

19061

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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MAY 03 2011
SC Court of Appeals

The Honorable Carolyn C Matthews, Administrative Law Judge

Case No 2009-ALJ-30-0103-AP

James "Cal" Bell, Othella Bernard, Katherina Bowyer, Linda M W Bratton,
Ann T Bridges, Rance C Cobb, Jeannie B Croxton, Bernetha L Culbreath,
William K Dreyer, Jacqueline D Farr, Ruth Fritts, Nancy Glenn, Etta Jane
Jones, Geneva M Martin, Mary H McCabe, Beverly McClanahan, Max D
Randolph, Carolyn McIver Smith, Maggie G Williams and Paula Woodhief,

Appellants,

vs

South Carolina Department of Corrections and Palmetto Unified School
District No 1,

Respondents

RECORD ON APPEAL

Volume 2 of 8

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1 over to the field, you know, where they really
2 did the real workouts and we could use that
3 track for practice So every afternoon I'd go
4 over there and practice and practice I
5 failed I failed by three seconds I dragged
6 the 150 pound bag of sand That was okay I
7 could do that My husband said it was because
8 I moved my furniture around so much But
9 anyway, I did that okay, but it was the running
10 that got me And so I went back to my
11 institution and explained to one of the powers
12 that be His quote was, hell, three seconds,
13 looks like they'd have given it to you, but
14 they didn't So that meant now that was in
15 July Then in later in August when we were
16 given a chance to try again, I had continued my
17 running, and I passed that But, oh, my God,
18 the the rifle shooting Am I saying too
19 much?

20 Q No You tell them about your experience with
21 training

22 A You know, the the pistol, the Smith &
23 Wesson and the shotgun Now I grew up in the
24 country and my dad had a shotgun, and I'd go
25 and turn the squirrel so he could shoot him,

1 but I had never held a gun in my hand There
2 had never been a reason And here I am
3 expected to shoot a Smith & Wesson So
4 somebody told me that if I'd go over to
5 Shooter's Choice on Wednesdays I could get in
6 either free or reduced rates So I went in
7 there, and I just just literally held the
8 gun and sort of played with it so I wouldn't be
9 so very intimidated by it And then I got up
10 the nerve to pull the string which brought the
11 paper chart with the human body silhouette up
12 there And I nearly shook to death, you know,
13 trying to get it I couldn't even hit the paper
14 at first But then the more I practiced, the
15 better off I got And SCDC sent a marksman out
16 to help two other women and myself who had
17 failed the test And so he, of course, was so
18 good at it, that he couldn't understand why we
19 were so dumb But he was, you know, patient
20 and helped as much as he could And I just
21 kept practicing and practicing And we were
22 it was so hot that we you know, wearing
23 the safety goggles And, of course, I wear
24 bifocals I was sweating like a pig and
25 and that sweat was rolling down and I was still

1 missing it I got a little better, but I was
2 still missing it And somebody suggested that
3 I ought to take my glasses off And I thought,
4 well, I'm failing Everything else I've
5 failed And so I just took the glasses off,
6 put the goggles on, and I couldn't see the
7 target I could only see that little tip of
8 steel at the end of that Smith & Wesson And
9 I got better, and I got better I didn't get
10 really good But on the day that I passed, the
11 lieutenant said let me let me do you
12 want me to count that again I said no, don't
13 count it again I think I just squeaked by
14 I just squeaked by

15 Q And during this time, what were you doing as
16 your work?

17 A Well, I had kind of hoped that I'd do what I
18 had observed so much, you know, walking in the
19 school and I knew we weren't going to have
20 any classes I guess that didn't make sense
21 They had me do everything that a correctional
22 officer does except go over on the death row
23 part of the complex where they have the really
24 bad men I don't think they even asked the
25 regular correctional women officers to do that

1 To tell you the truth, I don't think they ever
2 went And so except for that, I did everything
3 else I went, I observed when they cleaned out
4 their cells That was an experience I'd go
5 and watch when they had their shots I was
6 there for the when dignitaries would come
7 on, we had to get, you know, really everybody
8 in order I had to ride around the complex in
9 the car with the shotgun Now, if you thought
10 the Smith & Wesson was an experience, it was
11 the shotgun that stole the show I would
12 always stay back Usually I'm an you can
13 obviously see I'm an extrovert I would go
14 step up to the plate and, you know, go ahead
15 and get through with it But on the shotgun
16 thing, I didn't know anything about it So I'd
17 always stay back until time to test at the end
18 Well, it was a big class, and so they were kind
19 of rushing everybody through And they didn't
20 really give me a lot of instructions on how to
21 break it down, load it, reload it and
22 everything So I went out there I I
23 nearly laid down every pine tree on that firing
24 squad I mean it was awful, but I passed So
25 then when I got in the car, when I as an

1 officer, I was expected to ride shotgun I was
2 scared to death, you know, just to ease around
3 there We had to go really slow And I got
4 way around there where I thought not so many
5 people would be watching, you know And I
6 broke it down and did everything like I would
7 have to do if there had been a riot or some
8 really bad situation And of course I prayed
9 there wouldn't be

10 Q Okay And how long were you in that
11 correctional officer position?

12 A For six months

13 Q Okay And did your duties during that time
14 period change?

15 A I kept doing things I would go with the
16 grease truck This is a truck that comes and
17 let the grease out and it spills across the
18 complex And we'd check that point I'd go
19 with the grocery delivery truck, foods and all
20 that I did all kinds of things And I'd put
21 the mirror under the axles to make sure no
22 prisoner was riding out I did all of that
23 And then toward the end of the six months that
24 I was there, it seemed like that they had come
25 to their senses and put me in an area where at

1 least I knew a lot about what was going on
2 They put me in the library And the sad thing
3 about that was every day I was in that library
4 on duty watching where that my friend had
5 been raped in the bathroom across the hall
6 That was hard

7 Q Thank you, ma'am Don't go into that Were
8 you ever asked during that time as correctional
9 officer to do any educational services?

10 A Well, I guess that's what I started out to say
11 By putting me in the library, I was familiar
12 with that routine And I didn't let them take
13 any books out of there They'd try to steal
14 So I'd do what I had done before

15 Q All right Thank you, ma'am Now and my
16 last question will be did you ever have anyone
17 give you grief or a hard time about the rate of
18 teachers' pay?

19 A Well, I guess, you know, in a situation like
20 that when there's one part of a group that's
21 making more money than the other, I guess
22 there's that general feeling And I I did
23 sense that some of them might have thought we
24 had our comeuppance since we were demoted from
25 being a teacher to officer But I didn't

1 I didn't try to make any stigma about that

2 Q Okay

3 A One officer, every time he'd see me, he'd say
4 you're the one that can't shoot

5 Q Yes, ma'am

6 A I said but I passed, you know, in my defense
7 I said I passed

8 Q Thank you, ma'am I have no other questions
9 You can answer any questions Mr Summers or the
10 panel may ask you

11 **MS MARTIN - CROSS EXAMINATION BY MR SUMMERS**

12 Q Yes, ma'am, good afternoon

13 A Good afternoon

14 Q My name is Lake Summers I represent the
15 agency in this matter First of all, thank you
16 for answering questions of Ms Guffey I'm
17 going to be really, really brief and just check
18 a couple of things

19 A Okay

20 Q You mentioned that you talked to John Near?

21 A Yes

22 Q Okay Just do you recall where that
23 meeting occurred?

24 A Yes

25 Q Could you tell us where that meeting occurred?

1 A We were asked to meet him at the I believe
2 it was at the headquarters building Now if
3 not, it must have been in a a room there at
4 the school, but I kind of think I went over to
5 headquarters

6 Q And do you recall when that was, just the best
7 you can recall?

8 A Well, just very quickly after we got the notice
9 that we were being RIF'd And I have to say
10 that he was pleasant He he was succinct
11 but pleasant in telling me, and I was very
12 disappointed in what he said

13 Q Yes, ma'am

14 A I, I guess foolishly, thought that if I had to
15 be RIF'd, that I'd at least be placed in
16 something comparable to all my training in
17 education

18 Q And he explained to you

19 A He he explained to me that the only thing
20 the Department could offer me was that of
21 officer

22 Q Yes, ma'am

23 A And because my husband had need of a double
24 lung transplant, and a catastrophic illness
25 like that will wipe out most insurances Blue

1 Cross wasn't going to come through, I didn't
2 figure But I needed all the help I could get
3 So for insurance reasons, I I accepted that
4 position

5 Q Yes, ma'am

6 A And did the best I could

7 Q And we appreciate that

8 A Thank you

9 Q And thank you for your testimony very much

10 A Thank you

11 Q And those are all the questions I have, subject
12 to anything from Ms Guffey You may have
13 questions from the panel

14 **MS GUFFEY** No, I have no further questions

15 **MS ELMORE** I've got one question You mentioned
16 you said you were working at the Broad
17 River

18 A Yes

19 **MS ELMORE** facility as a teacher, an English
20 teacher?

21 A Yes

22 **MS ELMORE** And then you said when you became the
23 correctional officer, you said there were no
24 classes going on?

25 A Right

1 MS ELMORE They had discontinued all classes?

2 A They stopped all classes

3 MS ELMORE In the entire facility?

4 A Yes The men were very disappointed

5 MS ELMORE Okay, thank you

6 A If I may say so, we did a good job with
7 security before we were ever labeled
8 correctional officers We kept six classes,
9 full classes of men actively involved in
10 education and building self esteem I regret
11 it so much I miss it so much

12 MS ELMORE And all those classes were discontinued?

13 A Yes

14 MS ELMORE Thank you

15 MR MCCLARY Any other questions? Thank you, ma'am

16 MS GUFFEY We'd ask that this witness be dismissed

17 MR SUMMERS We would agree with that

18 MR MCCLARY Thank you, ma'am We appreciate it

19 MR NICKLES Thank you very much

20 A You're welcome

21 MR COBB - DIRECT EXAMINATION BY MR NICKLES

22 Q State your name and address, please

23 A Rance Cobb, 211 Harvest Lane, Greenwood, South
24 Carolina

25 Q Are you currently employed, Mr Cobb?

1 A I am I'm the principal of an alternative
2 school in Gaffney, South Carolina, and I have
3 grades six through twelve

4 Q Okay Where were you employed before June 1,
5 2003?

6 A With South Carolina Department of Corrections

7 Q And for the record, are you a grievant in this
8 case?

9 A Yes, sir, I am

10 Q What was your position before immediately
11 before June 1, 2003?

12 A I was principal at Leath Correctional
13 Institution in Greenwood and had supervisory
14 duties at a couple of other institutions that
15 had educational coordinators

16 Q What were those other institutions that you had
17 administrative duties?

18 A McCormick Correctional Institution and Perry
19 Correctional Institution

20 Q There is a list of institutions at page 188 of
21 the record Do you see that, sir?

22 A Yes, sir

23 Q All right Where are Leath and McCormick
24 located according to this document?

25 A Number ten

1 Q And where is Perry located?

2 A Perry is in number eleven

3 Q Okay So those are in different bubbles?

4 A Correct

5 Q Okay How long had you been principal at the
6 time or prior to June 1, 2003?

7 A Approximately 25 years

8 Q And tell me where those 25 years were spent

9 A I was first principal at Givens Youth Center in
10 Simpsonville

11 Q Okay

12 A Later at Perry Correctional Institution and
13 finally at Leath Correctional Institute

14 Q Is Givens still operating?

15 A Givens is closed It was closed several years
16 ago

17 Q Have you had any other positions either at the
18 Department of Corrections or at the Palmetto
19 Unified School District?

20 A I was a when I was first hired I've
21 been with the Department of Corrections since
22 March of 1973 I was hired as a project
23 director for a federally funded program

24 Q How long did you hold that position?

25 A Approximately a year and a half

1 Q Okay What was your next position?

2 A Guidance counselor at Givens Youth Center

3 Q How long did you hold that position?

4 A Several years before I became principal,
5 probably, I don't know, three or four years
6 I don't know exactly

7 Q Was your next position the principal at Givens?

8 A It was

9 Q And then Perry and then Leath?

10 A Yes, sir

11 Q And Leath was your final position?

12 A Yes, sir

13 Q Tell me what your duties were as principal at
14 Leath

15 A Essentially, supervising the educational
16 program and then representing the educational
17 program and the institution and in the
18 community

19 Q Did you have the responsibility of supervising
20 any individuals?

21 A All the teachers at Leath and also programmatic
22 responsibility for individuals at McCormick and
23 Perry

24 Q Now, in supervising the educational staff, did
25 you perform evaluations?

1 A Yes, sir, yearly

2 Q And what were some of the areas that you would
3 use to evaluate staff?

4 A Well, of course, the standards, time and
5 attendance, punctuality, but then of course
6 those that were also specific to education,
7 evaluation of instruction, evaluation of
8 curriculum, used evaluation of, you know, the
9 results they had with with the learning,
10 like graduation rate, completion rate for
11 vocational courses, progress on on testing
12 occasionally was looked at

13 Q Okay Was there a defined minimum program in
14 operation while you were at Leath?

15 A There was a defined minimum program which is a
16 document, an agreement between the Department
17 of Corrections and well, it's a document
18 that the Department of Education has for all
19 school districts that specifies what programs
20 and just the needs any school district would
21 have to fulfill in order to obtain funding and
22 required, you know, to comply with State
23 Department of Education regulations and
24 guidelines

25 Q And were your duties and expectations guided in

1 any way by that defined minimum program?

2 A Yes, sir We had, you know, as principal,
3 education supervisor, we were not only
4 responsible to Department of Corrections for
5 all their policies and procedures, we were also
6 responsible to Department of Education for all
7 their requirements as far as, you know,
8 programmatic responsibilities

9 Q Okay Now, were you familiar with the manner
10 in which your particular facility received
11 funding for its instructional staff?

12 A We received several pots of money We had some
13 grant money from the Carl Perkins Funds We
14 had some EFA monies We also had adult
15 education monies And then we had some, you
16 know, pure, hardcore state monies from the
17 Department of Corrections

18 Q Okay Now, were there restrictions on how some
19 of those monies could be used?

20 A Very definitely

21 Q Okay And were some of those restrictions
22 imposed by the State Department of Education?

23 A Well, not only State Department of Education
24 but also, you know, the federal government in
25 a lot of instances The money usually flowed

1 from, you know, federal to the state to the
2 Department of Education for disbursement to the
3 school districts

4 Q Okay Could those funds earmarked for
5 education be used for other purposes within the
6 Department of Corrections?

7 A No, sir

8 Q As a principal now in a school district, tell
9 me what school district that is

10 A Cherokee County School District, Gaffney, South
11 Carolina

12 Q Are you responsible for evaluating your
13 instructional staff?

14 A Yes, sir, I am

15 Q How do the standards you use in your current
16 capacity compare to the standards used in your
17 former capacity at Leath?

18 A Very, very similar

19 Q Okay Do you expect the same things out of
20 your teachers now as you expected out of your
21 teachers at Leath?

22 A Absolutely

23 Q And I believe you said you're the principal of
24 an alternative school, is that right?

25 A Yes, sir

1 Q And that's a school where maybe there's some
2 troubled students?

3 A Primarily Our biggest source of students are
4 students who've been kicked out of their
5 regular schools, and they're sent to us mostly
6 for behavioral problems I do have other
7 some students that come for various other
8 reasons, like straight from DJJ or court
9 release or and then sometimes the students
10 who have difficulty with time and attendance,
11 and other students we may receive during the
12 year might have a special academic need For
13 example, somebody might transfer in from
14 another district that's on a block type
15 schedule that they're they had to lose, you
16 know, some credit, for example, if they were
17 placed in a regular school They might send
18 them to the alternative school because we have
19 more flexibility under the law to work out
20 programs to save units and that kind of thing

21 Q The profile of these students in any way
22 similar to those that you might have had at
23 Leath?

24 A Unfortunately, most of them are, you know
25 or not most, but some are very well on their

1 way to to Department of Corrections About
2 a third of them I currently serve have active
3 cases with DJJ

4 Q Based upon your experience in these two
5 environments, is there any material difference
6 between what's expected of a teacher in your
7 current capacity versus what's expected of a
8 teacher in your former capacity at Leath?

9 A No, sir They we expect good teaching both
10 places

11 Q Okay At the time of the reduction in force in
12 2003, how many years of service did you have
13 within the Department of Corrections?

14 A When it was announced in March, I had, I think,
15 about 15 days shy of 34 years

16 Q Okay Now, were you given the opportunity to
17 continue to work as an educator by Department
18 of Corrections?

19 A I was not I was told that, you know, the only
20 area that I could look into was performing
21 since the education program was to be done away
22 with at both places essentially, that with, you
23 know no job openings whatsoever in
24 education

25 Q How about in any other area where you worked

1 before? You didn't have the opportunity to
2 compete up there?

3 A No, sir, I did not

4 Q Or anywhere else in the state?

5 A Nor anywhere else, even within driving
6 distance, no where else

7 Q Okay Do you know whether there were
8 principals who were retained after the
9 reduction in force?

10 A Yes, sir, there were

11 Q Did any of those have seniority in excess of
12 yours?

13 A I was the most senior principal in the
14 Department of Corrections

15 Q So the answer would be?

16 A No None had greater experience

17 Q Would you have been willing to transfer or move
18 to retain your employment with the Department
19 of Corrections?

20 A Within education, yes

21 Q Okay Within the Palmetto Unified School
22 District?

23 A Yes

24 Q At the time that you were employed at Leath,
25 did you have correctional officers performing

1 certified instructional duties?

2 A No, sir, never

3 Q Okay Have you had the opportunity to
4 determine whether that is now the case in the
5 Palmetto Unified School District?

6 A The when I left, there was a couple of
7 part-time positions that continued on The
8 person we had a guidance counselor and
9 myself as far as school administration that was
10 liaison with operations And as far as
11 scheduling inmates in and, you know, testing,
12 that sort of thing, those duties were assumed
13 by a correctional officer

14 Q Okay Let's look at page 778, and it's Tab 8
15 in the material that you have in front of you,
16 please

17 A 778, Tab

18 Q Tab 8 It's a little bit hard to read, but
19 this is entitled institutions greatly reduced
20 by RIF And the first column is the
21 institution The second says remaining staff
22 funded by SCDC and grant The next three
23 columns are enrollment And then the next
24 three columns are county funded Do you see
25 that?

1 MR COOPER 778?

2 MR MCCLARY It's that gray area is what he's
3 talking about

4 MS GUFFEY It's in the gray

5 MR NICKLES Yeah It's it's in this gray area

6 MR COOPER Oh, up at the top?

7 MR NICKLES It's very, very hard to read, but you
8 can you can decipher it if you are very
9 careful You might want to

10 A I don't know if my glasses go that far

11 Q What we have here is institutions I actually
12 had to write this on mine so I could read it
13 Remaining staff SCDC and grant funded,
14 enrollment as of 3/01 and I think that's '03
15 And that is county funded programs in the last
16 set of columns Now, looking at your former
17 institution, for example, do you see that Leath
18 is next to the bottom there?

19 A Correct

20 Q Did you know Patricia Williams?

21 A Yes, sir

22 Q And it says pink slip What does that mean to
23 you?

24 A Someone in temporary status

25 Q And then Sandra Cook, did you know Ms Cook?

1 A Yes

2 Q That's temporary status?

3 A Correct

4 Q Now, according to this, those are the only
5 people left at Leath after the reduction in
6 force who were employees of the Department Do
7 you see that?

8 A Correct

9 Q When they have the numbers academic,
10 vocational, academic to date and vocational to
11 date, do you know what those represent?

12 A Those were total total students served

13 Q Okay Well, in your professional experience,
14 would two part-time people be able to serve all
15 of those folks in the academic and vocational
16 category?

17 A None in vocational because neither neither
18 of these teachers were, you know, certified in
19 vocational areas that were taught As far as
20 academic, with those numbers, that if they
21 the students they served would be greatly
22 reduced to be effective at all

23 Q Okay And would that represent the approximate
24 number of students who were there during the
25 time that you were the principal at Leath?

1 A Those look like good good representative
2 totals I assume that, you know, as of 3/1
3 3/1/03

4 Q Okay

5 A Because they're they're cumulative based on
6 July the 1st forward

7 Q And you have a would it be fair to say that
8 your school year is a revolving one rather than
9 a traditional nine month school year?

10 A Very much so It's year round school

11 Q And that's by law, isn't it, the 12 month
12 program?

13 A It is

14 Q How do you accommodate those students who,
15 let's say, enter the system in May or September
16 or October? Do they have to join the
17 educational program at some particular spot, or
18 are they addressed individually at their skill
19 levels?

20 A At this particular institution, they were
21 and also in most schools within the Department
22 of Corrections, it's open ended, open exit by
23 design

24 Q So there's more direct one on one instruction
25 to the individual student?

1 A There's not necessarily more direct one on one,
2 but the programs are tailored and
3 individualized so that a student can enter, you
4 know, at any particular time For academic,
5 most of the classrooms were set up as lab
6 settings in which there are some direct
7 instruction And then the other instruction
8 for the remaining class period was a small
9 group instruction where you'd have several
10 students who were grouped together on the same
11 skill set, or there about, and then other
12 students who were working individually on
13 individual assignments

14 Q Okay What are the county funded positions,
15 what do those designate?

16 A County funded, the people are sometimes
17 employed by adult ed in various counties to
18 come in and usually supplement an existing
19 program that you have in an agency For
20 example, you know, Corrections had cooperative
21 agreements with several counties where there
22 wasn't money to necessarily implement a full
23 calvary of staff at an institution So if the
24 local adult ed folks had enough money for some
25 additional coverage, the Department would

1 would work with those folks to bring in
2 teachers through the county funded adult
3 education to do classes

4 Q Okay And I see on this there are some that
5 were working, it looks like, six hours or four
6 hours a week on up to one person working 40
7 hours per week Do you see that?

8 A Right

9 Q Did you ever have any of those folks in your
10 school?

11 A I did not

12 Q Okay Was it your understanding that these
13 part-time county funded folks would be the
14 primary deliverers of education in the Palmetto
15 Unified School District?

16 A No, sir Usually, they are they are not
17 There's, you know, good and bad working with
18 county funded folks within a correctional
19 setting But usually, primarily they weren't
20 the they were there to supplement rather
21 than to carry the main load in most instances

22 Q So, according to this, at Leath where you were
23 employed, all the certified staff were left,
24 and there were only two pink slipped people
25 working at the time that this was prepared?

1 A That's correct

2 Q Okay Now, in your 34 years or so working with
3 inmates in instructional capacities, did you
4 ever experience a division of the educational
5 program by eleven geographic regions in the
6 state?

7 A There's never been

8 Q It's page 189

9 A There's never been The only time it was ever
10 done was immediately preceding the RIF

11 Q Okay Now, we heard some testimony earlier
12 about regions within the Department of
13 Corrections At one time, Appalachian, Central
14 and Coastal Are you familiar with those
15 terms?

16 A Yes, I am They came about pretty much in the
17 late the mid to late 70s And National
18 Institute of Corrections, one of the
19 recommendations I think that some of the
20 models in states that, you know, had improved
21 correctional delivery overall, one of the
22 recommendations was to maybe divide into
23 functional regions And in our state, it, you
24 know, just sort of fell naturally with
25 Appalachian, Midlands or Central and then

1 Coastal

2 Q Was the educational program ever divided into
3 those regions?

4 A No, sir, never

5 Q Okay Was the administration of the
6 educational program ever divided into those
7 regions to your knowledge?

8 A No, sir, never

9 Q You're not aware of any area superintendents or
10 superintendents with specific geographical
11 spaces in South Carolina or Palmetto Unified?

12 A No, sir, they were not

13 Q Okay Was there always one superintendent?

14 A There's always been one superintendent

15 Q Was there always one board?

16 A The board of as far as Board of Education?

17 Q Yes

18 A As far as board of trustees for Palmetto
19 Unified?

20 Q Yes, sir

21 A That was created in 1981, I believe, when they
22 passed the General Assembly passed the
23 legislation that created the school district
24 within Department of Corrections

25 Q Did you from time to time participate in in-

1 service or employment enhancing activities in
2 the Palmetto Unified School District?

3 A Yes, sir, I did We had regular staff
4 development training in Columbia

5 Q Okay Was that on a statewide basis?

6 A Statewide

7 Q Okay Never divided by region or division?

8 A I can't say absolutely never, but, you know, at
9 least 98 percent of the time that I recall, and
10 maybe all of it was centralized

11 Q Now, was there a policy manual for the Palmetto
12 Unified School District?

13 A There was It's part of it's part of, you
14 know, being a school district There is a
15 separate and discrete policy manual that is
16 maintained

17 Q Okay You've seen it with your own two eyes?

18 A Every principal is supposed to have a copy in
19 the office

20 Q Okay And were you supposed to follow that
21 manual?

22 A As as far as anything pertaining to
23 education, yes Of course, like I said, we had
24 dual supervision Not only do we have to meet
25 every policy and mandate by Department of

1 Corrections, we also had to meet the defined
2 minimum program and all the rules, regulations
3 and compliance like any other school district
4 to comply with State Department of Education

5 Q In addition to yourself over the period of your
6 34 years, did you observe other folks
7 occasionally move from one institution to
8 another providing educational services?

9 A Yes, sir, I did

10 Q Okay And prior to this reduction in force,
11 was there ever any restriction on you telling
12 you you could not see employment in any other
13 area of the state as a principal or an
14 educator?

15 A No, sir

16 Q Were you party to the lawsuit that was brought
17 over teacher pay back in the 1990s?

18 A Yes, sir, I was

19 Q And what happened as a result of that lawsuit,
20 to the best of your knowledge?

21 A The ultimate result was that a settlement was
22 reached whereby the Department of Corrections
23 had to pay a sum of back pay to individuals who
24 were parties to the suit, and also the teacher
25 salary schedule was adjusted to reflect the

1 letter of the law as far as the amount of
2 of pay for educators

3 Q Now, did that adjustment affect only those
4 individuals who were participants in that
5 lawsuit?

6 A No, sir That adjustment everybody
7 benefitted from that adjustment

8 Q Based upon what you have observed, and if you
9 believe this document that we just looked at at
10 Tab 8, once again page 778 and 779, let's
11 assume that the information on these on
12 this chart is correct Is there a statewide
13 unified school district providing educational
14 services to inmates according to this chart?

15 MR SUMMERS I'm going to object to that I think
16 that goes to one of the questions that's before
17 the panel I think that's

18 MR NICKLES I'm asking him his he's had 34
19 years of experience

20 MR CORNING What is the question?

21 MR NICKLES According to the information on this
22 chart, does this reveal a statewide school
23 district providing education

24 MR CORNING Are you asking his opinion?

25 MR NICKLES Yes

1 **MR CORNING** I'll allow him to give his opinion,
2 counsel

3 **MR NICKLES** Okay

4 Q Let me go through here In Allendale, how many
5 state funded educators are there according to
6 this chart?

7 A None

8 Q Broad River?

9 A None

10 Q Evans?

11 A Four

12 Q Two pink slip, one has to be moved, right, and
13 one classroom teacher Goodman, Kershaw?

14 A None

15 Q Leath, where you were Excuse me, Kirkland

16 A One part-time person

17 Q Okay Leath?

18 A Two part-time

19 Q Lieber?

20 A One person

21 Q One grant Manning?

22 A That was a part-time teacher

23 Q Is he the part-time teacher how many hours
24 per week was that part-time pink slip teacher
25 working?

1 A He was working full time but designated as
2 part-time

3 Q Okay Then McCormick, Northside, Perry, Walden
4 and Watkins?

5 A None

6 Q Do you know who's providing educational
7 services to the inmates at those facilities?

8 A From here, it looks like most services were
9 provided by county folks

10 Q Are those individuals employed in the Palmetto
11 Unified School District?

12 A No, sir, they're not

13 Q What is an education coordinator?

14 A An education coordinator was a title developed
15 when the Department of Corrections was trying
16 to save some money and cut back Instead of
17 having a full time principal at every single
18 institution, some of the smaller institutions
19 where they still had educational staff, they
20 were you know, more than one or two but
21 less than, you know, say eight to ten But
22 anyway, they would designate a lead teacher to
23 administrate the program who was to be
24 supervised by a certified principal

25 Q Did the education coordinators have to be

1 certified as teachers?

2 A They did, absolutely

3 Q But they couldn't fulfill the position of
4 principal because they didn't have that
5 certification?

6 A That's correct

7 Q That's something

8 A Well, most of them probably did not

9 Q That's something the Department of Education
10 requires?

11 A For a principal, you have to be certified as a
12 principal

13 Q Okay And to your knowledge, that's something
14 the State Department of Education requires,
15 correct?

16 A Absolutely

17 Q Is that is that true in the Palmetto
18 Unified School District?

19 A Yes, sir

20 Q Is it true in the district you teach and you
21 serve now?

22 A Yes, sir

23 Q What is APT?

24 A APT is stands for assessment and
25 performance in teaching That was an

instrument used prior to ADEPT ADEPT is the current instrument used for to evaluate new teachers and/or other teachers the the principal may choose to place on a formal evaluation program So APT was an instrument used statewide by school districts and of course with Palmetto Unified as part of the Correctional school district, too, to evaluate any new teachers that came into the system that hadn't had previous teaching experience and had already passed that in a in a district from which they came

Q Okay So you say that is the standard that was imposed not only in other districts but Palmetto Unified District?

A Absolutely

Q Okay

A It's one of those mandates you had to meet, you know, as far as the Department of Education

Q Okay So that if there were a teacher employed in the Palmetto Unified School District who had not previously obtained passing APT, they had to go through that process in the Palmetto Unified School District, is that correct?

A That's correct

1 Q Now, was there any requirement for individuals
2 who were evaluating under the APT?

3 A Anyone who evaluated any other teacher as far
4 as APT had to have the credential provided by
5 the State Department of Education You had to
6 take a formal training program and pass that
7 training program as an evaluator in order to
8 to evaluate anybody else

9 Q Did you have to do that?

10 A Yes, sir

11 Q Okay And did you do that?

12 A Yes, sir

13 Q And did you evaluate teachers under the APT?

14 A I did

15 Q Now, as a principal, were you evaluated?

16 A I was every year

17 Q Okay And how was that evaluation conducted?

18 A Over the years it changed somewhat from sort of
19 fluid The most often it was done by the
20 superintendent of education Sometimes it was
21 done by his designee, and it usually it
22 entailed institutional input in the evaluation
23 And also, State Department of Education, there
24 was a special form for principals that was
25 added and made part of the EPMS that was over

1 and above the EPMS It was a part of it that
2 was, you know, for principals

3 Q Okay Now, as the constituents of your
4 services, did anyone representing the inmates'
5 interests also participate in evaluations?

6 A No, sir

7 Q Okay Warden or anyone like that representing
8 their interests ever participate in your
9 evaluation?

10 A Yes, sir, at Leath Either a warden or a
11 warden designee had input into it

12 Q Okay Answer any questions that Mr Summers
13 here or that members of the panel may have, Mr
14 Cobb

15 **MR COBB - CROSS EXAMINATION BY MR SUMMERS**

16 Q Good afternoon, sir My name is Lake Summers
17 I know you've been in here for parts of the
18 past two days As you know, I represent the
19 agency I'm going to ask you some questions
20 And again, as Mr Nickles said, when I'm
21 concluded he may have a chance to ask you some
22 more based on what I'm asking you And then of
23 course the panel members might have some
24 questions You talked about pots of money that
25 were available

1 A Yes

2 Q to

3 A Well, I used the term pots, but essentially
4 different different sources of funds

5 Q And we've heard some testimony about many or
6 all of these I want to try to get some
7 information from you about the ones you
8 specifically mentioned today You used
9 Perkins?

10 A Yeah, Carl Perkins

11 Q Okay Describe for the panel what that, I'll
12 call pot of money what that pot of money
13 that you referred to as Perkins

14 A Right

15 Q What is it?

16 A That's a federal source of funds Carl
17 Perkins, I think, was the senator that attached
18 his name to the enabling legislation It does
19 several different things, one one of which
20 is vocational programs Another thing is
21 programs for women specifically who are under
22 employed or may need additional training to
23 enhance their employability

24 Q And then you said and is that before I
25 move forward, does that pretty much summarize

1 what the Perkins type funds would be?

2 A Yes

3 Q And you said there was money, pots of money for
4 adult education?

5 A Yes

6 Q Describe for the panel again what that means

7 A Again again, that's flow through money from
8 the federal government that comes to the state
9 It's it's allocated out on a formula basis
10 to different school districts to operate in the
11 different counties adult education programs

12 And anyway, Corrections, as a school district,
13 received monies from from that source also

14 Q And then you talked in terms of my notes
15 are not necessarily perfect You talked about
16 state money from or to the Department of
17 Corrections?

18 A Yes

19 Q Describe for the panel what you meant by that
20 particular pot of money

21 A State appropriations from the Budget & Control
22 Board to Corrections specifically to be used
23 and distributed like Corrections, you know, saw
24 fit

25 Q And then you I believe you used the

1 initials EFA?

2 A Correct That's state monies funded through
3 Education Finance Act

4 Q And the Education Education and Finance
5 Act, is that state to your knowledge, state
6 legislation or federal legislation?

7 A State legislation and also EIA funds,
8 Educational Improvement Act that, you know,
9 would go along with EFA funds

10 Q Okay So there's EFA and then there's EIA,
11 correct?

12 A Right

13 Q And do you know if at all obviously,
14 they're different names

15 A Right

16 Q What's the difference between the two? Just
17 the panel about that

18 A Education Improvement Act funds are funds that
19 come through the School Improvement Act or
20 Educational Improvement Act that provides
21 certain sources of money to improve the school
22 program, the overall progress Education
23 Finance Act are are more general funds that
24 can be used in a wider variety of, you know,
25 more for, you know, your regular programs,

)
1 not specifically geared toward improvement,
2 although, you know, the overall goal of
3 everything is still we make progress and
4 move forward But anyway, those are two
5 separate acts through the legislature As far
6 as how they were limited or the amounts or
7 whatever, again, that comes well not again,
8 but that comes to the Department and is
9 administered through Palmetto Unified central
10 office as far as the educational type funds and
11 in conjunction with the budgetary part of SCDC
12 So, anyway, those I don't have that was
13 beyond my scope of knowledge as far as exactly
14 how much of that money came and how it was
15 allocated to the institutions and all that
16 So, you know, I can't I can't speak to
17 that

18 Q So it comes through the district to the
19 district through SCDC, the types that you were
20 talking about?

21 A I don't know if we're, you know, splitting
22 hairs here, but of course some of those funds,
23 you know, are not available If we are not a
24 school district, then, you know, you aren't a
25 label, you don't get certain funds You aren't

1 eligible to receive that funding So, you
2 know, whether it comes straight through, you
3 know, from Department of Education to Palmetto
4 Unified and whether the agency acts as a
5 fiduciary to receive the money and then send it
6 to to Palmetto Unified budget, you know
7 Are you splitting hairs? I don't know So
8 but essentially, it comes from the Department
9 of Education to fund educational programs

10 Q And you used the term flow through dollars Is
11 that what you're talking about, flow through
12 money?

13 A Right I think, you know how would other
14 people describe it? That's the way I would
15 describe it

16 Q I was just checking your words, sir That's
17 all

18 A Right

19 Q Okay Now, earlier on in your testimony, and
20 I may have written the name of the institution
21 down wrong Was it Givens?

22 A That's correct

23 Q Where was Givens located?

24 A Simpsonville, South Carolina

25 Q And you said that was closed?

1 A It was

2 Q Do you recall when it was closed?

3 A Approximately 19 I'm sorry Let's see, I
4 think 2002, 2003, somewhere around in there

5 Q So it was not long at all before the reduction
6 in force we're talking about?

7 A That's correct

8 Q Now, you I'm going to turn your attention
9 back to Mr Cooper I think it's still up on
10 the screen, so I don't think you'll have to
11 adjust it back to page 778 That was the table
12 that Mr Nickles was running through with you

13 A Okay

14 Q And that's at Tab 8 in the notebook in front of
15 you Have you found that, sir?

16 A Yes, sir

17 Q I won't ask you to try to again read the
18 material in the gray at the top

19 A Thank you

20 Q You're welcome But I'm going to talk about
21 some institutions that aren't referred to on
22 this table And if you know anything about
23 them, please tell both me and the panel I
24 don't see anything about McDougall on the table
25 here Did you find McDougall on the table here

1 on page 778 or 779?

2 A No, sir I don't see McDougall

3 Q Okay And the title of this table, at least
4 that's not in gray, is titled institutions
5 greatly reduced by RIF?

6 A That's correct

7 Q And I don't see Ridgeland on here

8 A That's correct

9 Q I don't see Trenton on there

10 A That's right

11 Q I don't see Turbeville

12 A Correct

13 Q If you know, how

14 A Nor Tyger River

15 Q Nor Tyger River, yes, sir Let's talk about
16 Turbeville If you know, how was Turbeville
17 impacted by the reduction in force, the
18 educators at Turbeville?

19 A From what I had heard, I think very little, but
20 I don't know for sure But, you know, I'd have
21 to refer back to that map to, you know, even
22 see what the you know, who was eligible to
23 bump into there or however I don't know

24 Q And I'm going to you mentioned EFA before,
25 Education Finance Act funding, is that correct?

1 A That's correct

2 Q Is that contingent upon the age of the inmate?

3 A It is

4 Q Tell the panel about that

5 A Well, it's for regular public school programs
6 And public school age children, of course, are
7 can be funded for public school up through
8 age 21 If you're 21 prior to the start of the
9 fiscal school year, then you're not eligible
10 for funding If the fiscal school year starts
11 and you enroll in the program before you reach
12 age 21, then you can be eligible to get counted
13 for funding

14 Q Do you know whether or not there was inmates
15 under the age of 21 shifted from institutions,
16 one institution to another, in and around,
17 let's say, the first half of 2003?

18 A I don't recall the exact dates, but there was
19 massive inmate movement and realignment at some
20 particular point right up right around that
21 time, you know, before

22 Q And that was before?

23 A Before the RIF

24 Q Okay

25 A So it could have been as early as a year before

1 that I you know, I just don't recall the
2 exact dates

3 Q And when you say before the RIF, are we talking
4 the effective date, June 1st of 2003, sir?

5 A Yes, sir

6 Q Now, in questioning from Mr Nickles, you
7 talked about legislation that had been enacted
8 by our General Assembly And if you can with
9 that notebook that's still there in front of
10 you, would you turn to Tab 19? And, Mr
11 Cooper, that's going to be page 828 Did you
12 find that, sir?

13 A Yes, sir

14 Q And Mr Cooper's very quickly going through and
15 making that image visible on the screen for us
16 Thank you, sir And you would agree with me
17 that on page 828 there's a printout of statutes
18 from or a statute from the South Carolina
19 Code of Laws, wouldn't you?

20 A Yes, sir

21 Q Okay And there's some numbers there It says
22 24-25-10 Do you see that, sir?

23 A I do

24 Q Okay And next to that, you see the words
25 Palmetto Unified School District Number 1

1 established, correct?

2 A Yes, sir

3 Q Okay And if you could, there's a sentence
4 there Could you read that for us, if that
5 print's clear enough for you?

6 A It is hereby established a special statewide
7 unified school district within the South
8 Carolina Department of Corrections to be known
9 as the Palmetto Unified School District Number
10 1

11 Q Yes, sir Just below that there's the word
12 history Do you see that?

13 A I do

14 Q And could you read the information that appears
15 to the right of the colon next to the word
16 history?

17 A 1981, Act Number 168, Paragraph 1

18 Q Okay So when you were talking with Mr
19 Nickles, I believe you talked about legislation
20 that was enacted in and around 1981, correct?

21 A Correct

22 Q Is this the legislation you were referring to?

23 A Yes, sir, I believe it is

24 Q Now, sir, in the same tab, if you could go to
25 page it's the very last page of that tab,

1 Tab 19, and it's designated by the record
2 number of page 838 Did you find that one yet,
3 sir?

4 A Yes, sir

5 Q And let the record reflect that Mr Cooper has
6 brought it up on the screen And do you see
7 the numbers 24-25-90?

8 A I do

9 Q Okay And could you read the language that
10 appears next to the numbers 24-25-90?

11 A Superintendent and other personnel to be
12 employed according to Department of Corrections
13 policies

14 Q And if you could, sir, if the if the print
15 is visible enough, could you read the sentence
16 that appears underneath the text that you just
17 read?

18 A The superintendent of the district and all
19 other educational personnel shall be employed,
20 supervised and terminated according to the
21 South Carolina Department of Corrections
22 personnel policies and procedures

23 Q Yes, sir Do you see the word history below
24 that sentence?

25 A I do

1 Q And again, as you did before, could you read
2 the material that appears after the colon
3 there?

4 A 1981, Act Number 168, Paragraph 9

5 Q So that appears to be part of the same
6 legislation?

7 A Yes, sir, it does

8 Q Now, earlier you talked with Mr Nickles about
9 having a policy manual for Palmetto Unified
10 School District

11 A Yes, sir, there is

12 Q And you had access to that, obviously, in your
13 duty as principal?

14 A I did

15 Q Does the Department of Corrections also publish
16 and maintain policy manuals or procedures?

17 A The South Carolina Department of Corrections as
18 an agency?

19 Q Yes

20 A Yes

21 Q Did you keep those at close reach as well?

22 A At close reach? They were those were
23 located in the law library and then if they
24 weren't restricted Then the restricted, there
25 was a policy set usually in at least the warden

1 and deputy warden's office

2 Q Now, you mentioned under questioning from Mr
3 Nickles about having a meeting with John Near
4 Do you recall talking about that?

5 A I do

6 Q And John Near's position, as you recall it back
7 in 2003, was what, sir?

8 A Director of Human Resources

9 Q And if you if you testified to this, I
10 apologize for missing it But can you describe
11 for the panel where ya'll wound up meeting?

12 A Leath Correctional Institution

13 Q He came down there, sir?

14 A He did

15 Q Anybody else come with him to the best of your
16 recollection?

17 A I think Ms Thrailkill there

18 Q Sitting next to me here?

19 A If memory serves, but it doesn't serve too well
20 lately

21 Q Yes, sir, I understand Do you recall how long
22 the meeting lasted?

23 A Approximately about fifteen minutes, I would
24 guess

25 Q And then effective June 1st the effective

1 date of the RIF was June 1, 2003, correct?

2 A Correct

3 Q And that's when your time with the Department
4 of Corrections ended?

5 A That's correct

6 Q Sir, thank you very much for answering my
7 questions I appreciate your indulgence Mr
8 Nickles may have some Of course the panel
9 might

10 **MR COBB - RE-DIRECT EXAMINATION BY MR NICKLES**

11 Q I just have a couple that I forgot to ask
12 What degrees do you hold?

13 A Bachelor's Degree from Furman University, a
14 Master's from University of South Carolina, a
15 Doctorate from University of South Carolina

16 Q Okay What was your level of pay when you were
17 separated from the Department of Corrections?

18 A I was paid on the salary scale, a Doctorate
19 with I think our salary scale goes up to 22
20 years where it maxes out

21 Q Okay And on the salary scale, generally
22 speaking, what are the components that
23 determine the amount that you receive?

24 A The years of experience and the degree that's
25 held

1 Q Okay And you had more than 34 years of
2 experience and a Ph D ?

3 A At the time of the RIF, I had about 30 years
4 and an E D D

5 Q Okay Were you at the top of the scale?

6 A Yes, sir, I was

7 Q And you were not allowed to compete against any
8 others who held principal positions, correct?

9 A That's correct

10 Q Mr Summers asked you some questions about the
11 legislation that created the Palmetto Unified
12 School District And if we could look at page
13 829, please

14 A What tab?

15 Q It is Tab 19, page 829 What is the title of
16 this particular section of the law?

17 A Purpose

18 Q Okay And is this enacted at the same time
19 those other pieces that Mr Summers directed
20 your attention to?

21 A Yes, sir, I believe it is

22 Q Could you read what that particular section
23 says?

24 A The purpose of the District is to enhance the
25 quality and scope of the education for inmates

1 within the Department of Corrections so that
2 they will be better excuse me, so that they
3 will be better motivated and better equipped to
4 restore themselves in the community The
5 establishment of this District shall insure
6 that educational programs are available to all
7 inmates with less than a high school diploma or
8 its equivalent, and that various vocational
9 training programs are made available to
10 selected inmates with the necessary aptitude
11 and desire Where enrollment in an education
12 program must be restricted, justification for
13 that restriction should be documented by the
14 District

15 Q Okay Now, so when education opportunities are
16 restricted, who's supposed to document that?

17 A According to this, by the District

18 Q Okay And is this to be available to only
19 those inmates under 21 years of age?

20 A No, sir

21 Q What does it in fact say?

22 A To inmates within the Department of
23 Corrections

24 Q To all inmates?

25 A I would interpret it as all inmates because it

1 doesn't say specifically if any are excluded

2 Q Well, what does it say? It says available to
3 all inmates with less than a high school
4 diploma Was it your experience there were
5 plenty of inmates with less than a high school
6 diploma who were over the age of 21?

7 A Most of them

8 Q Okay So, if so there's no provision here
9 in limiting education based upon age, is there?

10 A No, sir

11 Q Or funding, is there?

12 A No, sir

13 Q Thank you

14 MR SUMMERS No further questions based upon Mr
15 Nickles' questions

16 MR MCCLARY Glynnis, Lynn, Herb? No further
17 questions

18 MR NICKLES Thank you very much We have we're
19 going to take by video deposition next
20 Wednesday

21 MR SUMMERS Correct

22 MR NICKLES We've yet to resolve the issue of the
23 second witness

24 MR SUMMERS Correct

25 MR NICKLES who is unavailable due to her

1 duties in the State of Georgia We would ask
2 your indulgence and ask that we be allowed to
3 present those witnesses as they are available

4 **MR CORNING** Counsel, it's going to depend when this
5 one's available, the one in Georgia

6 **MR NICKLES** Right

7 **MR CORNING** And I don't

8 **MR NICKLES** And to the extent

9 **MR CORNING** And I don't think

10 **MR NICKLES** And to the extent that we cannot make
11 her available, we understand the consequences

12 **MR CORNING** I mean if you're talking about next
13 week, it's probably not a problem If you're
14 talking about three weeks down the road, it
15 probably is a problem because we've had enough
16 witnesses that I'm not convinced, unless you
17 can convince me, that one more witness is going
18 to make a difference in the decision of the
19 panel one way or the other

20 **MR NICKLES** I just don't want to waive her rights

21 **MR CORNING** Oh, I I totally understand

22 **MR NICKLES** Okay

23 **MR SUMMERS** And for the record, the witness that
24 Mr Nickles is referring to, I believe, is a
25 grievant, is that correct?

1 MR NICKLES That's correct

2 MR CORNING Well, I mean we prefer to hear her

3 MR NICKLES Correct

4 MR CORNING if she wants to testify But we
5 may have to do it by camera or something just
6 like we're doing this other witness if

7 MR NICKLES And if it comes to it, we'll do that

8 MR CORNING Okay

9 MR NICKLES And we'll do it within the time frame
10 that the committee designates

11 MR SUMMERS Subject to, obviously, the issues that
12 Mr Nickles mentioned to you, sir, we're ready
13 to begin tomorrow morning at 9 00 o'clock
14 Again, the latest text or series of texts I've
15 gotten have indicated that Director Ozmint is
16 set for Monday at 2 00, and I'm going to adjust
17 my schedule accordingly and to keep this panel
18 occupied with business so we can move forward

19 MR CORNING And so counsel will know, I've spoken
20 to the panel about having the closing arguments
21 on the day that they meet back to consider the
22 case So I assume that once we finish Monday,
23 if we finish Monday, except for the other two
24 witnesses who are somewhere or another, we'd
25 need to get the information to the panel to

review prior to them meeting for closing arguments So as soon as you know the dates, the better, because we'll need to set a date at some point to come back and consider the case And because of the in a nature of three and four day hearings, the sooner it's possible, obviously the better for everybody

MR NICKLES Let me make sure I understand The panel's pleasure is to hear closing argument on the day that they convene to deliberate, is that correct?

MR CORNING Yes, so they've had a chance to review all the evidence before they hear closing arguments

MR NICKLES Fine And do you want do you plan to deliberate on the day that we deliver this additional evidence to you?

MR CORNING Not necessarily, because I don't know whether the panel will have a chance to review the additional evidence before the date they deliberate So

MR NICKLES I understand Well, my my understanding is that this video tape deposition is going to be certainly no more than an hour in total It should be

1 substantially less than that

2 **MR CORNING** Let me ask do we have the facility to
3 put the video on the computer like the other
4 documents and testimony?

5 **MS BRABHAM** I feel like we do, yes

6 **MR CORNING** If we can put it on the computer the
7 way we do the other stuff, I don't see any
8 reason not to put it on the computer so they
9 can look at it before we ever meet

10 **MR SUMMERS** And, Mr Corning, it may be that the
11 media by which the video is stored would be a
12 compact disc or a DVD

13 **MR NICKLES** I'll have to check and see

14 **MR CORNING** I mean currently they have the ability
15 to pull all the testimony up

16 **MR NICKLES** Right

17 **MR CORNING** And and I don't know about video,
18 but I mean if they can do that, that's
19 certainly an easier way to do it

20 **MR NICKLES** Well, I'll check with the videographer
21 and see if they do

22 **MR CORNING** Because I've got a feeling, counsel,
23 that your arguments are probably going to take
24 more than an hour, closing arguments, perhaps
25 substantially more than an hour And then

1 they've got to deliberate, and I have no idea
2 how long that's going to take, but it certainly
3 isn't going to be quick, would be my guess

4 **MR NICKLES** I appreciate that And believe me, we
5 Mr Summers and I both are thankful for
6 your indulgence here I know this is not the
7 easiest proceeding to be involved in, and we're
8 going to try to make it as efficient as we can

9 **MR CORNING** My concern, obviously, would be that if
10 we take up a bunch of time with, you know,
11 evidence and things on the day, then it's
12 you may be talking about more than finish
13 we might not be able to finish up
14 deliberations in one day

15 **MR NICKLES** I understand

16 **MR CORNING** So, I mean that and it seems to me
17 that it's to everybody's benefit to have it all
18 probably all done on the same day

19 **MR NICKLES** Do you want to and this is
20 something for you folks to think about In
21 terms of we have this video deposition next
22 Wednesday We will know Wednesday afternoon
23 whether we're going to do anything with the
24 other lady

25 **MR SUMMERS** Correct

1 **MR NICKLES** or it will have been accomplished
2 by that point in time So we'll have it ready
3 for delivery to you on Thursday, hopefully, you
4 know, digital transcript and the video tape of
5 this If you folks can look and see what your
6 schedules are and maybe convene one last day to
7 hear this last little bit of evidence and then
8 to hear argument and then to deliberate If we
9 could do it starting sometime in the morning,
10 I think that would give you an opportunity at
11 least to make some headway in your
12 deliberations

13 **MR CORNING** Well, it really depends a lot on how
14 long this witness, particular witness is

15 **MR NICKLES** It's it's going to be brief

16 **MR CORNING** Well, if it's brief, we might be able
17 to do it all in the same day

18 **MR NICKLES** I would think so

19 **MR MCCLARY** I would like to try

20 **MR SUMMERS** That would be my expectation and hope
21 And, certainly, as Mr Nickles said, we are
22 very appreciative If nothing else, I think
23 Ms Guffey, Mr Nickles and myself and Ms
24 Phillips and Ms Thrailkill, we're trying just
25 as expeditiously as we can So we're at

1 least we're I think there's a lot of
2 disagreement about things when it comes to the
3 record and the testimony, but I think we all
4 agree that your time is valuable We want to
5 move forward

6 **MR CORNING** We'll just have to cross that bridge
7 next week

8 **MR NICKLES** Okay, all right So 9 00 o'clock in
9 the morning?

10 **MR MCCLARY** 9 00 o'clock in the morning

11 **MR SUMMERS** 9 00 o'clock

12 **MS BRABHAM** Are we setting a date to to view
13 the video?

14 **MR MCCLARY** Are we talking about

15 **MR CORNING** We're going to have to get the panel
16 members to tell us what dates they're
17 available If we do it all on one day, the
18 deliberations and closing arguments, we're
19 going to have to pick a date, and it's going to
20 have to be after Wednesday of next week because
21 we wouldn't even have this additional witness
22 until Wednesday So you're going to have to
23 you don't have to We would request,
24 respectfully request, that you check with the
25 panel members and see what dates after

1 Wednesday are available for everybody to meet
2 again

3 **MS BRABHAM** Can you do can you do that now or

4
5 **MS KUDELKA** Sure

6 **MR CORNING** Well, if everybody knows I mean I
7 don't know Frankly, I don't know

8 **MR SUMMERS** Mr Corning, one thing we might want to

9
10 **MR CORNING** without going to the office and
11 seeing what else I have scheduled

12 **MS BRABHAM** From just from when the room is
13 available is what I mean

14 **MR CORNING** Oh, you mean that, yes Do you know
15 when the room's available?

16 **MS BRABHAM** Well, I mean it's available that
17 Thursday and Friday

18 **MR MCCLARY** Of next week, you're talking about?

19 **MS BRABHAM** Uh-huh (affirmative response), 13th and
20 14th

21 **MR MCCLARY** Are we certain and I may have
22 missed something Are we certain that the
23 media will be ready after Wednesday?

24 **MR SUMMERS** That was my point I don't we
25 might want to save Thursday to depending on

1 the logistics of getting over there, getting
2 back, getting the material onto some kind of
3 viewable media, it may be that we're not ready
4 until Friday

5 **MR NICKLES** What I'll do is I'll have my staff talk
6 to the videographer tomorrow, and by tomorrow
7 afternoon I'll certainly be able to tell you
8 whether if the deposition goes forward on
9 Wednesday, at what point in time that record
10 would be available

11 **MR MCCLARY** I think it's almost premature to select
12 a date at this point

13 **MR SUMMERS** At least at this point, maybe tomorrow
14 we can

15 **MS KUDELKA** Can you just tell us what day it's
16 available just so we have an idea?

17 **MS BRABHAM** Well, like I said, 13th, 14th It's
18 available that Monday, the 17th and the 21st

19 **MR CORNING** My preference would be Monday because I
20 rarely have anything scheduled out of the
21 office on Monday which means I would be
22 available

23 **MS KUDELKA** The 17th is better for me

24 **MR CORNING** And it's far enough away that it gives
25 everybody a chance to review it

1 MR MCCLARY The 17th is

2 MS KUDELKA It works for me That's that's
3 better than having two to three days out of the
4 office next week I'd rather have

5 MR MCCLARY The 17th, that's just penciled

6 MS KUDELKA Penciled It won't be

7 MR SUMMERS We'll use that as the target date

8 MR MCCLARY Right

9 MR SUMMERS and adjust accordingly

10 MR MCCLARY Thank ya'll very much We'll adjourn
11 until tomorrow morning Not adjourn, we'll
12 reconvene tomorrow

13 (There being no further testimony, the hearing was
14 adjourned)

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CERTIFICATE

This is to certify that the transcript of the appeal hearing in the matter of James "Cal" Bell, et al , versus South Carolina Department of Corrections, et al consisting of Two Hundred Fifty-Two (252) pages, is a true and correct transcript of CDs transcribed by me to the best of my ability without the benefit of being present at the proceeding

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel, nor do I have any interest, financial or otherwise, in the outcome of same

IN WITNESS WHEREOF I have hereunto set my hand and seal this 19th day of April 2009



Shana L Greenway
Notary Public for South Carolina
My Commission Expires 11/29/2009

STATE OF SOUTH CAROLINA
OFFICE OF HUMAN RESOURCES
STATE EMPLOYEE GRIEVANCE COMMITTEE

JAMES "CAL" BELL, OTHELLA BERNARD,)
KATHERINA BOWYER, LINDA M W BRATTON,)
ANN T BRIDGES, RANCE C COBB,)
JEANNIE B CROXTON, BERNETHA L)
CULBREATH, WILLIAM K DREYER,)
JACQUELINE D FARR, RUTH FRITTS,)
NANCY GLENN, ETTA JANE JONES,)
GENEVA M MARTIN, MARY H MCCABE,)
BEVERLY MCCLANAHAN, MAX D RANDOLPH,)
CAROLYN MCIVER SMITH, MAGGIE G)
WILLIAMS and PAULA WOODLIEF,)

Appellants,)

vs)

SOUTH CAROLINA DEPARTMENT OF)
CORRECTIONS and PALMETTO UNIFIED)
SCHOOL DISTRICT NO 1,)

Respondents)

TRANSCRIPT OF APPEAL HEARING
BEFORE THE SOUTH CAROLINA
EMPLOYEE GRIEVANCE COMMITTEE

HELD ON NOVEMBER 7, 2008
DAY 3

W ALLEN NICKLES, III, ESQUIRE
DONA L GUFFEY, ESQUIRE
ATTORNEYS FOR THE APPELLANTS

LAKE E SUMMERS, ESQUIRE
ATTORNEY FOR THE RESPONDENTS

ROLAND S CORNING, ESQUIRE
ATTORNEY FOR THE COMMITTEE

KARL MCCLARY, COMMITTEE CHAIR

1 **MR MCCLARY** This is the third day of the hearing of
2 the appeal of the reduction in force instituted
3 by Bell, et al , against the South Carolina
4 Department of Corrections being held in
5 Columbia, South Carolina this 7th day of
6 November 2008 A recording is being made of
7 the hearing For the record, my name is Karl
8 McClary, Department of Motor Vehicles And
9 other members and State Employee Grievance
10 Committee present are Herb Cooper, Department
11 of Transportation, Glynnis Elmore, Department
12 of Mental 'Health, Lynn Hutto, SLED, Lesia
13 Kudelka, Department of Labor, Licensing &
14 Regulation The committee attorney is Roland
15 Corning, Attorney General's Office Appellant
16 is represented by attorney Allen Nickles The
17 employee employing agency is represented by
18 attorney Lake Summers Assisting the committee
19 is Sandra Braham

20 **MR CORNING** Brabham

21 **MR MCCLARY** Braham?

22 **MR CORNING** Brabham, Brabham

23 **MR MCCLARY** Brabham

24 **MS BRABHAM** After all this time

25 **MR MCCLARY** Oh, I've been calling her Branham all

all week So I'm just trying to correct that Each side will be given the opportunity at the appropriate time to ask questions of the witness The presiding officer, any member of the committee or the committee attorney may direct questions to any party or witness at any time during the proceeding Before closing the hearing, the presiding officer will allow both parties to present a brief summary of closing statements if so desired The appellant will have an option of closing first or last I wish to point out that only testimony and evidence pertinent to the grounds on which the appeal is based, or pertinent to the charge on which the agency action is based will be allowed Testimony or evidence which is repetitive or cumulative will not be permitted or cumulative will not be permitted Are there any questions by either party?

MR NICKLES No questions

MR SUMMERS None

MR MCCLARY Are there any witnesses how many witnesses do you have outside today?

MR SUMMERS As of right now, sir, we have two And they're ready to begin whenever the panel is

1 ready to take testimony

2 **MR MCCLARY** I'm thinking about bringing those two
3 witnesses so I don't have to read this all over
4 again

5 **MR SUMMERS** And Ms Thraillkill is going to be a
6 witness today, too Forgive me for not
7 acknowledging her

8 **MR NICKLES** I don't have any objection if you'll
9 just swear the witnesses in

10 **MR CORNING** That's my that's my reaction as
11 well Just bring them in

12 **MR SUMMERS** Individually

13 **MR NICKLES** Yes

14 **MR CORNING** Just bring them in once so you don't
15 have to bring them in Just bring them in and
16 swear them when they come in

17 **MR NICKLES** You can bring them in, swear them in
18 and just instruct them not to speak about this

19 **MR CORNING** And just instruct them

20 **MR SUMMERS** And then we proceed with the testimony

21 **MR CORNING** Rather than reading the whole thing

22 **MR MCCLARY** Okay After hearing this appeal, the
23 committee will report its finding and decision
24 in writing to the employee and the employing
25 agency within twenty calendar days of the

1 conclusion of the hearing The decision will
2 be final in terms of administrative review
3 This hearing remains in executive session You
4 may call your

5 **MR SUMMERS** Thank you very much At this time, the
6 agency is going to call John Davis And let
7 the record reflect that Mr Vincent is
8 graciously going out to bring Mr Davis into
9 the room And let the record also reflect that
10 we'll double check our phones to make sure they
11 are silent or in vibrate mode For some
12 reason, Friday mornings I had to turn mine
13 off just a moment ago So, I thought that
14 might be a good idea to do

15 **MR NICKLES** Hey, how are you, sir?

16 **MR DAVIS** I'm fine

17 **MR SUMMERS** Have a seat right there, sir

18 **MR MCCLARY** Good morning, sir

19 **MR DAVIS** Good morning

20 **MR MCCLARY** We're going to ask that you testify
21 under oath, and we're going to ask that after
22 leaving today that you don't discuss this
23 matter with anyone outside of this room

24 **MR DAVIS** Okay

25 **MR MCCLARY** until after a decision is rendered

1 MR DAVIS Sure

2 MR MCCLARY At this time, Herb

3 MR COOPER Would you please stand, sir?

4 MR DAVIS Yes, sir

5 MR COOPER State your name

6 MR DAVIS John Davis

7 MR COOPER Please raise your right hand, Mr Davis

8 Do you swear or affirm that the testimony you
9 will give today is the whole truth and nothing
10 but the truth?

11 MR DAVIS Yes

12 MR COOPER Put your hand down and be seated

13 MR SUMMERS With your indulgence, sir, we're ready
14 to proceed

15 MR MCCLARY Yes

16 MR SUMMERS Okay, very well

17 MR DAVIS - DIRECT EXAMINATION BY MR SUMMERS

18 Q And we'll start Mr Davis For the record,
19 I'll introduce myself I know you know who I
20 am My name is Lake Summers I represent the
21 agency in this matter, and I know you've
22 already been sworn and stated your name for the
23 record Make yourself comfortable Speak as
24 loud as you can We are recording these
25 proceedings So I think there's some

1 microphones dangling from the ceiling And to
2 make things more efficient and flow better, to
3 the extent that you can naturally, just go
4 ahead and you're providing responses to not
5 just my questions but Mr Nickles and others
6 Obviously, address the panel so they can get a
7 better opportunity to hear your voice

8 A Sure

9 Q Thank you very much Please tell the panel
10 what you currently do

11 A Well I'm currently retired, which I enjoy very
12 much I spend a lot of time with my
13 grandchildren I still maintain my
14 certification as a CPA

15 Q And how long have you been certified as a CPA?

16 A I have been certified since '90 let's see,
17 '89 '89, '90, about '90 or '91 I can't
18 remember exactly It might have been a little
19 later than that, but by the time I got my
20 all my time in I passed the exam in '89, but
21 probably by the time I got all my auditing time
22 in, it might have been '91 or '92 by the time
23 I got my certificate But I had spent, before
24 that, 21 years in the U S Air Force as an
25 officer in the Air Force And with my children

1 in college, I got out and went to college

2 Q And tell the panel about that

3 A I went back to USC, got my degree in
4 accounting, a Master's Degree in accountancy
5 and took the CPA exam, passed it Went to work
6 for a small firm up in Gaffney for a short
7 period of time, a CPA firm And then I got on
8 with the State Auditor's Office in April of '90
9 and worked with them for about two and a half
10 years I think it was in '92 or July,
11 around July of '92, something like that, that
12 I or '93 that I moved over to the
13 Department of Corrections as the Director of
14 Audits And then was promoted into the
15 position of the Director of Administration Is
16 it okay to go on?

17 Q Please I was going to have you go through
18 that anyway

19 A The Director of Administration in February of
20 2000 And then in August of 2003, I was asked
21 to, initially temporarily, to take over as the
22 Director of Health Services and because our
23 previous director had just left And wound up
24 staying there about two and a half years So,
25 I guess I did such a good job, according to the

1 Director, that he didn't want me to leave So
2 and then after that I retired I retired
3 in December of 2005

4 Q Let's turn our attention back to 2003 Mr
5 Cooper, if you could, it's going to be page
6 468 Mr Davis, on the screen up here, Mr
7 Cooper, a member of the panel, is going to put
8 up some information If you can't read it,
9 there's a hard copy of our documents there we
10 can go through More specifically, if you
11 could go, Mr Cooper, to the next page, 469,
12 just down one page And we'll start
13 there's a diagram there at the bottom, sir
14 That'd be great

15 MR COOPER Can ya'll see that, fellow panel
16 members? I can enlarge it Can you see that
17 okay?

18 MS KUDELKA I can see it

19 Q Can you see it, Mr Davis?

20 A Yes

21 Q Okay And we'll go back and talk about the
22 document, the first page of it in just a moment
23 here Tell the panel what that is

24 A That's the it's an organizational chart of
25 the of the main administrators, basically

1 the upper level administrators of the
2 Department of Corrections with the Director
3 And that was shortly after he had made some
4 changes after coming into office But he moved
5 Mr Stroker in as the Acting Chief of Staff and
6 and continued to use him as the General
7 Counsel as well And then I was the Director
8 of Administration at that time, which
9 encompassed several divisions And Mr
10 Shepherd was the Inspector General Then the
11 other below that are which were even
12 though the chart, the way it's shown, notice
13 the way it's drawn It's a little
14 misconceiving because we weren't over those
15 folks down at the bottom Only the Director
16 was The line goes straight from the Director
17 So he's actually over all of those folks

18 Q So he's the direct supervisor of all the folks
19 whose name appear at the very bottom of this
20 chart?

21 A Exactly, as well as the ones at the top So
22 and then the Division of Programs and
23 Services, that's the division in which the
24 Department of Education fell under at that
25 time And the

1 Q Well let's talk about that for just a moment,
2 sir

3 A All right, sure

4 Q You used the term Division of Education

5 A Right

6 Q Okay For the record, you're looking at the
7 block, the bottom left corner And if you
8 could, read the name of the official and the
9 title

10 A Gerri Miro, Acting Director, Division of
11 Programs and Services

12 Q So she was the super she was the supervisor
13 for the Division of Education?

14 A As well as other divisions

15 **MR NICKLES** I'm going to object to the leading of
16 this witness, please, sir

17 **MR SUMMERS** Very well, I'll move on

18 Q You've heard the term Palmetto Unified School
19 District?

20 A Yes

21 Q You've heard the term, obviously, Division of
22 Education?

23 A Yes

24 Q Tell the panel what, if any, difference there
25 is between those two terms

1 A Well, the implication is that the district is
2 a is a may be different I don't know
3 But in reality, the district and the division
4 to me are the same thing The only difference
5 would be the fact that the Palmetto School
6 District was created to allow us to, you know,
7 receive other funds, you know, like the EIA,
8 EFA funds And

9 Q Let me stop you right there and talk about EIA
10 and EFA

11 A Sure

12 Q And again, there's been testimony about those

13
14 A Okay

15 Q those programs or those types of funds
16 Let's start with EFA What does that stand
17 for, first of all, to your knowledge?

18 A Educational Finance Act I don't know a lot
19 about it other than the fact these are some
20 are federal funds, I believe, and some are
21 funds that come through the Department of
22 Education that we're allowed to receive if we
23 meet the criteria for those funds And I'm not
24 sure what all the criteria is

25 Q And you used the term EIA Do you know what

1 that those initials stand for?

2 A Educational Improvement Act Again, that's a
3 similar type fund I believe that comes
4 through the Department of Education, and as
5 well as the other one And again, we have to
6 meet certain requirements to be able to draw
7 those funds And those, in my mind, were the
8 reason for the Palmetto School District

9 Q Can you describe for the panel how your
10 interaction worked with the Palmetto Unified
11 School District or the Division of Education?
12 Again, there's been some confusion So how in
13 your job would you go about managing that
14 division?

15 A I well, I didn't have direct management
16 over the division Obviously, that came under
17 Ms Ms Miro But the my position as
18 Director of Administration was to manage the
19 budget and and also personnel Those were
20 two of the divisions that I had under me which
21 managed the payroll, the hiring and and
22 termination of the employees, as well as the
23 budget that was used by the Division of
24 Education to finance And all the funds,
25 including the EIA, EFA funds, came through the

1 budget office and were allocated, you know, out
2 of the budget office So the management
3 basically of of the personnel and was
4 done by the direct supervision of people within
5 the Palmetto School District or the Division of
6 Education And all the hiring and termination,
7 et cetera, the paper work, the payroll,
8 everything was done through personnel And the
9 budget was allocated from the budget office
10 So

11 Q And if you could, describe for the panel when
12 you say money was allocated, how just give
13 the panel a primer on how the Department
14 receives funds and what happens with those
15 funds once they're received

16 A Okay The funds are primarily received from,
17 of course, through the legislature, you know,
18 the when the budget's passed by the
19 legislature We receive all the funds as far
20 as SCDC and public funds And along along
21 those times, the budget includes all the lines
22 for EIA, EFA even though those are approved and
23 come through the Department of Education When
24 any budget's passed, you know, the legislature
25 has to know what everything that's spent,

1 including so that's how they allocate our
2 budget to us, which is the same as it would to
3 the education department or anyone else And
4 so when we get our budget, we would sit down
5 and or the budget office would sit down and
6 divide those funds up between the different
7 divisions of the agency And education gets
8 their pot, and everybody else gets their pot
9 And then the EIA, EFA funds, of course, go to
10 education or are already allocated to the
11 Division of Education Did I leave something
12 out?

13 Q No, sir You're the one who knows

14 A All right

15 Q So you tell the panel what you know Now, Mr
16 Cooper, if you could go back to page 468, and
17 it may be beneficial to give me one second,
18 ma'am I'm going to open the volume here so
19 you can get a complete view of the document
20 And I'll get you right there, sir, with my ten
21 dancing fingers, get there with some degree of
22 speed Here we go

23 A Okay

24 Q And let the record reflect that Mr Cooper has
25 kindly put the very top of page 460 on the

1 screen Mr Davis has the hard copy in front
2 of him Sir, first of all, have you seen this
3 document before?

4 A Yes

5 Q And could you obviously it's up on the
6 screen and you can certainly look at the hard
7 copy Could you read the subject line?

8 A Reorganization and agency reduction in force

9 Q And who is it from?

10 A Director Ozmint

11 Q And

12 A John E Ozmint

13 Q Okay And who is it to, sir?

14 A All employees

15 Q Now, before we get into some of the passages
16 from the memorandum, let's take a step back
17 What was in your assessment, what was your
18 information about the status of the agency's
19 budget and fiscal health in March of 2003?

20 A This was a tough time for the agency because we
21 had already gone through two years of of
22 cuts We had made numerous cuts, all with the
23 the one thing in mind was our mission Our
24 mission is, of course, you know, to incarcerate
25 inmates, and that's the primary mission as to

1 the health, welfare and feeding and care of the
2 inmates and to keep them locked up So
3 operation is is obviously the biggest
4 responsibility that we have And we had gone
5 through two years of cutting everything we
6 could to the point of closing down a couple of
7 smaller institutions and incorporating them
8 into other institutions We had gotten
9 permission from the legislature to sell some
10 property and use those funds to operate, to
11 sell some of the timber off the land to use to
12 operate We had tried a lot of innovative
13 things, which was very unusual to try, to meet
14 our budget and and avoid having to do a
15 RIF We did we put a freeze on early on,
16 and many of the divisions had already lost a
17 lot of employees We had set minimum levels in
18 the in the operations side And we had
19 reduced the number of employees down to those
20 minimum levels So all of this stuff had
21 happened in the two previous years in trying to
22 meet our budget Even so, we were still
23 struggling to meet the budget And then on top
24 of that, we got another cut, obviously, in the
25 2003 fiscal year So we with that in mind,

1 the Director made this decision with that for
2 his backdrop The fact that we had done most
3 of the things that we could do A lot of other
4 agencies had already done RIFs previously in
5 previous years We had tried to avoid doing it
6 as long as we could, but it was to the point
7 where the Director felt like that that we
8 didn't have any choices left

9 Q When did Director Ozmint assume his
10 directorship?

11 A In let's see, it would have been early in
12 '03 This was in March I think it was like
13 January of '03, I believe That's the best I
14 can remember

15 Q And so the cuts you're talking about, the
16 efforts to save money occurred before he
17 assumed his directorship?

18 A Oh, all of the all of the cuts that I was
19 referring to, yes, that had happened in
20 previous years

21 Q And you mentioned some closure of some
22 institutions

23 A Yes We closed at least two institutes I
24 think there was another small one that we did,
25 and maybe other institutions, but it was a very

1 small institution And

2 Q Do you recall the names of those institutions,
3 the best you can?

4 A Yeah Blueridge was one We moved it into
5 Northside, I think And we closed Givens,
6 moved it over to Perry And Givens is the one
7 where we had the property that we got
8 permission from the from the legislature to
9 be able to sell the property and use the funds
10 State Park, we closed it It's over by the old
11 archives area, and we moved it into or
12 actually shuffled some other institutions
13 around in the Broad River area and and
14 moved it into Goodman Looked at the
15 possibility of others, but really could not do
16 that because of the numbers of the inmates we
17 had and were getting in even at one time We
18 actually had to put some inmates in the
19 into gymnasiums temporarily until we could open
20 up some institutions We had gotten permission
21 from the legislature earlier to use some funds
22 from a that we had gotten, capital funds,
23 to build a new institution And we got
24 permission from the legislature to use those
25 funds instead to build additional buildings

) 1 within existing institutions It was much
2 cheaper, and also we could do it without adding
3 personnel, as many personnel And we had to do
4 something And so we got permission to do
5 that, and we were allowed then to open up some
6 of those later on to get those inmates out of
7 the out of the gymnasiums

8 Q And when you moved when you said you closed
9 down the institution, you talked about moving
10 inmates from one to the other Describe for
11 the panel how that particular process works

12 A Well, I don't know all the details of that
13 because it's mostly an operations thing But
14 what we what we wound up doing is a lot of
15 folks lost their jobs as a result of that,
16 obviously, when we closed the institution And
17 the inmates then would be moved, you know,
18 under armed guard, of course, over to the
19 to the other institution And some of the
20 buildings that were in those institutions, we'd
21 have to wind up combining perhaps inmates in
22 some of the institutions The personnel that
23 could be moved with it would have been or given
24 the opportunity to move since in most cases it
25 was beyond the distance that we were allowed to

1 move people by you don't require people to
2 move So it was all on a voluntary basis
3 mostly And so that's the best I can do with
4 that I mean as far as the actual process and
5 all, that was an operational issue, and they
6 were taking care of that

7 Q And you mentioned a moment ago distance to move
8 people

9 A Yes

10 Q Tell the panel what you understand about the
11 rules, regulations concerning that topic

12 A We have a as any any agency has, I
13 mean, and I'm sure that the Department of
14 Education does, too Any agency that has
15 offices statewide, there's a limited distance
16 that you can move an employee I think it's 25
17 or 30 miles, I believe I'm not sure And we
18 could not move anyone by requiring anyone to
19 move beyond that distance and take a job Many
20 times we'd have folks volunteer Now, we did
21 have certain jobs that were statewide jobs that
22 we hired, and it was stated in the in the
23 position description prior to hire so that the
24 person knew that that had to do that job prior
25 to hiring But once a person was hired at a

1 certain location, without their permission we
2 couldn't move them beyond a certain distance
3 And if they did, it was usually voluntary

4 Q Can you talk to the panel about jobs that were
5 lost? Was there a reduction in force of any
6 kind done at that time?

7 A Not per se I can't I can't remember
8 That's something you probably would be better
9 off asking Mr Near or someone from personnel
10 I know we did some a small number of
11 people, and it was probably in 2001 or so, I
12 believe I can't remember

13 Q That's okay

14 MR NICKLES To the extent that the witness refers
15 to documents, I'd like to take a look at them,
16 please

17 MR SUMMERS Sure, sure

18 Q Mr Davis, that's fine That recollection is
19 fine

20 A I can't remember It's it's it's
21 it's probably probably about the time we
22 closed those institutions, I'm guessing And
23 those would have been but that that's
24 the best I can remember

25 Q And you mentioned Mr Near's name

1 A Yes

2 Q Describe for the panel who Mr Near is

3 A John Near is our was the Director of
4 Personnel and Human Resources at the time I was
5 Director for Administration He was involved,
6 of course, in in the RIF process and is
7 much more knowledgeable in terms of the
8 personnel issues than myself

9 Q We've talked about the Palmetto Unified School
10 District, and you recall talking about that
11 with me and talking about that with the panel,
12 obviously Was there a separate personnel
13 division for the Palmetto Unified School
14 District?

15 A No, there was not They all were hired through
16 the through our personnel office at SCDC

17 Q Did they have a separate payroll division?

18 A No, they did not No They were paid through
19 the payroll section which was also in Human
20 Resources at SCDC

21 Q Now, let's go back and talk We have the
22 memorandum up here about the reduction in force
23 in 2003 What was your input, what was your
24 role when it came to the reduction in force
25 activity? Did you work with Mr Near?

1 A Yes We were part of the process of selecting
2 those individuals with the Director that were
3 going to be affected by the RIF And after or
4 during the RIF process, I actually went with
5 Mr Near to to group meetings I did not
6 go with him I didn't sit with him on the
7 individual meetings with the individuals who
8 had been RIF'd, but I went with him to all
9 each institution that was affected by the RIF
10 and personally talked to the all the
11 employees that were affected by the RIF Very
12 painful thing to do

13 Q Do you recall how many of those meetings you
14 attended with Mr Near?

15 A I do not not It's probably in the number of
16 six or eight at least, I'm thinking, but I
17 that's it's been a while, so I don't
18 remember for sure

19 Q Were the extent of the RIF, the divisions
20 it affected, do you recall how many divisions
21 the RIF affected?

22 A Not per se I can but it almost
23 basically let me let me precursor that
24 a little bit We were trying to at that
25 point we had already brought the operations

1 down, if you remember, to our minimum levels
2 that we felt like we could be at So what we
3 were looking for were those divisions that we
4 could still take some, you know, people out
5 without affecting the operational job of the
6 agency, without affecting the our primary
7 mission So what we did was look at all the
8 divisions and the positions within those
9 divisions that we could afford to take RIF
10 folks without affecting them There were
11 almost all the divisions at headquarters were
12 affected, but I can't enumerate all of them,
13 but I know several that were For example, the
14 Division of Internal Audits was almost
15 completely eliminated We had eight out of ten
16 positions were RIF'd, and even today they only
17 have one, one auditor So and there's only
18 one position in there So there were other
19 divisions that were affected But what we
20 tried to look at is many of those divisions had
21 already been drawn down because of the freeze
22 to minimum levels or near minimum levels So
23 we had to be very careful how many we took out
24 of each one So we tried to process it that
25 way to affect the mission as least as possible

1 but still, you know, try to get the numbers we
2 needed to to cut the budget

3 Q Thank you for that information, sir The
4 minimum that's up here, obviously the date of
5 it is March 31, 2003 Was that the first
6 announcement by the agency of the RIF to its
7 employees in an official capacity on March
8 31st?

9 A Probably was I do not remember for sure

10 Q Okay When the RIF was announced well let
11 me back up for just a second We're talking
12 about a reduction in force To your knowledge
13 how long had you been at SCDC? When did
14 you start SCDC again, what year?

15 A At SCDC, I believe I started in July of '93, I
16 think

17 Q And during that time, we talked about this a
18 bit before, had there been reductions in force
19 of the magnitude of this reduction in force?

20 A No, there had not, not of this magnitude that
21 I remember

22 Q Are you familiar with the term bumping rights?

23 A Yes, somewhat

24 Q Tell the panel what you know about the term
25 bumping rights, what that means

1 A Well, basically, what I know about it is that
2 someone with higher seniority can bump someone
3 of lower lower seniority within the area of
4 of the RIF And that happened in some
5 cases, and it depended on the, you know, on the
6 seniority of the individual And that included
7 just not just necessarily seniority within
8 the agency but within the state I had one
9 individual, for example, in the internal audit
10 section did bump another one I remember that
11 in particular And I think there were some in
12 some of the other areas, but those are
13 questions that Human Resources will answer
14 better than me

15 Q You talked about drawing down and a freeze Do
16 you recall whether or not there was a freeze
17 particular to the Division of Education?

18 A There was a freeze It was to all divisions
19 within the within the agency actually
20 Actually, for a while the freeze was on
21 everyone Initially, it was with all positions
22 that were not critical And then throughout
23 that process of the two years, we finally wound
24 up freezing everybody for short for some
25 periods of time until we got to minimum levels

1 There was never a freeze particular to the
2 Division of Education

3 Q Was and I'm going to use the term turnover
4 What does turnover mean in relation to a freeze
5 and numbers of employees?

6 A All right Turnover normally would be, you
7 know, the normal turnover, for example, the
8 hiring and termination of people People leave
9 and then you have to hire to replace them, that
10 sort of thing So that would be the normal
11 turnover And, for example, a lot of the
12 divisions turn over a lot faster than others
13 When we put the freeze on, some of the
14 divisions, as I mentioned earlier, were already
15 down to the near minimum levels already by the
16 time we got to the point of having to do the
17 RIF And if I recall, education was one of
18 those divisions that had very little turnover
19 Their turnover was, I believe, and this is my
20 belief You'd have to look at the records to
21 to verify this, but my belief is that their
22 turnover rate was much lower than the turnover
23 rate of some of the other divisions or many of
24 the other divisions So at that point in time,
25 we were looking also at divisions that had, you

1 know, already down to their minimum levels and
2 could not be, you know, further reduced

3 Q Now, based upon your knowledge of the RIF plan,
4 and we talked about bumping rights, would it
5 have been practical to provide statewide
6 bumping rights to folks affected by this RIF?

7 MR NICKLES I'm going to object I don't think
8 he's laid a foundation that this particular
9 individual can respond to that question

10 MR CORNING I don't know He may ask him a few
11 preliminary questions, counsel

12 MR SUMMERS Okay

13 Q We talked about bumping rights

14 A Right

15 Q Were you familiar with the geographic or
16 competitive areas that were established in the
17 RIF plan?

18 A Generally Specifically, I'd have to, you
19 know, look at a map to give specifics, but
20 but generally, yeah I knew we had several
21 areas I believe it's like ten or eleven
22 areas

23 Q Sir, there's a notebook up there to your right,
24 right there

25 A This one?

1 Q Yes, sir And if you go to Tab 4, the second
2 page of Tab 4, top right page, top right corner
3 of that page, page 189 Do you find that one,
4 sir?

5 A Yes, I do

6 Q And just wait just a moment for Mr Cooper to
7 put that up on the screen Okay, it's up on
8 the screen now, and it's correctly oriented
9 You talked about looking at a map of the state,
10 and obviously you're looking at page 189
11 You've seen that before, you've seen that
12 document before?

13 A Yes, I have

14 Q Okay Please tell the panel about that
15 document

16 A This was set up basically by Human Resources
17 and divided up the areas that were RIF'd And
18 the issue with having this versus a statewide
19 RIF, if you have a statewide RIF, as you can
20 see, the distance between one location to
21 another between the state, you could have
22 people commuting all the way across the state
23 And, of course, under normal circumstances, we
24 couldn't require anybody to do that And any
25 any time we'd ask somebody to go to one

1 location, we'd have to ask them to volunteer
2 So to RIF statewide, I think it's to me
3 it's pretty obvious, and even though I'm not a
4 Human Resources person, the it would not be
5 practical to be asking people or requiring
6 people to go from from, say, Spartanburg
7 down to to Ridgeland, you know That would
8 be over a 200 mile commute one way So we had
9 to be reasonable for for the people and to
10 make it as as palpable as possible by
11 dividing it up and putting dividing it up
12 into areas and allocating areas so that when
13 the RIF took place, it would be a reasonable
14 area for people to bump into and they wouldn't
15 have such a huge commute to have to go all the
16 way across the state to commute It would be
17 within a reasonable area If you compare that
18 to a standard school district, I think you'll
19 find that the school district is probably a
20 very small geographical area, normal school
21 district Whereas, here is a division that
22 belongs to the Department of Corrections which
23 is spread all over the state And it would be
24 very very difficult to I think you'd
25 find it to be difficult for the Department of

1 Education to do it statewide Does that
2 does that answer your

3 Q Yes, sir And if you could, let's talk
4 let's go to the next tab, Tab 5 in the
5 notebook And that's going to be page 473
6 And again, let Mr Cooper catch up with me
7 Allow me to let him catch up And at the very
8 top of that, there's letterhead there What's
9 the letterhead reflect, sir?

10 A It's the State Budget State Budget &
11 Control Board

12 Q Is there a particular office designated?

13 A Office of Human Resources

14 Q Tell the panel what you know about the Office
15 of Human Resources' input and role in the
16 reduction in force process

17 A Basically, we had to submit a a reduction
18 in force to the Office of Human Resources And
19 it was their responsibility to approve that
20 plan Now, in general and I read the
21 the plan, their approval process, in other
22 words, about how they approved it And as many
23 state offices do, and I think some of you may
24 be familiar with it and some may not, but many
25 of the state offices often times will not

1 approve a plan, every detail in a plan And
2 they don't consider it their responsibility to
3 do that What they do is they they approve
4 a plan usually as to form, as to whether or not
5 it's okay I have many experiences, for
6 example, with MMO where I'd submit a bid or
7 something like that They never, never
8 approved all the details in a bid They just
9 approved it as according to form and the fact
10 that it was done and generally that means
11 everything was included that should be included
12 in the plan And that's kind of the way I view
13 this answer, is they they approved it The
14 other thing is, that I might comment on, is
15 that there was no disapproval So that's kind
16 of where we were left with the with the
17 plan approval

18 Q Thank you, sir Have you heard of the teacher
19 pay lawsuit, does that ring a bell?

20 A Yes After after we discussed that, I
21 I remembered that there was one However, this
22 took place actually, this lawsuit took
23 place long before I took office as the Director
24 of Administration It happened, I think, back
25 in the 90s, is when it was initiated It did

1 come to conclusion shortly after I took office
2 as Director of Administration And the only
3 thing I remember about it is the General
4 Counsel's Office getting with me and the budget
5 folks as to telling us what we had to do in
6 terms of computing and paying paying the
7 pay and how we had to recompute it And that
8 was my only real knowledge of that

9 Q So were you involved in the actual process of
10 recomputing the pay?

11 A No Well, not specifically That was done
12 that was actually done by the courts, I think,
13 at least some of it But then General
14 Counsel's Office got with our finance people
15 and showed us what was required And and
16 so then we did that I was involved maybe in
17 the process of doing that or looking at that
18 and deciding what needed to be done But then,
19 of course, the budget office actually and
20 Human Resources, the personnel folks that
21 handle the payroll, would have done all the
22 actual computations and put it into the pay

23 Q There's been some

24 A (Inaudible)

25 Q That'd be fine, yes, sir There's been some

1 testimony about, I'll call it institutional
2 tension And by that I mean, sir, difference
3 between folks who worked in the program side of
4 the house versus the operation side of the
5 house

6 A Yes

7 Q Could you tell the panel what you experienced,
8 what you know about, I'll call it this
9 institutional tension, between programs and
10 operations?

11 A It's it's something that kind of always
12 goes on a little bit in Corrections And I
13 think you'll find that in any any business
14 It used to go on in the Air Force between
15 people fluent people, you know, operational
16 folks and non-operational folks It's just
17 there's just always a little bit of feeling
18 that the operational folks get all the
19 attention and and everybody else is there,
20 even though it couldn't operate without them,
21 you know They still are needed But as far
22 as people working together and getting the job
23 done, I don't think you'll find any place
24 that'll do it any better

25 Q Did you ever hear any comments about teachers

1 or educators getting paid too much?

2 A From some of the employees maybe, but I don't
3 recall it ever happening anywhere in we
4 didn't discuss it in any of the meetings that
5 I had in terms of especially not dealing
6 with the RIF That was strictly dealing with
7 how we you know, how we saw cutting the
8 costs versus maintaining operations It just
9 basically came down to that

10 Q Did you ever hear the Director make any
11 comments about teachers or educators, or for
12 that matter, anybody else?

13 A Not personally

14 Q Well, sir, those are all the questions I have
15 for you at this time I'm sure Mr Nickles
16 will have some questions for you And just to
17 let you know, sir, when Mr Nickles is done, I
18 may have some At the conclusion of the
19 attorneys questioning, the panel members may
20 have some

21 A Okay

22 Q So just make yourself comfortable You'll be
23 there for a while

24 A Thank you

25 Q Certainly

MR DAVIS - CROSS EXAMINATION BY MR NICKLES

Q Mr Davis, my name is Al Nickles, and I'm representing the grievants in this case I have a few questions for you One is you said that you and Mr Ozmint selected the individuals for RIF How did you do that?

A It wasn't just me and Mr Ozmint

Q Okay Who else?

A We had a group of folks that were in it

Q Well tell me their names

A It was myself Mr Near was in the meeting

Q Okay

A Mr Stroker, Richard Stroker

Q Okay

A And Cliff Franz, he was the budget person And from time to time, we would ask other people from other divisions to come in and comment or talk about their particular division or their needs

Q Okay So, Mr Ozmint was the Executive Director?

A Yes, he was

Q And you were the Chief of Administration?

A Director for Administration, yes

Q Mr Near was Human Resources?

- 1 A Yes
- 2 Q Mr Stroker was?
- 3 A Chief of Staff
- 4 Q Chief of Staff
- 5 A In an acting capacity, yes
- 6 Q Mr Franz was what?
- 7 A He was the Director of Budget
- 8 Q Okay That was the core group that identified
- 9 the individuals then?
- 10 A Pretty much
- 11 Q All right So when you say you identified
- 12 individuals, tell me did you have a list of
- 13 employees and say, all right, I want this one,
- 14 this one, this one, this one and this one?
- 15 A We had a combination of we had an
- 16 organizational we used the organizational
- 17 chart We had the employee, you know the
- 18 job descriptions of the employees We had
- 19 inputs from from some of the divisions
- 20 And basically, what we did was we looked at
- 21 that in terms of operations We knew what the
- 22 division levels were in terms of critical
- 23 needs, who the critical employees were and what
- 24 the minimum levels that we had set for those
- 25 divisions

1 Q Okay Let's look at something that's a part of
2 the record here, and it is at Tab 7 in the
3 materials that you have beginning at page 191,
4 which is the third page in and following for
5 several pages

6 A Okay

7 Q Now, this document has been represented to me
8 to be a list of employees who were subject to
9 reduction in force and identifying those who
10 were selected for reduction in force Do you
11 see does this document look familiar to
12 you?

13 A I've yes, I've seen it

14 Q Okay, all right So, for example, we've got
15 these designated by classification title Do
16 you see that?

17 A Uh-huh (affirmative response)

18 Q Is that yes?

19 A Yes

20 Q Look at the first page, classification title
21 Administrative Specialist II Do you see that?
22 And that's the middle of the page It says
23 classification title at the top

24 A Right

25 Q And then it has what the title is

1 A Admin Specialist II, right

2 Q And then there's a long list of individuals
3 under that, correct?

4 A Yes

5 Q And there's one who has a number one by the
6 name And if you look on the other page,
7 there's somebody that has the number three by
8 the name Do you see that?

9 A I see the one, and I see three, yes

10 Q Okay And if we look over at page 205 from the
11 second to the last page of this tab, we'll see
12 what those terms mean If I can help you, I'll
13 be happy to You see that there is a key
14 there?

15 A Correct

16 Q And it tells you if you're number one, you're
17 the RIF'd employee If you're number three,
18 you're subject to bump Do you see that?

19 A Yes

20 Q And, excuse me, number two is subject to bump,
21 and number three is subject to lay off Do you
22 see that?

23 A Correct

24 Q Okay What was the difference in subject to
25 RIF and subject to lay off, do you know?

1 A Not off hand It could have been could be
2 they were were not had not reached
3 their seniority or were still a probationary
4 employee maybe I'm not sure

5 Q It couldn't be that because we see on 192,
6 you've got Loretta Hodge who is a number three
7 who's subject to lay off, and her service date
8 well, it's 9/17/03 You're probably right
9 That looks like a probationary employee

10 A Could be I mean I like I said, I don't
11 I don't really know You'd have to
12 that'd be a personnel issue

13 Q All right So this designates of all these
14 administrative specialists, you've got one
15 person that's subject to the RIF and one
16 subject to

17 A The lay off

18 Q lay off because P is probationary

19 A Okay

20 Q Three she's a three P Do you see that?

21 A Right

22 Q Okay And then we look at the administrative
23 assistants, and it goes on for several lines
24 here And you have one, two, three, four folks
25 subject to the RIF And then you have some

folks subject to lay off, one of those being probationary Do you see that? Is that how ya'll went through and said, wait a minute, we need to get rid of, here at the central office, one administrative assistant? We need to get rid of four of these or four administrative assistants and one Administrative Specialist II Is that how ya'll went through the process?

A Well, you're simplifying it, quite simply There's a lot more to it than that Of course you discuss each each position, and we'd discuss, you know, what the what the requirements of that position were and what the minimum levels were and whether or not we needed that position

Q Okay

A So we didn't

Q Did you look at the at the PD of the individual and look at the the work history of the individual?

A Often times we did It depended on the position and where it was So I can't say we did that on every one

Q All right So, is it your testimony that when

1 you finished your selection of individuals, you
2 not only knew the slots but you knew the people
3 who were going to be RIF'd?

4 A Pretty much

5 Q Okay Now, in some of these areas I noticed
6 where you've got your circles drawn, if we look
7 at at competitive area three, and that
8 bubble

9 A Where are you? I'm lost

10 Q I'm going to look it's at it's page
11 202, competitive area three That bubble would
12 have been the same size as the other bubbles,
13 correct?

14 A Are you talking about in terms of personnel?

15 Q I'm talking about well, you drew the
16 bubbles, right?

17 A Yes

18 Q Okay Did you draw them all the same size?

19 A As far as mileage, they should have been, yes

20 Q Okay So we're talking about the same area,
21 correct?

22 A Right

23 Q Same geographic area?

24 A Areas well, areas of cover, yeah, area
25 geographical areas of cover You've got to

1 realize the institutions it depended on
2 where the institutions were There was no
3 point in drawing bubbles where there was no
4 institution

5 Q Were there any bubbles where there were no
6 institutions?

7 A I don't think so

8 Q Okay So, let's assume there were some
9 institutions in bubble three, okay Ya'll
10 didn't pick anybody

11 A In bubble three

12 Q In bubble three

13 A I like that Like I said, when you're going
14 through it this way, you don't necessarily go
15 by institution It could be there's three
16 critical positions in that area I do not
17 know

18 Q Catawba Pre-Release was in number three?

19 A Catawba Pre-Release?

20 Q Uh-huh (affirmative response) Didn't

21 A I don't have where's the map?

22 Q It's page 189

23 A 189

24 Q That's that's Tab Number 4

25 MR MCCLARY Tab 4

1 **MR SUMMERS** On that particular notebook, sir
2 A Tab 4?
3 Q Uh-huh (affirmative response)
4 A All right, Tab 4 Okay, number three had
5 Catawba It looks like it might have been the
6 only institution in that area
7 Q Okay And competitive area number five, of
8 course the only person you eliminated there was
9 the library specialist
10 A I think that only has one institution as well
11 Q Okay
12 A The institutions are spread out all over the
13 state So it was
14 Q Area number eight down in the coast, that's
15 Ridgeland?
16 A Right
17 Q Ya'll didn't eliminate anybody down there So
18 in some of these areas, ya'll chose not to
19 eliminate anybody?
20 A Right, and that would depend, like you like
21 I said earlier, we had to look at each area and
22 see, you know, what the what the positions
23 were still available at that time And that
24 at that point in time, the freeze might
25 have eliminated most of the positions except

1 for critical positions So if we looked at an
2 area or an institution and it didn't and we
3 didn't eliminate anyone, most likely they were
4 already down to to their critical levels

5 Q Okay So like in area number five, if you look
6 at page 202 of the document that's in Tab
7 Number 7

8 A Okay 202?

9 Q Page 202, yeah, 202

10 A Okay

11 Q You see you had in that area and just for
12 reference that's in Kershaw You eliminated a
13 library specialist, inspector, all the
14 certified teachers, all the vocational teachers
15 and the guidance counselor, correct?

16 A I

17 Q According to this list

18 A I can't tell from this it was all of them or
19 not, but

20 Q Well, didn't you have to list everybody that
21 was that could bump, could be subject

22 A Oh, you mean on this list

23 Q Yes

24 A in terms of what's listed versus what's

25 Q Yes You listed everybody in every category

1 that was subject to the RIF, correct? You did
2 that in every other place

3 A Right, but like I said, I I didn't create
4 this document So I can't answer totally that,
5 but I would assume if what you say is correct,
6 then

7 Q I'm relying on your document, your agency's
8 document

9 A Yeah Well, like I said, I I didn't create
10 the document

11 Q Okay

12 A But if what you say is correct

13 Q The document speaks for itself

14 A then then you're probably correct

15 Q Okay

16 A So

17 Q All right And then if we look at area ten,
18 the next page, 204, we've got two inspectors,
19 and then everybody else that's eliminated in
20 that region or bubble is either a certified
21 teacher, vocational teacher, guidance counselor
22 or principal, correct?

23 A All the ones that are shown as eliminated on
24 this list

25 Q Did ya'll eliminate anybody you didn't show?

1 A Like I said, I didn't create the document I'm
2 going on what you said
3 Q Okay, that's fair
4 A And I can only believe what you say
5 Q I can only believe what I'm getting I'm
6 asking
7 A No, I understand, sir
8 **MR SUMMERS** Sir, to the
9 A What I was trying to make a point is, is that
10 I I didn't create the document
11 Q Okay
12 A I'm only trying to read what you're showing me
13 right now, and you want me to answer something
14 that I didn't create
15 Q Did you create that document that Mr Summers
16 showed you for the memo to all the employees?
17 A No, I did not
18 Q But you were happy to talk about that document
19 A Talk about what I know about it
20 Q Okay And that's all I'm asking you, what you
21 know about things, okay
22 A Okay
23 Q You said that the reason for the Palmetto
24 Unified School District was to allow the
25 Department of Corrections to collect education

1 funds That was your testimony, correct?

2 A Yes, that's

3 Q Did you look at the statutes creating the
4 Palmetto Unified School District when you were
5 doing this reduction in force?

6 A I did not

7 Q Have you ever looked at them before this
8 reduction in force?

9 A I don't recall if I ever have

10 Q Have you looked at them since the reduction in
11 force?

12 A I've seen parts of them

13 Q Okay

14 A but

15 Q All right

16 A but I don't know if I've read them all in
17 total

18 Q Okay Let's look at Tab Number 19, please
19 And look at page 829, which is the second page
20 in Tab Number 19

21 A Which page?

22 Q Page 829 It's the second page

23 A It's at the top of the page?

24 Q Yes, sir It's at the top of the page

25 A Okay

- 1 Q And this is a statement of legislative purpose
2 Do you see that?
- 3 A Uh-huh (affirmative response)
- 4 Q Is that yes? You have to answer yes I know
5 it's
- 6 A I'm looking Just hold on a second Where
7 does it state that?
- 8 Q Well, what's the title of that?
- 9 A Code of Laws of South Carolina Annotated
- 10 Q What does it say? 24-25-20, what's the word
11 beside that?
- 12 A It just says purpose
- 13 Q Okay And does this say that the purpose of
14 the Palmetto Unified School District is to
15 allow the Department of Corrections to get
16 educational funds?
- 17 A No, it does not
- 18 Q Okay It says that the purpose is to insure
19 that the education programs are available to
20 all inmates with less than a high school
21 diploma or its equivalent, and that the various
22 vocational training programs are made available
23 to selected inmates with the necessary aptitude
24 and desire Do you see that?
- 25 A Uh-huh (affirmative response)

1 Q Is that yes?

2 A Yes, I'm sorry

3 Q And that, according to the General Assembly, is
4 the purpose that the Palmetto Unified School
5 District was established, is that fair?

6 A Okay

7 Q All right So now, as a coincident to
8 that, because it is a school district, Palmetto
9 Unified is entitled to receive certain funds
10 through the Education Finance Act and Education
11 Improvement Act and also certain federally
12 designated funds, is that correct?

13 A That's correct

14 Q Is there a finance officer in the Palmetto
15 Unified School District?

16 A That I do not know There could be

17 Q When you were employed there, did you ever have
18 any dealings with the finance officer from the
19 Palmetto Unified School District?

20 A Well, I had dealings with a lot of people in
21 in the school district I can't remember
22 a specific person called a finance officer, but
23 there could have been and I probably dealt with
24 them if there was

25 Q Okay Let's look at Tab 11, please, and this

1 is page 1102 This is a document that was
2 presented to me by the Department of
3 Corrections, and it's supposed to show budgets
4 for the Palmetto Unified School District and
5 expenditures for the Palmetto Unified School
6 District over a period of years Do you see
7 that?

8 A Yes, I do

9 Q Okay Did you receive this type of
10 documentation from the Palmetto Unified School
11 District in your capacity as the Director of
12 Administration?

13 A I would have received similar information
14 Whether it would have been specifically in this
15 but yes

16 Q Okay And you see that there is a list of
17 numbers there for state funds, for example
18 It's the first category

19 A Uh-huh (affirmative response)

20 Q Is that yes?

21 A Yes

22 Q And you see that there is a dramatic decrease
23 from FY 03 to FY 04, correct?

24 A Yes

25 Q And those would be funds received by the

1 Department of Corrections allocated to the
2 education operations of its divisions, correct?

3 A Yes

4 Q Okay And then the other listings here,
5 federal funds, you see that there are monies
6 there listed, \$1 26 million in '04 projected,
7 \$1 65 in '03

8 A Right

9 Q You see EIA funds listed You see EFA funds
10 listed, and you see EFA carryover listed
11 What's a carryover?

12 A Some years when we would get a we'd have a
13 budget Certain funds the government would
14 allow us to carry over into the next year

15 Q It means you hadn't spent them in the preceding
16 year

17 A Exactly

18 Q so you'd carry them over to the next year?

19 A Right

20 Q And, of course, these EFA carryovers that
21 you're moving from one year to another
22 represents that you didn't spend all the money
23 in the preceding year, you're carrying it over
24 to the next year, correct?

25 A That's correct

1 Q Okay So, if these numbers are being to be
2 believed, then the Department of Corrections
3 education division was actually carrying over
4 EFA funds from year to year to year, correct?

5 A It appears so

6 Q Okay And those are funds that can only be
7 used for education, can they not?

8 A That's correct

9 Q Okay You'll see that there was a spike in the
10 expenditures in 2001, and there is a asterisk
11 there It says teacher lawsuit settlement paid
12 out in FY 01 That's at the bottom of the
13 page

14 A Right

15 Q There were some funds that had to be paid for
16 back pay in that year, correct?

17 A Yes

18 Q Okay And that came out of Correctional funds,
19 not EFA or EIA funds, correct?

20 A Yes, it did

21 Q Okay You look at the next page here, page
22 1103 Did you know Wendell Blanton?

23 A Yes, I did, still do

24 Q Still do, good Like you, he's retired now,
25 correct?

1 A Yes, I think so

2 Q But in 2003 he was the Superintendent of the
3 Palmetto Unified School District?

4 A Yes, he was

5 Q And this is a memorandum It talks about
6 percentages of the agency budget that are
7 directed toward education Do you see that?

8 A Yes

9 Q And the most that is listed here in any one
10 year is 3 51 percent, correct?

11 A Yes

12 Q And then 03-04 it dropped to 1 19 percent?

13 A Correct

14 Q Did Mr Blanton ever have any discussions with
15 you about concerns that the education budget
16 was being cut in a fashion that could
17 jeopardize any state or federal money?

18 A Yes

19 Q And look at page 1005 in this same tab, please

20 A Okay

21 Q And this has been represented to me to be a
22 statement of the operating expenditures of the
23 Department of Corrections over the various
24 fiscal years shown here Do you see that?

25 A Yes, I do

1 Q And is it fair to say, at least according to
2 this document, the expenditures have never been
3 less than, in that period of time, \$329 million
4 dollars?

5 A That appears to be correct

6 Q So, in the grand scheme of things, the
7 educational budget was a small percentage of
8 the overall operating budget of the Department
9 of Corrections during the time that we're
10 talking about, isn't that correct?

11 A That's true

12 Q Okay Now, when you were selecting individuals
13 for RIF, did you notice that more than 50
14 percent of those individuals came from the
15 Palmetto Unified School District?

16 MR SUMMERS I'm going to object as to the form of
17 the question

18 MR NICKLES And I don't know what the objection to
19 form is

20 MR CORNING What's the objection again?

21 MR SUMMERS That 50 percent of those particular
22 employees

23 MR CORNING He's you know, I guess he could ask
24 what the percentage do you know what the
25 percentage is, you know, but I mean he's on

1 cross

2 MR SUMMERS I understand

3 MR CORNING I'm going to allow him a little bit of
4 latitude

5 Q Did you notice while you were selecting the
6 individuals to be reduced, separated from
7 employment effective June 1, 2003, that there
8 were a large number of educators involved?

9 A I mean you couldn't help but notice

10 Q Okay And you talked about these state
11 restrictions on compelling people to move more
12 than a certain mileage from where they happened
13 to live

14 A Yes

15 Q Now, bumping is always optional, isn't it?

16 A No, not necessarily I don't I don't think
17 it's always optional

18 Q You mean to tell the panel that if I'm an
19 employee and I'm subject to RIF and I know that
20 somebody who's less than me, that that I
21 have to take their job, I can't just leave?

22 A No I'm not talking about that way I'm
23 talking about the other way

24 Q Okay

25 A That maybe we have to give them the job if they

1 now they can say, okay, no, I don't want it
2 maybe, yeah

3 Q Yes What I'm saying is

4 A If that's what you're talking about

5 Q Yeah What I'm saying is bumping is always
6 optional as to the individual who's choosing to
7 move, if necessary, correct?

8 A To a certain extent, you're right

9 Q Well how am I wrong?

10 A Like I said, the other way around, if someone
11 chooses to bump that person, we have to follow
12 through

13 Q Right

14 A If we give them the choice and they say, yes,
15 I want that position

16 Q Right

17 A then we have to give them that position

18 Q And they have to either get there some way or
19 another or you fire them, correct?

20 A Well, if it's within, yeah, within the
21 parameters of the RIF

22 Q And I do you know whether or not you
23 actually have employees who commute more than
24 25 miles to work?

25 A Sure

1 Q Okay And they do that of their own free will?

2 A That's by choice, yes

3 Q Okay So that if I were separated by a
4 reduction in force and I was eligible to bump
5 around the state, nobody could force me to bump
6 farther than I wanted to go, could they?

7 A No

8 Q Okay But if I wanted to go that far and I had
9 more seniority and more credit for continuous
10 statement, then I could exercise that right
11 except for these limits imposed by the agency,
12 correct?

13 A That's correct

14 Q Okay

15 A And there again, that would be correct for any
16 outside the state, any jobs that carry you
17 outside the state

18 Q Do you have operations outside the State of
19 South Carolina?

20 A We do not

21 Q Okay So you didn't RIF anybody outside of
22 South Carolina?

23 A No, we didn't I'm not trying to imply that

24 Q Okay You actually have people who live
25 outside of South Carolina who work for you?

1 A We do We do

2 Q So there's no requirement that an individual
3 live within "X" number of miles of their
4 facility, is there?

5 A Well, there has been in the past

6 Q Is there now?

7 A Not that I know of

8 Q Okay

9 A Unless there are certain jobs that require it
10 that I'm not aware of

11 Q Certainly You're not aware of any teacher
12 jobs that require them to live just outside the
13 gates of a facility, are you?

14 A No teacher jobs that I'm aware of

15 Q Okay And while you were employed with the
16 Department of Corrections, there wasn't
17 anything that would prohibit a teacher or
18 anyone else if a job came open in another part
19 of the state for applying for that job, is
20 there? There were no were no geographic
21 limits on seeking promotional opportunities,
22 were there?

23 A No Again, that's voluntary

24 Q Just like bumping is voluntary, correct?

25 A Yes

1 Q I noticed that on page 440 468, and that's
2 if you could pull that page up again,
3 please

4 A Which tab?

5 MS GUFFEY This one

6 MR NICKLES Is it in ours?

7 MS GUFFEY Probably, it may be

8 Q I know that it is in the materials that you
9 were just looking at And I don't believe it's
10 in our tabs It's before you there

11 MR SUMMERS He's got it

12 MR NICKLES That'd be fine if you'd like In fact,
13 you may have it in front of you

14 MR SUMMERS He's already right there

15 A Oh, this page?

16 Q Yes When when this memo was sent out, it
17 listed all the areas that were affected Do
18 you see that?

19 A Yes

20 Q It didn't put the numbers of individuals
21 affected in any of those areas, did it?

22 A No, it did not

23 Q Okay And there's some of the areas that were
24 affected that there were relatively few, and
25 some that there were considerably more,

1 correct?

2 A Yes, correct

3 Q And it would be fair to say that if you
4 including the Palmetto Unified School District
5 and educational services, that would have been
6 one of the heaviest hit, correct?

7 A In terms of numbers?

8 Q Yes, sir

9 A Yes, but not necessarily in terms of
10 percentage

11 Q Okay And the ones that were eliminated from
12 the Palmetto Unified School District included
13 some of the most senior and most compensated
14 employees in that district, isn't that true?

15 A That I could not answer for sure

16 Q You were asked to look at page 473 and 474, and
17 that's Tab 5, if you want to look at it in the
18 hearing notebook

19 A Okay

20 Q And you indicated that you were familiar with
21 this particular letter Do you see that?

22 A Yes I read it back at the time

23 Q It wasn't addressed to you, but you

24 A No

25 Q are familiar with it?

1 A Yes

2 Q Okay And when you read it at the time, did
3 you understand that Mr Poor was telling you in
4 the second paragraph that it appears that your
5 plan is procedurally correct?

6 A Yes

7 Q And then he says down in the third sentence,
8 our approval does not, he underlines it, kind
9 of make sure you pay attention to that You
10 see that?

11 A Yes

12 Q Does not include determination of geographic
13 locations in the competitive areas So you
14 knew that wasn't approved, correct?

15 A Well no, I did not know it wasn't approved I
16 knew that he didn't approve it, but it wasn't
17 disapproved

18 Q Well

19 A I'm sorry

20 Q tell me if he doesn't approve it, was it
21 did you consider it to be since he
22 didn't approve it, did you consider it to be
23 approved?

24 A Well, I considered

25 **MR SUMMERS** I'm going to ask I'm going to

1 object to the question Perhaps

2 **MR NICKLES** Well I'm trying to understand his
3 testimony

4 **MR SUMMERS** I understand that, sir, but I'm allowed
5 my objection for the record

6 **MR CORNING** What's what's the question?

7 Q You said you said it doesn't approve it,
8 but you said it wasn't disapproved Now, tell
9 me the distinction between not approving it

10 A And not disapproving it?

11 Q Yeah, and not disapproving it What's the
12 difference?

13 A I well, it by not disapproving it, to
14 me, then what he's saying here is is
15 and if you look down further there, I think
16 he's saying it's solely the responsibility of
17 SCDC management

18 Q Okay

19 A So it was our responsibility to do the details
20 and to work out the details of the RIF

21 Q And he says a little bit more than that,
22 doesn't he? He says he says justification
23 for any exception should be retained by the
24 Department, correct?

25 A Right, any exception

1 Q So he's putting the burden on the Department to
2 make sure that these things are appropriate,
3 correct?

4 A Well, and to right Any if we have any
5 exceptions, to document those

6 Q Okay And to correct any wrongs or whatever,
7 okay Now, the plan that was submitted, I
8 believe, is at Tab Number 3, and that's page
9 180 and follows in the committee record Is
10 that a document that you recognize generally?

11 A I've seen it before It's been a long time,
12 but

13 Q Okay It actually speaks to the authorization
14 for the reduction in force at the top of page
15 181 Do you see that, the second page? It
16 says 1 1 of the of the plan Do you see
17 that?

18 A Uh-huh (affirmative response)

19 Q Is that yes?

20 A Yes, I see it

21 Q Agency director or designee In this case it
22 was the agency director, was it not?

23 A Yes

24 Q Is authorized to approve any positions to be
25 abolished and to approve the competitive areas

1 within which employees subject to a lay off
2 will be able to exercise their rights under the
3 policy procedure So that's the agency
4 director who has that responsibility, correct?

5 A Yes, that's correct

6 Q And it has a note, all caps, underlined Do
7 you see that?

8 A Yes

9 Q The competitive areas may be agency wide

10 A Right

11 Q A department Would you consider the Palmetto
12 Unified School District a department?

13 A Could be considered a department It's a
14 division but

15 Q Well, the education division, would that be a
16 department?

17 A Like I said, yes, it could be considered a
18 department

19 Q Okay Or a more restricted geographical area
20 where the staff is separately organized and
21 clearly distinguishable from the staff in other
22 areas Do you see that?

23 A Yes

24 Q Now, tell me, Mr Davis, how is the staff in
25 these eleven imaginary circles separately

1 organized and clearly distinguishable from the
2 staff in the other imaginary circles?

3 A I, you know, without analyzing it, I cannot
4 remember in terms of analysis This like
5 I said, this was put together by Human
6 Resources

7 Q Okay

8 A I think Mr Near could answer that question
9 better than I, but I know that there were
10 separate principles And I don't know if it
11 had anything to do with that or not, but I'm
12 just I can't speculate, so I don't know
13 I'd rather leave that for Mr Near to answer

14 Q I wouldn't ask you to speculate If your
15 answer is you don't know how they were clearly
16 distinguishable or separately organized, that's
17 fine with me

18 A Okay

19 Q It says in on page 185, 7 5, that
20 probationary, temporary, pink slip You're
21 familiar with the term pink slip, aren't you?

22 A Yes

23 Q Does that mean temporary?

24 A Yes, it does

25 Q Or temporary grant employees And temporary

1 grant employees would be different from pink
2 slip, would they not?

3 A Yes, slightly different

4 Q That means you've got a particular fund that's
5 providing for that position?

6 A Exactly It's still temporary but it's

7 Q But temporary is a someone who's receiving
8 essentially undesignated funds for their
9 services, correct, unrestricted funds by a
10 grant?

11 A Are you talking about the temporary grant
12 employees?

13 Q No I'm talking about other than temporary
14 grant Those folks wouldn't be tied to a
15 specific grant, would they?

16 A No, they would not

17 Q Okay And they don't have recall or
18 reinstatement rights under this policy?

19 A No

20 Q Okay Now, can you tell me why pink slip and
21 temporary grant employees were retained in
22 favor of folks who were permanent state
23 employees under this RIF?

24 A I can't I really can't comment in terms of
25 you say in favor of I I can't say

1 that they were I don't see that they were
2 I know we did terminate some temporaries and
3 probationary employees I mean you even
4 pointed out some on the sheet here So I can't
5 answer

6 Q So it would be odd, wouldn't it, if you kept
7 pink slip employees while you were terminating
8 permanent employees?

9 A Well, no I don't I think you would have
10 to look at the individual situation, what that
11 employee did, what their responsibilities were,
12 how critical those positions were Plus the
13 fact that a temporary employee can be
14 terminated at any time anyway

15 Q Okay

16 A So

17 Q So wouldn't you want to get rid of them first
18 so you'd know if you had to get rid a permanent
19 employee?

20 A Generally, we had gotten rid of a lot of the
21 temporary and probationary employees already
22 earlier in in the process

23 Q Let's look

24 A So I, you know I can't answer your your
25 question the way you're putting it

- 1 Q Well, let's look at Tab Number 8 for a minute,
2 please, and that's page 778
- 3 A Okay
- 4 Q Do you see that?
- 5 A Yes
- 6 Q And this is a document produced by SCDC You
7 see there's a SCDC stamp at the top
- 8 A Right
- 9 Q right hand corner Institutions greatly
10 reduced by RIF You see that in well,
11 let's just say at Goodman, for example, the
12 only remaining funded DOC staff are two pink
13 slip employees Do you see that?
- 14 A Okay
- 15 Q And you see that, for example, if you go over
16 to Manning on the next page, the only pink slip
17 the only person that's an SCDC funded
18 person in that facility for education is a pink
19 slip teacher
- 20 A Okay
- 21 Q working 37 5 hours per week
- 22 A Uh-huh (affirmative response)
- 23 Q Now, do you know if there were certified
24 teachers eliminated from any of these
25 facilities where there were pink slip people

1 retained?

2 A I'm not sure I don't

3 Q Well, we can make it easy Look at

4 A Yeah, you probably have that information

5 Q Let's look at Leath, for example It's on the
6 other page

7 A Leath?

8 Q L-E-A-T-H

9 A Okay

10 Q Your testimony has been, and the record shows
11 that there were no certified staff retained at
12 Leath

13 A Okay

14 Q But it shows two pink slip people retained
15 there

16 A All right

17 Q Okay So, did you when you were going
18 through identifying positions to be eliminated,
19 did you look and see whether there were pink
20 slip people in those particular institutions?

21 A I'm sure we did, but in terms of what you're
22 I think I know what you're getting at with
23 your question But I really can't answer it
24 because I don't know what we looked at at the
25 time I can't remember or recall

1 Q Okay

2 A the details that we would have looked at
3 that would have made the decision, you know, of
4 who to who to RIF or who to let go and who
5 not to

6 Q Let's look back at the plan That's Tab Number
7 3, please, sir, Tab 3, page 187

8 A Okay

9 Q This is a part of the same thing You see Mr
10 Ozmint's signature on that page, I believe

11 A Yes

12 Q And there is a definition of temporary
13 employee Do you see that?

14 A Yes

15 Q It refers to full time or part-time employee
16 who does not occupy an FTE Is that full time
17 equivalent position?

18 A Yes, it is

19 Q Whose employment is not to exceed one year and
20 who is not a covered employee, and that's for
21 state grievance rights Do you see that?

22 A And other things, too, yeah

23 Q Well, 8-17-320 is the State Grievance
24 Procedure, isn't it? If you don't know, that's
25 fine

1 A If you say so I don't

2 Q That's fine, all right So, according to this,
3 temporary employees are not supposed to fill a
4 position for more than one year, correct?

5 A Yes

6 Q But that was certainly not observed in the
7 Department of Corrections, was it?

8 A Well

9 **MR SUMMERS** Objection as to

10 Q If you know

11 A I'd rather ask Human Resources

12 **MR CORNING** What's your objection?

13 **MR SUMMERS** Just answer Mr Nickles I'll withdraw
14 the objection

15 A Okay

16 Q Do you know of any temporaries who worked for
17 more than a year?

18 A Yes

19 Q Okay And they worked for more than a year in
20 temporary positions?

21 A But they had to you said more than a year
22 Yes, they worked more than a year, but they had
23 to have a break in employment at the end of
24 each year

25 Q Do you know for a fact that everybody who

1 worked as a temporary employee had a break?

2 A I'm not a Human Resources person, so I can't
3 tell you for a fact, but that's basically what
4 was required

5 Q Right That's what's supposed to have
6 happened, okay So the way to get around it is
7 they have a little break and then you rehire
8 them again under the same temporary situation?

9 A Right

10 Q Even though it's the same person doing the same
11 job?

12 A Could be

13 Q What are you doing, getting out of paying
14 benefits and giving them rights? Is that

15 A It does well, you don't it reduces the
16 cost to the employee, for sure

17 Q Of the employee?

18 A Within reason, yeah

19 Q It doesn't I mean it helps the agency

20 A Yes

21 Q in terms of the agency doesn't have to
22 pay as much for that individual, and they don't
23 have any rights, correct?

24 A That's true

25 Q Okay

1 A Well, and there are other things Don't have
2 to pay as much for coverage or for benefits and
3 that sort of thing

4 Q Okay So the pattern

5 A But that's not something but you can't run
6 an agency just on temporary employees,
7 obviously

8 Q Were you involved in any way in the replacement
9 of the certified teachers who were lost as a
10 result of the reduction in force?

11 A No

12 MR MCCLARY I'm sorry, I didn't hear your question

13 MR NICKLES My question was was he involved in any
14 way in the replacement of the teachers who were
15 lost as a result of the reduction in force, and
16 the answer was no, I believe

17 A No

18 Q Would that be something that Human Resources
19 might have been involved in?

20 A Yes

21 Q You ever attend a meeting of the Palmetto
22 Unified School District board?

23 A I don't recall ever doing it

24 Q How long were you employed with the Department?

25 A Totally with the Department?

1 Q Yes, sir

2 A About '93 to 2005, about 12 years

3 Q About 12 years?

4 A A little over 12 years, 12 1/2, something like
5 that

6 Q Fair to say that no input from the Palmetto
7 Unified Board was solicited or provided in this
8 reduction in force?

9 A Unless they were through Wendell Blanton

10 Q Well Blanton wasn't a part of the core group,
11 was he?

12 A I am not familiar with the board

13 Q No I'm talking about the people you named for
14 me earlier who participated

15 A Oh, no, but he was brought in a couple of
16 times

17 Q Okay Kind of after the decisions had been
18 made, correct?

19 A No We actually got some memos a memo from
20 him, I thought, and he asked some some
21 questions at some point in time I can't
22 remember exactly when it was, but I think it
23 was still going on

24 Q Well you folks made your selections before you
25 announced the the RIF, correct?

1 A Before we announced the RIF?

2 Q Yes You had already made the selections of
3 who's going to be let go before you announced
4 it, hadn't you?

5 A Well, before this letter came out here March
6 31st?

7 Q Yes, sir

8 A I don't think so

9 Q You didn't?

10 A When did we do that? I'm sorry, I don't I
11 don't remember the timing of it, but but
12 the are you talking the number the
13 people that were going to be RIF'd?

14 Q Yes, sir I thought you said ya'll sat down
15

16 A We made the selections and then we announced
17 that people are going to be RIF'd

18 Q Yeah

19 A Yeah We would have done that after we made
20 the selections

21 Q It's kind of a chicken and egg issue, isn't it?

22 A But no We we were talking about the RIF
23 before then actually

24 Q Yeah

25 A And we had asked other people's input on it

1 Q When you announced it in March, ya'll had
2 already designated the positions to be
3 eliminated, isn't that correct?

4 A At this point in time, yeah, we probably had,
5 because you're talking about this letter
6 that was sent March 31st?

7 Q Yes, sir

8 A By that time, we would have, yes, because the
9 list should have been with it, right?

10 Q I don't know, sir

11 A Or shortly thereafter What was the date of
12 the list? I think we went around in April and
13 and visited the institutions, I believe

14 Q Right

15 A and talked with the folks

16 Q And you certainly didn't visit with them before
17 you had identified them?

18 A No I guess I misunderstood your question

19 Q Okay, I'm sorry My question was ya'll sent
20 out this memo to everybody on March 31st, and
21 you identified 148 positions

22 A Yes

23 Q according to this letter?

24 A Right

25 Q So, unless I'm wrong, ya'll had already

1 identified on March 31 the positions that were
2 going to be eliminated, correct?

3 A Probably would have by that time, yes

4 Q And ya'll knew, except for folks who might be
5 able to bump, exactly who it was who was going
6 to be eliminated?

7 A Most likely Like I said, that would have been
8 depending on when Human Resources were able to
9 compile the list and get it ready

10 Q Okay So, this is a process that took a period
11 of time, did it not? You didn't do it
12 overnight

13 A No It took some several weeks probably,
14 two or three weeks, or at least a month or two
15 maybe I'm not sure Well, we couldn't have
16 had more than about a month, I think

17 Q Because Mr Near only came in had to come
18 in after the inauguration, didn't he?

19 A Yeah He came in after all that So I can't
20 remember exactly when he got there He was
21 appointed early on, but he didn't really get in
22 there to work until probably February, March
23 So it was probably probably couldn't have
24 taken more than a few weeks

25 Q All right

1 **MR SUMMERS** And to correct the record, sir, I
2 believe you said Mr Near, and you have meant
3 Director Ozmint
4 **MR NICKLES** I meant Mr Ozmint
5 **MR SUMMERS** Yes
6 Q I mean the inauguration was on January 14,
7 2003
8 A Right
9 Q You probably attended
10 A No, I didn't
11 Q You didn't go?
12 A I watched it on tv
13 Q Okay And then Mr Near Mr Ozmint came in
14 sometime thereafter?
15 A Yes
16 Q Had he been meeting with ya'll before he
17 actually came on board?
18 A No, he had not
19 Q Okay So his first involvement in all of this
20 would have been whenever he actually came on
21 board?
22 A Yes
23 Q And that would have been maybe even sometime in
24 February or so?
25 A Maybe February

1 Q Was the RIF in the works before he even came on
2 board?

3 A No, it was not

4 Q Okay So we're looking at the RIF It starts,
5 let's say, sometime in February, and it's all
6 tied up and sent to OHR March 14th, correct?

7 A As far as the RIF plan, yes

8 Q Yes, sir

9 A Yes

10 Q And then you had all the positions identified
11 by March 31st?

12 A Yes

13 Q Okay

14 A So probably, I would say, two to three weeks
15

16 Q So that's

17 A based on those times that you just gave me

18 Q All right That's pretty quick work

19 A Yes

20 Q You mentioned when you looked at the
21 organizational chart that you had somebody who
22 was over the education division, correct?

23 A Correct

24 Q And is the Palmetto Unified School District in
25 the education division?

1 A Well, it's it's kind of like the division,
2 you know the people that make up the
3 district also make up the division

4 Q Okay The district is established by law,
5 correct? Is that yes?

6 A Yes

7 Q Okay The division is an organization creature
8 of the Department of Corrections, correct?

9 A That's true

10 Q So my question is, this creature of law, this
11 division, this Palmetto Unified School
12 District, is that within the umbrella of the
13 Division of Education at the Department of
14 Corrections?

15 A I don't know if I can answer that question
16 It's

17 Q Okay If you don't know the answer, that's
18 fine

19 A You know, to me, I view the division is, you
20 know, basically the same That's what I had to
21 deal with I had to deal with the Division of
22 Education

23 Q Did you have direct dealings with the State
24 Department of Education?

25 A No, I did not, not in regards to this

1 Q Did you have anything to do with maintaining
2 the certificates of the teachers or knowing
3 what the defined minimum program was for the
4 Palmetto Unified School District?

5 A No

6 Q And I think you mentioned earlier that you're
7 really not intimately aware of the ins and outs
8 of the EFA and the EIA funds?

9 A No, just generally how they work

10 Q Okay That was left to somebody else to handle
11 the nuts and bolts of that process?

12 A Exactly

13 Q And that may have been the finance officer in
14 the Palmetto Unified School District, or it may
15 have been someone else?

16 A It could, but our budget office dealt with it
17 a lot, too

18 Q Okay Now, shortly after the reduction in
19 force, there was a retirement incentive that
20 was offered to employees, is that correct?

21 A I believe there was We had also offered one
22 the year before, I think, or two, one or two
23 years before I don't remember

24 Q All right That is Tab Number 20, I believe
25 I think we had the reduction in force effective

1 June 1, 2003 Is that your recollection?

2 A Yeah, because I think because of the timing
3 and it being the end of the fiscal year, we
4 were told that we had to in order for it to
5 take effect to have any effect on the budget at
6 all So that that's part of the issue
7 Those these things do not have much effect
8 on the budget until later in the year or even
9 the following year

10 Q These things being what?

11 A The retirement incentive The first year they
12 have almost no no impact because of the
13 payouts, the fund payouts

14 Q Okay Did you think about offering retirement
15 incentives before the reduction in force?

16 A We didn't even discuss it before

17 Q Okay Did some folks take advantage of the
18 retirement offer?

19 A I'm sure some did I wouldn't know

20 Q It was definitely intended to be a cost saving
21 measure for the Department?

22 A The retirement?

23 Q Yes, sir

24 A Yes, it was over time, but like I said, those
25 we had done it like a year or so before,

1 and we found that, you know, the first year
2 there was almost no savings because of the
3 payouts So you don't really get any savings
4 until the following years

5 Q When you picked these 148 positions for
6 elimination, I guess you were aware that
7 eliminating all the teachers and the
8 administrators at Leath and McCormick, you were
9 getting rid of some highly paid employees?

10 A We would yeah We would have look at the
11 pay in general, not necessarily at those
12 particular institutions but in general, yes
13 A lot of them were higher higher paid
14 employees

15 Q And so in order to make sure that those higher
16 paid employees were eliminated, you had to make
17 they couldn't bump somebody else If they
18 bumped somebody else, it kind of defeats the
19 purpose, doesn't it?

20 A You know, we we didn't look at it that way
21 I think it I mean I can't answer that
22 because I I don't know I mean the way I
23 looked at it and the way I the way we were
24 looking at it was we've got to we've got to
25 effect a savings that doesn't affect

1 operations, and that was our that was our
2 driven orders basically We don't want by
3 the Director, not to affect operations

4 Q So

5 A So from my point of view, that's what I was
6 looking at

7 Q So if it eliminated the highest paid educators
8 and didn't allow them to bump, that was just
9 fortuitous?

10 A That happened in other areas, too, not just
11 there

12 Q Well, let's look at that issue for just a
13 minute

14 A If you're looking at comparison of salaries,
15 you're going to find that the educators
16 probably do have higher salaries because they
17 were paid more

18 Q All right Let's look at what we talked about
19 in bumping Let's look, for example, at Tab 7,
20 just for example Look at the third page in
21 It's area number one, third page in, page 191
22 of the record

23 A Okay

24 Q If I am Claudette Floyd, who was an
25 administrative specialist in region one, she is

1 the person designated for RIF Do you see
2 that?

3 A Yes

4 Q She is one of there are about 30 per page
5 More than 30 people in that category

6 A Okay

7 Q If you look at Edna Alexander under
8 administrative specialist in region one and
9 Rebecca Crier, they are among, let's say,
10 around 60 or 70 people in that category Do
11 you see that?

12 A Okay

13 Q You look at the physical technicians, several
14 people there, two eliminated Auditors, this
15 is in your area, I suppose, you eliminated

16 A I had been in that area, yes

17 Q You had been in that area in the past, correct?

18 A Yes

19 Q There are a couple of those eliminated who are
20 all audit managers Both of them got the axe
21 Do you see that?

22 A Uh-huh (affirmative response)

23 Q Administrative managers, only one eliminated
24 out of several Program Coordinator II's,
25 those things just go on forever Program

Coordinator I's and so forth and so on And
you look through and you finally get down to,
in this particular area which is this is
number one That's the most populated area,
isn't it? That's the Richland County, Broad
River

A Yes

Q Complex That's got the highest
concentration of employees of any of the
bubbles that were drawn, right?

A Uh-huh (affirmative response)

Q And you get the certified teachers, and ten of
those are eliminated You look at the
vocational teachers, and six of those are
eliminated And then you've got the guidance
counselor, one of those You've got the
program I don't know what academic program
managers are, got three of those And then if
you look in these other areas, it seems, Mr
Davis, to follow a pattern that the fewer
numbers of positions that are being eliminated
in these areas, it comes down to certified
vocational teachers, principals, librarians
having no bumping opportunities In fact, if
you look at the first page of this tab, page

1 at Tab 7, you see that outside of areas one
2 and two there appears to be no significant
3 opportunity for bumping whatsoever for these
4 educators Do you see that?

5 A Uh-huh (affirmative response)

6 Q And your testimony is that's merely
7 coincidental?

8 A Well, you're that was in regards to a
9 different question But remember, a lot of
10 these institutions are spread out all over the
11 state

12 Q And you knew that a vocational teacher at Perry
13 could do the same job a vocational teacher at
14 Tyger River, didn't you?

15 A Most likely

16 Q In fact, some of them had moved from

17 A It depends on the vocation

18 Q Let's say a carpentry teacher at Tyger River
19 could be a carpentry teacher at Perry?

20 A Yeah, most likely

21 Q And a masonry teacher at one of these
22 institutions could be a masonry teacher
23 somewhere else The skill sets are
24 interchangeable, are they not?

25 A Yeah, for the same vocation

1 Q Okay, all right But in drawing these circles
2 here, even if I wanted to, even if I've been
3 employed more than 30 years with the
4 Department, and my position in that area is
5 eliminated, I couldn't cross the bubble to my
6 neighbor and say, I'm sorry, son, you've got
7 less time than I do in this position, I want to
8 keep my job That opportunity was eliminated
9 with this geographic areas, was it not?

10 A Well, yes

11 Q Okay

12 A Pretty much

13 Q Okay Thank you Those are all the questions
14 I have at this time

15 **MR DAVIS - RE-DIRECT EXAMINATION BY MR SUMMERS**

16 Q Mr Davis, I'm going to have some

17 A Okay

18 Q just hopefully brief follow up

19 A Sure

20 Q And again, it may prompt Mr Nickles to ask a
21 few more and then the panel members I don't

22

23 **MR MCCLARY** Before you start

24 **MR SUMMERS** Yes I was going to say we've been
25 going for two hours

1 MR MCCLARY Yeah Can we take a quick break?

2 MR SUMMERS Subject to your discretion, yes, sir

3 MR MCCLARY Maybe for about five or ten minutes,
4 and then we can pick back up I'm sorry to
5 interrupt you

6 MR SUMMERS Oh, not at all, not at all I more
7 than understand

8 MR MCCLARY Okay

9 (Off the record)

10 MR MCCLARY Do you want to wait on Bart?

11 MR SUMMERS No, sir, we can go ahead and proceed

12 MR MCCLARY Whenever you're whenever you're
13 ready

14 MR SUMMERS Thank you, Mr Chairman And
15 ultimately this will hopefully pleasantly
16 surprise, but I'm not going to ask Mr Davis
17 any follow up questions I think a lot of
18 ground was plowed, and that would mean it's up
19 to the panel should ya'll desire to ask Mr
20 Davis whatever questions you feel are
21 appropriate

22 MR MCCLARY Okay Do you have any questions? None
23 down there There was one that I had Let me
24 look through my notes this time

25 A Sure

1 **MR MCCLARY** Yes You mentioned critical positions

2 A Yes

3 Q And are those critical I know this is a
4 leading question

5 **MR SUMMERS** Subject to Mr Corning's discretion

6 **MR MCCLARY** Critical positions would mean security
7 I think you mentioned meals

8 A Right Basically, it would mean any position
9 that directly impacted, you know, the those
10 those items, the incarceration of the
11 inmate, the safety of the inmate and the
12 you know, and the health care of the inmate and
13 his feeding

14 **MR MCCLARY** Okay

15 A Care and feeding of the inmate The basic
16 because you can take a prison system and boil
17 it down to just one thing We're responsible
18 for public safety by keeping that prisoner
19 incarcerated We're required by law to feed
20 him, and we're required by law to provide
21 health care

22 **MR MCCLARY** And then I guess that leads me to the
23 question, would one of these critical missions
24 be legislative mandates?

25 A Yes, although I think you'll go back and look

1 historically, and many times we've had to go
2 back and ask the legislature for leeway on
3 on some things or get the laws changed in some
4 cases because of lack of funds to support

5 **MR MCCLARY** Okay Was education a legislative
6 mandate for the Department of Corrections?

7 A Only a certain part of it

8 **MR CORNING** I'm going to hold on before you
9 answer

10 A I can't really answer

11 **MR CORNING** Hold on a second Stop a minute

12 A Okay

13 **MR CORNING** I'm not sure he's got it sounds to
14 me like you're asking a legal question Are
15 you asking his opinion? Because if you're
16 asking a legal question, he's not qualified to
17 answer it

18 **MR MCCLARY** Well, the reason I guess the reason
19 I'm asking it was based on him mentioning the
20 critical mission When he mentioned the
21 critical missions that are I wanted to
22 clarify what those critical missions were And
23 this is his opinion What about his opinion?

24 **MR CORNING** Well, I mean if you want to ask him

25 **MR MCCLARY** I think I've done that

1 **MR CORNING** if education was a critical
2 mission, he's qualified to at least give his
3 opinion

4 **MR MCCLARY** Right

5 **MR CORNING** But you're you were asking him a
6 legal question, whether it's a legislative
7 mandate That's a legal question So so
8 I mean if you want to ask him what his
9 opinion is, that's fine

10 **MR MCCLARY** Yeah, that's fine

11 A No I think in my opinion education is not a
12 critical function in in providing those
13 things, you know, the safety of the public, the
14 the incarceration of the inmate, the
15 feeding of the inmate and the health care of
16 the inmate

17 **MR MCCLARY** I think that was it There was
18 something I had a little asterisk here by I
19 think the question was asked of you asked
20 have you ever heard anyone talk about teachers
21 being paid too much And I think your answer
22 was yes, you had heard heard it

23 A Yeah

24 **MR MCCLARY** And I think you said, though, that it
25 was never discussed by you or upper management

1 And I kind of paraphrased that

2 A Not during this period in regards to the RIF

3 **MR MCCLARY** Okay

4 A We we didn't That was we looked at
5 it, like I said, from my point of view, and
6 this is the way I was looking at it, was that
7 it was had to do with that critical
8 functions

9 **MR MCCLARY** Okay

10 A And and we were trying to cut as much money
11 as we could without cutting the critical
12 functions

13 **MR MCCLARY** Okay And and and I may have
14 misheard this, but I thought I heard you say
15 that you never heard it from the Director
16 personally

17 A Not that I remember

18 **MR MCCLARY** Okay

19 A I don't recall ever hearing it from him
20 personally I heard it a lot of times from
21 people, you know, in different areas and stuff
22 like that, but just passing comments and things
23 like that

24 **MR MCCLARY** Okay

25 A And I'm not saying he didn't say it I don't

1 know

2 **MR MCCLARY** Right, right, okay Thank you, sir

3 Any other questions?

4 **MR COOPER** I have a couple Retirement's a lot
5 more fun than doing this, isn't it? When you
6 were

7 A I'd rather be playing golf, but that's all
8 right

9 **MR COOPER** When you, in your original discussions
10 about the RIF, you said you were with Mr Near,
11 Director Ozmint, Stroker and some other people

12 A Glenn Franz

13 **MR COOPER** And some others How did did you
14 hear about how these circles were created as to
15 the logic and reasoning? And what do they
16 represent, is it a mileage thing or what?

17 A I think it's mileage Mr Near could answer
18 that question better than me

19 **MR COOPER** I know that, but

20 A I don't

21 **MR COOPER** did you hear in your discussions as
22 to what they were for?

23 A He he probably explained them, you know,
24 but I like I said, I don't remember Other
25 than the fact that we were trying to do it

1 logically and make it as as simple as
2 possible, that was, you know, as far as I know,
3 that was my opinion, you know We made we
4 were trying to make it as logical and simple as
5 possible and and make it where we didn't
6 have to send people all the way across the
7 state, you know

8 **MR COOPER** That was what you're remembering the
9 discussion to be?

10 A Yeah That's that's kind of all I can
11 remember I don't like I said, Mr Near
12 knows more about, you know, exactly how they
13 were created and but a lot of the
14 institutions and if you look at it, I guess
15 the logic behind it would have to be, in my
16 opinion a lot of the institutions are
17 spread out really all over the state And some
18 of them are very isolated Because, you know,
19 people don't like institutions in a populated
20 area

21 **MR COOPER** Was there any discussion in your meeting
22 that you can recall as if someone might live in
23 circle ten but be working in eleven and they
24 wouldn't be able to bump into into where
25 they're actually living, which would be closer

1 to them?

2 A No I don't remember that

3 **MR COOPER** You don't remember any of those
4 discussions?

5 A I don't I don't remember that, recall if we
6 ever discussed that

7 **MR COOPER** Okay

8 A Because I don't think we looked at where people
9 actually lived

10 **MR COOPER** No, I know that, but I mean just the
11 possibility that they may have where
12 someone may be halfway between or just outside
13

14 A No

15 **MR COOPER** or where their actual commute may be
16 actually less or the same or any of that

17 A That would get a little complicated because
18 then we'd have to look at where everybody
19 lives, you know We just didn't do that We
20 just looked at where they were you know,
21 they're hired were hired

22 **MR COOPER** Okay Let me see if I have anything
23 else And did I understand you to say you did
24 not remember why the temps or the pink slip
25 people were retained over the permanent?

1 A No I said I don't know any particular reason
2 why they would have been unless that was a
3 critical position or if there was somebody
4 there might have been a reason

5 **MR COOPER** But you don't know what that was?

6 A But I don't know if

7 **MR COOPER** What you could have heard in those
8 discussions

9 A No I don't remember in those discussions
10 anything about that

11 **MR COOPER** That's all I have Thank you

12 **MR MCCLARY** Go ahead

13 **MS HUTTO** I've got a question And if I misquote
14 you, please let me know You said that I
15 thought I heard that you were ordered by the
16 Director to come up with reductions that didn't
17 affect operations

18 A I said well, I don't know about order
19 That was kind of our that was our direction
20 that we were trying to come up with And we
21 had worked if you think about it
22 historically, we had already done a very
23 you know, quite a few things So at that point
24 in time, you know, once he had decided that he
25 was going to do the RIF, then it was just

1 basically how can we do this with the least
2 impact on operations

3 **MS HUTTO** Okay Would you kind of explain, to help
4 me understand, what you all consider
5 operations?

6 A Okay Those things that like we were just
7 talking about just a minute ago with Mr
8 McClary That directly affected the
9 incarceration of the inmate, the health of the
10 inmate and the food, you know, his welfare
11 So, we had to look at those things We had
12 already, you know operations basically are
13 all the correctional officers that maintain
14 security in the institution and the
15 infrastructure that took care of that
16 institution to make sure that it was was,
17 you know the safety was maintained in the
18 population Like we had to have some
19 maintenance, obviously even though maintenance
20 had already been cut severely Had to be some
21 maintenance There had to be some food
22 service, you know, people even though that had
23 been cut severely already through attrition
24 We had to have health care professionals That
25 was very difficult to maintain because even

1 though it had been cut through attrition,
2 health care is a there's a shortage of
3 health care all over the nation, and it was
4 very difficult to hire people, as you can
5 imagine, in a prison situation, too So those
6 were the things that we were primarily
7 concerned about being critical positions And
8 everything else was was pretty much fair
9 game And as in the backdrop of that,
10 remember we'd already I already talked
11 about how we had put the freeze on, and we had
12 already reduced several divisions down to
13 to minimum levels already

14 **MS HUTTO** Thank you

15 **MR MCCLARY** Mr Davis, I've got one more, possibly
16 two

17 A Yes, sir

18 **MR MCCLARY** I think you came to work for the
19 Department in '92, I think you said, sometime
20 around in '92, '93

21 A It's '92 or '93 I can't remember the exact
22 year

23 **MR MCCLARY** And when did you leave the Department?

24 A When I started work first?

25 **MR MCCLARY** When did you leave?

1 A Oh, when did I leave?

2 MR MCCLARY When did you retire?

3 A December '05

4 MR MCCLARY December '05 Between '93, '92, '93
5 and 2005, have you ever seen where use of these
6 circles were used before the RIF or after the
7 RIF?

8 A No We've never a RIF of this nature

9 MR MCCLARY I mean were they ever used, these
10 circles, before in the operation of the South
11 Carolina Department of Corrections where you
12 utilized these these circles for transfers,
13 for any any part of your operations? Were
14 these geographical areas established prior to
15 the RIF in the in the operation

16 A Not as they're drawn here necessarily that I
17 can not that I recall

18 MR MCCLARY Okay

19 A Now, a lot of times if you're talking about
20 anything we did in terms of transferring people
21 or moving people around, we were limited by
22 that distance as to what we could do

23 MR MCCLARY The 25, 30 miles?

24 A Yeah, right And so we did not That was our
25 basically, our and if you look at it,

1 those circles almost I mean those
2 institutions are so isolated

3 **MR MCCLARY** Uh-huh (affirmative response)

4 A Usually, a lot of times we couldn't move people
5 from one institution to another unless they
6 voluntarily wanted to go

7 **MR MCCLARY** Okay, thank you Any other questions?
8 Thank you, Mr Davis

9 **MR NICKLES** Thank you

10 **MR SUMMERS** We would request Mr Davis' excusal

11 **MR NICKLES** No objection

12 **MR MCCLARY** You're excused, sir

13 A Thank you

14 **MR MCCLARY** Mr Near, Mr Cooper is going to read
15 the oath of oath to you oath of office
16 I've been here too long He's going to read
17 the oath to you here in just a moment We're
18 going to ask that you not discuss this with
19 anyone after you leave today

20 **MR NEAR** Okay

21 **MR MCCLARY** until the decision is rendered in
22 this case

23 **MR NEAR** Okay, sure

24 **MR MCCLARY** Herb?

25 **MR COOPER** Thank you Would you please state your

1 name?

2 **MR NEAR** John Near, N-E-A-R

3 **MR COOPER** Mr Near, would you please raise your
4 right hand? Do you swear or affirm that the
5 testimony you will give today is the whole
6 truth and nothing but the truth?

7 **MR NEAR** I do

8 **MR COOPER** Have a seat, please

9 **MR NEAR - DIRECT EXAMINATION BY MR SUMMERS**

10 Q Make yourself comfortable Hopefully you will
11 not a chair spill over in your direction or any
12 other, myself included Good morning

13 A Good morning

14 Q As you can see, I'll be asking the questions
15 first, as you know

16 A Okay

17 Q At times, if you need to, go ahead and talk to
18 the panel so they can, number one, hear you
19 The microphones are hanging from the ceiling
20 So we're recording the proceedings Again, I
21 don't think you'll have any difficulty speaking
22 up just as loud as you need to Please
23 introduce yourself to the panel

24 A Okay My name is John Near, N-E-A-R

25 Q What do you do for a living now?

1 A Right now, I'm the Human Resources Director at
2 Newberry County Memorial Hospital, and have
3 been there for a little less than a year and a
4 half at this point

5 Q And prior to your time at Newberry County
6 Hospital, where did you work?

7 A Prior to that, I worked for the South Carolina
8 Department of Corrections for over 21 years
9 I just held two jobs there as their hired
10 as their Assistant Human Resources Director,
11 and for the last 14 years I was there, Human
12 Resources Director Before that

13 Q Thank you

14 A Before that I was the I worked for the B F
15 Goodrich Company for over 12 years And I was
16 in personnel for most all that time At
17 manufacturing plants twice here in South
18 Carolina, once in Akron, Ohio and once in Los
19 Angeles, California So about 35 years total

20 Q Describe for the panel your educational
21 background

22 A I have a Bachelor of Arts Degree from Ohio
23 University I was a psychology major That's
24 pretty much my education background

25 Q And safe to say that you spent the bulk, if not

1 the entirety, of your career in the field of
2 human resources?

3 A I've I've pretty much always worked in HR
4 except for in the very beginning I was hired
5 in doing labor standards and and all of
6 that in the beginning with B F Goodrich, but
7 most all of that of that time, the 35
8 years, has been in in personnel We've
9 been called a lot of things over the years,
10 personnel, employee assistance, HR

11 Q Any kind of certifications in the field of
12 human resources or any kind of continuing
13 education seminars?

14 A You know, obviously through the years, I've had
15 just a ton of different types of training and
16 education and and things of that nature
17 I have never desired to pursue in the later
18 years when a lot of the PHR tech certifications
19 and that really came into play, again, because
20 of all the years in HR, I just had never
21 desired to do that I've never had anybody
22 really necessarily want me to to do that as
23 a as a requirement of my job So I don't
24 have any certification I think the only
25 the only real certification I have outside of

1 of that is I'm a licensed brick layer

2 Q Well tell the panel about that When did you

3

4 A Last ten years, the last ten or more years,
5 I've been a brick layer and went through a
6 certification process at Richtex Brick And
7 that's what I do when I don't don't work in
8 personnel in the last ten or more years, brick
9 layer

10 Q Do you have any you talked about the
11 certified brick layer Do you have any

12 A Well, you have to get licensing through the
13 Department of Labor and and and all
14 that sort of thing

15 Q Well thank you for answering those questions
16 Obviously, we're here to talk about the
17 reduction in force that occurred in 2003
18 Let's go back a bit before that on perhaps a
19 different topic Tell the panel what you did
20 as the Director of the Department of
21 Corrections Human Resources Division What was
22 your entity responsible for?

23 A Okay You probably have heard a lot about the
24 Department of Corrections So I I probably
25 don't need to tell you too much about it But

1 originally, there were 32 prisons, and I think
2 when we left, we had 29 prisons There were
3 probably about 20 divisions We had I
4 think when I came on board, we had about 2,800
5 employees And over the years they opened ten
6 about ten prisons Employment went up to,
7 oh, probably 7,100 employees And and then
8 by the time I left, I think it had dropped back
9 to about 5,500 or 5,600 employees I was
10 responsible for everything that related to the
11 HR field, which included employment We
12 probably hired, I don't know, maybe 1,500
13 employees a year, about 100, 150 a month I
14 had payroll Payroll ran probably \$16 million
15 dollars a month Of course, all the benefits,
16 all the things that related to health and
17 and leave and attendance and and all those
18 things Had workers' compensation, which at
19 Corrections was a really big animal I think
20 when I left the premium was around \$11 million
21 dollars We probably had anywhere from 75 to
22 100 injuries per month Probably had at least
23 15, and some months we would have as many as
24 20, assaults on employees So I had all of
25 that Had all the employee drug testing which

1 we ran about 25 percent random and reasonable
2 drug reasonable suspicion drug testing
3 Had all the everything related to employee
4 relations We probably did anywhere from 100
5 to 150, 75 to 150 disciplinary actions a month
6 from written warnings all the way up to
7 terminations And just an awful lot of policy
8 work and and administrative things and
9 and just lots and lots of hats that related to,
10 obviously, operations and and all that It
11 was a just a very, very busy job I think
12 in state government it probably was considered
13 one of the worst HR jobs that there are in
14 terms of volume and and all the stuff you
15 had to do with all of that It was a tough
16 tough job, but that's what I kind of what
17 I did

18 Q Thank you

19 A Sure

20 Q Describe for the panel what kind of staffing
21 you had in your division to handle the
22 functions that you talked about

23 A Staffing went up and down over the years I
24 think when I started there as an Assistant
25 Director, we had less than 20 We had about 18

1 people Then once I became the HR Director, it
2 had built up to where we had about 55 employees
3 in HR as far as central office I had also, in
4 addition to that, 19 HR offices in prisons
5 And that was mostly the larger prisons and the
6 medium sized prisons So I had 19 of those
7 For a few years they added all of the training
8 for the agency under me, which involved all the
9 field training, training academy and all that
10 And there was probably at least 75 employees
11 So I guess at one point I probably had around
12 150 employees that were direct or indirect
13 reports to me Like I say, when I left central
14 office, I know we had backed down from 55 to I
15 think around 30, 32 employees We had about 40
16 40 or 45 percent of our HR staff cut
17 through through, you know, attrition and
18 and they were just getting rid of people
19 and all of that And and then when a later
20 director came on, they split the training back
21 out and all of that So that's pretty much
22 what I had under me

23 Q Thank you again You talked about you used
24 the term attrition Tell the panel, in your
25 field of endeavor, what does attrition means?

1 A Usually, attrition means that, you know,
2 somebody leaves and you don't hire a
3 replacement

4 Q And they're you've heard some testimony
5 about freezes, hiring freezes

6 A I'm sorry, my hearing is a little bit bad

7 Q That's okay My voice is going at this point,
8 so I'll try to make it better I apologize
9 We've heard testimony about hiring freezes

10 A Yeah

11 Q Tell the panel what that means What is a
12 hiring freeze?

13 A Well, again, back in the mid 80s when I
14 started, there was a there was a lawsuit
15 that the Department of Corrections had to
16 increase training and and living conditions
17 and stuff like that for inmates And and,
18 of course, the number of inmates was rapidly
19 increasing So the the agency was was
20 adding persons Like I say, I think when I was
21 there we opened like ten, maybe eleven big
22 prisons around the state, and that that ran
23 up through, I'd say, the early 1990s Then
24 things started to level off We actually
25 started closing prisons and and cutting

1 back Then we got into the mid 90s and and
2 upper 90s and and we the agency started
3 having to continue either their growth or
4 continue to run the prisons they had but had
5 different funding cuts And over time we had
6 to attrit or stop you know, stop hiring
7 different different areas Generally, I
8 think through all the agency directors that we
9 had and and I don't know how many worked
10 for, but there was at least at least five
11 that I can recall The you know, we had
12 different freezes on on hiring, but but
13 most of the time, you know, they you know,
14 they they tried to lay off, you know, those
15 primary areas where you had to provide specific
16 care for and in and programs for
17 inmates, you know, some of the basics
18 Obviously, security was always number one
19 Food service, you know, you've got to feed the
20 inmates, health care, a lot of the education,
21 a lot of the programs, the basics that you, you
22 know, you had to keep keep inmates going
23 and keep a lot of type stuff, but all the
24 all the extra or you could say almost the
25 support functions, a lot of those saw the bulk

1 of the the cuts And like I say, between
2 about 19 probably 1998 or 1999 and the time
3 when I left in 2007, I think the agency
4 probably dropped from about 7,100 down to 5,600
5 employees, about 1,500 And they did that
6 through all kinds of stuff, you know, freezes
7 and cuts and

8 Q Expansion and contraction was frequent over the
9 course of your tenure with the Department of
10 Corrections, a frequent type of activity?

11 A It was The last you know, the last half
12 a dozen, eight years, it was continuous It
13 was you know, you were forever struggling
14 We had different agency directors that, you
15 know, wanted to have the say so of of
16 anybody you hired I mean if you had to hire
17 a if you had to hire an administrative
18 person, you know, even if it was a phone
19 receptionist, a lot of times the agency
20 directors wanted to know and wanted to make
21 absolutely sure So it they were really
22 watching the dollars and stuff

23 Q And in some of the responses you provided to my
24 questions to the panel, you used the terms, or
25 one of them at least, the central office

1 Describe what you understand the central office
2 to be
3 A You know, I've always considered central office
4 as, you know in the Columbia area there's
5 headquarters complex, if you will, the I
6 think in later years they actually renamed it
7 the Broad River Complex And the bulk of the
8 the bulk of the of the support
9 functions were located either in the two story
10 headquarters building or a lot of the
11 outbuildings Training was an outbuilding, a
12 lot of the support services areas, canteen,
13 commissary, certainly food service I can't
14 think of all the divisions there And and
15 in earlier years, they had in the real
16 early years, the agency even had the agent
17 split up into three regions And then a
18 director came in and kind of increased those
19 I think we they kind of tried to split that
20 up even more, not so much as geographic
21 regions, but more with the types of inmates and
22 prisons we had And I think they had five or
23 six regions at one point So all that all
24 that, I guess you could say, non direct inmate
25 care type was would be considered as

1 central office type stuff to me Somebody
2 could have a different opinion, but that's
3 that's pretty much what I've always thought of
4 it as

5 Q And earlier you mentioned there are some, what,
6 20 divisions?

7 A That's a that's a round number I I
8 I don't honestly know, but I think it was
9 around 20 divisions

10 Q And just the top of your head, name, say,
11 three, four or five of the divisions that come
12 to mind

13 A Okay Well, obviously, human resources,
14 accounting, human services, training,
15 education, some of the human service They had
16 like a volunteer services area, inmate services
17 area I can't think of them There was an
18 audits division There was, you know there
19 was just a bunch of a bunch of divisions
20 I would say a lot of them

21 Q And thank you for providing that accounting of
22 them Let's talk you mentioned one in
23 particular, obviously, education And I don't
24 think it's any big mystery that's part and
25 parcel of why we're we're here today

1 Describe well, first of all, you've heard
2 of the term Palmetto Unified School District,
3 correct?

4 A Yes, I have

5 Q Tell the panel what you know and what you
6 understand as defining the Palmetto Unified
7 School District

8 A Okay Well, again, I've been there I was
9 there over 21 years and and to me, and I'm
10 just talking me, the Palmetto Unified School
11 District was was always just a I don't
12 want to use the word storefront, but but
13 just something that was there to enable maybe
14 the agency to receive funding of some sort
15 Education, or I should say the Palmetto Unified
16 School District like I say, I was there
17 over 21 years I mean I I I never had
18 any contact with any of those people if and
19 I wouldn't sitting here, I couldn't even
20 tell you how many people there were Never had
21 a phone call, never had a question, never had
22 a that I can recall, never had any
23 conversations, never had a meeting with them,
24 never attended a I guess they had board
25 meetings to kind of inform them of what was

1 going on periodically in the agency You know,
2 the human services group had a had a I
3 think they belonged to some state human service
4 certainly some state human services
5 connections and and I think education had
6 that as well But but I mean I I
7 never, you know I I like I say, I
8 mean if I had to call one of them, I'd probably
9 have to ask somebody what a name was and then
10 try and find a phone number

11 Q And let me ask let me be very specific
12 When you say call one of them, to whom are you
13 referring when you say call one of them?

14 A Somebody, I guess, on the school board,
15 somebody that's related to the Palmetto Unified
16 School District I never had any interaction
17 with them ever

18 Q Do you know the name Wendell Blanton?

19 A Wendell Blanton was our our division
20 director of education and superintendent of
21 of of education

22 Q Okay Describe for the panel how often that
23 you would interact with Mr Blanton and how
24 that worked

25 A Okay Well again, there were there were 20

1 divisions and and education was one of
2 them I would interact with Wendell Blanton
3 like I would any other division director From
4 the Human Resources side, we provided every
5 every service that for them that we would
6 for the accounting department If they wanted
7 to I don't know, if they wanted to create
8 a position let's say they said we needed to
9 add somebody, you know They'd come to us
10 They'd do the paper work and and we'd go
11 through, you know, the the deputy director
12 and the director to get the stuff approved If
13 they wanted to announce a position or advertise
14 it in the newspaper, we would do that, you
15 know When they wanted to know what the person
16 was supposed to be paid when they got hired,
17 we'd tell them Our compensation area would
18 tell them that If they if they you
19 know, when they brought them on board as new
20 hires, you know, we'd tell them when they're to
21 report for orientation and and certainly
22 Human Resources and training and all that would
23 do their do their orientation, you know
24 Certainly, through the years, provided lots of
25 advice to them, you know All the support

1 services that we did, you know, if they were
2 if their name came up in random drug
3 testing, we did the drug testing on them If,
4 you know, we had a service awards program for
5 people that had were going to get an award
6 for 20 years of service, you know, we were the
7 ones that collected all that and and would
8 notify them to make sure they came to that We
9 we did their payroll We provided their
10 benefits If they were going to do something
11 that related to any kind of benefits, we
12 you know, they'd come to us and we'd deal with
13 that If there was anything that related to
14 any kind of discipline, we would do that We
15 you know, we would assist with the
16 counseling on how to do written warnings, how
17 to how to do suspensions, terminations, you
18 know Obviously, through all those years,
19 there were people that were disciplined, as you
20 can imagine And we did all of that And
21 and that was why when you asked the question
22 earlier about the school district, you know, I
23 never had any interaction with them whatsoever
24 on any of that stuff We we did it we
25 did it all

1 Q I'll ask the question was there, again, a
2 separate human relations arm, office solely for
3 the Palmetto Unified School District to your
4 knowledge?

5 A Well, again, I mean I I might have been out
6 there in another planet, but I, you know, our
7 office and the Department of Corrections had
8 rules and regulations and policies and all this
9 other stuff And to my knowledge, I didn't
10 know that the Department of or the school
11 district had as much as an employment policy
12 that they participated in anything, that they
13 had a disciplinary policy or anything else,
14 nothing that I was ever aware of

15 Q Was your knowledge extending to the Department
16 of Corrections policies, and you were referring
17 to those a moment ago?

18 A Well, it did, but but I like I say, I
19 mean if if somebody came in that door right
20 now and said, you know, we're here and here's
21 what we have, I I would have said well sit
22 down and let's let's go over it and let's
23 talk about it But I mean I never had contact
24 one with any of them about anything that
25 related to anything

1 Q In your in your Human Resources activities?

2 A Yeah I mean I yeah, never I mean I
3 like I say, if you ask me even you know, I
4 wouldn't be able to give you a name or a phone
5 number or nothing I don't know I don't even
6 know where they are, if they're where they
7 meet or anything

8 Q And again, this is the board you're talking
9 about or

10 A Yes, sir

11 Q Now, there's been some testimony about
12 positions And I want to get the weeds just a
13 little bit and then back out about positions
14 that may have been established at institutions
15 involving county funds for teachers or
16 temporary teachers Are you familiar with
17 those types of transactions by which to bring
18 those people on board in that capacity?

19 A Well, the the I guess from a broader
20 a broader scale, the Department of
21 Corrections is an agency And just like other
22 agencies, you know, money comes in from
23 different sources You know, the Highway
24 Department probably gets a whole bunch of money
25 from the federal government We didn't get

1 that much I think, you know, we got almost
2 all of our money from state funds And we got
3 a very small portion of that from from
4 federal monies And we also got a small
5 portion of that from other monies Our canteen
6 operation, for example, they sell coca-colas
7 and candy bars and they used to sell cigarettes
8 and stuff like that in the prison stores And
9 the money that brought in was what they call
10 other funded money So there was state money
11 and federal money and other monies And the
12 State of South Carolina, the Budget & Control
13 Board, every year when the legislature convenes
14 they can either give you positions or in
15 later years they of course they took them
16 away So they will give you you have to
17 request positions in the budget process, and
18 you can request state state funded
19 positions and these other funded positions
20 And so I you know, the the source of
21 monies that was paid to, in this case you're
22 asking about education, came from a number of
23 sources There were people in the Division of
24 Education at the Department of Corrections who
25 were paid out of total 100 percent state

1 monies Usually it was it was the ones
2 that were almost all state funded were
3 were, you know, usually a lot of the
4 administrative and support, but but I
5 there may have been certainly some teachers as
6 well There were a lot of positions that
7 what they called were split funded, meaning
8 they'd get half their money from one source and
9 half from another, maybe half from state and
10 half from another, or they might get it from
11 three or four or five different sources And
12 then you had some positions that were
13 completely funded by federal monies or other
14 monies and things of that nature You know,
15 for example, a local school district might
16 might give the Department of Corrections some
17 money to go ahead and have some sort of a
18 program in the evening And so they might fund
19 the give the you know, the agency the
20 money to go ahead and set that position up, but
21 but it all came into us And then we had
22 to make the request to go ahead and establish
23 those positions through through HR
24 Q So through Human Resources that particular
25 transaction would occur?

1 A Right We would do it, and then we would have
2 to, of course, get the approval of of the
3 of the agency director and accounting and
4 all that, but then it would have to we'd
5 have to always make sure that it came down to
6 the Budget & Control Board because they
7 maintain this balance, if you will, for all
8 state agencies And if you have, say, a
9 hundred state positions and two federal
10 positions and one other position, you could
11 never you know, you had to you had to
12 always maintain that balance So they were
13 had a very careful watch over that In fact,
14 they I think used to send us reports like
15 monthly and to make sure that we were always in
16 balance and all that So, you know, we
17 like I say, we did all that We had to had
18 to do that

19 Q And I know you know the term I know the panel
20 knows the term But for the sake of the
21 record, EPMS, you're familiar with that term
22 obviously?

23 A Right And EPMS is an employee performance
24 management system performance evaluation

25 Q And would your office be involved in the

1 maintenance of EPMS materials, EPMS documents?

2 A We do, yes

3 Q Tell tell the panel how that mechanically
4 works Do you collect them all from the
5 different divisions of the agency?

6 A We we we did we did do that
7 Education had a they did their performance
8 evaluations Since you're asking about
9 education, they did theirs once a year, I
10 think, all at once And and the agency did
11 performance evaluations at different times on
12 on the on the person's review date when
13 they either had one year of service, or if they
14 had had a job change Let's say somebody got
15 promoted or demoted to a different job Then
16 that would reset their date and they that
17 would be one year from that date I think the
18 reason the the the performance
19 evaluations for education were were done
20 all at the same time, and that was coordinated
21 by Wendell Blanton's office, was because I
22 believe the you know, they did their pay
23 scale Department of Education did the pay
24 scale once a year

25 Q I was going to ask you about that, too, but

1 A And they all had to they all had to be done
2 at the same time And I think that's why they
3 did that I don't know exactly, but I think
4 so

5 Q Okay And you mentioned the teacher pay scale
6 obviously Describe for the panel again your
7 understanding and work with the teacher pay
8 scale Was is it, first and foremost?

9 A Well, I guess to understand the teacher pay
10 scale you would have to understand pay scales
11 in in general The State of South Carolina
12 has a number of pay scales They have what
13 they call classified or people that are graded,
14 a graded pay scale There's there's the
15 education pay scale People that are agency
16 directors, their pay scale is set by the I
17 think it's called the agency head salary
18 commission

19 Q And these are what kind of pay scales? You
20 said agency

21 A Yeah, the people that were that were like
22 agency heads and that have a there's a
23 there's a a commission that's in in
24 state government I don't know exactly who it
25 is, but they they review salaries And

1 it's made up of some people from the Budget &
2 Control Board and I'm sure a couple of
3 legislators or something like that And they
4 determine, you know, who gets raises And that
5 actually is based on a different system which
6 is like the I think they call it the HAY
7 System They assess points based on what they
8 call the KSAs, knowledge, skills and abilities
9 and all that There I believe in on
10 the judicial side, I think there's I think
11 there's judicial scales for people in the
12 judicial side So there's a there's a
13 number of of pay scales in state
14 government And and, you know, far and
15 above the pay scale that's most predominant is
16 what they call the classified pay scale because
17 most people in state government have what they
18 call a pay grade And and ironically, even
19 though the largest group of people in all of
20 state government are covered under this
21 classified pay scale, all the agencies are
22 allowed to go ahead and develop their own
23 their own pay scales as long as they fit within
24 the overall framework of the main ten pay
25 grades And you go to different agencies and

everybody's got different different types of scales We had it set up to where we had five levels within each pay band, and that way an employee could look at a job on the board, and if they're a Grade 5B and the job that's posted is a 5C, they know right away whether they're going to be going up or down And so it made it a whole lot easier for them But but like I say, the the education pay scale was just was just one of those pay scales like like so many others

Q And I'm going to ask you if you recall the name of the Abraham teacher pay scale lawsuit, do you recall that event?

A Only, you know obviously, the the I'm aware of it The the bulk of that of that teacher of that lawsuit that you're talking about and was handled through a number of teachers who, I guess, dealt with with the issues of pay It went through our legal office, and I know there was collaboration with the with the State Department of Education And and it all had to do with supplements, I think, that were being that were being paid The education

1 pay scale that we have at the Department of
2 Corrections is actually different than than
3 in some regard than say other school
4 districts My wife, for example, she worked in
5 kindergarten 24 years and and they're on a
6 nine month schedule At Department of
7 Corrections they work year round They work
8 twelve months So so what the Department
9 of Education would do is each year they would
10 take the pay scale and they would pro-rate it
11 or make the allowance for the extra months and
12 and bump if you will, bump the pay
13 scales up, and then they would give the
14 information to our accounting department And
15 our accounting department would give it to us,
16 and we'd go ahead and pay pay everybody
17 I think the difference and I'm I might be
18 talking way out of my head here, but I think
19 the issue with that the Abraham issue, and
20 I don't know Abraham is, but was different
21 different districts in the State of South
22 Carolina can pay a supplement, you know If
23 you if you work in Horry County over in
24 Myrtle Beach, you know, they've got a lot of
25 money coming in from tourists and that So

1 they had this pay scale that their teachers are
2 paid under, but they're allowed to pay a, you
3 know, real big supplement because they've got
4 the budget for it Whereas, if you go to
5 Allendale County, Allendale County may not have
6 much money, so their supplement might be real
7 low We paid I say we The Department of
8 Corrections paid a supplement, but I think
9 later on as a result of this thing, it was
10 reinterpreted that the supplement that had to
11 be paid wasn't just a single supplement It
12 had to be like an average or something of
13 of all the supplements I don't know if it's
14 all the whole state or or large parts of
15 the state or something like that But anyway,
16 so I guess the agency was told they had to
17 to refigure the way they do their supplements
18 And and then, like I say, through the
19 accounting department, we were told what it
20 was The tough thing about the supplements is
21 you never know until after the year is over
22 what people paid So, as I recall, those last
23 couple of years I was there, every year we had
24 to go through the labor of going back and
25 and like catching up every year and paying the

1 extra supplement for the previous year because
2 it you know, they everybody changes all
3 year long in all the districts I say all of
4 them I think a lot of them changed So that
5 that's my knowledge of the that Abraham
6 issue You know, we're a we did payroll
7 for the whole agency And I hate to say it,
8 but paying paying people twice a month, I
9 mean, you know, we were always anxious for the
10 accounting department to just tell us what it
11 was so we could go ahead and get checks out on
12 time because, you know, you don't want to get
13 you don't ever want to be late with a
14 paycheck

15 Q Not the best thing to do Well let's go ahead
16 and turn our attention now to the more specific
17 events, if not the specific event regarding why
18 we're here today

19 A Okay

20 Q Then I'm going to there's some bound
21 volumes up there

22 A There's I'm sorry, what?

23 Q There's some bound notebooks up there

24 A Okay

25 Q I'm going to turn your attention first to page

1 179 Mr Cooper, who is seated to your left,
2 is going to get it up on the screen
3 A Oh, this this thing?
4 Q It will be labeled on the front, sir And it
5 should be in the back there
6 A 179?
7 Q 179, yes, sir
8 A Okay
9 Q And again, to the extent that you can see it up
10 on the screen, obviously you can refer to it up
11 on the screen and look there And if it helps
12 to have the hard copy so you can see the entire
13 document at one time, certainly go ahead and do
14 that So I take it you're now oriented to page
15 179, Mr Near?
16 A I am
17 Q Okay
18 A Yes
19 Q And do you recognize this document?
20 A I see it I don't remember it I but
21 yeah Yes, I do
22 Q Is it addressed to you?
23 A Yes
24 Q And what's the date on it?
25 A The date on it is March 14, 2003, and it's to

me from Chris Byrd, and it says the revised reduction in force policy submitted to our office has been approved and enclosed in your for your files The revised policy becomes effective only after covered Should you determine that further revisions are necessary, submit them to us and we're available for assistance

Q So you were paraphrasing, not reading verbatim but paraphrasing what that letter to you said?

A Yes, sir Did you want me to read it exactly?

Q No, that's fine That's fine I just wanted to make sure it was clear for the record That's all I'm doing, part and parcel And there's a name at the bottom, Chris Byrd

A Chris Byrd

Q Okay Tell the panel who Chris Byrd is

A Well, it says Chris Byrd is the assistant director The the Office of Human Resources and and again, if somebody knows all this, just raise your hand and I'll quit

Q No, you're here to tell us what's going on Tell the panel for the record

A The Office of Human Resources is the part of the Budget & Control Board, they have a

1 they have a director of the Office of Human
2 Resources or OHR Under the director they had
3 a few assistant directors, and they used to
4 have assistant directors for one for
5 compensation, one for employee relations, you
6 know, one for training and stuff like that
7 And then I think later on, and I'm not sure if
8 it was right at this time or not, they had
9 assistant directors that kind of covered more
10 generic or generalist type things Chris Byrd
11 was used to be our analyst and became the
12 assistant director And he was kind of like an
13 assistant director over an area that was
14 responsible for reviewing and approving
15 reduction in force policies that any agency
16 would submit to the to the to OHR

17 Q And let's go ahead there's another smaller
18 notebook, I think, just to the top of the
19 bigger notebook right there I believe you're
20 touching it, yes, sir

21 A Okay

22 Q And if you could, let's go to the Tab Tab
23 Number 3 When you open that up, sir, you'll
24 see a page designation in the top right corner
25 as page 180

1 A Okay

2 Q And Mr Cooper is switching now to page 180

3 MR COOPER Hold on for a second

4 MR SUMMERS Yes, sir

5 MR MCCLARY You're on 180? He said 180, right?

6 MR SUMMERS That's correct

7 MR COOPER I don't know how it's (inaudible)

8 Q Are you ready to proceed, sir?

9 A Yes

10 Q Everybody's at 180 Tell the panel what
11 appears at page 180

12 A Page 180 is the reduction in force policy for
13 the South Carolina Department of Corrections
14 And it's dated the same date as the letter from
15 Chris Byrd

16 Q Just a moment Let the record reflect that
17 we're hearing the traditional Friday serenade
18 of the University's fight song So just speak
19 up a bit louder if you could, please That may
20 or may not have picked up on the record So
21 tell the so you've identified the
22 document And it's in or associated with
23 a letter I talked about a moment ago And this
24 is going to seem like a very fundamental,
25 perhaps basically worded question Tell the

1 panel what this policy is First and foremost,
2 who drafted this policy?

3 A Okay This is kind of like this is kind of
4 like starting at the beginning of a reduction
5 in force process Obviously, there were agency
6 meetings before this where we talked about
7 reduction in force And I was instructed to
8 take our current reduction in force policy
9 And we had the agency had a reduction in
10 force policy Obviously, if you're going to
11 you know, if you're going to implement a
12 reduction in force, you want to make sure that
13 it's it's, you know the agency hadn't
14 had a reduction in force in, I guess, a good
15 long while Best to go through it, make sure
16 that, you know, it's it's updated, that
17 it's that it's applicable to that
18 particular time And and so what you do is
19 what I had to do in my job as HR director,
20 was I went down to the Department of
21 Corrections Excuse me, I went down to the
22 Office of Human Resources and said that we are
23 getting ready, it appears, to have a reduction
24 in force, and I need to make sure that I'm in
25 compliance with what, you know, the agency is

1 required to do

2 Q Let me stop you right there, sir What
3 prompted you to actually physically go down to
4 OHR?

5 A Well, the the Office of Human Resources has
6 has different policies, you know We
7 we might in in Human Resources you
8 might have 30 or 40 policies, you know You
9 might have a leave and attendance policy, and
10 you might have a all these other things
11 But there are a core group of policies that the
12 Office of Human Resources has to approve, you
13 know And and I believe reduction in force
14 was one of those They would they would
15 send out reminders periodically to remind
16 agencies that, you know, if you update certain
17 policies, maybe a discipline policy, for
18 example, you need to make sure you get OHR's
19 approval before you start using that policy
20 So anyway, I I contacted our analyst at
21 that time In other words, that's the Office
22 of Human Resources person who we deal with day
23 in and day out for all the stuff that we do
24 In this case, it was I think it was Chris
25 Poor And, you know, set up a meeting and said

1050

0102

0103

1 it looks like we're going to be approaching cut
2 you know, because of all the different
3 issues with funding and that, that we may be
4 implementing a reduction in force, what do I
5 need to do And, of course, they said, you
6 know, the first thing you've got to do, the
7 first first leg of the stool is you've got
8 to make sure that your reduction in force
9 policy is exactly what it is you need to do
10 your reduction in force That's the first step
11 of the policy So so I went back and I
12 I worked on the policy Of course everything
13 I did I had to, you know, send through the
14 agency director And and a lot of this
15 policy was a was already there, you know,
16 the I'm not that smart of a guy that I can
17 sit down and write this 15 page document, you
18 know, from scratch in in a week I mean a
19 lot of the the basics of this were there
20 And so I did the updates and all that stuff
21 Then I would go down to the Office of Human
22 Resources and meet with them And I say them
23 It would be Chris Poor It would be somebody
24 from their employee relations area It may be
25 a couple of them and maybe somebody from our

) 1 compensation area, certainly Chris Byrd, you
2 know It would vary depending upon when we
3 would meet And I'd give them that policy, and
4 they'd say, well, you know, you need to look at
5 this, you know You want to re-word this
6 differently You want to do all these things
7 And I would submit that And, you know, it
8 this letter the policy is dated March 14th,
9 but you can imagine it it probably took me,
10 you know, I'm guessing a couple of weeks, you
11 know, to get through this policy to get it all
12 exactly the way that, you know, that they say
13 it had to it had to be And then and,
14 you know, they those core policies, you
15 know, they would the Office of Human
16 Resources would help you just like any support
17 function They supported the agencies They
18 had a lot of what they called model policies
19 They had model pay policies and model RIF
20 policies and and model disciplinary
21 policies and all this kind of stuff They
22 didn't say you had to use those things
23 They're just something to help you, you know,
24 formulate policies that met your needs at the
25 agency So anyway, finally then once I got

1 the policy done, then of course the Director
2 had to sign off, you know, make sure it was
3 okay and everything And then I submitted that
4 to the Office of Human Resources And then
5 they sent obviously a letter back on March 14th
6 and said this is a good policy and and they
7 gave me this letter

8 Q Pretty quick turnaround on that then?

9 A Well, I mean, you know, like I say, it's a
10 this is a huge endeavor, and I'm guessing it
11 probably took at least, like I say, a week, two
12 weeks I mean it was you know, we had a
13 bunch of meetings, a bunch of phone calls and
14 all of that And and I had you know,
15 they were kind of helping lead me through all
16 of this

17 Q And do you recall when Director Ozmint assumed
18 his directorship, just generally what time
19 frame?

20 A It was about it was about about two
21 months before this He started this policy
22 is dated March 14th And Mr Ozmint started
23 right after the new governor came in and
24 he's still the governor, I think

25 Q That's correct

1 A And he he came in and appointed him in
2 January and and then, you know so it
3 was like I say, it was about sixty days
4 later And if I'm let me just say if I'm
5 if I'm answering these questions too long,
6 I mean tell me

7 Q You let me worry about that

8 A Okay

9 Q And let the panel worry about that They'll
10 tell me or and then certainly Mr Nickles
11 can ask questions, too

12 A All right

13 Q You're doing fine

14 A Okay

15 Q You said talked about meetings with folks
16 from OHR

17 A Right

18 Q in preparation of the policy itself

19 A Right That's the first the first leg of
20 the stool was the policy, right

21 Q Did you have meetings with or a meeting with
22 Director Ozmint that alerted you that this
23 particular task needed to be undertaken, and if
24 you did

25 A Oh, sure

1 Q do you recall that?

2 A Mr Ozmint I mean by policy, the agency
3 director has the the authority, the
4 responsibility to to do this I mean the
5 even though the responsible authority is
6 Human Resources, you know, the Director is the
7 is the the person who's in charge of
8 all the policies I mean he you have to
9 have him sign it

10 Q Right

11 A That's on the last page of that thing That's
12 you know, that's his call And, you know,
13 there's things that he like or don't like or
14 want words changed and stuff like that

15 Q So you were there meetings not just with
16 Mr with Director Ozmint but other members
17 of of the executive staff to assess the
18 circumstances and to begin the process of
19 undertaking the RIF? Tell the panel about
20 those

21 A Yes and no

22 Q Okay

23 A The when you say the executive staff, you
24 know, again, the way the Department of
25 Corrections is structured or was structured was

1 they had a you know, the agency director
2 was Mr Ozmint And then he had a General
3 Counsel who reported to him That's the
4 the head legal guy And then and then
5 there were a number of of what we used to
6 call in the old days deputy directors, but then
7 they called them division directors or, you
8 know, the main people in charge of that that
9 reported to Mr Ozmint The meetings that were
10 held to you know, to go through these
11 things really weren't held with all of the
12 executive staff and certainly not any
13 department directors It was it was really
14 Mr Ozmint and the chief the General
15 Counsel, the legal guy and which was
16 Richard Stroker and and then the budget
17 guy, which was Glenn Franz and and then
18 John Davis was the director over administration
19 who was my boss And I think that was really
20 kind of the core group And and I would
21 say that in terms of the reduction in force
22 policy, I probably dealt with the General
23 Counsel's Office as much as I did as much
24 as I did anybody, you know, trying to make sure
25 the wording was was the way they wanted it

1 and and of course Mr Ozmint

2 Q Now, I'm going to turn your attention to Tab 5
3 in the same notebook right in front of you

4 A Okay

5 Q And at Tab 5 you'll see the numerical
6 designation at the top right corner of 473
7 Got it and Mr Cooper will bring it up on the
8 screen He has And again, do you recognize
9 or have you seen this document before?

10 A I will say yes I don't remember a lot of it,
11 but I but sure, I've seen it, yeah

12 Q It's addressed to you?

13 A Yeah

14 Q Date on it, please?

15 A This is a letter from from Chris Poor, who
16 was our consultant, dated March 28, 2003, and
17 it was addressed to me And it says do you
18 want me to say what it says?

19 Q Let's ahead and and if you could, just bear
20 with me Could you read verbatim the first two
21 sentences?

22 A Okay Dear Mr Near, your reduction in force,
23 RIF plan for the Department of Corrections,
24 SCDC's eleven competitive areas has been
25 reviewed As a part of the plan we reviewed

the following components the plan, the competitive areas diagram, the listing of the competitive job classifications and job classification series, the listing of positions being eliminated and the employees eligible for bumping in each competitive area and the sample letter to employees in positions being eliminated Do you want me to do the next sentence?

Q Please

A In light of your assessment that the Department's current organizational charts may not be completely up to date, we understand that the listing includes all employees in each competitive area, and each competitive class and class series included in the reduction in force plan

Q And let me stop you

A We used this information to conduct our review

Q Okay, you finished off the paragraph for me
Thank you very much, sir Now, there are a couple of phrases in here that we've heard testimony about and I'd like to ask you about them since they've been read by you The competitive areas diagram, let's talk about

1 that

2 A Okay

3 Q What was let's talk about competitive area
4 What's a competitive area in the context of a
5 reduction in force?

6 A Okay Well, over the years, like I say,
7 working at B F Goodrich in a few different
8 states, working at the Department of
9 Corrections, I've been involved in reductions
10 in force before And and there are certain
11 things that are very similar to reductions in
12 force The first one of the first things
13 you do when you're identifying when you're
14 setting up your RIF plan is to identify
15 competitive areas And the competitive area is
16 the area in which an employee the positions
17 that have been identified for elimination
18 That's the area in which employees are able to
19 bump usually less senior employees That's
20 your competitive area In manufacturing, it
21 could be this one production line as opposed to
22 the one beside it In state government, it can
23 be it can be anywhere that you you
24 know, anything that you feel that an agency
25 feels is appropriate The that's why the

1 the state gives you a model plan, but they
2 don't tell you exactly what it is because every
3 agency is different, you know There are some
4 agencies where the entire agency is in one
5 building And so the competitive areas are
6 confined within that those block walls
7 And and an agency could set it up just that
8 building, or if they've got training on one
9 floor and compensation on another floor, they
10 could set their competitive areas up by floor,
11 or they could set it up within departments
12 within a floor, you know Anybody can I
13 mean that's what you do, is you you define
14 your competitive areas At the Department of
15 Corrections, you know, the the thing that
16 was so challenging with Corrections is the
17 agency was going to have this reduction in
18 force and and Mr Ozmint had identified
19 there were going to be positions throughout the
20 state And so in identifying the competitive
21 areas, you know, what you've got to do is
22 you've got to step back and say, okay, what's
23 the appropriate way to establish a competitive
24 area If you go too narrow and I had a
25 friend that that worked in in in an

1 agency next door to us They had a reduction
2 in force, and they literally set it up within
3 that office, and a person couldn't bump outside
4 of, you know, the rows of desks within that
5 office And and and so they were very
6 limited I mean it was like if your position
7 was eliminated, I mean you couldn't bump
8 anybody or or you had very little
9 opportunity to bump anybody Obviously, the
10 the other end of that spectrum would be,
11 you know, the entire state And and, you
12 know, to me it's absurd to even talk about that
13 because if you've got anybody that that's
14 going to have their position eliminated and
15 they live in Greenville, they're not going to
16 realistically, there's going to be so many
17 other factors that come into their decision to
18 bump If they've got if their next bump is
19 in Greenville or is in Charleston, let's say,
20 you know, that's the way all RIF plans work
21 because you bump the highest senior person
22 Their position is eliminated Bumps the least
23 senior person Well, if you if you go
24 statewide, you're going to have to bump the
25 least senior person in that grouping and, God,

1 that could be a hundred miles away So so
2 you have to, you know, use logic And and
3 truthfully, in dealing with, you know, this
4 type of a panel through the years, there were
5 also issues to look at The state has a rule
6 that talks about you can't involuntarily move
7 people more than I think it's around thirty
8 miles or to a nearest facility And so, you
9 know, then you start thinking, well, gosh, you
10 couldn't move somebody from Greenville to
11 Charleston because, you know, that's too far
12 So the best things seemed to be to provide
13 employees the the biggest opportunity to
14 bump and and and in effect allow the
15 more senior people to bump the least senior
16 people within a competitive area, give them the
17 opportunity to bump, but at the same time, not
18 make it virtually impossible for all the people
19 that were being their positions were being
20 RIF'd to to give them a choice that they
21 probably could never live with I mean they
22 had spouses that worked and and children in
23 schools and all this kind of stuff So it's
24 not realistic to think that if you're going to
25 do a reduction in force on a on a human

1 services coordinator, that they can go to
2 another city and uproot their their family
3 and all that stuff, too So you had to be
4 realistic at the same time So so like I
5 say, the that's how the agency came up with
6 the eleven competitive areas It was a
7 generally an area of clusters of institutions
8 where people could bump and not have to move,
9 not have to uproot their families and schools
10 and all that stuff, but still at the same time
11 try to have some institutions within that
12 competitive area that would give them the
13 opportunity for some bumping

14 Q And let me stop you right there Let's go to
15 the next tab

16 A I probably went way too far

17 Q No That's quite all right Go to the next
18 tab, Tab 4, in the same notebook in front of
19 you And it may not be the next It might be
20 the preceding tab Let's go to Tab 4

21 A Okay

22 Q And skip to the second page

23 A Okay

24 Q And that's going to be page 189 I'll let Mr
25 Cooper get that up on the screen In fact,

1 let's go back to page 188, forgive me And,
2 Mr Near, if you could go back to the preceding
3 page to page 188

4 A Okay

5 Q And you recognize this?

6 A Yes, sir

7 Q Okay

8 A That's the a listing of all the
9 institutions that the Department of Corrections
10 had at that time split up into eleven areas,
11 eleven competitive areas And again, each
12 competitive area tried to group the
13 institutions that were, you know, pretty close
14 by, relatively close by so that everybody, you
15 know so that people would have the
16 opportunity to bump, you know Competitive
17 area one, for example, is is pretty much
18 Columbia, and and that involved all the
19 institutions and divisions and and
20 everybody in everybody in the Columbia
21 area, Broad River Road complex, institutions,
22 divisions and the prisons that were on the
23 complex, as well as Watkins and Manning which
24 were not right there on the complex but but
25 certainly within, you know, like thirty miles

1 Q Let's go ahead and turn to the next page then

2 A Okay

3 Q That's going to be page 189 And before I
4 continue about this particular document, were
5 these documents that we just looked at, page
6 188, and for that matter 189, were they part of
7 the RIF plan? Were they part of the policy or
8 the RIF plan?

9 A Not they're not part of the policy Now
10 remember going back, remember when if
11 you do a if you do a reduction in force,
12 think of the seat of a stool It has legs,
13 okay The one leg is the policy The next leg
14 is the is the plan, okay And and the
15 reason why you know, you have to think of
16 those things as different, as separate because
17 a year later, you know, the Department of
18 Corrections may have a let's say they had
19 a reduction in force again, but they only had
20 it in the headquarters building and
21 headquarters building alone Well, at that
22 time, you may want to redefine your competitive
23 areas for the headquarters building and and
24 split it up by floors, you know, because it
25 might only involve, you know, certain things

1 So so the you've got the policy, and
2 you've got the plan And both of those, of
3 course, have to be approved not only by the
4 agency director I mean that's that's his
5 that's his plan, if you will, but they also
6 have to be approved by the Budget & Control
7 Board, the Office of Human Resources It's
8 required

9 Q And if you could, let's go back to Tab 3, same
10 bound notebook there

11 A Okay

12 Q And, Mr Cooper, we're going to go to page 181
13 It's going to be the second page in, Mr Near,
14 top right corner designation 181

15 A Okay

16 Q And if you could, read verbatim the provisions
17 of paragraph 1 1

18 A Okay 1 1 says the agency director or
19 designee, and of course the reason you say
20 designee is because, you know, if if he's
21 there when the the policy started and, you
22 know, he has a kidney stone and goes in the
23 hospital and can't do it, you know, he's got to
24 designate a maybe a deputy director to act
25 in his stint So that's what designee means

1 Q It sounds like to me you have some experience
2 with kidney stones

3 A The agency director or designee is authorized
4 to approve any positions to be abolished and to
5 approve the competitive areas within which
6 employees subject to a lay off would be able to
7 exercise their rights under this policy and
8 procedure Note, underlined, the competitive
9 area may be agency wide, a department or a more
10 restricted geographical area where the staff is
11 separately organized and clearly
12 distinguishable from the staff in other areas
13 The agency agency director will be the
14 final authority for approving a reduction in
15 force whereby employees may only bump into
16 vacant positions for which they are actively
17 recruiting to be filled And the second bullet
18 point, filled positions are abolished with the
19 subsequent removal of some or all employees
20 from the payroll and the reassignment and/or
21 possible transfer or demotion of others

22 Q All right, sir Thank you for doing that
23 Let's go back to Tab 4 and the map we were
24 looking at at page 189

25 A Okay

1 Q And let's talk there's a as soon as Mr
2 Cooper gets us oriented on the screen, it'll be
3 apparent In the top right corner, not just of
4 the hard bounding but up on the screen, there's
5 a two words are capitalized and then
6 underlined Do you see that, sir?

7 A Yes

8 Q What does that say?

9 A It says competitive areas

10 Q Okay So and there are circles

11 A Right

12 Q on the map, correct?

13 A That's correct

14 Q And there are numbers within the circles?

15 A That's correct

16 Q Okay So the circles represent competitive
17 areas?

18 A The circles are each competitive area that were
19 listed on that previous page And again,
20 trying to make the competitive area so that it
21 would include they would include all the
22 different locations at the Department of
23 Corrections And I guess, you know, didn't
24 have to do a visual like this, but again, when
25 you're trying to communicate to employees,

1 sometimes it's easier for people to understand
2 better if you you know, if you can look at
3 something rather than reading it, you know, and
4 everything So that's why that's why I did
5 the you know, I did the map with the
6 circles and the numbers and all that kind of
7 stuff just to make it easier for employees to
8 understand

9 Q Now, there's been some testimony regarding
10 whether or not these kinds of geographic
11 designations had ever existed before within the
12 Department of Corrections for any purpose

13 A Uh-huh (affirmative response)

14 Q Okay Had these particular eleven designations
15 on the map at page 189 ever existed before any
16 literature or any publication that you were
17 aware of?

18 A Again, the the policy says that when you do
19 a reduction in force plan, you designate your
20 competitive areas So these specific eleven
21 competitive areas, I don't know that these
22 existed before This was created in light of
23 the positions that were identified to be
24 eliminated, you know, statewide I will tell
25 you that that even though it wasn't a

1 reduction in force, back in about 1993 or
2 somewhere around there, you may recall the
3 Department of Corrections had a big prison here
4 in Columbia, CCI, Central Correctional
5 Institution And we had we had probably
6 500, 550 employees at CCI And the legislature
7 gave us the money, gave the agency the money to
8 build a new prison up in Lee County, but they
9 didn't give the agency money other than some

10 I think some transition money to staff the
11 prison Because the assumption was you're
12 going to close CCI, and you're going to move
13 the employees, you know Well, of course, the
14 problem was just like the competitive area
15 here CCI was located in area one which is the
16 Columbia area, and and Lee was actually in
17 competitive area two over here Well, when
18 we're closing CCI, it would really be unfair

19 it would be really wrong to tell employees,
20 those 500 people, ya'll have got to pick up and
21 move to Lee County because it's too far, you
22 know It's too far for them to go So, what
23 we did was met with all the employees And I
24 had and every time we told the employees
25 you tell us if you want to go voluntarily, if

1 you want to go to Lee County, okay And most
2 everybody said no, you know Some did But
3 then we said, okay, here's what we're going to
4 do then, okay Every time a position comes
5 open in your job classification, just like the
6 the RIF policy here in the RIF plan, every
7 time a job comes open in your in your job
8 classification if you're if you're a
9 Human Services Coordinator I and you're at CCI,
10 once a position comes open in the Columbia
11 area, we're going to come to you And I had to
12 get, you know we had to get make sure
13 the Office of Human Resources was okay with
14 this

15 Q This is the prior activity you're talking
16 about?

17 A Right We're going to come to you and say
18 we've got a position open at Kirkland
19 Correctional Institution for a Human Services
20 Coordinator I You take that job if you want at
21 Kirkland, okay, but you need to understand if
22 you don't, we're not going to ask you again
23 And when we close CCI, you're going to be
24 subject to reduction in force So, over time,
25 and gosh, it took us probably a year and a half

1 to close CCI And over that year and a half,
2 we placed every employee in the Columbia area,
3 in that competitive area without laying one
4 person off and which was a great thing
5 But but again, the important thing was
6 was that we had a prison in area one that was
7 going to, in effect, be closed and moved to an
8 area two, and we could not we did not force
9 employees to move out of that competitive area,
10 but we offered them the opportunity to move
11 into vacant positions in the midlands region in
12 area one Now, obviously, if we had people
13 left over, we would have had a RIF We would
14 have gone into the competitive area of one, and
15 then that Human Services Coordinator probably
16 would have been able to bump the least senior
17 person in that competitive area one, but
18 fortunately, we never got to that And so

19 Q But that was not the case with the realities
20 that were faced back in 2003?

21 A Yeah And but but so I mean you
22 asked me has this ever done been done
23 before Even though we didn't have a RIF
24 before with eleven competitive areas, the logic
25 of a competitive area one and a competitive

1 area two was done before We still used the
2 the what we thought were the rules and
3 regulations, that you couldn't move people more
4 than thirty miles And again, I will tell you
5 that there was, you know we had education
6 people at CCI, too, and they went through this
7 process, you know, that we did and we got them
8 all placed But but again, I you know,
9 going back to what you were asking me earlier
10 about, you know I mean we we we did
11 all this for all the employees of the
12 Department of Corrections, not just education
13 division but for all the divisions

14 Q Well let's talk about the education division
15 In your role as Human Resources Director back
16 in 2000 early 2003, would it have been
17 practical to have two different types of RIFs,
18 one for a particular type of personnel, another
19 for another type of personnel?

20 A That's it's absurd to even ask the
21 question I mean

22 Q Well, I did, so

23 A you can't I mean how imagine me
24 standing in front of, you know, six thousand
25 employees and saying, okay, here's the

1 here's the plan We're going to and I'm
2 assuming that the Office of Human Resources
3 would even would even consider something
4 like that But can you imagine standing in
5 front of 400 people at an institution and
6 saying, okay, here's what we're going to do
7 We're going to have we've got two different
8 RIF plans We're going to treat all of you
9 all you people over here and all you people
10 over here and and you know, we're going
11 to treat you differently And people over here
12 are going to say, but I'm just an
13 administrative specialist in the division of
14 working for education I'm paid one
15 hundred percent out of state funds How can
16 you put me in that group? I want to be in that
17 group, you know, and that kind I mean it
18 would be impossible And how in the world
19 would you orchestrate some of the the
20 movements and stuff? I mean it's it's
21 it wouldn't I mean I couldn't even fathom
22 two sets of rules, two sets of policies and why
23 would I do that It never even to be
24 honest with you, it never even crossed my mind
25 because, like I was telling you earlier, the

1 the school district, in my mind, was
2 something that didn't didn't come into play
3 in anything that I do, you know All of our
4 policies, all of our procedures covered all of
5 our employees It had it had nothing to do
6 with whether somebody, you know, was affiliated
7 with the school district or somebody was
8 affiliated with a different group or anything
9 like that They're all Department of
10 Corrections employees I mean it's kind of
11 like when you remember back in in 2000
12 yeah, 2000, when they passed the law that
13 said that Department of Corrections employees
14 can be eligible for police retirement because
15 whether you're wearing a uniform or not, you're
16 behind the fence You're dealing with inmates
17 every day You're having feces and urine
18 thrown on you and raped and everything else
19 You're all Department of Corrections employees
20 And so that's that's what it said It
21 didn't specify human services or education It
22 said Department of Corrections employees So
23 when we said here's a retirement plan for
24 Department of Corrections employees, you know,
25 education people said yeah, that's for us All

1 the divisions said that's for us, you know
2 There's no differentiation whatsoever

3 Q Let me stop you right there, sir

4 **MR SUMMERS** I've been looking at the clock for the
5 last couple of exchanges with myself and Mr
6 Near We've been going for about an hour I
7 am cognizant, as I'm sure Mr Near is, as Mr
8 Nickles is, everybody is, that it's about the
9 lunch hour Mr Chairman, we do stop at, what,
10 3 30 today?

11 **MR MCCLARY** Uh-huh (affirmative response)

12 **MR SUMMERS** I thought it might be a good time to
13 coordinate Do we continue on with Mr Near,
14 or do we take a quick break? We're ready to go
15 either way the panel wants to go, and, Roland,
16 you want to go But perhaps this is a good
17 time to adjust our

18 **MR MCCLARY** I was thinking about a good breaking
19 spot myself And, of course, I'll solicit
20 input from the committee, but I don't do
21 you know about how much longer yours is going
22 to be?

23 **MR SUMMERS** I would think I can move through what I
24 need to move through in the next half hour to
25 45 minutes

1 **MR MCCLARY** I don't want to rush you

2 **MR SUMMERS** I'm not going to no, sir I
3 understand that But I think that's going to
4 let's say an hour with the exchange and
5 other things that might go on

6 **MR CORNING** Mr Nickles, do you have any idea
7 what I'm looking at is if it's going to take
8 counsel for the agency possibly another hour,
9 that puts us at 1 30

10 **MR NICKLES** Yes, sir

11 **MR CORNING** Even if we take a short lunch break, 30
12 minutes, 40 minutes, whatever, that puts us
13 past 2 00

14 **MR NICKLES** That's correct

15 **MR CORNING** You'll you'll have to answer the
16 question, but I have a difficult time believing
17 that your cross examination is going to be
18 take less than an hour and a half

19 **MR NICKLES** Oh, I think it'll take less than an
20 hour and a half, but I don't think it'll take
21 less than 45 minutes

22 **MR CORNING** So you think we can finish by 3 30 even
23 so?

24 **MR NICKLES** I think if we took a normal lunch
25 break, we could finish by 3 30 I would

1 endeavor to do that, in fact, assuming that
2 that Mr Summers only has another hour of
3 questioning Of course, the panel will have
4 the opportunity to question I don't want to
5 inhibit their questioning either

6 **MR CORNING** Then the question to the panel is do
7 you want to break now, or do you want to at
8 least finish the direct examination first

9 **MS HUTTO** We're flexible

10 **MS KUDELKA** I'm flexible

11 **MR MCCLARY** I would I would personally like to
12 for you to finish before we go for a break

13 **MR SUMMERS** That'd be fine

14 **MR MCCLARY** That's my preference, but

15 **MS KUDELKA** That's fine

16 **MR CORNING** And break between direct and cross?

17 **MR MCCLARY** Right, right And maybe do 30, 35
18 minutes, or something like that

19 **MS KUDELKA** For lunch, yes, a short lunch

20 **MR MCCLARY** Is that okay with everybody, or do you
21 have to go back to your office again?

22 **MR CORNING** 30 minutes will be pushing it, but I'll
23 try

24 **MR MCCLARY** Okay

25 **MR SUMMERS** Okay, very well We'll continue to go

1 MR MCCLARY Okay

2 A And I realize I'm probably the problem I talk
3 too long And I will try to do it faster I
4 apologize

5 MR MCCLARY No, no, no

6 MR SUMMERS For the record, we've been going just
7 over an hour So we're doing fine

8 Q Let me turn your attention it's going to be
9 the same bound volume that you were working
10 from and go up to Tab 7 And I want you to
11 skip over the first two pages And then it's
12 kind of backwards on the bound volume It's
13 going to be page 191 And you see that
14 designation when you turn the paper?

15 A Yes, sir

16 Q It's landscaped paper And we're there Okay,
17 sir Do you recognize this?

18 A I do

19 Q Okay Tell the panel what this is

20 A When when I originally went to the Office
21 of Human Resources and said we were going to
22 have the RIF, we did the policy Then we
23 then I had you know, then I had the plan
24 By that time by that time Mr Ozmint had
25 already identified the positions within the

1 agency to be eliminated And I think there was
2 like 150 of those And and so, me, I went
3 to the Office of Human Resources and said,
4 okay, here's the 150 positions that are to be
5 eliminated, you know We're going to have
6 whatever, ten administrative assistants We're
7 going to have all this kind of stuff And they
8 said no, what you've got to do is of all the
9 classifications and all the positions that are
10 being eliminated, what we need you to do is we
11 need you to list every employee in all those
12 classifications throughout the entire state,
13 split them up by competitive areas so that we
14 can see who's being what positions are
15 being eliminated and what the bumping would be
16 all the way through to the end, like predicting
17 how it's going to turn out

18 Q Let me stop you there Would you have done
19 that on your own? Was that what you originally
20 had intended or conceptualized when you were
21 doing the plan?

22 A I yeah I and I do remember this I
23 mean I remember, you know, just going like
24 you've got to be kidding me They want me to
25 list all these all these positions, all

1 I said I don't even understand what you're
2 talking about So what they what they did
3 was they you know, they said here's what we
4 need, you know Take take your competitive
5 area one, for example, which was the Columbia
6 area, list all the positions in the Columbia
7 area, competitive one, by job classification
8 and then subdivide all those by seniority
9 order And then you indicate which position
10 has been eliminated Like on that first sheet
11 you've got there, that says there's Claudette
12 Floyd was the position that was occupied
13 the position to be eliminated It doesn't mean
14 she's the one getting laid off It just means
15 that her position is no longer needed, okay
16 Then what we want you to do is we want you to
17 go ahead and and mark it ultimately who is
18 it that's going to get laid off And I said
19 well how in the world can I figure out who's
20 going to get laid off? What if she says I'm
21 going to take lay off, you know And they
22 said, well, you've got to assume that that
23 person's going to bump the least senior person
24 in that job classification So I'm like okay
25 So I went through this two or three times

1 before I got it, you know, the way that they
2 said they needed it So so here you're
3 looking at like on this first page here,
4 these are all the administrative specialists
5 within competitive area, which is Columbia
6 There was one position that was eliminated It
7 was an administrative specialist in the
8 substance abuse division, okay And that
9 happened to be occupied by Claudette Floyd So
10 they said put a one by the position that's
11 being eliminated Then they said who would she
12 bump, the least senior person in that job
13 class Well you go to the very end, and that
14 is Loretta Hodge

15 Q Where do you see that, sir?

16 A She's on that's on the next page, 192

17 Q And just point

18 A Right So then they said

19 Q Hold on one second just so we can get to 192

20 A There it is right there

21 Q Now you've been talking about let me do it
22 this way I'll be a be a lawyer about it,
23 if you will You've got several columns on
24 this particular we'll call it a
25 spreadsheet

1 A Right

2 Q Okay And you've got the first column on the
3 left hand side If you read from the top

4 A Right

5 Q down vertically it says RIF

6 A One, two, three

7 Q one, two, three

8 A And the one, two, three is what they it
9 took me a while to understand what they were
10 saying, but the one a one is the position
11 that was eliminated The two is the person who
12 gets bumped but still may have the opportunity
13 to bump somebody else And then a three is the
14 person who ultimately loses their job So like
15 in this case here, the least senior person in
16 the in the job class was Loretta Hodge So
17 the number one, which was Claudette Floyd,
18 bumped Loretta Hodge and she became the three
19 So you've

20 MR NICKLES I hate to interrupt you

21 A Sure

22 MR NICKLES What does the P stand for?

23 MR SUMMERS I was going to ask that next question

24 A At the very end of the whole spreadsheet,
25 there's a key I put that on there

1 Q I was going to take you to that, too

2 A I put that on there in case somebody, you know,
3 wanted to understand it later on A P means
4 that that person is probationary So, Loretta
5 Hodge was a probationary employee

6 Q Let me stop let me stop you right there,
7 sir

8 A Okay

9 Q And again, we're just doing this for the sake
10 of the record and so the panel can keep up, and
11 for that matter, the attorneys, especially me

12 A Okay

13 Q Let's go to the very last page of the tab,
14 okay

15 A Right The key on there the types of
16 employees there's probationary employees,
17 temporary employees and temporary grant
18 employees

19 Q Let me stop you there The P indicates
20 probationary employee?

21 A Probationary, right

22 Q T for temporary employee?

23 A Right

24 Q G for temporary grant?

25 A Temporary grant, meaning a grant status

1 employee

2 Q Let me stop you again Let's go back to the
3 preceding page This is going to be the page
4 I was talking to you about, 206 Let's just go
5 back one page to the bottom of it, page 205

6 A Okay

7 Q Okay And at the very bottom of the
8 spreadsheet that appears, or the part of it on
9 page 205, okay, there's some numeric

10 A Oh, yeah, there it is

11 Q numerical designations Well, first let's
12 go above that You see the words total
13 employees?

14 A Right That means there was I was close
15 There were 148 positions that were eliminated
16 in this reduction in force And the key under
17 that is anybody with a number one in that left
18 hand column means that's the position that was
19 eliminated Number two is somebody that got
20 bumped by number one but still has the ability
21 to bump maybe somebody else And number three
22 is the person who actually got they got no
23 where else to go So they got they're
24 they're probably going to be either laid off or
25 choosing to go into a vacancy, right So

1 that's the one, two, three

2 Q And these you talked, I believe, about
3 projected, is that correct?

4 A Right, yeah

5 Q So you were doing some

6 A Again, the Office of Human Resources wanted you
7 to literally go through the entire RIF on paper
8 even though it hadn't even occurred yet And
9 then predict how the whole thing was going to
10 turn out so that they could see it so that they
11 could approve that all the bumping was good,
12 was everything was okay And like I say,
13 it took me quite a while to understand exactly
14 what they wanted here but but finally got
15 it And then then a month later or
16 whenever it is when you actually go through the
17 whole process, you know, then it could end up
18 different, you know, because Claudette Floyd,
19 for example, that first number one, she might
20 have elected to just take lay off, you know
21 She might say, you know, thank goodness, I'm
22 ready to go And so then the other person
23 didn't get bumped So it could change, or God
24 forbid, somebody could die or something, you
25 know I mean anything could happen

1 Q Mr Near, let's go back to well let me ask
2 you a question We're still on page 205 You
3 were talking about the key at the bottom

4 A 205, okay

5 Q And we're still again, let's go up We
6 were talking the second column from the left

7 A Okay

8 Q Go all the way up and you'll see about halfway
9 up the page there's an alphanumeric two
10 character code, R4

11 A Right

12 Q Tell the panel what R4 is

13 A The the Budget & Control Board obviously
14 said and the policy also says that there
15 are cases where an individual may be subject to
16 RIF Their position may be eliminated They
17 may get try to be bumped, or they may
18 ultimately be the person who gets laid off or
19 something like that But in some cases those
20 people would be what you could call like an
21 exception to the policy And and it could
22 be for a number of things That's on page 205

23 Q Yes

24 A Yeah, down down about halfway down
25 there In the middle there it starts that

1 section says Charles Williams, all the way down
2 to Jerry Parks You see it?
3 Q And let the record reflect everybody's trying
4 to get oriented to that particular area
5 A If he could just point to it, point to the R4s
6 for him, would you?
7 Q We're going to put the person on the screen
8 A There you go, exactly So, anyway, you know,
9 it it could be anything It could
10 there there have to be some exceptions, you
11 know Let's say, for example, if if I am
12 bumping to a different area, but it turns out
13 my wife is in that area, you know, obviously
14 that might be an exception, or let's say I'm in
15 one area but I've got a child who's a prisoner
16 in that area, or maybe, like a lot of people,
17 maybe their ex-spouse is an inmate at that
18 location, you know That might be a
19 disqualifier So maybe it requires a certain
20 type of certification or credential that person
21 doesn't have So, anyway, if you have any of
22 those exceptions, they they told us to go
23 ahead and identify those and label them and put
24 that in the plan And it's and those are
25 all listed in the the actual written plan

1 Q Well let me as you mention that, I don't
2 believe it's in the small bound volume that you
3 have in your hands, but I believe I know in
4 the big three ring binder

5 A Okay

6 Q if you turn to page 175

7 A 175 in this big one?

8 Q Correct

9 A Okay, 175

10 Q Did you find it, sir?

11 A Right

12 Q And there's

13 A Yeah, at the bottom of 175

14 Q Hold on one second, sir Let's get it
15 oriented, and we'll walk through it real quick
16 Mr Cooper, thank you There's a roman numeral
17 at the top of the page, page 175 What does
18 that read, sir? Roman there's a roman
19 numeral with some text

20 A Page 175?

21 Q Yes

22 A The reduction in force projected outcomes?

23 Q Yes Is that what you were talking about

24 A Right, right

25 Q Okay

1 A And down at the

2 Q One more thing At the top there's materials,
3 Samuel L Wilkins, March 28, 2003, okay

4 A Right

5 Q Now, is this part of the RIF plan you were
6 talking about?

7 A Yes This is this is really you know,
8 this kind of lays out the you know, lays
9 out the mean of employees in the bulk of the
10 process

11 Q Okay, good

12 A Yes

13 Q So if you were obviously, I meant to do so,
14 but I apologize for doing so, the bottom of
15 page 175

16 A Okay The bottom of 175 it says in some cases
17 employees by higher RIF service date were
18 retained over others with a lower RIF service
19 date due to necessary qualifications of the
20 position They're a higher pay level within
21 the pay code Specific reasons are as follows,
22 and every one of those that we had to list, and
23 there's five of those There's an R1, 2, 3, 4
24 and 5 And the spreadsheet that you had shown
25 me, those people were on that last page, 205,

1 were called R4s

2 Q Right

3 A And R4s, if you look on page 176

4 Q Let everybody catch up, sir

5 A On 176 it says UB02s, UB04s, certified teachers
6 and vocational teachers in four competitive
7 areas of the state, several certified teachers
8 and vocational teachers did not possess the
9 specific educational credentials or skills
10 necessary to qualify for bumping into positions
11 occupied by employees with lower RIF service
12 date Do you want me to tell you what that
13 means?

14 Q Please

15 A Okay And and what that means is you might
16 have in the case of education, you know,
17 you might have two vocational teachers, you
18 know They might be both classified as
19 vocational teacher They might both be
20 classified as a job class is UB04, let's
21 say So, if you didn't know any better and you
22 look back at them, they're both exactly the
23 same One's a UB they're both UB04s, both
24 vocational teachers However, if you look at
25 their certifications, one of them might be a

1 welding instructor and one might be a plumbing
2 instructor Well, you know, their
3 certifications are totally different And
4 obviously a plumber can't bump a welder unless
5 they've got that certification So so
6 that's how when you go through that bumping
7 process, if you had those situations, you'd try
8 to you know, you'd try to make sure you
9 detailed that so that that you know, people
10 understand that

11 Q Now, I thank you, number one, for that
12 explanation Number two, I'm going to go back
13 to the bound volume, okay

14 A Okay

15 Q Tab 5 And we're going to go to page 473 which
16 is the first page at Tab 5 And earlier I
17 asked you to read verbatim the first paragraph
18 Could you read the second paragraph verbatim?
19 And again, for the record, this is at page 473
20 This is the letter addressed to Mr Near from
21 Mr Poor at OHR dated March 28, 2003 If you
22 could, read that second paragraph for us

23 A Based on the information you submitted, it
24 appears that the plan is procedurally correct
25 The Office of Human Resources approval of the

1 procedural correctness indicates only that the
2 required elements of the RIF plan are present
3 and in accordance with the Department's RIF
4 policies and procedures Our approval does not
5 include the determination of geographic
6 locations and the competitive areas,
7 competitive classes, competitive class series,
8 bumping rights, positions being eliminated or
9 any exceptions in the plan since these are
10 solely the responsibility of SCDC management
11 Justification for any exceptions should be
12 retained by the Department And that
13 again, that just says that they excuse me

14 Q Go right ahead

15 A That just that just says that they reviewed
16 the plan The plan is is in accordance
17 with our policy, and their that's their
18 disclaimer saying that they don't they're
19 not the ones that set it up which which is

20
21 Q Well, based upon your testimony, is that

22 A Well

23 Q precisely accurate?

24 A It's kind of half truth

25 **MR NICKLES** I'm going to object to the leading of

1 this witness

2 A Okay

3 **MR CORNING** What's the leading, counsel?

4 **MR NICKLES** Based upon your testimony, is that
5 exactly what they did I think that's very
6 suggestive

7 **MR CORNING** Well, he's asking him is that what

8 **MR SUMMERS** I don't think it's leading

9 **MR CORNING** Well, he's not suggesting what the
10 answer is I mean

11 **MR SUMMERS** It's not a leading question, sir

12 A Well, I mean it's true Like they didn't
13 they didn't set up say use they didn't
14 set up the competitive areas, but but the
15 reality is, over the course of several weeks,
16 I mean, you know, they walked me through
17 document by page by plan by policy by
18 everything And and when I was getting a
19 little off track, they'd you know, they'd
20 pull me back in and everything I mean that's
21 you know, I mean that's why all the
22 meetings, all the phone calls with all the
23 people and everything else I mean they
24 weren't just reviewing it every time and
25 saying no, that didn't look good enough, keep

1 trying, you know They kept they kept kind
2 of guiding me through the whole thing So
3 so, you know, they didn't create the geographic
4 areas, but, you know, they sure did weigh in on
5 a whole lot of stuff, yeah

6 Q Now, we've talked about documents from March
7 28th In fact, we're there for Mr Poor's
8 letter to you on March 28th The three ring
9 binder in front of you, let's go to page 468

10 A Okay, page 468

11 Q Yes, sir, 468

12 A Okay

13 Q We'll just allow Mr Cooper to bring it up on
14 the screen Here we are Now, do you
15 recognize this document?

16 A This is a yes, I do This is a letter to
17 all employees from the agency director which
18 just pretty much announced that the agency was
19 going to reorganize and have a reduction in
20 force It's a was a general notification
21 It's kind of like a public a public memo so
22 everybody would know what's going on

23 Q And let's talk about the aftermath, if you
24 will Obviously, that's critical When this
25 letter or memo went out, what actions did you

1 undertake to meet with the affected employees?

2 A Okay I mean you just want me to go through
3 the process?

4 Q Please

5 A Okay Well, again, first of all, I had been
6 through I've been through reductions in
7 force before in my life And and I don't

8 I don't think anybody knows that a lay off
9 is one of the most difficult things that a
10 manager can do, I've got to tell you It's not
11 like you do a disciplinary action and somebody
12 deserves something Lay off is one of those
13 things where people had no control over the
14 situation Their jobs are eliminated, and it's
15 always usually always due to the bottom
16 line type stuff And so it's really tough,
17 very difficult to employees And again, I knew
18 from experience in manufacturing and all of
19 that how horrible it is And so what I did was
20 I met with my staff And and truth is, I
21 even you know, I had to keep a lot of my
22 staff in the dark on a lot of stuff, too,
23 because, you know, this is something that
24 nobody was you know, we tried not to know
25 a lot about And because it's devastating, you

1 know, the rumors that get out and people are
2 fearful and all this kind of stuff So when I
3 met with my staff, I told them that when we go
4 through this reduction in force process,
5 knowing what it's like, employees employees
6 go through phases, if you will, you know
7 They're emotionally hurt They're angry, and
8 they always take it out on the person that's
9 carrying the message And and and I
10 know that because like I say, I've been there
11 before So what I told them was when we go
12 forward with this, I feel that, unlike a lot of
13 companies do where you just get a slip in your
14 check, the right way to do this is, you know
15 we have a we have a meeting with all
16 the employees at a at specific locations so
17 they understand it Then I have individual
18 meetings one on one with every employee,
19 initially, the 150, 148 and then second wave
20 with all the people that that are going to
21 get bumped And they said how are you going to
22 you know, how are you going to do 200
23 how are you going to do 200, 150, 200 meetings,
24 you know, how long are they going to take I
25 said I've got to take two hours with every

1 person But if I was getting laid off, I'd
2 want somebody some people think you're a
3 head head guy I'd want the head guy to
4 come and look me right in the eye and tell me
5 exactly what's going on, explain to me why, you
6 know, what's going on, tell me my options and
7 and do all that So I says I'm going to do
8 that Nobody else is going to go through that
9 And it's a like I say, it's a tough thing,
10 you know So, anyway, we had those meetings
11 The nice thing about about having those
12 meetings one on one is it's so much more than
13 just meeting with somebody and saying your
14 position has been eliminated What you do is
15 you sit with the employee You let them vent
16 You let them express their anger You go
17 through all the stuff that's involved with
18 that And then what you do is every
19 person's different, you know We had 148
20 people initially, plus probably another 25 to
21 50 that got bumped Every one of those people
22 has a different situation Some got kids, some
23 don't Some's a military retiree and benefits
24 aren't that big of a big deal to them, some
25 not Some have only been there two years

1 Some have been there twenty years, you know
2 Some are male, some are female It goes right
3 everybody's different, and everybody's got
4 different needs So so what I did in
5 having those meetings was not just carry the
6 message to them, but also I used that as the
7 opportunity to try and figure out a solution to
8 where we go from here with them So like if
9 somebody told me, you know, they break down
10 crying and they say I'm three weeks away from
11 retirement, then I say, well, okay, here's what
12 you probably maybe you want to consider
13 doing this If you've got no place to bump,
14 maybe you want to bump into a vacant position
15 Maybe it's something you don't want, but at
16 least you'll have your benefits through the
17 time you're able to retire or, you know, you
18 can make some decisions, you know If you're
19 a teacher and there's no place for you to go
20 except for into a security position and you've
21 never you know, you've never really done
22 security before, you know, that's that's a
23 tough thing to do But if you think about it,
24 why not bump into a security position all the
25 time Then maybe you do that for whatever

1 amount of time and you start looking for
2 opportunities somewhere else, maybe in a local
3 school district that's under the state
4 retirement That way you can go from us into
5 them You have a continuous flow in your
6 stuff, and you're still okay So so I used
7 those sessions to sit with people and work
8 through all the the different things, the
9 different problems they had and tried to come
10 up with solutions on on how to not just
11 to tell them they've lost their job, but how to
12 express to them, you know, number one, how bad
13 I feel about it, but but also how to help
14 them get through this really tough time, you
15 know Sometimes there were no solutions, you
16 know It's a it's a like I say, it's
17 the worst thing that an HR person can do, to
18 have to to have to do a lay off It's
19 horrible

20 Q And thank you for that

21 A Sure

22 Q We're still in the bound volume What I want
23 to do is have you look at page 217 That'll be
24 further back in the place we've established in
25 the notebook

1 A Okay

2 Q And it's up on the screen And, obviously, you
3 see it and everybody's up to 217 Do you
4 recognize this?

5 A I'll say okay because I it's copied me on
6 it, but I I don't recall it Give me a
7 minute to read what it says

8 Q Let the record reflect that Mr Near is so
9 reading

10 A This is a it looks like an email that
11 again, when you go through that huge document,
12 like a a reduction in force plan and a
13 policy, you know, there's going to be little
14 a little there might be a little
15 something that you that you overlooked, you
16 know, and and or didn't think of at the
17 moment or something like that And like that
18 approval letter that that I can't
19 remember who it was that sent me that Said
20 remember, if you make any changes, if you
21 make sure you coordinate it through us And so
22 this is, you know this says that one
23 obviously, one of the things that maybe was
24 forgotten to put in there was just a little
25 option that just said that if a person is

1 reinstated, you need to remember that they will
2 have the option of of buying back any leave
3 that they may lose or get paid for, you know
4 That's all that is, just a
5 Q So that was a reference to paragraph 7 9 of the
6 RIF policy? You talked about the policy and
7 the plan I just want to make and if it's
8 not clear, we can
9 A It says a reduction in force policy 11 05
10 Q Okay Now, if you could, just as we're
11 talking about these things, and you were going
12 through and talking about interactions with
13 affected employees
14 A Yeah
15 Q Go two pages ahead to page 219
16 A Uh-huh (affirmative response)
17 Q It's up on the screen And we're just going to
18 pick the first one of the grievants that we
19 have here
20 A Okay
21 Q Top right corner, do you see a name?
22 A James Bell, James C Bell
23 Q Okay And tell the panel what this document
24 is, what it reflects
25 A Okay Again, we go we would go to the

1 different institutions or groups of
2 institutions if they're real close by, have a
3 general meeting with employees, give them a
4 letter saying that this reduction in force is
5 is being going to take place Your
6 position has been identified as one of the
7 positions that has been eliminated, okay Then
8 at that meeting, employees were given this
9 form, okay And the this form served a
10 couple different purposes, you know One, it
11 it serves the purpose that, you know, they
12 were advised that we you know, their
13 position was eliminated And but the other
14 thing that it does is it notifies them that
15 they're about to make a have to make a
16 decision They can't just go back and say, oh,
17 this is all so terrible I'm not going to make
18 any decision I'm not going to talk to anybody
19 or anything else It forces them to make a
20 decision, okay, as to whether they want to just
21 elect lay off or at least go through the
22 reduction in force process which involves the
23 bumping and all that, okay And I encouraged
24 all employees to at least initially you
25 know, somebody when you tell people, you

1 know, they're all upset They're so mad and
2 everything, and you understand that But
3 but you try to once you get through that,
4 you say, look, don't just say give me the form
5 and I'm picking lay off Think about it for a
6 minute You can always pick lay off, you know,
7 but at least at least say you want to sit
8 down and talk with me about it because maybe we
9 can work through your situation, whatever it
10 is If we can't, you can always pick lay off
11 So the top section, you know, tells says
12 that, yeah, they want to they want to meet
13 with me And then the bottom section, the
14 middle section lets them to either elect to
15 bump into a filled position or a vacant
16 position like that lady before She could
17 choose to bump that least senior person, or at
18 the very bottom say, no, I've decided I want to
19 I want to select lay off And and to
20 make absolutely sure, we even you've got to
21 remember when you have a lay off and it's for
22 for for financial reasons, generally
23 most employers aren't hiring That's why you
24 have a lay off, you know You're not hiring
25 So most places when you read in the paper today

1 and it says GM's laying off a thousand workers,
2 they're those thousand people are losing
3 their job Department of Corrections, it was
4 kind of twofold We they identified all
5 these positions to be eliminated, but we still
6 had positions we were trying to fill And it
7 was primarily security and food service and
8 health care, you know We still had, you know
9 because we had 40 percent turnover in
10 correctional officer ranks So, you know, we
11 were actually hiring for correctional officers
12 So what I did by competitive area was I made a
13 we made a list of all the positions that
14 were vacant in each of the competitive areas
15 And when I'd sit down with a person, I'd say,
16 okay, here's all the positions we've got
17 vacant, okay Your choices are you can you
18 can bump so and so who's the least senior
19 person, okay If you don't have a bump, then
20 and you've got no choice Your only
21 choices are either going to a vacant position
22 or elect lay off And they always say, well,
23 what are your vacant positions I'd have the
24 whole list of the vacant positions and say here
25 they are And and I talked to somebody in

1 operations, and I asked them to at least set up
2 vacant security positions at each of the
3 locations in all the competitive areas so that
4 everybody would at least have the chance to
5 bump into something I mean if if one
6 person had no choice, I wanted to at least say
7 if you want to stick around, at least we've got
8 a correctional officer position for you It's
9 lower pay, but at least you've got the
10 benefits, you know, if you're worried about
11 your retirement, you know At least your
12 average was based on your salary from, you
13 know, the highest years of earnings and all
14 that stuff So at least let's keep you on
15 board and then maybe later on if you see
16 something else maybe within the agency, maybe
17 outside of the agency, maybe another agency, at
18 least at least you've got the opportunity
19 to move without having that break in service
20 So so that's what that form is And
21 and I went through that with initially with
22 148 people And then I went through it with
23 all the second wave people And I'd say every
24 meeting took at least two hours

25 Q Now, with that in mind, some of the issues you

1 just discussed, let's go up flip ahead to
2 page 231 I'm talking this previous form
3 on page 219 dealt with Mr Bell Let me bring
4 your attention specifically to the form at page
5 231 And, fortunately, at the bottom where the
6 block is provided for employee name, the
7 person's penmanship is so good, I believe you
8 can read that name

9 A Yes, sir It says Othello Bernard

10 Q Okay Tell the panel what this form is

11 A This is a letter that that advises
12 employees It says several employees whose
13 position was affected by the RIF had requested
14 information regarding recall rights after
15 retirement In other words, if if I was
16 my position was identified for elimination
17 and I was laid off, okay, this question is
18 after I'm and and I choose lay off or
19 I choose to retire, the Office of Human
20 Resources told us that any employee who retires
21 before the lay off is actually not affected by
22 the RIF The RIF was effective on June 1st
23 So when we were having these meetings in April
24 and May, somebody gets really you know,
25 says, oh, man, I can't take this anymore, I'm

1 just going to go ahead and I'm just
2 leaving I'm I've got enough time in to
3 retire I'm going to retire Well, if they
4 retire in April or May, any time before June
5 1st, the Office of Human Resources told us that
6 those people weren't laid off because they left
7 the State before the lay off So, therefore,
8 they don't have recall rights under the RIF
9 plan You had to actually be on the rolls at
10 the time of the RIF in order to have recall
11 rights after June 1st

12 Q Thank you, sir Now, you said June 1st was the
13 effective date of the RIF, June 1, 2003,
14 correct?

15 A Correct

16 Q I don't know if we've talked about it, but
17 certainly I should know There there was
18 a recall period, is that correct?

19 A Right Any anybody who any employee
20 who was laid off who was a permanent employee
21 a probationary employee, you know, their
22 first twelve months in state government, they
23 have no they have no I hate to say no
24 rights They have no recall rights They have
25 no grievance rights, nothing But any employee

1 that is laid off does have the right to be
2 recalled under the plan within one year from
3 that date of the lay off And the agency is
4 required to recall them So, a good example,
5 if if you have a an administrative
6 assistant in the Columbia area who gets laid
7 off June 1st, come September somebody quits
8 who's an administrative assistant and that
9 department manager gets the approval to fill
10 that person that quits, all right, before we
11 announce that job, before we can fill it,
12 before we can do anything, we have to go the
13 recall list of all the people who got laid off
14 And you see if you've got anybody who's laid
15 off in that competitive area in the Columbia
16 area, one, and if they are, we're required to
17 go to that person and say, okay, we've got a
18 vacancy You were laid off as an admin
19 assistant We now have a vacancy as an admin
20 assistant It's in your competitive area, your
21 job class You get a choice You can either
22 come back into that job, or you can say I don't
23 want to come back Maybe you found another job
24 or, you know, you're just tired of Department
25 of Corrections, whatever it is And you can

1 elect to say, I waive my recall rights So at
2 that point, you know, we say no and you no more
3 you no longer have recall rights because
4 you you know, you turned the job down
5 Then we go to the next person on the list if
6 there's another person and keep going down
7 until we get through all the admin assistants
8 in that competitive area If there's nobody
9 else, then we go ahead and announce the
10 position

11 Q Was there ever during that one year recall
12 period so going to, I guess, May 31st of
13 2004, was there ever an occasion where you told
14 anybody or were under the understanding that
15 funds were available to bring affected
16 employees back on, but it was not going to be
17 done until after the end of the recall period?

18 A I don't understand what you're saying

19 Q Were you ever did you ever I'm trying
20 to be general in my question I may have to
21 ask a leading question I might have to get an
22 objection on it

23 A Well just ask me again Then maybe I'll know

24 Q I will I'm trying to do a better job Did
25 you ever say to anybody during the one year

1 period, the recall period, after June 1st of
2 2003, that funds were available to bring back
3 employees affected by the RIF, but you were
4 waiting the agency was going to wait until
5 after June the 1st of 2004 until the recall
6 rights had expired?

7 A Okay, I understand No

8 Q Was that ever the case?

9 A Well, I I you know, I can say I
10 don't know I don't know any of the budget
11 related stuff, number one But but the
12 statement itself doesn't make any sense It's
13 kind of

14 Q Tell the panel why

15 A Excuse me The the statement's kind of
16 stupid if you think about that because if
17 I don't mean stupid I don't mean it that way
18 I mean I mean it doesn't make sense to me
19 because whether you whether you fill a
20 position before or after a date doesn't matter
21 because if you bring somebody if you put
22 somebody in that job, and let's say if it was
23 education, you're still going to have to pay
24 them according to the education pay scale So
25 whether you recall somebody at a at a

1 recall, you know, at their old job or whether
2 you bring in a new employee that maybe has been
3 in the school district for twenty years, you've
4 still got to pay that person that under the
5 education pay scale in that case So it
6 wouldn't make any difference, but no I mean
7 I don't I don't know that I know the I
8 mean the truth is, the budget situation is
9 never getting any better It just continues to
10 worse and still is

11 Q And let me ask you some more specific
12 questions, and hopefully that will wrap up this
13 portion of it

14 A Okay

15 Q And I thank you for your patience and that of
16 the panel

17 A Okay

18 Q You interacted with Director Ozmint early in
19 2003 about the need to conduct the RIF,
20 correct?

21 A Correct

22 Q Did he ever express to you that the RIF was
23 going to be constructed in a certain way
24 towards a particular group of employees or
25 category of employees, say educators?

1 A COs or
2 Q Educators
3 A Oh, educators No, never You know, Mr
4 Mr I mean this I started working on
5 this reduction in force probably in February
6 Mr Ozmint came in January I mean he probably
7 hadn't been on board been on board a month
8 and a half The governor the new governor
9 appointed him I got the impression that, you
10 know, he came on board with the order that, you
11 know, you've got to figure out a way to, you
12 know you're not getting any money from the
13 legislature You've got to you've got to
14 get spending figure out a way to make stuff
15 happen and and you know, he was just
16 continuing on what other agency directors had
17 done, but no I mean I I mean the meetings
18 that we had talking about the RIF, I mean most
19 of them were just like this here I'm sitting
20 here He's saying, you know, all the divisions
21 and all the positions to be eliminated I mean
22 he had only been there sixty days He didn't
23 even know who the people are He barely knew
24 who I was And and and but no I
25 mean I you know, I didn't know where he

1 I mean there were, you know, a whole bunch of
2 people that were eliminated I mean we had
3 gone for years eliminating positions all over
4 the agency, you know Mine as my own
5 division as an example and, you know, again,
6 this was just one more you know, one more
7 process we were going we were going to have
8 to go through And, you know, unfortunately,
9 that was my job to, you know, to do the RIF
10 That's that's my call

11 Q Number one, thank you for your testimony today
12 Thank you for your service with the Department
13 of Corrections This would conclude my direct
14 examination of the witness I think we have a
15 plan to take a break

16 MR MCCLARY Yes We're going we're going to
17 hold off until after lunch for cross

18 MR NICKLES That's fine

19 MR MCCLARY Let's be back at can we be back at
20 10 til, 10 til 2 00? Is that enough time for
21 everybody?

22 MR CORNING I'll try

23 MR SUMMERS Do you have your running do you
24 have your running shoes on, Mr Corning?

25 MR CORNING I can't promise

1 MR NICKLES And let me say, Mr Chairman, if the
2 concern is that cross examination is going to
3 extend this witness beyond a day, rest assured
4 it will not

5 MR MCCLARY Okay

6 MR NICKLES So if you want to take until 2 00
7 o'clock or slightly thereafter, it is not
8 it's not going to

9 MR MCCLARY 2 00 o'clock then

10 MR NICKLES It's not going to restrict my cross
11 examination

12 MR MCCLARY Okay, okay

13 MR SUMMERS And that will allow the panel enough
14 time to ask questions, at least a window within
15 which they can do it

16 MR NICKLES Oh, I would give them

17 MS KUDELKA If it does not, will we get to cross
18 him back?

19 MR MCCLARY We'll have to call him back

20 MS KUDELKA Call back, okay

21 (Off the record)

22 MR MCCLARY Mr Nickles, we're ready whenever you
23 are, sir

24 MR NICKLES Very good, thank you

25 MR NEAR - CROSS EXAMINATION BY MR NICKLES

1 Q Mr Near, my name is Al Nickles I believe
2 we've met before today, is that correct?

3 A Yes, sir

4 Q I'm representing the former employees who have
5 brought this grievance And we met at one
6 occasion, I believe, back in the gee whiz,
7 when was it? June of 2006 for your deposition

8 A A couple of years ago, yes, sir

9 Q I believe that was conducted at my office, is
10 that correct?

11 A Yes

12 Q As I indicated to you in that situation, what
13 I want to do in our questioning today is to ask
14 you questions that are clear to you And if
15 for any reason I don't make myself clear, will
16 you please tell me and I'll try to make myself
17 clear Will you do that?

18 A Yes, sir, I'll try

19 Q A couple of things I'd like to ask you
20 initially, Mr Near You testified that you
21 spoke with nearly all of the victims of the
22 reduction in force sometime prior to their
23 separation, is that correct?

24 A Yes, sir

25 Q And I believe your testimony was that most of

1 those meetings took upwards to two hours

2 A Probably as an average, if that's the question
3 Some of them were longer Some of them were
4 were shorter, you know There there
5 certainly were some people that, you know, came
6 in and said I've decided I want to take, you
7 know, lay off and I don't even want to get into
8 discussion So it, you know but it was
9 it seemed like at least a couple of hours on
10 the average

11 Q Seemed seemed like it at the time?

12 A Yes, sir

13 Q Do you remember Ms McClanahan here?

14 A I do

15 Q Your meeting with her took only about ten
16 minutes, didn't it?

17 A I I don't recall I remember Ms
18 McClanahan

19 Q Remember Ms Fritts who attended the meeting
20 with Ms Guffey here?

21 A Again, it's been a while, you know If she was
22 sitting here, I probably would say yes

23 Q Okay And that meeting didn't take two hours,
24 did it?

25 A I don't recall

1 Q Okay So your memory might not be altogether
2 clear about some of these things that happened
3 five years ago, is that fair?

4 A I I think that's very fair, yes, sir

5 Q Okay In your former capacity as Human
6 Resource Director, did you attempt to make
7 certain that people were properly identified in
8 their job positions?

9 A I don't understand the question

10 Q Well, let's say that you have two people who
11 are performing the same functions at different
12 locations Apart from their locations, their
13 jobs are the same, the same requirements, the
14 same duties Would you expect those two
15 individuals to have the same job title?

16 A I I don't know with the whole Department of
17 Corrections that I can assure that no it
18 was it was very common throughout the
19 agency that that two people were maybe
20 classified the same might be doing totally
21 different things, yes

22 Q No, that's not my question You've turned it
23 around on me

24 A Okay

25 Q My question is this Let's say that I am a

1 carpentry teacher

2 A Okay

3 Q at Perry, which is one of the institutions
4 at the Department of Corrections, fair?

5 A Yes, sir

6 Q And I'm a carpentry teacher at Tyger River, for
7 example Would you expect that or my
8 brother is the carpentry teacher at Tyger
9 River Would you expect that my brother and I
10 have the same job title?

11 A If if you say it that way, I would I
12 would think so

13 Q Okay And would you expect that we would be
14 paid on the same basis, if not the same amount,
15 but according to the same formula?

16 A As as you're saying it well, on the
17 same formula probably, yeah

18 Q Okay So it would be unusual if you had two
19 employees performing essentially the same
20 functions who were treated in very different
21 ways, isn't that fair?

22 A They're both classified the same?

23 Q They are both performing the same duties

24 A Well, no, probably not, you know A good
25 example would be like in the state There's a

1 you might have two people that are called
2 a a program manager and and, you know,
3 they're doing completely different things even
4 though they may have the same same
5 classification, same job classifications You
6 might have at at one institution you might
7 have a an administrative assistant, let's
8 say, who is the assistant to the warden who's
9 classified as an administrative assistant, very
10 possible And and but you go to
11 another prison, and let's say due to cutbacks,
12 they've not been able to fill their
13 administrative assistant who left So they
14 have they have no one to do that job They
15 haven't gotten the approval to do it, but they
16 know all that stuff's got to get done They've
17 got reports that have to be done and all that
18 So it wouldn't be uncommon for the warden to
19 have a correctional officer sitting there, if
20 they've got those skills, to to be doing
21 those doing that job

22 Q What about if the only thing I did was be a
23 carpentry instructor, would I normally be
24 designated as a vocational carpentry
25 instructor?

1 A Well, again, I think using that same example I
2 was just giving you, I think I think it's
3 very possible and and I would assume that
4 it happens a lot in state government where if
5 you have a job that has to be done and you're
6 not able to fill that job, it's very possible
7 that you would have somebody else doing that
8 doing that job, very possible

9 Q Really?

10 A Yeah, very possible I, you know to give
11 you a good example, too, in in Human
12 Resources we had payroll people, payroll
13 clerks It's very possible that if I had an
14 employee that was out on workers' comp for an
15 extended period of time, you know, might have
16 to have might have to have somebody else
17 filling in in that job in a completely
18 different classification

19 Q Would that normally last two or three years?

20 A I've seen I can think of a case at the
21 training academy where it lasted a good while,
22 sure

23 Q Wow And tell me, please, about when you went
24 through this reduction in force I believe you
25 testified that the Executive Director

1 designated the positions, correct?

2 A That's correct

3 Q So we talk about these 148 people that we saw
4 on the schedule That's a result of the
5 Executive Director saying I want this number of
6 individuals in these positions eliminated, is
7 that correct?

8 A I guess close Let me make sure I can just
9 tell you what happened, probably the easier
10 way

11 Q Well, try to answer my questions first, and
12 then we'll we'll get into that

13 A Okay

14 Q My question was, did the Executive Director
15 tell you that I want, let's say, five
16 vocational teachers eliminated, or I want three
17 principals eliminated, or I want two Human
18 Resource support staff eliminated, and then he
19 didn't say I want Joe Blow or or, you know,
20 Candy Bee, but I want these positions
21 eliminated Is that what he indicated to you?

22 A Not that's not the way it started, no
23 What what Mr Ozmint did was to to go
24 through the agency and look at at programs
25 and and maybe he had a substance abuse

1 program Maybe he had you were talking
2 about a carpentry program He might say I
3 don't want to have a carpentry program at this
4 place, you know, at at a certain
5 institution, or he may say I no longer want to
6 have we have an accreditation process I
7 no longer want to have the accreditation
8 process And and from that, then he would
9 go down and and it would it would fall
10 down the positions that were associated with
11 those areas

12 Q Okay

13 A And and sometimes it might be eliminating
14 everything Sometimes it might just be
15 eliminating some, you know, some of the
16 some of the positions, you know He might say
17 I want to keep having this program, but I need
18 to reduce it down

19 Q So he might have said I've got this Leath
20 Correctional Institution here I want to
21 eliminate the education program there

22 A No He I I never recall him saying
23 that What he would say, and again, trying to
24 think back What he would say is at a
25 particular institution, based on inmates, based

1 on based on programs he had, he wouldn't
2 say I want to eliminate education What he
3 might say is we need to place more emphasis on
4 maybe a certain area versus another area So
5 I want to maybe eliminate, you know, this
6 this part this part of the program, if
7 you're talking vocational as an example

8 Q Well, let's maybe we can help ourselves out
9 by looking at Tab Number 7 I believe you've
10 had some opportunity to look at that earlier in
11 the day And that's at page 191 and follows up
12 the general record

13 A Yeah, sure Is this it?

14 Q Yes, it is And you go to the third page in,
15 page 191 That's something you spoke with Mr
16 Summers about

17 A Yes, sir

18 Q Now, at some point in time before this was
19 produced, there was a decision that there was
20 going to be a position, or in this case, 148
21 positions eliminated, correct?

22 A That's correct That's correct

23 Q And you didn't make that decision The
24 Executive Director made that decision, correct?

25 A That's correct

1 Q So you had to get information from the
2 Executive Director in order to put this chart
3 together, correct?

4 A Right I had to be told what you know,
5 what areas, what positions Yes, that's
6 correct

7 Q All right So, for example, let's go to area
8 number ten It's on page 200 Actually, that
9 is let me make sure I've got the

10 A If it's ten, it's probably toward the end

11 Q Let me

12 A Probably 204

13 Q I want to make sure I'm correct No It's in
14 area that's let me make sure here
15 we go Area ten is on page 204, you're
16 correct Now, this has Leath Correctional
17 Institution and McCormick Correctional
18 Institution, correct?

19 A That's correct

20 Q And those are the only two institutions in that
21 area, correct?

22 A I think so If I can go back to that
23 schematic, I think those are the only two
24 institutions, but I'll

25 Q Trust me, they are

1 A I'll take your word for it

2 Q Okay Now, we see that there are two inspector
3 positions eliminated there Then we see all
4 the certified teachers, all the vocational
5 teachers, all the guidance counselor and the
6 principal Do you see that?

7 A Uh-huh (affirmative response)

8 Q Is that yes?

9 A Yes, I do

10 Q So how did you get the information from
11 Executive Director Ozmint that he wanted to
12 eliminate all of the educational positions at
13 Leath and McCormick?

14 A He would have just told me

15 Q Okay, that was simple enough So Mr Ozmint
16 told you I want to eliminate all the all
17 the educational positions at Leath and
18 McCormick, and the result is this document?

19 A Well again, I don't know if that's the way he
20 told me, but but but this is how it
21 ended up, yes

22 Q That's the information that was conveyed to
23 you, correct?

24 A Correct

25 Q You didn't pick these positions, he picked

1 these positions, correct?

2 A Right, yeah I wouldn't know

3 Q But you picked the geographic areas, you're the
4 one that created those, right?

5 A Well, again, I was responsible for for
6 developing the plan in conjunction with the
7 General Counsel's Office and Mr Ozmint and
8 and and, you know, to say that it was just
9 one individual, no I think it was a you
10 know, I think it was one of those things we had
11 to work through to come up with it, right

12 Q I think you testified earlier that you did it,
13 but let's say it was a group effort

14 A Okay, right

15 Q Now, did you draw that circle before or after
16 you got these names from Mr Ozmint?

17 A I would think well I don't I don't
18 know I don't know that it was before or
19 after I can't say

20 Q Okay Well you testified earlier, I believe,
21 that when CCI closed down there was going to be
22 a number of people displaced in the agency,
23 correct?

24 A That's right

25 Q And you recognized that you couldn't force

1 people to move from one location to another
2 beyond whatever the state limit is Let's say
3 it's 30 miles or so But you could offer them
4 that opportunity, correct?

5 A Could, sure

6 Q And, of course, the Department of Corrections
7 doesn't pay mileage to its employees who drive
8 to and from work, does it?

9 A No, sir, not that I'm aware of

10 Q And the Department of Corrections doesn't have
11 any limitation on how far you can live away
12 from your job As long as you get to your job
13 on time, it's okay with the Department of
14 Corrections, right?

15 A I think that's correct, yes

16 Q And even people live in Georgia and North
17 Carolina who work at the South Carolina
18 Department of Corrections, correct?

19 A That's true

20 Q So, in this instance, for example, Rance Cobb,
21 who was the principal at Leath Correctional
22 Institution, do you know Mr Cobb?

23 A I do I you know, again, it's been
24 it's been a long time and but I would say
25 yes

1 Q Mr Cobb had a Doctoral Degree and had 30 years
2 of experience with the Department of
3 Corrections and in fact had been an
4 administrator in another bubble in the
5 Department But because all the positions were
6 eliminated in McCormick and Leath, he had no
7 where he could go, did he?

8 A He he did not have a a bump within that
9 competitive area, no

10 Q In fact, he was the lone cowboy, wasn't he?

11 A He was

12 Q By only the

13 A the principal there, that is true

14 Q Couldn't have bumped himself, could he?

15 A No

16 Q So, there were some schools left open after the
17 reduction in force, weren't there?

18 A Some what left over?

19 Q Weren't there some schools left open after the
20 reduction in force?

21 A I believe there were, and and I don't know
22 where where they were or what they what
23 they did and all that, but yes, sure

24 Q Okay You didn't eliminate all of the
25 certified teachers, did you?

1 A No, sir

2 Q A lot of them?

3 A There were still a lot of positions left,
4 that's true

5 Q Well, I mean there were a lot of them that got
6 eliminated, weren't there?

7 A True

8 Q Okay So there were some left And would it
9 with 30 years of experience and a Doctoral
10 Degree, if there had been a statewide bump,
11 chances are, Mr Cobb could have found another
12 job if he wanted to move, don't you think?

13 A There wasn't a statewide bump

14 Q I said if there were

15 A Oh, if there were, I mean if if there were
16 a lot of rules, he could have bumped other
17 agencies or he could have done a lot of things,
18 but that's not what the rule was

19 Q But you made up the rules, right? It could
20 have been a statewide bump I mean you
21 it's in your it's in your policy, it could
22 have been, correct?

23 A The agency director does have the ability to
24 determine competitive areas, and they could be
25 different, that's correct

1 Q I mean it could have been a Department wide
2 bump And you've said you considered the
3 education division an entity of the Department
4 So he could have he could have bumped
5 people within that division That's another
6 alternative that could have been used, right?

7 A Well, again, if if you're if you're
8 saying if there were competitive areas
9 established as the entire state, sure

10 Q And nothing compelled you to draw these eleven
11 units That was your choice, correct?

12 A It was a requirement It wasn't a it
13 wasn't a choice I mean it was one of the
14 things that had to be established as a part
15 of the RIF policy and the RIF plan is to
16 establish competitive areas

17 Q Right, but it didn't require you to establish
18 eleven competitive areas, did it?

19 A It doesn't say that it's required to do eleven
20 competitive areas, no

21 Q It could have been

22 A There could have been four

23 Q nine, eight, seven, six, five, four, three,
24 two or one, correct?

25 A Could have anything, that's right

1 Q Okay Now, when you were submitting your plan
2 to the Department to the Office of Human
3 Resources, I believe you said that you
4 submitted a plan It had already been signed
5 off on by the Executive Director, correct?

6 A No

7 Q No?

8 A If that's what you heard, that wasn't what I
9 meant When the plan when the plan was
10 like a working document until it got finalized
11 Once it was finalized, yes Then the agency
12 director signed off on it

13 Q Well let's talk first about you said the
14 first leg of the stool is the policy, right?

15 A That's correct

16 Q Let's look at Number 3, Tab Number 3, it's page
17 180

18 A Okay

19 Q And this superseded a policy that you had in
20 effect in July of 2000 So did you have a
21 reduction in force on or around July of 2000?

22 A The agency had a had a reduction in force,
23 a small one of a couple of people when Doug
24 Catoe was the agency director And I want to
25 think he was there around that time And there

1 was a I think there was a real small RIF in
2 the prison industries area of a few positions
3 So but I don't know exactly when those
4 were

5 Q This particular policy was developed explicitly
6 in conjunction with the reduction in force on
7 June 1, 2003, correct?

8 A Well again, I think if if you were dealing
9 with the policy that was several years old
10 if you're if you're asking me did we review
11 the policy and submit it to the state for
12 you know, to have it have it approved, to
13 make sure that it was applicable for the RIF
14 that was about to take place, yes, sure

15 Q Well, my question was a little simpler This
16 was submitted and approved on March 14, 2003,
17 correct?

18 A Right

19 Q Then you submitted your plan on the 28th of
20 March, two weeks later?

21 A Right

22 Q So this policy was developed for the plan of
23 the 2003 RIF, correct?

24 A I mean it was submitted prior to it, yes

25 Q So you didn't have any idea when you submitted

1 this policy that you were going to have a RIF
2 two weeks later?

3 A Not two weeks later, no

4 Q Well you announced it on April 1st, didn't you?

5 A Right, but it was for for June 1st

6 Q Okay, all right I want to make sure I
7 understand your testimony

8 A Sure

9 Q I'm just trying to get a straight answer

10 A Sure, and I'm trying to give you that You
11 made it sound like maybe you're asking
12 should we have maybe done the RIF plan earlier

13

14 Q No, sir

15 A than the policy

16 Q I'm just asking you a simple question

17 A Okay

18 Q This is

19 **MR SUMMERS** I'm going to object to the editorial
20 comments from Mr Nickles He can certainly
21 ask questions, but

22 **MR CORNING** He can repeat the question I mean go
23 ahead, counsel

24 **MR SUMMERS** Okay

25 Q My question, I thought, was simple

1 A Okay

2 Q And that is

3 **MR CORNING** Well, I mean that's that's what
4 he's talking about editorial comments, counsel

5 **MR NICKLES** Fair enough

6 **MR CORNING** Just just ask the questions

7 Q The RIF policy and procedure that we have,
8 pages 180 through 187, Tab 3

9 A Yes

10 Q That was presented to the Office of Human
11 Resources as a step in the reduction in force
12 that took place on June 1, 2003, is that
13 correct?

14 A Yes

15 Q Thank you

16 A I apologize for not understanding

17 Q And you've looked at Section 11, I believe,
18 and you read it aloud to the committee,
19 correct?

20 A Yes, sir

21 Q All right Now, I want you to tell me as best
22 you can, looking, if you would, at the
23 competitive areas, and that's at page 188 and
24 189 I want to ask you a couple of questions
25 about those, okay?

1 A Okay

2 Q Tell me how competitive areas one through
3 eleven in those areas, how the staff are
4 separately organized

5 A Tell me how the I don't understand

6 Q Staff are separately organized

7 A The oh, okay There is a in in
8 competitive area one there are the prisons that
9 are located within the Columbia area, as well
10 as all the support divisions or central office,
11 as somebody called that And then all the
12 other competitive areas, the other ten, tried
13 to include institutions that were relatively
14 close to each other, either within the 30 mile
15 radius or at least the closest nearby in order
16 to enable someone to have the opportunity to
17 bump if if there was an opportunity there

18 Q Let me ask the question again

19 A Okay

20 Q You've got eleven competitive areas

21 A Right

22 Q Let's say that I am a teacher at Leath
23 Correctional Institution, okay?

24 A Okay, yes, sir

25 Q How am I separately organized from teachers at

1 other institutions?

2 A Because you're at a different location

3 Q So

4 A Kind of like a salesman that works for a
5 company in two different parts of the country
6 The same company, but they're in two different
7 parts of the country

8 Q So the location is the only distinction?

9 A I would say that is the distinction, yes

10 Q Okay, all right And apart from location, Mr
11 Near, how is the teacher at Leath
12 distinguishable from the teacher at the other
13 institutions apart from location?

14 A I don't know if a if a if you have two
15 teachers in two separate parts of the state
16 that are both classified as, let's say, math
17 teachers, I would make the assumption that
18 they're both teaching math and they both have
19 a certification Now, whether they're teaching
20 it to the same types of individuals or
21 education levels or or types of inmates and
22 stuff like that, I mean that that could be
23 different, but

24 Q Well, in the Palmetto Unified School District
25 you don't really put much stock in that

1 term, do you?

2 A Well, no, I never said that I just said that
3 that, you know, I don't I never had any
4 interaction whatsoever with the Palmetto
5 Unified School District or any of those people,
6 no Never even

7 Q And I believe that when you were drawing these
8 geographic areas, you had not previously
9 examined the statutes that create the Palmetto
10 Unified School District, isn't that true?

11 A No I I wouldn't know to look at a
12 statute

13 Q Okay So, let's look at one now then

14 A Okay

15 Q Tab Number 19 If you look at the first
16 statute there, it says Palmetto Unified School
17 District Number One established, history, Act
18 168 of 1981 Were you employed with the
19 Department of Corrections in 1981?

20 A No, sir I started in 1986

21 Q Okay So, if this was established to be a
22 special statewide unified school district
23 within the Department of Corrections, that
24 would have been in operation before you came to
25 the Department of Corrections, is that fair?

1 A That's fair, yes, sir

2 Q Okay Did you have any sort of training or
3 introduction when you came onto Department of
4 Corrections? Did they say, well, here's the
5 Palmetto Unified School District, nobody told
6 you it was even there?

7 A No, sir, no special training

8 Q Okay And if you look at the next page, that
9 says it's the purpose of the the District,
10 and the General Assembly uses the term District
11 here The purpose of the District is to
12 enhance the quality and scope of education for
13 inmates within the Department of Corrections so
14 they will be better motivated and better
15 equipped to restore themselves to the
16 community That's a laudable purpose, is it
17 not?

18 A I yes, it is

19 Q And you would agree that that is a purpose that
20 is carried out while inmates are incarcerated
21 You try to make it so that they can move into
22 society once they leave, if possible Is that
23 a purpose?

24 A Yes

25 Q Otherwise, you'd just be warehousing people,

1 aren't you?

2 A Yes

3 Q So wouldn't it be a critical purpose of the
4 Department of Corrections to try to assist
5 these individuals to better themselves while
6 incarcerated so that they can move on after
7 they're released?

8 A The Department of Corrections?

9 Q Yes, sir

10 A Yeah I mean we do it every day of our lives

11 Q Okay It says the establishment of this
12 District shall insure that education programs
13 are available to all inmates with less than
14 high school diploma or its equivalent, and that
15 various training programs are available to
16 selected inmates with the necessary aptitude
17 and desire Do you see that?

18 A I do

19 Q Now, when the decision was made to eliminate
20 the educational programs at these various
21 institutions, did you take into account that
22 there might be individuals with less than a
23 high school diploma or its equivalent who would
24 be denied the opportunity for an education?

25 A I again, I I didn't make any selection

1 of positions, no

2 Q Well, you drew the areas and you could see
3 that, oh, my goodness, in this area all the
4 certified educators are being removed You
5 could see that, couldn't you?

6 A No Again, I

7 Q Didn't pay any attention to it?

8 A The no, that's not what I said The
9 competitive areas were designed to enable
10 bumping by employees within an area

11 Q Well, isn't it sort of the reverse, Mr Near?
12 Aren't the geographic areas designed to
13 restrict bumping within a particular area, not
14 to enable it?

15 A No That's your interpretation I would think
16 if I would think if you set up a geographic
17 area which is incredibly narrow and wouldn't
18 even allow people to bump outside of, let's
19 say, that owned their own prison or even
20 smaller within a shift within a prison, I would
21 say that's very narrow Again, and I'm just

22

23 Q Of course

24 A I'm just sitting here You're asking me a
25 question I'm giving you an answer The

1 the whole idea of establishing these
2 competitive areas, eleven of them, you know,
3 we're talking the entire State of South
4 Carolina with multiple prisons within that, you
5 know The whole purpose of doing that was to
6 enable more bumping to try to give employees
7 more choices Now, it's a true statement that
8 there were some areas where, you know, there
9 may not have been options And and and
10 that does happen with a reduction in force, but

11 but I will tell you that my thinking and my
12 part in trying to to help prepare this RIF
13 policy and plan was to make the geographic
14 areas large enough to try to assist people

15 Q Well, how do you do that when you eliminate all
16 the positions in which an individual can bump?

17 A Well, here again, you know, I didn't eliminate
18 I didn't eliminate positions What I did

19
20 Q The Director did that?

21 A The Director the Director

22 Q You just drew the areas?

23 A I just I was just that's right

24 Q Okay So, your testimony is that you didn't
25 consider this legislation that says it's a

1 single unified statewide school district when
2 you drew your geographic areas?

3 **MR SUMMERS** I'm going to object

4 Q Is that correct?

5 **MR SUMMERS** I'm going to object, sir I think
6 that's calling I think Mr Nickles is
7 making a presumed legal conclusion on the form
8 of the question

9 **MR NICKLES** I'm I'm reading the statute

10 **MR CORNING** Well, it's already asked and answered
11 So I don't know, you know I think he's
12 already stated that, counsel

13 Q What did you say, Mr you didn't consider
14 it, is that correct?

15 **MR CORNING** He didn't he said he didn't know it
16 existed, but I'll let him say it again

17 **MR NICKLES** Okay

18 **MR CORNING** I'm paraphrasing, counsel That may
19 have not have been the exact words, but that
20 was the essence

21 **MR NICKLES** As long as the record is clear, I have
22 no problem with that, Mr Corning

23 Q Now, you testified that there is sort of a
24 central training division of the Department of
25 Corrections, is that the case?

1 A Yes, sir

2 Q But that training division does not include an
3 educational trainer, does it?

4 A Are you talking about it doesn't include a
5 position which like teaches an inmate?

6 Q No, sir From time to time, new teachers are
7 hired within the Palmetto Unified School
8 District

9 A They're hired within Department of Corrections

10 Q Okay And they have to be trained and
11 evaluated, don't they?

12 A The teachers?

13 Q Yes, sir

14 A They to my knowledge, they have to be
15 trained by in in the requirements of
16 the Department of Corrections that relate to
17 orientation, security and all the stuff that we
18 do I have no clue as to no idea as to
19 what training they have to receive as a teacher
20 unless there's maybe a some you know,
21 some sort of an annual update that they have to
22 do, but that's all I'm aware of

23 Q You're not familiar with the standards for
24 certification and the standard for maintaining
25 certificates for teachers then, are you?

1 A I know that within the Department of
2 Corrections in a lot of areas there are
3 requirements for certification from
4 everything from people that hold CPAs, nursing,
5 education and all the rest of those, but
6 but they're still you know, they're still
7 our employees Is that what you're asking?

8 Q No, sir That wasn't my question

9 A Okay

10 Q If you listen carefully, I said are you aware

11

12 **MR SUMMERS** I'm going to object again to the
13 editorial comments

14 Q Are you aware of the requirements for a teacher
15 obtaining and maintaining the certificate to
16 teach within the Palmetto Unified School
17 District?

18 A No, sir, I am not

19 Q Okay So if that's done, that teachers do
20 maintain their certificates and do teach within
21 the Palmetto Unified School District, it's done
22 through some office other than your own,
23 correct?

24 A Again, I have no knowledge of it So I don't
25 know what they're doing

1 Q Okay Now, aren't there other requirements
2 that teachers have to observe, for example,
3 don't they have to conduct themselves in a way
4 that they shall maintain their license to teach
5 in South Carolina?

6 A Like give me an example I'm not sure I
7 understand

8 Q Aren't all licenses of teachers subject to
9 review by the State Department of Education?

10 A I don't know, but I would think so

11 Q Okay And you mentioned the salary schedules
12 for the folks in the Palmetto Unified School
13 District That's not controlled by the
14 Department of Corrections, is it?

15 A No, it is not

16 Q Okay That's determined by the State
17 Department of Education and by the average of
18 all supplements paid throughout the state,
19 correct?

20 A I think so

21 Q Now, if you were to hire a teacher with no
22 years of prior experience, would that teacher
23 receive compensation at a lower level than
24 perhaps a teacher who had been teaching for 20
25 years?

1 A Yes You want me to explain the grid for
2 for them or not?

3 Q No, sir You don't need to do that Are you
4 familiar with the South Carolina School Boards
5 Association?

6 A No, sir

7 Q Do you know whether or not the Palmetto Unified
8 School District is a member of that
9 association?

10 A No, sir

11 Q Let's look at Tab Number 5, page 473, please
12 And this is the letter that you received from
13 Chris Poor

14 A Yes, sir

15 Q on March 28th And this is in reference to
16 the plan And that is the one that included
17 the bubbles and and the list of
18 individuals

19 A It includes the competitive areas and the
20 projected listing of positions and where they
21 might bump, yes

22 Q Okay And the first part of this, in his first
23 paragraph, Chris is just listing the things
24 that you sent to him, correct?

25 A That's correct

1 Q And in the second part, he says your plan
2 appears to be procedurally correct

3 A Yes

4 Q And then he says what his approval does not
5 mean, correct?

6 A That's correct

7 Q And you you understood that at the time,
8 did you not? When you received it, you didn't
9 have any there wasn't any ambiguity about
10 this to you, was it?

11 A No It's it's to me it was clearly a
12 requirement that the Office of Human Resources
13 must accept and review your plan, and that they
14 take no responsibility for the plan They are
15 they just make sure that you're following
16 your policy Like I said, the ironic part of
17 that is, you know, they in going through
18 it, you know, they had a huge part in in
19 in kind of getting me to the end

20 Q But ultimately, you accept the responsibility
21 for the plan, don't you, Mr Near?

22 A Well, the agency director accepts the
23 responsibility for the plan

24 Q Okay

25 A It's not you know, it's not mine

1 Q Okay

2 A Yeah

3 Q And at least you knew when you received that
4 letter from Mr Poor that the responsibility
5 was that of the agency and not the Office of
6 Human Resources as to the substance of the
7 plan?

8 A That's what the letter says, yes

9 Q Okay Let's look at Tab Number 6, if we could,
10 please

11 A What was it?

12 Q I'm sorry, Tab Number 9, please

13 A All right

14 Q And these are pages 780 and follows And, Mr
15 Near, the information, and I believe you may
16 have provided this information to us, is in
17 response to a question, identify all positions
18 filled formerly by certified education
19 educators That's before the RIF So these
20 were folks who filled positions that had
21 formerly been certified educators before the
22 RIF, okay?

23 A Okay

24 Q Now, a couple of questions for you One of
25 these folks is James C Bell He's about ten

1 or twelve people down first

2 A I see him

3 Q Program Coordinator I, Perry Correctional
4 Institution, do you see that?

5 A I do

6 Q Do you know what Mr Bell's duties were at
7 Perry Correctional Institution?

8 A No, sir

9 Q Would it surprise you if they were exactly the
10 same as they had been before the RIF?

11 A I I don't know

12 Q Okay Well, if you're putting somebody into a
13 position that had been formerly RIF'd, normally
14 you'd put them back into that same position,
15 wouldn't you?

16 A Say it one more time

17 Q If somebody had been RIF'd and they came back
18 to you to do the same job, normally you'd put
19 them back into the same slot, wouldn't you?

20 A They were were they recalled?

21 Q No, sir

22 A No

23 Q Okay So only if you're recalled do you get
24 your old job back?

25 A If you're recalled, you go back into your

1 previous classification only

2 Q But if you get employed after the recall date,
3 you can be put in any position and be paid
4 anything to do your former job, is that
5 correct?

6 MR SUMMERS Object as to the question

7 MR CORNING Do you want to split that up?

8 MR NICKLES Okay, I'll split it up

9 MR SUMMERS It was kind of a compound question

10 MR CORNING You'll have to split it up

11 Q Let's assume that it's after the recall period

12 A Like a more than a year later, you mean?

13 Q More than a year later

14 A Okay, all right

15 Q This happened to be January 17, 2006

16 A Okay

17 Q Which was what, about a year and a half

18 A Okay

19 Q six months after the recall period, or
20 longer than that, really So let's assume that
21 Mr Bell had been a certified vocational
22 instructor

23 A Okay

24 Q He had been RIF'd from that position

25 A Okay

1 Q And he is re-employed

2 A As a as a what?

3 Q As a Program Coordinator I

4 A Okay

5 Q But he is employed to do exactly what he
6 formerly did as a certified vocational teacher
7 Shouldn't he be paid at the same level he was
8 paid as a certified vocational teacher?

9 A Well, here again, I I don't you know,
10 if you have an individual who was hired back in
11 the same classification, I would agree with you
12 that they would be would be paid in
13 accordance with that classification, but there
14 are you know, throughout state government,
15 throughout certainly throughout our agency,
16 there are a lot of people who are classified as
17 as one thing, but a lot of times they do a
18 lot of different jobs I think you know,
19 and again, I think, you know, jobs change all
20 the time, you know Inmate levels, inmate
21 mixes, types of, you know, just everything that
22 pertains to that changes

23 Q Well

24 A So I don't I don't know that I could
25 probably answer your question the way you want

1 it answered

2 Q But in the Palmetto Unified School District,
3 aren't you supposed to have certified
4 individuals providing instruction?

5 MR SUMMERS I'm going to object as to the question,
6 sir I think again we're getting into a legal

7
8 MR CORNING That is a legal question, counsel I
9 don't know how he can answer that if he doesn't
10 he didn't even know the Department of
11 Education existed within the Department

12 Q Let's look at a few other examples here then

13 A Okay

14 Q What is the difference between certified
15 teacher, classroom teacher and unclassified
16 classroom teacher?

17 A Between certified teacher

18 Q Certified classroom teacher Look at Linda
19 Bratton She was hired on June 2, 2003 It's
20 the day after the RIF

21 A Okay, there, I see her

22 Q Day after the RIF

23 A Her state title, it says, is certified teacher
24 Her

25 Q UB

1 A UB02

2 Q 02 and a classroom teacher

3 A Classroom teacher is is her internal title

4 Q Okay

5 A And and, of course, she probably teaches
6 She could be general instruction It could be
7 math, could be you know, could be a number
8 of things

9 Q What's the difference in that position and you
10 go down to Ms Georgia Brown who is 12/1/03
11 That's within the recall period, the RIF
12 period, right?

13 A Yeah

14 Q Unclassified certified teacher 999 What does
15 that mean?

16 A I I don't know I I again, I'm
17 you're going way back here I I don't know
18 what the difference is there

19 Q Okay

20 A It could be just the way it's listed

21 Q Now, if this position, this certified teacher
22 position had been RIF'd as a certified teacher
23 position and replaced as an unclassified
24 classroom teacher, would that have been kosher?

25 A No

1 Q No?

2 A No, you've got to go back I missed all that
3 Tell me again tell me the situation you're
4 making up

5 Q I'm not making something up

6 A Oh, okay

7 Q I'm asking you a question

8 A Okay

9 **MR SUMMERS** Again, sir, if you can ask the
10 questions and have the dialogue

11 **MR CORNING** That was all right, counsel

12 **MR SUMMERS** Okay

13 A Yeah, I just didn't get it, and I apologize for
14 that

15 Q Let's say that you have a certified teacher

16 A Okay

17 Q who's a classroom teacher

18 A All right

19 Q getting paid on the certified teacher
20 basis

21 A Okay

22 Q That position is eliminated

23 A Okay

24 Q Within the twelve month period thereafter

25 A All right

1 Q somebody is hired to do that job but in an
2 unclassified position Is that appropriate?

3 A Oh, it yes, yes Unclassified may mean
4 that this is a maybe a temporary employee,
5 very possible Give you give you a good
6 example on that one that you're talking about
7 Let's say you've got that that lady who was
8 a classroom teacher, certified teacher, and
9 she's working 40 hours per week We the
10 agency has a reduction in force, and she's
11 she's laid off

12 Q Right

13 A Okay Then maybe some funds come available,
14 maybe they figure out a way to make it work
15 Maybe they realize that they really have to
16 have this, but they the agency cannot
17 doesn't have the ability to have that maybe
18 full time Maybe they don't have the ability
19 to pay benefits, you know In other words,
20 outlay all that it takes for that So it's
21 very possible they might hire a temporary
22 employee That's very common in business if
23 you've got full time employees if you're
24 running a production line and you lay those
25 people off To start production back up, you

1 may have to bring in temporary employees making
2 less or or maybe not having benefits

3 Q And in the private sector, that's perfectly
4 acceptable, isn't it?

5 A I would think I would think that it's logical
6 no matter where you are

7 Q It's not permissible in South Carolina in state
8 government, though, is it?

9 MR SUMMERS I'm going to I'm going to object as
10 to (inaudible) the question

11 Q Are you familiar with

12 MR CORNING Well, once again, counsel

13 MR NICKLES I'll lay a foundation

14 MR CORNING I don't think he's qualified to

15 MR NICKLES Oh, he's qualified

16 MR CORNING answer the question

17 Q Are you familiar with the Office of Human
18 Resources frequently asked questions service
19 that they have on their website?

20 A No

21 Q Okay Are you familiar with the Office of
22 Human Resources website? It was up and running
23 while you were working, was it not?

24 A If it was up and running, I you know, I
25 would I can't say that I would necessarily,

1 you know, review something that's on their
2 website or not

3 Q Well, they have a website that has frequently
4 asked questions for reduction in force

5 A Okay

6 Q I'm just going to hand this to you and ask you
7 if you're familiar with it

8 **MR SUMMERS** And I'm going to object even as the
9 as the witness looks at the material Are we
10 getting into material that's not in evidence at
11 this point?

12 **MR NICKLES** It's public information

13 **MR CORNING** I'll allow him to ask it

14 A It's it's not a problem I'm I'm
15 no, I'm not familiar with that

16 Q Okay

17 **MR SUMMERS** Very well Thank you, sir

18 Q Okay So you're not familiar with the public
19 website for the Office of Human Resources,
20 particularly as it speaks to reductions in
21 force?

22 A You just asked me was I familiar with this, and
23 I guess I would say no, I'm not

24 Q Okay And what does it represent itself to be?

25 A Frequently asked questions

1 **MR SUMMERS** I'm going to object at this point He
2 said he's not familiar with it

3 **MR CORNING** Well he's not familiar with it If
4 he's not familiar with it, counsel, I mean
5 that's

6 **MR NICKLES** Okay I'd just like the record to
7 reflect that this witness is not familiar with
8 the publicly available frequently asked
9 questions on reduction in force published by
10 the South Carolina Office of Human Resources

11 **MR CORNING** That's what he said

12 **MR NICKLES** Thank you

13 **MR SUMMERS** Sure

14 Q If it is the case, Mr Near, that the Office of
15 Human Resources has determined that an agency
16 may not hire a temporary employee to perform
17 the duties of an employee affected by a
18 reduction in force, then the list on this
19 material in Tab 9 reveals that the Department
20 of Corrections violated that, is that correct?

21 **MR SUMMERS** I'm going to object as I'm going to
22 object and direct the witness, subject to your
23 discretion I think it calls for a speculative
24 answer

25 **MR CORNING** It does

1 **MR NICKLES** He's he's been presented to this
2 committee as the witness on Human Resources at
3 the Department of Corrections I listened to
4 his testimony patiently, Mr Corning, Mr
5 Chairman He has offered his opinions left and
6 right to Mr Summers without my objection I
7 am simply asking him to provide me the same
8 courtesy

9 **MR CORNING** What what is the question again,
10 counsel?

11 **MR NICKLES** I want him to look at Tab Number 9
12 He's testified that these represent temporary
13 placements, okay

14 Q And you can see because of the multiple
15 appointments to individuals that they do in
16 fact represent temporary placements, do they
17 not, Mr Near?

18 A Yes The Department of Corrections had
19 temporary employees before the reduction in
20 force and after the reduction in force

21 Q And if we look, for example, at page 20 no,
22 page 780, Linda Bratton You see the date
23 there?

24 A I do

25 Q 6/2/03, certified teacher, classroom teacher,

1 you see that?

2 A Correct, I see that

3 Q Next you see let's go on down to Georgia
4 Brown, 12/1/03, unclassified certified teacher
5 You testified that is more likely than not that
6 would be a temporary appointment

7 A I I would assume it is, yes

8 Q Okay And we look over to the next page,
9 3/17/04, Chad Clark, the second entry

10 A Uh-huh (affirmative response)

11 Q Unclassified vocational teacher That would be
12 temporary as well, correct?

13 A It it appears to be, yes

14 Q Okay

15 A Uh-huh (affirmative response)

16 Q And if you look down to Ronald Davis, now that
17 says certified teacher, classroom teacher
18 UB020 Is that a permanent slot?

19 A It appears that if they are in a classified
20 position of UB02, that they're a certified
21 teacher I would say that it appears that
22 that's a permanent position

23 Q But that person was hired the day after the
24 reduction in force, 6/2/03, correct, according
25 to this document?

1 A If the effective date is the hire date, that's
2 correct

3 Q Okay

4 A Yeah

5 Q And we look down to L S Green, for example,
6 certified teacher, classroom teacher, hire date
7 6/2/03, the day after the RIF, correct?

8 A Right

9 Q Look down to

10 A But but here again, the those say
11 and I think I talked about this earlier Those
12 say certified teacher and classroom teacher,
13 but it doesn't say what their certification is
14 in

15 Q I understand

16 A Yeah I mean one could be math, and one could
17 be plumbing, and one could be welding

18 Q Well, it couldn't be that because that would be
19 vocational

20 A Well, I take that back It could be math or
21 or whatever the different disciplines are
22 in the classroom, English and

23 Q We look at we look down at Patsy Haycock,
24 10/27/03 That's a 999 That's a temporary
25 slot, correct?

1 A That's right I mean it appears it is, yes

2 Q Okay Well according to your recollection of
3 the way these records are maintained, correct?

4 A Uh-huh (affirmative response)

5 Q And the same thing for Brooks Henderson
6 That's a vocational teacher Looks like a full
7 time job the day after the RIF, correct?

8 A Again, it says effective date I do not I
9 don't know that that's a hire date I don't
10 know that, no

11 Q Well, that's a date that kind of stands out
12 because the RIF was 6/1/03, correct?

13 A It was, but again, I don't know Like I say,
14 I don't know If you're asking me all these
15 people that are listed with a hire date of 6/2,
16 if you're asking me if we ran out and hired all
17 these people in these full time positions, I
18 don't think so

19 Q Okay

20 A So I think that effective date means something
21 totally different than what you're

22 Q The day they came to work?

23 A I'm sorry?

24 Q The day they came to work?

25 A I don't know All it says effective It's

- 1 it's I have no idea what it means
- 2 Q Okay Well, let's take a look
- 3 A I don't think it's a hire date
- 4 Q Let's just look at the unclassified then You
- 5 said those are temporaries, right?
- 6 A Those are temporaries
- 7 Q 999 are temporaries, correct?
- 8 A Right Uh-huh (affirmative response)
- 9 Q Look on page 782 You've got Etta Jones, Eva
- 10 Jones, excuse me, 7/9 7/29/03 Do you see
- 11 that?
- 12 A I do
- 13 Q And then she was hired again
- 14 **MR SUMMERS** I'm going to object at this point,
- 15 refer to hire We already heard the witness
- 16 say he doesn't think that's the hire date
- 17 **MR NICKLES** While I'll use effective date rather
- 18 than hire date if that's more accurate
- 19 A Well, again
- 20 **MR SUMMERS** That's not what it says
- 21 A Let me just if I can maybe maybe I
- 22
- 23 **MR CORNING** Wait a minute What was your comment,
- 24 counsel?
- 25 **MR SUMMERS** I'm simply asking counsel to reflect

1 what the document says

2 MR NICKLES Okay

3 MR CORNING Okay He said he'd do effective

4 MR NICKLES I'll do that

5 A You just pointed out Eva Jones

6 Q Right

7 A on page 782

8 Q Correct

9 A And the first date it says effective date
10 of 6/28/04

11 Q It's actually the second

12 A I'm sorry?

13 Q That's the second one The one below that is
14 earlier, sir

15 A Right And the one right below that is 7

16 Q 29/03

17 A 29/03 It's it's very possible that
18 that date when you talk about those
19 unclassified, those those part-time
20 positions, the the state you know, the
21 state you can't have a temporary employee
22 in a full time capacity, you know, like that
23 So what you have to do is, in essence, you take
24 them off payroll and put them back on in order
25 to keep them as a temporary employee

1 Q But here's my question, sir Let's you've
2 testified that to the best of your knowledge
3 these 999s represent temporaries, correct?

4 A To to the best of my knowledge, that's what
5 I think they are

6 Q And then 7/29/03 would have been within the
7 recall period of the RIF, correct?

8 A If

9 Q Only a couple of months

10 A Well, again, if you're asking me and I'll
11 use Eva Jones as an example 7/29/03, Eva
12 Jones, as a classroom teacher at Lee, if you
13 if you go back to the if you go back to
14 the positions eliminated at Lee let me find
15 it here Give me one second See, I think
16 you're I think you're wrong You pointed
17 out Etta Jones Eva Jones, I'm sorry, was
18 hired or was a pink a temporary
19 classroom teacher at Lee But if you go back
20 to competitive area two which is on page 201,
21 you'll see that Lee all they eliminated
22 were vocational teachers So she wasn't
23 replacing anybody that was that was
24 that was reduced

25 Q Classroom teachers

1 A It's like apples and oranges

2 Q Classroom teachers were eliminated at Camille
3 Graham Correctional, isn't that correct?

4 A That's a different competitive area

5 Q Well, here's one on page 783 In fact, there
6 are three two of them three of them

7 A Page 783

8 Q Okay, look at Chandra McCoy, 8/18/03,
9 unclassified classroom teacher

10 A Right

11 Q Go down to Susan Mullis

12 A And again and again, if you look at the
13 dates on Chandra McCoy, she's listed there
14 twice

15 Q Right

16 A Probably because it asked for anybody was hired
17 during the period

18 Q Right

19 A The one day as you see is 8/18/03, and then the
20 next date is or 8/16/03, and then the above
21 that is 8/16/04

22 Q Right

23 A It's exactly one year So all that means is in
24 all likelihood, that lady was and continued to
25 be a temporary employee And each year all

1 they were doing was just renewing her That
2 doesn't mean they ran out and hired all these
3 people right after the the RIF

4 Q So you retained temporaries instead of the
5 permanents then, is that your testimony?

6 A I think the Department of Corrections did still
7 have temporary employees on the roll, sure

8 Q Okay Well, the question was a complete
9 list of all employees indicating position and
10 hire date assigned responsibilities that were
11 performed by certified educators prior to the
12 reduction in force That's what this list is
13 supposed to be, okay?

14 A Okay

15 Q So

16 MR SUMMERS Let the record reflect that's what
17 counsel purports the list to say

18 MR NICKLES That's what you said it was, Lake All
19 right, we'll get that in there

20 MR CORNING Is there any question, counsel? I mean
21 it's

22 MR NICKLES There's not any question about it I
23 mean you'll see

24 MR CORNING I'm saying if you two want to take a
25 break a minute, we'll get an agreement

1 MR NICKLES Okay, let's take a break for a minute
2 We'll get an agreement If you object to my
3 reading the letter, I'll

4 MR SUMMERS It's not in evidence

5 MR CORNING No I'm talking about what the

6 MR NICKLES Let's take a minute

7 MR CORNING what the document that's in Tab 9
8 represents

9 MR SUMMERS Yes

10 MR CORNING I think that's his question

11 MR NICKLES Okay, let's take a break

12 MR SUMMERS Sure

13 (Off the record)

14 MR NICKLES We've agreed to the following
15 stipulation As to the material at Tab Number
16 9, that material is in response to the
17 following question Present a complete list of
18 all employees indicating position and hire
19 date, assigned responsibilities that were
20 formerly performed performed by certified
21 educators prior to the reduction in force Let
22 me repeat that A complete list of all
23 employees indicating position and hire date,
24 assigned responsibilities that were performed
25 by certified educators prior to the reduction

1 in force And that is the information at Tab
2 Number 9 Thank you, Mr Summers, for that
3 stipulation

4 **MR SUMMERS** I understand

5 Q So with that description, Mr Near, if there
6 are individuals who have hire dates within the
7 twelve months following the reduction in force
8 that are temporaries, then they are either
9 accepting or continuing in positions that were
10 previously filled by certified teachers, is
11 that correct?

12 A Either accepting or continuing, it appears
13 that's right

14 Q All right And what you have told me is that
15 by law you cannot guarantee a temporary
16 employee employment beyond a one year period of
17 time, correct?

18 A That was my understanding from the Office of
19 Human Resources, yes

20 Q So on each occasion when there was a decision
21 within the twelve month period following the
22 RIF to hire or continue

23 A Or renew

24 Q one of these temporaries, you could have
25 hired or rehired one of the people who had been

1 affected by the reduction in force, is that
2 fair?

3 A No I don't think that's I don't think
4 that's right because if you had someone who was
5 a temporary position, and let's say it was
6 about to you know, it was about to expire
7 and you had the choice whether to hire or to
8 renew that temporary employee or recall or
9 rehire a certified teacher, I would think that,
10 you know, you you could again, based on
11 your financial conditions, that you could
12 logically draw the conclusion that you probably
13 would stick with your temporary employee

14 Q And for the record once again, you haven't
15 reviewed any of the frequently asked questions
16 from the Office of Human Resources on the
17 reduction in force, correct?

18 MR SUMMERS I'm going to object as to asked and
19 answered, sir

20 MR CORNING It was asked and answered, counsel

21 MR NICKLES That's true

22 A I don't recall that, no

23 Q Okay, thank you Mr Summers asked you a
24 question about whether you made a statement
25 And I believe it was really whether you

1 recalled making a statement that the Department
2 would wait beyond the recall period to hire
3 teachers Do you remember?

4 A I remember the question, yes

5 Q And you said I believe your testimony was
6 that wouldn't make sense to you

7 A Well, it that's correct

8 Q Okay Do you recall participating in a
9 grievance involving an individual at the
10 Kershaw facility in which Ms Woodlief and
11 David Dunlap also participated?

12 A I don't I don't recall it, but I'm sure if
13 you are saying that it occurred, I probably was
14 part of the trip

15 Q Do you know who David Dunlap is?

16 A I do I think he's like a deputy warden or a
17 warden at Palmer Correctional Institution I

18

19 Q Did you know did you know Paula Woodlief?

20 A I know Paula Woodlief's name, but I but
21 again, it's been a while So I I can't
22 place her

23 Q Well, can you admit or deny making a statement
24 in Ms Woodlief's presence that the Department
25 would forebear hiring teachers until the recall

1 period expired for the reduction in force?

2 A No Since you know, since it that
3 wouldn't even begin to be my call I can't
4 imagine why I would even say that I don't
5 have knowledge of that, so the answer would be
6 no

7 Q Is the answer no, you deny it, or no, you can't
8 admit or deny it?

9 A I I don't ever remember ever saying
10 anything like that, no

11 Q Okay So you don't recall it?

12 A I don't even recall the situation I mean you
13 said I was there, so I'm I'm going to
14 assume that I was there, but I

15 Q Okay Did you ever hear Mr Ozmint say that he
16 thought teachers were overpaid or paid too
17 much?

18 A No

19 Q Did you ever hear anybody say that within the
20 Department of Corrections?

21 A Have I ever heard anybody say that?

22 Q Yes

23 A I would say that I probably have heard
24 employees say that, you know or I guess you
25 could say complain that teachers were paid more

1 than than, you know, classified employees,
2 but but I hear that about employees talking
3 about managers and and, you know, one
4 one group always talking about another group
5 So

6 Q All right, sir Answer any questions that Mr
7 Summers may have or that members of the
8 committee may in

9 A Yes, sir

10 Q in the little remaining time, for which I
11 apologize

12 MR SUMMERS Mr Near, based upon Mr Nickles'
13 questions, I don't have any follow up for you
14 Therefore, it would be up to the panel to ask
15 questions

16 MS KUDELKA I have one In just trying to help me
17 understand the circles I'm not not sure
18 what they

19 A Competitive areas

20 MS KUDELKA Competitive areas

21 A Yes

22 MS KUDELKA Okay Did you draw those yourself, or
23 did you draw those with the help of somebody?

24 A Oh, I think

25 MS KUDELKA Did you decide?

1 A I think it was you know, I would really
2 think that that it's a it was a joint
3 effort that reached you know, that
4 ultimately reached a conclusion as part of the
5 plan If you're asking me did I did I
6 probably initiate the thought process of doing
7 that, I would say probably, yes

8 MS KUDELKA So you didn't sit down first and draw
9 out the circles and then present it and say
10 this is what I think we should do?

11 A I don't recall that that's exactly the way it
12 went, but but I mean, obviously, I would
13 have been a huge part of developing that, of
14 course, yes Because and a lot of that is
15 because you know, it's like a lot of other
16 things When they said, okay, Near, you've got
17 to you need to develop the plan, you know,
18 it's I've got to do it And and so,
19 you know, you try to to knock the whole
20 shell out and everything

21 MS KUDELKA Okay And then one other question
22 Did you decide yourself to create the
23 competitive areas? Was there ever a discussion
24 with anyone on whether there would be
25 competitive areas other than one or not, or was

1 that just something you thought was appropriate
2 and decided to do?

3 A I I can when I when I first started
4 off you're talking about enter a discussion
5 with anybody You know, I can remember going
6 down to the I can remember when I went down
7 to the Office of Human Resources when I first
8 started this process and and was doing
9 that And I remember them even saying your
10 competitive areas are so broad, you know, that
11 that you know, you can make this so
12 much narrower and and, you know, and I
13 remember there was a discussion about that
14 And I said no, I said the agency really wants
15 to have since we're talking about the
16 entire state and all the areas that are
17 affected, and all the different areas, we
18 really wanted to develop areas that would give
19 the employees the opportunity for some bumping
20 And if we if we and I remember them
21 telling me Said you realize if you do that,
22 you're going to have a whole bunch of people
23 bumping, and you're going to have so many
24 meetings, you know, how are you going to do
25 that And I said we know that, but, you know,

1 we honestly felt like that was the fair thing
2 to do, was to give people the opportunity to
3 to bump and and, you know, I mean I
4 I honestly think that that after the
5 initial discussions with them, if if we
6 were more swayed their way, we probably would
7 have had them much more narrow, maybe just
8 institution by institution, you know But I
9 again, I don't think that was would be
10 the right way to go either

11 **MS KUDELKA** Okay, that's all I have

12 **MR MCCLARY** Yes, ma'am

13 **MS ELMORE** The one I had was on funding When the
14 decision was made to cut the budget and the
15 teachers, what was their particular monies
16 coming in? Were they low? Because they're
17 paid separately out of from Department of
18 Corrections funds, right? They're not paid
19 from Department of Corrections money

20 A No, that's not true, not all of them

21 **MS ELMORE** Okay

22 A Teachers are teachers are paid from a
23 variety of sources, you know Some are
24 like I was saying earlier, some are split
25 funded Some are all federal funded Some are

1 other funded And as well as and remember
2 this was a Department of Corrections reduction
3 in force There were people in the Division of
4 Education that weren't even teachers So a lot
5 of them were even state funded You know, if
6 you had, say a secretary, or somebody like
7 that, they may be totally state funded So
8 there was all there was different fund
9 sources and and so it sounds like
10 you're asking me about the decision Say it
11 one more time

12 **MS ELMORE** I guess in my mind I'm thinking if the
13 teacher funds weren't low, and at the same time
14 they weren't costing Department of Corrections
15 but so much, I guess, even though they had to
16 pay for support staff, you know, what have you,
17 how did they decide to cut so many teachers if
18 they had the money to pay the teachers?

19 **A** Yeah Well, again, I don't think it's I
20 don't think it's just about I don't think
21 it's just about just fund source, you know
22 And and again, I mean I'm not an
23 accountant I'm not that smart, believe me
24 But but let's say you had a let's say
25 you had an institution where you had an

1 education program, and everybody there was
2 federally funded, okay And you say, okay, if
3 that didn't exist, how in the world could that
4 save money Well, if you think about it, over
5 here you've got all these support functions
6 going on for those people You've got security
7 officers, correctional officers that are paid
8 out of state funds that are supporting them
9 You've got food service people that may be
10 state funded that are supporting them You've
11 got you've got all these other divisions
12 over here And I mean I'll use myself as an
13 example I mean we cut everybody's pay checks
14 no matter what their fund sources were Not
15 saying that we cut back necessarily because
16 that one item, you know, was, but but of
17 course we were But but sometimes
18 something that changes over here can
19 dramatically impact over there It has nothing
20 to do with funds It can actually enable those
21 people who were providing those services to do
22 other things So so

23 **MS ELMORE** I see your point

24 A You know, the yeah

25 **MR MCCLARY** Can can I follow up on that? A lot

1 of these these institutions where
2 already institutions where the where the
3 teachers were RIF'd The programs didn't
4 really go away, right? I mean other people
5 were were allowed to continue on doing that
6 though the functions or the support functions
7 were still there And I know that was just an
8 example you used

9 A Yeah You're you're asking me a question
10 that's a little bit out of my area

11 **MR MCCLARY** Okay

12 A So I I don't know that I can

13 **MR MCCLARY** And that's that's my

14 A can totally give you an answer, but
15 but, you know, there were there were parts
16 of programs and parts of disciplines that were
17 eliminated, you know A place may have, you
18 know to begin with a place might have had
19 classroom and vocational, and then maybe they
20 eliminated vocational, or maybe all they had
21 was vocational and they cut back on the
22 vocational because the agency thought that, you
23 know, maybe there was direction going in some
24 other in some other area So so
25 like I say, some of the funding stuff I'm not

1 I'm not really I'm not really
2 knowledgeable on that

3 **MR MCCLARY** I've got one more question with the
4 circles The circles that were drawn

5 A Competitive areas

6 **MR MCCLARY** Competitive areas

7 A Yes

8 **MR MCCLARY** We'll call them competitive areas

9 A Uh-huh (affirmative response)

10 **MR MCCLARY** Were they is it is it certain
11 miles that were out from each institution,
12 or was it just lumping a grouping of
13 institutions that were near each together? Was
14 it based on miles, or was it based on
15 proximities, I guess?

16 A It was really based on both, you know You can
17 have two institutions that are, you know
18 let's say they were 30 miles apart And you
19 might have an employee that lives somewhere in
20 the middle and and as well as other places
21 And so by by trying to to group those
22 institutions together in in what we call
23 competitive areas, in reasonable driving
24 distances, again, the whole I mean I'm
25 sitting here, I'm telling you the whole thought

1 process behind that was to make a competitive
2 area that was broad enough, if possible, to
3 allow people to bump if they were going to have
4 a bump But at the same time, not force them
5 to uproot their entire families and their
6 and their you know, and all the stuff that
7 goes along with that It's it's easy to
8 sit here today If I was a person who lost my
9 job, I can guarantee you I would sit here today
10 and say I live in Greenville, I'll go to
11 Charleston I mean I'm I'm saying that
12 here today But if you turn back the clock,
13 you know, six years ago and you ask me would I
14 set up a reduction in force process that would
15 require that the next available bump would
16 force everybody in the Department of
17 Corrections to bump all over the state like
18 that, I mean that to me would be the most
19 horrible thing you could do Imagine if you
20 were a teacher in Greenville, and the next
21 available bump or the person with the least
22 seniority was in Charleston So you bump that
23 person and you uproot your family and you move
24 to Charleston And then within the year, it's
25 time for recall, a position opens up and we

1 offer you a recall, and then it's in Florence
2 So then your choice is now do I go to Florence
3 You know what I'm saying? It's just I mean
4 it it makes no sense to take an agency that
5 is having a reduction in force and to either
6 say that we're going to have statewide bumping
7 for everybody, all divisions I mean it
8 doesn't make any sense at all And it doesn't
9 even make more it makes worse sense to say,
10 okay, we're going to go into this thing and
11 and meet with all these people and say guess
12 what, we're going to have two sets of rules for
13 everybody We're going to have one set of
14 rules for these people, and we're going to have
15 one set of rules for these people I mean that
16 wouldn't that wouldn't be right either

17 **MR MCCLARY** I understand the chaos that it would
18 cause the Department But I think as an
19 employee, and this is the question I'm asking,
20 and, Roland, you tell me if he can answer this
21 This is an opinion, I guess Would you want to
22 have that choice to uproot your family or not?
23 Would that not be would you want to have
24 that choice?

25 A I think I think sitting here today someone

1 might say that But I remember how difficult
2 it was back then when I was offering people
3 choices just to bump at an institution that was
4 only 500 feet away, and they were irate about
5 that alone You can imagine if I would have
6 told them their only opportunity would be to
7 bump a hundred miles from here

8 **MR MCCLARY** I guess what I'm getting at is the
9 Department made the choice for them

10 A I'm sorry?

11 **MR MCCLARY** The Department made the choice for
12 them

13 A It's it's the responsibility of the
14 Department, of the Director of the Department
15 of Corrections to make the choice That
16 that is the responsibility of him And that
17 choice has to be made based on the best
18 interest of all employees, not just one group
19 who who thinks they're who thinks
20 they're different

21 **MR COOPER** So you following up on that, you
22 the conversation among yourselves was we're
23 we're not even going to give we're not
24 going to make it one one competitive area
25 We're not even going to look at that because it

1 creates

2 A It never even came up Like I say, as a matter
3 of fact, the Office of Human Resources thought
4 we were even too broad as it was with eleven
5 competitive areas

6 **MR NICKLES** I'm going to object to this volunteered
7 testimony about things that happened with other
8 people who are not witnesses in this case I
9 think it goes beyond what we're here to
10 resolve

11 **MR SUMMERS** Our position would be, very
12 respectfully, he's responding to the panel
13 member's question

14 **MR CORNING** That's my understanding He's just
15 responding to the panel's question I mean are
16 you objecting to the question he's asking?

17 **MR NICKLES** No I didn't object to the question
18 that was asked, but I can say that the response
19 is unresponsive and it is asserting things that
20 are, at best, hearsay

21 A Well I was there

22 **MR CORNING** No, no, no You can't don't
23 solicit what other people don't ask
24 questions about what other people said

25 **MR COOPER** All right, that's fine I understand

1 One last question and I'll be done

2 A Yes, sir

3 MR COOPER I'm reading from your policy

4 MR CORNING I'm sorry I missed that

5 MR COOPER that you're not allowed to have any
6 new additional hires during that one year
7 period into those positions And I understood
8 from these documents that temporaries were
9 hired in some of those positions Does that
10 not, in your opinion, violate your policy?

11 A No, sir The the positions that they're
12 talking about that are hired as it relates to
13 to recall has to do with those permanent
14 positions And I will tell you that every time
15 that a that a full time position would come
16 up, we would immediately go to the employment
17 office, and they would have to review the
18 people that were on the recall list And they
19 were required to go to those people And we
20 actually recalled people during that period, no
21 question about that

22 MR COOPER Well go go down right here

23 A No Temporary employees don't I'm sorry

24 MR COOPER At 2 3, whenever a RIF is in effect, no
25 additional new hires, internal promotions or

1 reassignments and the making of positions in a
2 competitive area will be allowed in any
3 position

4 A Right And and that is that is
5 specifically talking about full time positions
6 because temporary employees

7 **MR COOPER** It doesn't full time

8 A don't get promoted and demoted and and
9 all of that That that has that
10 doesn't apply to a temporary person

11 **MR COOPER** But it says no additional new hire, but
12 a temporary is a new hire

13 A Well, again

14 **MR COOPER** But not

15 A Just

16 **MR COOPER** You don't think it is?

17 A No, and just like the clarification that went
18 back on that one item that talked about people
19 buying you know, being able to buy back
20 their time I think if you if you ask me
21 now would you would you clarify that, you
22 know, yeah, you probably would

23 **MR COOPER** Okay, okay All right That answered
24 my question Thank you, no further questions

25 **MR MCCLARY** We will start up again on

1 MS KUDELKA Can
2 MR MCCLARY I'm sorry, there's another question
3 MS KUDELKA Can I just ask him one
4 MR MCCLARY I'm sorry, I'm sorry
5 MS KUDELKA I'm sorry, just one one question
6 that I failed to
7 MR CORNING I know you have to be somewhere
8 MS KUDELKA I will hurry
9 MR MCCLARY No
10 MS KUDELKA Now you made me forget what my question
11 was Oh, teacher certification If you hired
12 anybody to work within that
13 A Competitive area?
14 MS KUDELKA division of no
15 A Oh
16 MS KUDELKA Division of education or Palmetto
17 Unified School District, ever how you refer to
18 it, did they have to be certified to be hired?
19 A Let me make sure I understand your question
20 If you hired if you hired a full time
21 teacher to be a math teacher at an institution,
22 do they have to have certification in math?
23 MS KUDELKA Uh-huh (affirmative response)
24 A Yes, they do
25 MS KUDELKA Okay

1 A And that's part of the reason why some people
2 couldn't bump other people because even though
3 they were classified the same, they had
4 different certification

5 MS KUDELKA Okay That's it for me

6 MR MCCLARY Any other questions? That's it

7 MR NICKLES Thank you very much

8 MR MCCLARY 9 00 o'clock on Monday?

9 MS KUDELKA Yes

10 (There being no further testimony, the hearing was
11 adjourned)

CERTIFICATE

This is to certify that the transcript of the appeal hearing in the matter of James "Cal" Bell, et al , versus South Carolina Department of Corrections, et al consisting of Two Hundred Seventy-Six (276) pages, is a true and correct transcript of CDs transcribed by me to the best of my ability without the benefit of being present at the proceeding

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel, nor do I have any interest, financial or otherwise, in the outcome of same

IN WITNESS WHEREOF I have hereunto set my hand and seal this 19th day of April 2009



Shana L Greenway
Notary Public for South Carolina
My Commission Expires 11/29/2009

)

STATE OF SOUTH CAROLINA
OFFICE OF HUMAN RESOURCES
STATE EMPLOYEE GRIEVANCE COMMITTEE

JAMES "CAL" BELL, OTHELLA BERNARD,)
KATHERINA BOWYER, LINDA M W BRATTON,)
ANN T BRIDGES, RANCE C COBB,)
JEANNIE B CROXTON, BERNETHA L)
CULBREATH, WILLIAM K DREYER,)
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GENEVA M MARTIN, MARY H MCCABE,)
BEVERLY MCCLANAHAN, MAX D RANDOLPH,)
CAROLYN MCIVER SMITH, MAGGIE G)
WILLIAMS and PAULA WOODLIEF,)

Appellants,)

vs)

SOUTH CAROLINA DEPARTMENT OF)
CORRECTIONS and PALMETTO UNIFIED)
SCHOOL DISTRICT NO 1,)

Respondents)

-----)

TRANSCRIPT OF APPEAL HEARING
BEFORE THE SOUTH CAROLINA
EMPLOYEE GRIEVANCE COMMITTEE

HELD ON NOVEMBER 10, 2008
DAY 4

W ALLEN NICKLES, III, ESQUIRE
DONA L GUFFEY, ESQUIRE
ATTORNEYS FOR THE APPELLANTS

LAKE E SUMMERS, ESQUIRE
ATTORNEY FOR THE RESPONDENTS

ROLAND S CORNING, ESQUIRE
ATTORNEY FOR THE COMMITTEE

KARL MCCLARY, COMMITTEE CHAIR

1 **MR MCCLARY** This is the fourth day of the hearing
2 of the appeal of reduction in force instituted
3 by Bell, et al Bell, et al , against the
4 South Carolina Department of Corrections being
5 held in Columbia, South Carolina this 10th day
6 of November 2008 A record is being made of
7 the hearing For the record, my name is Karl
8 McClary, Department of Motor Vehicles And
9 other members of the State Employee Grievance
10 Committee present are Herb Cooper, Department
11 of Transportation, Glynnis Elmore, Department
12 of Mental Health, Lynn Hutto, SLED, Lesia
13 Kudelka, Department of Labor, Licensing &
14 Regulations The committee attorney is Roland
15 Corning, Attorney General's Office Appellant
16 is represented by attorney Allen Nickles The
17 employing agency is represented by attorney
18 Lake Summers Assisting the committee is
19 Sandra Brabham, Office of Human Resources
20 Each side will be given an opportunity at the
21 appropriate time to ask questions of a witness
22 The presiding officer, any member of the
23 committee or committee attorney may direct
24 questions at any party or witness at any time
25 during the proceeding Before closing the

1 hearing, the presiding officer will allow both
2 parties to present a brief summary or closing
3 statement if they so desire The appellant
4 will have an option of closing first or last
5 I wish to point out that only testimony or
6 evidence pertinent to the grounds on which the
7 appeal is based, or pertinent to the charge on
8 which the agency action is based will be
9 allowed Testimony or evidence which is
10 repetitive, cumulative will not or
11 cumulative will not be permitted Are there
12 any questions by either party?

13 **MR NICKLES** No questions

14 **MR SUMMERS** No questions at this time, subject to
15 you, Mr Chairman, of the I guess we were
16 doing a review Let the record reflect that
17 prior to the panel going on the record, there
18 was some discussions by you, sir, the panel
19 chairman, our committee attorney, Mr Nickles
20 and myself regarding documents that the panel
21 seeks to assist them in to assist in making
22 the decision under the circumstances that
23 currently now face us We had talked about the
24 status of collecting the EPMSSs, and for the
25 record, we Ms Thraillkill, who has sat with

1 me at counsel table the entirety of the
2 proceedings, advises that she will be picking
3 up the archive file for one of the grievants,
4 and therefore would be able to complete all
5 EPMS the requirement the request by the
6 panel for all EPMSs for the grievants So we
7 expect to have that material completed today

8 **MR CORNING** Mr Summers, that's not all EPMSs
9 It's the most recent

10 **MR SUMMERS** Most recent, forgive me

11 **MR CORNING** EPMS

12 **MR SUMMERS** I misspoke Thank you for correcting
13 me That would be the most recent EPMSs for
14 all of the 20 grievants Then there was
15 discussion undertaken by you, Mr Chairman,
16 regarding the position descriptions Our
17 committee attorney obviously added input to
18 that discussion And Ms Thrailkill was taking
19 notes She'll be the contact person through
20 which I'll work to get these documents for the
21 panel And we wanted to make sure we have the
22 scope of that request precisely identified so
23 we can be responsive And as you said, Mr
24 Corning, it was the position descriptions for
25 those of the grievants who returned to the

1 agency I see

2 **MR CORNING** And/or positions that were filled

3 **MR SUMMERS** Positions that were filled

4 **MR CORNING** allegedly by people who were
5 filling positions that were formerly filled by
6 the

7 **MR SUMMERS** Grievants?

8 **MR CORNING** the grievants So if somebody
9 filled a position by a grievant, what was
10 how was the position particularly in the
11 case where a grievant went back and apparently
12 I say apparently Allegedly took a the
13 same position at a different I mean whether
14 they did or not, I'm saying that's the
15 allegation as I understand it Is that
16 correct, Mr Nickles?

17 **MR NICKLES** Well, our position is, Mr Corning, Mr
18 Chairman, that the listing of hires at pages
19 780 through 785 constitute the universe of
20 positions that our employees would have been
21 capable of being at least considered for And
22 that is identified at in response to a
23 question requesting the Department to produce a
24 complete list of all employees, indicating
25 position and hire date, assigned

responsibilities that were performed by certified educators prior to the reduction in force So, we I believe we had a little bit of testimony about this on Friday with Mr Near And I believe, correct me if I'm wrong, he identified all the 999s as being temporary positions and all those with other designated letters and numbers as being permanent positions So, while it looks like a lot of information, I think there are multiple individuals for many of these positions I've actually done the math on this and can tell you that there were 43 permanent hires among these positions and 50 temporary hires and 13 bumps That's what these documents represent So, that's what we would suggest, except for the for the bumps, which would obviously have been within the reduction in force plan All those other positions, I think, are those that my clients should have been considered for filling

MR CORNING Well, Mr Nickles, when I meet when we break I'll ask the panel pleasure because I'm not sure that's what they wanted

MR NICKLES That's fine

1 **MR CORNING** Every all of them So I mean I'm
2 going to when we break I'll ask them and
3 we'll get we'll revisit this later today

4 **MR NICKLES** Very good

5 **MR SUMMERS** And ultimately, Mr Corning and Mr
6 Chairman, and for that matter, Mr Nickles, Ms
7 Thraillkill will be the person who will be
8 processing the request So my job is to make
9 sure she understands precisely what ya'll want
10 So

11 **MR CORNING** Well I understand that, counsel

12 **MR SUMMERS** I just want to make

13 **MR CORNING** But I mean until we sort this out

14 **MR SUMMERS** Yes, sir And then with your
15 indulgence when we go to a break, we can also
16 I think it goes hand in glove with what Mr
17 Nickles was talking about with the position
18 listings or position notifications It may
19 very well be tied to some of that information
20 we just discussed So perhaps it'd be best at
21 the break to identify that, and then we can
22 work further towards that goal in getting these
23 materials that the panel wants, subject to your
24 discretion

25 **MR CORNING** That's fine

1 **MR NICKLES** Oh, and Mr Summers, I'd just like to
2 inform the panel that our final grievant

3 **MS GUFFEY** Ms Etta Jane Jones

4 **MR NICKLES** Ms Etta Jane Jones who is teaching
5 in Georgia, she's going to finish her testing
6 today, get in her car, drive here She'll be
7 here this afternoon Mr Summers has been kind
8 enough to say that after Mr Ozmint, if the
9 panel would permit, we can present Ms Jones
10 and she should be a very brief witness, but
11 that would be the final grievant to testify
12 before you

13 **MR SUMMERS** And, obviously, we'll see how that fits
14 in with our afternoon schedule Director
15 Ozmint is scheduled to be here at 2 00 to
16 begin Our goal is to make sure we start
17 promptly at 2 00

18 **MR MCCLARY** How many witnesses do you have this
19 morning?

20 **MR SUMMERS** I have two this morning

21 **MR MCCLARY** Okay

22 **MR SUMMERS** Ms Gerri Miro, who you'll hear from in
23 a just moment, and Ms Thrailkill about some
24 issues that came up as well, aside from what we
25 were just talking about a moment ago

1 **MR MCCLARY** Okay With that said, since they're
2 both in the room, we'll go ahead and give them
3 a little warning of discretion The witnesses
4 are asked not to discuss this case either
5 before or after testifying until they are
6 excused This is not intended to preclude the
7 parties from entering into discussion with
8 either with with their respective
9 witnesses Does any witness not understand
10 this? Witnesses are to remain available after
11 testifying until they're excused by the
12 presiding officer After after opening
13 statements, witnesses may not remain in the
14 hearing room except when called to testify
15 Witnesses will be asked to testify under oath
16 At this time, the Secretary will determine
17 which witnesses on the parties' list are
18 present and administer the oath to all those
19 witnesses

20 **MR COOPER** All witnesses to testify, please stand
21 Let me call the roll What was your name?

22 **MS MIRO** Geraldine P Miro

23 **MR COOPER** Geraldine

24 **MS MIRO** P Miro, M-I-R-O

25 **MS THRAILKILL** Patricia S Thrailkill, T-H-R-A-I-L-

1 K-I-L-L

2 **MR COOPER** Would you please raise your right hand?
3 Do you swear or affirm that the testimony you
4 will give today is the whole truth and nothing
5 but the truth?

6 **MS MIRO** I do

7 **MS THRAILKILL** I do

8 **MR COOPER** Thank you, please sit down

9 **MR MCCLARY** One little more tidbit of information
10 The appellant, the agency, the witnesses or
11 anyone else related to the case are not to
12 discuss the case with any member of the
13 Employee Grievance Committee before, during or
14 after the hearing until the final decision is
15 reached The only time the case is to be
16 discussed is during the formal hearing
17 procedure A matter is still considered to be
18 pending before the committee during the time
19 involved, and a request for consideration of
20 the committee's decision or until the time has
21 passed for the appeal to the Administrative Law
22 Court The only time the case is to be
23 discussed is during the formal hearing
24 procedure After hearing this appeal, the
25 committee will report its finding and decision

1 in writing to the employee and the employing
2 agency within twenty calendar days of the
3 conclusion of the hearing The decision shall
4 be final in terms of administrative review
5 The hearing remains in executive session

6 **MR SUMMERS** Very well, sir At this time, the
7 agency would call Ms Miro to the stand

8 **MS MIRO - DIRECT EXAMINATION BY MR SUMMERS**

9 Q Please make yourself comfortable You've
10 obviously stated your name for the record
11 previously, but please go ahead and introduce
12 yourself to the panel And just I know you
13 won't have any difficulty doing this, ma'am,
14 but just speak up as loud as you can because
15 the proceedings are being recorded And you
16 can see the microphones hanging from the
17 ceiling So just please introduce yourself to
18 the panel

19 A My name is Geraldine P Miro Most folk in the
20 agency know me as Gerri Miro I've been with
21 the Department of Corrections for 31 years I
22 started off as a social worker and moved
23 through the ranks And I've done accreditation
24 for the agency I have been the associate
25 warden at death row I've been a warden I

1 have worked at basically male facilities For
2 about 120 strange days, I was the warden at
3 Camille Graham for Women Then I became the
4 division director for female facilities, then a
5 division director for Level II facilities, male
6 facilities, and then assumed the position of
7 deputy what is essentially deputy director
8 for programs and services, and this is the
9 position I currently occupy

10 Q And describe for the panel your
11 responsibilities as in your current
12 position

13 A Currently, I'm responsible for eight divisions,
14 four on the program side of the house and four
15 on support services The programs would be
16 Young Offender Services, the Division of
17 Education, the Division of Inmate Services and
18 Victim Services On the services side of the
19 house I have the Division of Facilities
20 Management which was formerly called
21 Construction, Engineering & Maintenance, the
22 Division of Prison Industries, the Division of
23 Support Services and the Division of
24 Transportation In addition, I supervise four
25 three small areas, the Sex Offenders

1 Program, the HIV Program, HIV, Sex Offenders,
2 Substance Abuse Area, and I'm responsible for
3 Litter Control, not much

4 Q So it would appear that you have quite a bit on
5 your plate

6 A A little bit, yes

7 Q Now, I know you talked about your history
8 briefly with the agency Can you please
9 provide the panel your educational background?

10 A I have a degree in sociology, double minor from
11 Livingstone College, Salisbury, North Carolina
12 I've done further study at the Citadel I'm
13 about three hours short of a Master's in
14 clinical counseling I have attended
15 leadership training for new wardens I've done
16 some training for NIC, National Institute of
17 Corrections, and I am an auditor for the
18 American Correctional Association

19 Q And describe for the panel what just very
20 briefly what an auditor for the American
21 Correctional Association involves

22 A We're called upon to go to a facility that
23 seeks accreditation which is a national
24 accreditation And we inspect it to insure
25 that it meets standards, national standards

1 And then we either accredit or do not accredit
2 a facility And I've audited probably a
3 hundred or more facilities in ten, twelve
4 states over the course of my my time as an
5 auditor

6 Q So it obviously extends beyond our own state
7 borders?

8 A Oh, absolutely From the west coast I
9 don't like to travel that far, but I will
10 Basically up and down the east coast or across
11 the United States

12 Q Well, ma'am, let's go ahead and let me give you
13 some information with respect to the exhibits
14 that we're going to be talking about And with
15 Mr Nickles' indulgence, you'll see some
16 notebooks there at your table And at various
17 times, I may have you going back and forth
18 between notebooks I apologize for that
19 inconvenience And also let the record reflect
20 that Mr Cooper will be able to put any
21 numbered document or any document in the record
22 that we're talking about up on the screen So
23 you can refer to it there as well So let's
24 talk about first of all, let's find page
25 468 in the record And 468, ma'am, will be

1 this larger body

2 A 468?

3 Q Yes, ma'am I apologize for not speaking
4 clearly myself

5 A That's all right

6 Q 468 And just let me know when you're there,
7 ma'am

8 A I'm there

9 Q Okay And let the record reflect that Mr
10 Cooper does have that page up on the screen
11 Ma'am, have you seen this before?

12 A Yes, sir, I have

13 Q Please tell the panel what this is

14 A It was a memorandum sent out by Jon Ozmint
15 shortly after his assumption of duties as
16 as the Director, and it was sent out to all of
17 us to let us know that there was a deficit, and
18 that he was going to take some measures to try
19 to see if he could right the ship And that
20 this was going to be a reduction and a
21 reorganization and a reduction in force, and
22 that the people the agencies and divisions
23 that would be affected

24 Q Okay, ma'am And you said right the ship, and
25 that's fine Just tell the panel what you

1 meant when you said by righting the ship

2 A We had a deficit of a a significant deficit
3 when he came on board And we had over \$20
4 million I think it says \$28 million dollars
5 And we were talking

6 Q Ma'am, I'm sorry, let the record reflect that
7 number appears in the third paragraph

8 A Okay

9 Q Continue, ma'am, and I apologize for
10 interrupting

11 A And it was his intent as he spoke to us that we
12 needed to take some very serious measures And
13 that the only way we could eliminate or reduce
14 that deficit was to do some things that had not
15 been done before We had I can only
16 remember one time in 30 years that we had ever
17 had a RIF, and that was 70s or 80s, I think
18 We had one RIF And we had never done anything
19 as serious as he was proposing, but he felt
20 that was the way to kind of get us back on
21 track and reduce some of the deficit that we
22 had

23 Q To your knowledge, had the agency made
24 additional efforts prior to the date of this
25 memo to right the ship and to get some degree

1 of control?

2 A There were some things he had done He had
3 immediately one of the things that he did was
4 we restricted travel, and he cut back on what
5 we were were doing in terms of conferences
6 He immediately decided that we're going to sell
7 some timber because we needed money He
8 reorganized and restructured some of the
9 divisions and downsized He tried to take as
10 many measures I think as quickly as he could to
11 to get us back on track

12 Q Okay And, ma'am, if you could, just flip over
13 to page 469

14 A All right

15 Q And again, Mr Cooper's moving forward and sir,
16 if you can, move it to the bottom of the page
17 That'd be fine, sir And let the record
18 reflect that Mr Cooper has put that image, the
19 bottom half of page 469, on the screen Ma'am,
20 do you see the I'll call it a wiring
21 diagram organizational chart?

22 A Yes, sir

23 Q Okay Do you see your name on there?

24 A Yes, sir

25 Q Okay Let's describe for the panel what your

1 position and title is it that position you
2 currently hold now?

3 A Yes, sir, it is

4 Q The block reads acting director, correct?

5 A Yes, sir

6 Q Describe for the panel the process or the
7 events that led to you becoming the acting
8 director for the division of programs and
9 services by publication of this memo on March
10 31, 2003

11 A I think he was still restructuring, and I don't
12 know that he intended to keep any of us I
13 think we had to earn our way And this was a
14 measure to reduce and downsize He changed a
15 number of things The four of us were he
16 never he has never liked the term deputy
17 director So we just became general directors
18 of areas But the four of us were what would
19 have been called in the past the old deputy
20 directors And so he combined some divisions
21 that had originally belonged to budget and
22 resource management up in John Davis' area He
23 combined those with programs and assigned those
24 to me He eliminated some positions in
25 classification and compliance There were some

1 areas that he eliminated

2 Q And let the record reflect you're flipping back
3 to page 468

4 A He eliminated some some operational review
5 and accreditation areas and formed
6 basically cut classification and compliance
7 And then Bob Ward then became acting director
8 of all of operations Before Jon Ozmint came
9 on board, there were four of us who were over
10 operations I had Level II facilities, eight
11 facilities Richard Bazell had female
12 facilities, that was three facilities Bob had
13 Level III, about eight or nine, and then
14 Bernard Mackey had I, which were the work
15 release and pre-release centers

16 Q And let me stop you right there, ma'am You
17 used the term Level IIIs

18 A Yes

19 Q Describe for the panel what is that a Level
20 III institution?

21 A Level III institutions, high security
22 institutions, what we used to call the old
23 medium and maximum security facilities

24 Q And you mentioned you said Bazell You
25 mentioned

1 A Richard Bazell was at that time when the
2 Director came, Richard Bazell was either
3 division director or Level IV facilities is
4 what they called it But they were basically
5 the female facilities, and there are three in
6 our agency And then Dr I'm sorry, Dr
7 Gowan was in charge of medical and health
8 services

9 Q And earlier you talked about the four of us
10 Are you referring to the four names that appear
11 at the bottom?

12 A At the bottom, yes, sir

13 Q And you've mentioned earlier that among the
14 divisions that fell under your jurisdiction
15 then and remain under your jurisdiction was
16 education, correct?

17 A Yes, sir

18 Q Now, describe when you say is it the
19 Division of Education?

20 A It's the Division of Education

21 Q Who is in charge of the Division of Education?

22 A Dr Randy Grady

23 Q Okay You've heard the term Palmetto Unified
24 School District?

25 A Yes, sir

1 Q Describe for the panel what the interaction or
2 relationship is between the Division of
3 Education and the Palmetto Unified School
4 District

5 A There really isn't any difference It's
6 it's a part of that division It's an
7 educational component that was mandated by law
8 that is a part of the Division of Education to
9 provide services, educational opportunities for
10 our inmates, educational and vocational
11 opportunities for our inmates

12 Q Now, ma'am, I'm going to jump ahead quickly, if
13 you can I don't know if that volume goes up
14 to page 738

15 A All right, sir

16 Q Okay And you found that obviously?

17 A Yes, sir

18 Q And whose do you see the name Wendell
19 Blanton?

20 A Yes, sir

21 Q Tell the panel back in April of 2003 who Mr
22 Blanton was

23 A Wendell Blanton was the division director for
24 the Division of Education He was
25 Superintendent of Palmetto Unified School

1 District

2 Q And what was your relationship on the job with
3 Mr Blanton?

4 A I was his immediate supervisor

5 Q So he reported to you?

6 A Yes, sir

7 Q Now, this memo on page 738 is from Mr Blanton
8 to the Board of Trustees of Palmetto Unified
9 School District Do you see that, ma'am?

10 A Yes, sir

11 Q Describe for the panel your interaction with
12 the Palmetto Unified School District Board of
13 Trustees

14 A I try as hard as I can to attend their board
15 meetings I think it's important that that
16 we keep a good line of communication with them
17 They're a great group of people who volunteer
18 to come in and assist us and advise us and
19 and provide support They're the ambassadors
20 for for the Palmetto School District And
21 so I try to go when I can to their board
22 meetings If they have any other functions, if
23 they come downtown and and and speak in
24 our behalf, that kind of thing, I try to come
25 if I can

1 Q And when you say come downtown, what do you
2 mean by that?

3 A They come to the statehouse, I'm sorry

4 Q That's quite all right Now let's go ahead and
5 turn the page literally, the very next page

6 A Yes, sir

7 Q And Mr Cooper, if you could, just stop at the
8 top there where the list of attendees at that
9 meeting Ma'am, these this particular
10 document is entitled minutes of board meeting
11

12 A Yes, sir

13 Q for the Palmetto Unified School District
14 Number 1 dated April 17, 2003 Do you see
15 that, ma'am?

16 A Yes, sir

17 Q Okay And let me run through I'll call it,
18 for lack of a better term, a roll call It
19 says board members present Do you see the
20 names Jim Harvey?

21 A Yes, sir

22 Q Earl Brown, Les Leevy and Carolyn Williams,
23 correct?

24 A Yes

25 Q And then you see staff present And you see

1 Wendell Blanton?

2 A Yes, sir

3 Q Hoyt Sharpe?

4 A Yes, sir

5 Q Tell the panel about Mr Sharpe

6 A Hoyt Sharpe, who is now deceased, was the
7 vocational coordinator for all the programs,
8 vocational programs in the Department of
9 Corrections in the school district He was
10 also serving as kind of the unofficial
11 assistant to the superintendent

12 Q Describe what you mean by unofficial assistant
13 to the superintendent

14 A It was not a part of his position description
15 That was not a part of his position
16 description But often if Wendell was not
17 available, because Hoyt had been there so long
18 and he knew all of the information and he had
19 been with the school district so long, he
20 became then the second person in line if you
21 needed some information

22 Q And again, that was not reflected in any
23 official organizational chart?

24 A No, no, no Hoyt was the vocational
25 coordinator or vocational administrator, had to

1 do with vocational programming in the agency

2 Q And then there's the name Theresa Cobb

3 A Yes, sir

4 Q Describe for the panel who Ms Cobb was at that
5 time

6 A She was at that time the the office
7 manager She kept the time and attendance for
8 the staff She assisted the the division
9 director She managed the office She was the
10 office manager

11 Q And the office manager for what office, ma'am?

12 A For the Division of Education

13 Q And there's another name there It says others
14 present Do you see the name Felicia Poston?

15 A Yes, sir

16 Q Describe for the panel who Ms Poston was

17 A Ms Poston was at that time an employee of the
18 Division of Budget & Finance She was just the
19 staffer there who was assigned to help them if
20 they filled out grants or that kind of thing
21 She she assisted education, but she was not
22 a part of that division

23 Q Well there's been some testimony about
24 different functions that may or may not have
25 existed under the Palmetto Unified School

1 District structure So let me ask you the
2 following questions with that preface And let
3 me start by this question For whom did Ms
4 Poston work?

5 A She worked at that time for . she worked for
6 John Davis

7 Q Whose name appeared on the prior exhibit that
8 we looked at in that organizational chart?

9 A Yes, sir

10 Q Did the Palmetto Unified School District have
11 its own budget and finance office?

12 A No, sir

13 Q Did the Palmetto Unified School District have
14 its own payroll services office, if that's the
15 correct term?

16 A No, sir

17 Q Did the Palmetto Unified School District have
18 its own human resources office?

19 A No, sir All of that's that's an agency
20 those are agency functions They're we
21 have only one human resource office We have
22 only one budget office

23 Q And, ma'am, let's go through and we'll talk in
24 more detail about Ms Poston in just a moment

25 A All right

1 Q But if you could, there's a Mr Cooper, if
2 you could scroll down In the full the
3 bigger paragraph at the very bottom of the
4 page, and take a moment Do you see your name
5 in there?

6 A Yes, sir

7 Q Okay And for the record, I'm going to read,
8 with the indulgence of counsel, I think one of
9 the last sentence in that paragraph The new
10 acting director for the Division of Programs
11 and Services, Ms Geraldine Miro, that's you,
12 correct?

13 A Yes, sir

14 Q Mr Blanton said that Ms Miro would be
15 responsible for several additional divisions
16 And I'll finish the paragraph He thinks this
17 may be an advantage because she is over other
18 divisions that education deals with on a
19 regular basis Is that or was that an accurate
20 description of

21 A Yes

22 Q your duties?

23 A Yes

24 Q And earlier in that paragraph there's the name
25 Judy Anderson

1 A Yes

2 Q And describe for the panel who Ms Anderson was
3 or is and what her role was prior to, we'll
4 call it, March 31st of 2003

5 A Judy Anderson is a veteran employee of the
6 agency She is was at that time the
7 Director of Programs, the division or part of
8 the division that I now have She was, when
9 Jon Ozmint came on board, one of the folk
10 reassigned to another area Judy has a a
11 good history and is noted in the United States
12 for being one of the authorities on women's
13 issues in corrections And Judy was reassigned
14 to Camille Graham where we now have a reception
15 and evaluation center and a lot of real
16 substantial programs for females And she has
17 addressed a lot of female issues, but but
18 that was Judy was at the time Division
19 Director for Programs because that's all it
20 was, just the Division of Programs

21 Q While we're on that topic of Ms Anderson, if
22 you could, there's a bound notebook, ma'am, to
23 the right, upper right Yes, ma'am, that's it
24 right there If you could, pull that towards
25 you And at the tab labeled Tab Number 2, I'm

1 going to ask you to turn, I believe, to the
2 third page in or the fourth page in Top right
3 corner it's 1244

4 A Yes, sir

5 Q And we'll let Mr Cooper bring that up, and
6 he's let the record reflect it's so
7 reflected on the screen You'll see the first
8 full paragraph, middle of the paragraph, and
9 with the court I'm sorry, with the panel's
10 indulgence and Mr Nickles' indulgence, I'm
11 going to read a sentence to you Two division
12 directors, Richard Bazell and Judy Anderson,
13 received demotions but kept their salaries
14 without confinement in competitive areas Do
15 you see that sentence, ma'am?

16 A Yes, sir

17 Q And the next sentence says this was done just
18 a few days before the RIF was announced Do
19 you see that?

20 A Yes, sir

21 Q Based upon your knowledge, were Mr Bazell and
22 Ms Anderson demoted?

23 A No, sir

24 Q Tell the panel why you would make that
25 assessment

1 A They were simply reassigned He I think
2 and I certainly don't presume to speak for
3 Jon Ozmint, but there was the feeling when he
4 got on board, and he was not shy about saying
5 it, that we were a little top heavy at
6 headquarters And so he felt that many of us,
7 particularly those of us who were veteran
8 employees, could be used in other places that
9 were that where we could serve And so
10 when there were some openings and an
11 opportunity to reorganize, he simply reassigned
12 some of us And we all knew when he walked in
13 the door that some of us would be reassigned,
14 and some of us would be changed in the
15 positions that we had and and that there
16 would be no money forthcoming for any of us for
17 anything So if you took on eight divisions,
18 you got the same amount of pay you had as if
19 you had four institutions And you got
20 reassigned from headquarters to a facility, you
21 got the same amount of pay I mean it just
22 we were just reassigned for the good of the
23 agency, in my opinion, is what he thought he
24 was doing and tried to do

25 Q Now, ma'am, let's go back to page 740, and you

1 can set aside that bound volume for just a
2 moment Thank you for that information Are
3 you at 740?

4 A Yes, sir

5 Q And I'm going to read to you, again with the
6 indulgence of the panel and Mr Nickles, the
7 second paragraph that appears there Mr
8 Harvey asked Felicia Poston to give a budget
9 update Ms Poston handed out the third
10 quarter projected budget compared to year-to-
11 date expenditures report There's a
12 parenthetical that says see attached She gave
13 an overview of the report Do you see that,
14 ma'am?

15 A Yes, sir

16 Q And if you could, turn over to page 741

17 A Yes, sir

18 Q And have you seen this document before?

19 A Yes, sir, I probably have

20 Q Well obviously you see it now?

21 A Yes, sir

22 Q Okay Is there a date at the top of it? It
23 may be hard to read with the font being what it
24 is

25 A It looks like April 17th '03

1 Q And this that date was after you assumed
2 your duties?

3 A Yes, sir

4 Q So tell the panel first of all who prepared, to
5 the best of your knowledge, this particular
6 sheet

7 A I would think that it was prepared by Ms
8 Poston

9 Q And again, her duties were what?

10 A She was a budget and finance person assigned to
11 assist education

12 Q And when you say assigned to assist, describe
13 for the panel your understanding of assigned to
14 assist

15 A If we wanted to apply for a grant, if there
16 were some funds out there available, if we were
17 eligible for some funds from the State
18 Department or the U S Department of Education,
19 if those were were things that we could
20 apply for, they would talk with Felicia, and
21 she would help them to come up with a budget
22 and kind of help to walk them through that
23 process And she was just she was just a
24 staffer assigned to that division There are
25 staffers assigned to my facilities management

1 folk There are staffers assigned to my
2 support services folk She was just the staff
3 person assigned to education to assist them
4 with with the financial aspects of it

5 Q And you talked about different types of monies
6 And we've heard, for lack of a better term and
7 not to mean any disrespect to anybody, kind of
8 an alphabet soup of a variety of programs I'm
9 going to again with the indulgence of the
10 panel and counsel, have you heard the term EFA
11 before?

12 A Yes

13 Q Describe for the panel what your understanding
14 of first of all, what does EFA mean?

15 A EFA is the Education Finance Act And that's
16 and I'll get thoroughly confused

17 Q Well, that's fine, whatever I can do to help or
18 the panel can help

19 A It'll get clear as mud to me probably in a
20 minute The Education Finance Act is one of
21 those funds that all school districts are
22 eligible for The Department of Corrections is
23 eligible simply because we have inmates who are
24 under the age of 21 who go to school And so
25 we qualify as a school district for some of

1 that money as we qualify under EIA, which is
2 the Education Improvement Act Now, I don't
3 pretend to be able to articulate kind of all
4 the nuances of that You'd probably have to
5 ask Dr Reagan or some of the folk in
6 education But I do know that we qualify for
7 certain programs and projects with EFA money
8 and EIA money And then we're able to use some
9 of those funds for things that are just not
10 solely confined to those divisions or to those
11 students, but we can use it for a broad range
12 of things under certain conditions And we
13 have to be very careful about that

14 Q Do the types of jobs that education personnel
15 perform depend upon the source of financing?

16 A Yes, yes

17 Q And this is obviously going to be a wide
18 question Describe for the panel what you
19 understand are there any limits, for
20 example, with EFA funding?

21 A Yes

22 Q Describe for the panel

23 A I'm I'm not certain that I could it without
24 having something in front of me

25 Q Okay

1 A And I would not want to to say anything
2 that was incorrect I do know there are
3 limitations And every time we start to talk
4 about what we want to do, I have to pull the
5 book out because I just don't know There are
6 just so many of them

7 Q And so when you say you pull the book out, what
8 do you mean by that?

9 A There is a manual for both of them that kind of
10 tells us how we can operate and what we're
11 eligible for and what the criteria is and who
12 would be eligible for the services at which
13 facilities or at which schools, that kind of
14 thing for us

15 Q And that's going to run through your division?

16 A Yes, it is

17 Q Well, thank you for that information about the
18 funding Let's jump ahead a little bit further
19 in the record If you could, go up to page
20 1100 And let me know when you find it, ma'am

21 A I'm there

22 Q Okay Let the record reflect that Mr Cooper
23 put that on the screen And again, could you
24 just identify or just I'll do it this way
25 It's a memorandum, is it not, ma'am?

1 A Yes, sir

2 Q Okay Dated March 18, 2003?

3 A Yes, sir

4 Q Could you tell the panel who it's to?

5 A It's to Jon Ozmint

6 Q And there's a line below that What does that
7 say?

8 A It's through Judy Anderson who is the Director
9 for Programs, Program Services

10 Q And again, she was your predecessor?

11 A She was

12 Q And it's from who, ma'am?

13 A Wendell Blanton

14 Q And the subject is?

15 A Budget issues

16 Q Now, let's did you do have anything to do
17 with that or review of that particular memo?

18 A No, sir This was before I assumed my
19 responsibilities for the division

20 Q And do you recall when you officially assumed
21 your responsibilities for your division?

22 A I believe it was April 3rd that we all
23 officially moved We were notified before, but
24 I think it was April 3rd that we all assumed
25 the new responsibilities

1 Q And was that part of the reorganization?

2 A Yes

3 Q And let's skip ahead from 1100 Let's go to
4 1103

5 A All right

6 Q Do you see that, ma'am?

7 A Yes, sir

8 Q Okay And that's a memorandum to to Mr
9 Blanton, correct?

10 A Yes, sir

11 Q And that's from Felicia Poston?

12 A Yes, sir

13 Q And the subject is education funds?

14 A Yes

15 Q And at the bottom, and Mr Cooper is going to
16 scroll down, do you see your name at the
17 bottom?

18 A Yes, sir

19 Q Okay Could you read the paragraph?

20 A He said education is now only 1 19 percent of
21 the agency's budget All this money goes to
22 salaries and to fringes We also have
23 available about \$6 million dollars in grant and
24 other educational funding, see attached The
25 \$6 million will be lost if we lose the \$3

1 million I would hope the agency would look
2 outside of education if we have any additional
3 cuts Education has taken its hit Please
4 help us get please help us get this message
5 out

6 Q And there's a signature block, correct?

7 A Yes, sir

8 Q And who signed that?

9 A Wendell Blanton

10 Q And is there a date?

11 A September September 12th of '03

12 Q Well let's go through this particular paragraph
13 with some detail With the panel's indulgence,
14 I'm going to read It says we also have
15 available about \$6 million in grant and other
16 educational funding The next sentence reads
17 the \$6 million will be lost if we lose the \$3
18 million Do you know what he meant by that?

19 A I think what he was trying to say, and we had
20 a discussion about this We get about we
21 were getting about \$6 million dollars between
22 EFA, EIA and some other things that had come
23 from the State Department And he was saying
24 in essence that if we lose this if you
25 eliminate these people, because that's what he

1 was actually talking about, those folk who make
2 up that 19 percentage of the state's budget,
3 the education fund did If we take that away,
4 then we stand to lose about \$6 million dollars
5 I was not convinced that that was correct

6 Q Why is that, ma'am?

7 A Because some of that money, although it was
8 tied to to fringes and it was it was
9 tied to grants and other educational programs,
10 all of that money was allowed to be used
11 because we had already earned that money That
12 was money that we had already earned for the
13 year

14 Q Can you describe for the panel what you mean
15 already had earned the money?

16 A We have the money allocated to us at the
17 beginning of a budget year That was money
18 that we had already we were we had
19 already been given And we were spending that
20 money through June 30th So that was our
21 money And I think what he was saying is we
22 will not earn this money next year We will
23 not be eligible next year if you take these
24 cuts, if you cut us again, if you take that
25 if you eliminate anymore positions, I think,

1 essentially is what he was saying And I'm not
2 trying to speak for him, but based on the
3 conversation that he and I had

4 **MR NICKLES** I'm going to object to any
5 conversations

6 **MR SUMMERS** That's fine

7 **MR NICKLES** that may have taken place

8 A I'm sorry

9 **MR NICKLES** with anyone who's not before the
10 panel

11 A I'm sorry

12 **MR SUMMERS** That's fine, I understand Thank you,
13 sir

14 Q And the phrase there, if we have any additional
15 cuts, were there was there a concern of
16 additional cuts throughout the agency?

17 A Yes, sir

18 Q Tell the panel what you know to be the case or
19 the prospect of additional cuts in September of
20 2003?

21 A There were two fairly large areas that the
22 Director looked at when he first came on board
23 One was education and one was health services
24 And so that was the other other big area
25 that was looming somewhere in the background

1 He had to cut some more He he probably
2 would have looked at that, and he and he
3 did examine that as a possibility

4 Q And you said health services Did that fall
5 under your jurisdiction?

6 A No, sir

7 Q Under whose jurisdiction did that fall under?

8 A That at that time was under Dr Gowan

9 Q And if you could, describe for the panel what's
10 involved with health services

11 A That entails all of medical services, all of
12 dental services, mental health services and all
13 of pharmacy

14 Q And those are for the inmates, correct?

15 A That is correct That is for inmate services

16 Q Now, ma'am, let's go ahead and jump ahead a
17 little bit further, same volume, page 1106
18 And this goes back in time a little bit from
19 the memo we were just looking at dated
20 September 8th I'll let the record reflect
21 that Mr Cooper is at page 1106 You've found
22 the document?

23 A Yes, sir

24 Q Okay And it's a memorandum to all employees,
25 correct?

1 A Yes, sir

2 Q From Director Ozmint?

3 A Yes, sir

4 Q And the subject's retirement opportunity?

5 A Yes, sir

6 Q And the date's July 16th of 2003?

7 A Correct

8 Q If you could, could you read the first
9 paragraph, please?

10 A Over the last two years the Department of
11 Corrections has made numerous attempts to
12 address our budget shortfall These efforts
13 have included reduced spending, elimination of
14 probationary staff, voluntary furloughs,
15 holding positions vacant, and recently a
16 reduction in force While these have helped,
17 our budget for the next fiscal year appears to
18 lack the necessary funding to operate the
19 agency Fortunately, there may be a method to
20 further reduce costs without reducing our
21 valuable staff and have a positive impact on
22 many of our employees

23 Q Well, ma'am, tell me how this particular
24 program worked to the best of your knowledge

25 A I did not participate, but to the best of my

1 knowledge, an employee who was eligible could
2 retire, effectively retire from the agency, be
3 gone for a specified period of time I think
4 it was a couple of weeks or so with a break in
5 service And then they could come back and
6 they could work for the agency And at that
7 time, with a \$50,000 fiscal year earnings
8 limit, I guess There was a limit on how much
9 they could make, but they were allowed to come
10 back and work But they had to take a break in
11 service every year

12 Q Why is that?

13 A I I couldn't tell you It would have to be
14 something that the folk over in Human Resources
15 could tell you, but I know that they had to
16 take a break in service because they were not
17 permanent employees for one thing

18 Q Okay And then what was their status?

19 A They were temporary employees They were
20 we called them retired rehires

21 Q And to the best of your knowledge, describe
22 what a permanent employee is What's the
23 status, what's the benefit of being a permanent
24 employee?

25 A You have benefits We have we have

1 vacation, sick leave We put into the
2 retirement system We are full time
3 equivalents

4 Q And then temporaries?

5 A Temporaries have have no benefits If they
6 don't work for the most part, they don't get
7 paid They don't have the benefit of of
8 of insurance, and they don't have the
9 benefit of annual and sick leave

10 Q Now, let's kind of take a step back We'll
11 pull ourselves I'll pull you out of the
12 materials that we've been looking at You said
13 you spent time as a warden, correct?

14 A Yes, sir

15 Q And where did you perform your wardenship?

16 A I was warden at Allendale for seven years

17 Q Okay And what kind of institution is
18 Allendale?

19 A Allendale at that time was a Level III
20 facility, male facility, which would would
21 have been considered a medium maximum security
22 male facility

23 Q And did you have education staff working for
24 you?

25 A Yes At that time there was a principal I

1 think there well there was a guidance
2 counselor, teachers and vocational instructors

3 Q And when was this? When was your seven year
4 period there?

5 A I was warden there from '94 til 2001

6 Q When you were warden, if there had been a
7 problem with an educator, a disciplinary
8 problem, for example, tardiness, what was the
9 process by which corrective action would have
10 been taken?

11 A If the teacher did not report appropriately or
12 was not on time or failed to meet their class
13 responsibilities, as a courtesy I would contact
14 the Division of Education and let them know
15 that they were not performing and that I
16 certainly welcomed the opportunity for them to
17 come and be present for a meeting with the
18 teacher for the corrective action

19 Q Why would you contact someone at the Division
20 of Education?

21 A There were a lot of at that time there were
22 a lot of employees who they called it dual
23 supervision, but there were a lot of employees
24 who were assigned to a larger area, but their
25 job duties were at a specific facility The

1 folk in recreation were assigned to specific
2 institutions, but they came out of the Division
3 of Inmate Services So if there was a
4 technical issue, then certainly that was an
5 education responsibility

6 Q And when you say technical issue, describe for
7 the panel what you mean by that term

8 A If the employee was not reporting the average
9 daily attendance, if the employee was not
10 teaching the subjects that were required by the
11 superintendent or the division director of
12 education, if the employee was providing
13 inaccurate material or not administering tests,
14 that kind of it was a technical issue that
15 dealt with education Then I would contact
16 them and say there's an issue, you need to come
17 and deal with that because it was more
18 technical in nature But if it was an issue of
19 security, that dealt with security, if they
20 were inappropriate with an inmate, if an inmate
21 had had put them in harm's way or had in
22 some way made them feel uncomfortable and
23 something had happened as a result, then I'd
24 contact education and say you want to come down
25 and we'll talk about it, and I think there's

1 something that I need to do

2 Q When corrective when I say corrective
3 action, what do you understand the term
4 corrective action to mean?

5 A It's our administrative disciplinary process
6 for employees, employee corrective action

7 Q And within the Department of Corrections, is
8 there only one corrective action system?

9 A Yes, sir

10 Q To your knowledge, did the Palmetto Unified
11 School District have an apparatus a
12 separate apparatus or a separate policy or
13 procedure to deal with corrective action?

14 A No, sir, not to my knowledge

15 Q As warden, did you ever experience a separate
16 track, if you will?

17 A No, sir

18 Q The educators that came under your supervision
19 at Allendale, who would conduct their their
20 annual performance reviews?

21 A The division director or Hoyt would come down
22 and do it, and I would sign off

23 Q And when you say Hoyt, Mr Sharpe?

24 A Hoyt Sharpe One of them would come down and
25 do it And it was always something that we

1 just at my facility it was always something
2 that we discussed, particularly with the
3 principal, the guidance counselors Well, in
4 fact, all of them I was very fortunate to
5 have a good staff of educators, and so it was
6 always it was never a chore to do it for
7 us, but we always discussed it

8 Q There's been some testimony about, I'll call it
9 tension, or jealousies, perhaps comments
10 between folks in the program side versus the
11 operation side And that's my preface for the
12 next question Were you ever aware of any
13 comments we'll start while you were a
14 warden

15 A Yes

16 Q regarding teachers making too much money,
17 that type of that type of statement being
18 made?

19 A Yes

20 Q Describe for the panel your experience with
21 those types of tensions

22 A Institutions can sometimes be very violent
23 places Schools, for the most part, at that
24 time particularly were not always the most
25 pleasant places to be And so if a teacher in

1 our schools had a problem with an inmate, they
2 informed uniformed staff, and they were taken
3 the inmate was dealt with The inmate was
4 removed or whatever the teacher needed to have
5 happen would happen There were times, and I
6 can only speak for my facility

7 Q Yes, ma'am

8 A There were times when I first came that the
9 history of Allendale was not a very good
10 history to begin with And so we had a fair
11 number of disturbances in the beginning And
12 I had we locked down fairly often for a
13 while there

14 Q And describe for the panel what a lock down is

15 A That meant we restricted all inmate movement
16 We locked them in their cells until we could
17 restore order and figure out what the problem
18 was And that went on for a while until we had
19 a major disruption and we got it right and we
20 resolved the problem But in the beginning
21 there were issues And some of the employees
22 in education would not respond as I felt was
23 appropriate for everybody who was in that
24 family We were a family And many times when
25 an incident occurred, they simply went into the

1 education building, locked the doors and you
2 didn't see them all day And I had staff who
3 were classification caseworkers who were IRCs
4 and who performed other functions People in
5 the mail room, medical staff, everybody was
6 trying to help us as an institution to prepare
7 lunches and do a lot of other things And I
8 didn't get a whole lot of cooperation from the
9 teachers And we had a meeting and I shared
10 with them my concerns

11 Q What concerns did you articulate to them,
12 ma'am?

13 A I said to them if we are a family, and if you
14 expect this officer who makes \$28,000 a year to
15 come in and take care of you when you have a
16 problem with an inmate, I will expect you to
17 help us to do lunches, to deliver mail, to do
18 everything else that I'm asking every other
19 employee to do I did not think it was
20 unreasonable I still don't think it was
21 unreasonable, and that was my position And
22 once we discussed it and we talked about it, I
23 never had another problem And they were some
24 of the most diligent employees I had

25 Q Since you've assumed your position that you

1 currently hold, are you aware of any kind of
2 continuing tension along those lines,
3 statements being made that teachers make too
4 much money, those kinds of things?

5 A I had I was by that time I was at
6 headquarters, but I I did hear some
7 comments about a lawsuit And I was not at
8 that time intimately involved with it So I
9 really don't have all the details, but I know
10 there was a lawsuit And I know there was the
11 concern that that they were making a lot of
12 money, or there was the thought that they were
13 making a lot of money

14 Q Would this pre-date Director Ozmint's tenure?

15 A Yes, yes That lawsuit was filed 1999 or 2000,
16 I think, somewhere in that area

17 Q Ma'am, let me ask you some specific questions
18 about Director Ozmint, ma'am Have you ever
19 heard Director Ozmint say that teachers were
20 wrong in suing the agency to get higher money?

21 A I never heard him say that in my presence
22 I've never I never heard him say that

23 Q Well, ma'am, those are all the questions I have
24 for you at this time As I'm sure you can
25 anticipate, Mr Nickles may have some Just to

1 let you know the process from here, after Mr
2 Nickles is done, I may have some follow up for
3 you He may have follow up based upon my
4 follow up, subject to Mr Corning's ruling
5 And then the panel may very well have some
6 questions for you So make yourself
7 comfortable and we'll get going there

8 A All right

9 MR MCCLARY Mr Nickles, before you get started on
10 cross, could we take a five minute break?

11 MR NICKLES Absolutely

12 (Off the record)

13 MR MCCLARY Mr Nickles, whenever you're ready

14 MR NICKLES Oh, sure, thank you

15 MS MIRO - CROSS EXAMINATION BY MR NICKLES

16 Q Ms Miro, my name is Al Nickles I'm
17 representing the employees in this case who
18 were separated by the reduction in force I'm
19 going to ask you a few questions, and if I ask
20 you a question that you don't understand, it's
21 probably because my question is not clear
22 Will you tell me that you don't understand? It
23 doesn't embarrass me in the least

24 A Yes, sir, I will

25 Q Okay Now, you mentioned, I believe, in

1 response to some of the questions from Mr
2 Summers that there was this re-shifting of the
3 responsibilities after Mr Ozmint assume his
4 duties as the Director of the agency, is that
5 correct?

6 A Yes, sir

7 Q And as a part of that shifting, Ms Anderson
8 went from a Program Director to do something
9 within the Division of Education, is that
10 correct?

11 A Repeat the question

12 Q Yes You were talking about Ms Anderson
13 earlier

14 A Yes, sir

15 Q And I believe that you looked at a document
16 She was a Program Director at one point in
17 time

18 A Yes, sir

19 Q And then after Mr Ozmint came in and he
20 shifted people around, she moved over to the
21 Division of Education, correct?

22 A No, sir

23 Q Okay I thought you said that she moved to
24 Camille Graham

25 A Yes, sir, as the warden

1 Q Right So she did moved She moved not from
2 a Program Director to division but to a
3 warden's position?

4 A That is correct, sir

5 Q Okay So and you got some of the
6 responsibilities that she was doing at the time
7 that she was a Program Director?

8 A Yes, sir

9 Q Okay Do you know whether Mr Ozmint cut her
10 pay when he moved her from Program Director to
11 warden?

12 A No, sir, I don't know that

13 Q Okay But that was done prior to the reduction
14 in force, correct?

15 A It may have been They were all kind of
16 running together It but it could possibly
17 have been, yes, sir

18 Q Well I believe we looked at some documents, and
19 that happened back in March of 2003 We know
20 the reduction in force took place effective
21 June 1, 2003

22 A Yes, sir

23 Q Correct?

24 A Yes, sir

25 Q And I believe you said you even came over to

1 your new position before June 1, 2003

2 A Yes, sir, April

3 Q So if you look at the calendar, that took place
4 before

5 A Yes, sir

6 Q the reduction in force?

7 A Yes, sir

8 Q Okay And there were some other people who got
9 shifted around before the reduction in force,
10 particularly at the higher levels of the
11 administration, isn't that correct?

12 A Yes, sir

13 Q But you didn't lose any pay when you took on
14 these additional duties, did you?

15 A No, sir, I didn't lose any

16 Q Okay I didn't think you did

17 A I didn't earn any either

18 Q Well, you may have earned it, but you didn't
19 receive it?

20 A I didn't receive it, no

21 Q Okay Now, you testified that you were a
22 warden over at Allendale

23 A Yes, sir

24 Q from about '94 to 2001, something like
25 that?

- 1 A Yes, sir
- 2 Q And that was a challenging job, wasn't it?
- 3 A Yes, sir, it was
- 4 Q Okay But you didn't testify that you had an
5 educational program at the institution,
6 correct?
- 7 A Yes, sir
- 8 Q Did you think it was a valuable program?
- 9 A Absolutely
- 10 Q Okay Do you think that the inmates benefitted
11 from the program?
- 12 A I do, yes, sir
- 13 Q And that program was open not only to
14 individuals younger than 21, but who adult
15 inmates as well, correct?
- 16 A That is correct, yes, sir
- 17 Q Because one of the missions is to provide high
18 school equivalency to those inmates who haven't
19 achieved that, is that correct?
- 20 A Yes, sir
- 21 Q And that doesn't have an age limitation on it,
22 does it?
- 23 A No, sir
- 24 Q Now, unfortunately, the Allendale educational
25 program was shut down with the reduction in

1 force, was it not?

2 A Yes, sir

3 Q And all those teachers and guidance counselors
4 and principals that you had worked with as
5 warden lost their jobs as a result of the
6 reduction in force, didn't they?

7 A Yes, sir

8 Q And that was unfortunate, wasn't it?

9 A It was

10 Q Okay When you were at Allendale, did you live
11 down there?

12 A No, sir

13 Q Where did you live?

14 A I lived I currently live in Orangeburg

15 Q Okay Where is your office located?

16 A In Columbia

17 Q How far did you have to travel from Orangeburg
18 to Allendale to be the warden there?

19 A 47 miles

20 Q Each way?

21 A Yes, sir

22 Q And you were willing to do that, weren't you?

23 A Yes, sir It was part of the requirements for
24 the job

25 Q Okay, all right And now that you live in

1 Orangeburg, you have to travel to division
2 headquarters, correct?

3 A Yes, sir

4 Q And how far do you travel per day to do that?

5 A 47 miles

6 Q You're smack dab in the middle, aren't you?

7 A Yes, sir

8 Q But you've been given the opportunity to
9 advance through the system even though you
10 happen to make your home in Orangeburg,
11 correct?

12 A Yes, sir

13 Q That hasn't limited your opportunities to work
14 in other locations, has it?

15 A It did initially when I first came to work for
16 the agency, it did

17 Q How so?

18 A When I first came to work for the agency in
19 '77, I worked at MacDougall And MacDougall
20 was the only and I lived in Summerville
21 My husband was was in public schools there
22 And so I moved to Summerville with him, and
23 MacDougall was the only facility in the area
24 And so I didn't have a chance for a promotion
25 I mean that was where we were

1 Q And you stayed there?

2 A And then and when Leiber opened, it was an
3 opportunity for me because it was kind of right
4 across the interstate So for that period of
5 time, I did have an option to at least apply
6 for something different and I did that But
7 once once I did that, if I wanted anything
8 else, I had to be willing to to move
9 around

10 Q Okay And ultimately, you made your home in
11 Orangeburg and you worked in other locations?

12 A Yes, sir

13 Q Fair to say that there is only one Palmetto
14 Unified School District to your knowledge?

15 A Yes, sir

16 Q And that's administered, as you said, according
17 to the statutes adopted by the General
18 Assembly, right?

19 A Yes, sir

20 Q You have one superintendent?

21 A Yes, sir

22 Q You have various staff people who are assigned
23 full time to the Palmetto Unified School
24 District, correct?

25 A Yes, sir

1 Q Have you ever looked at the website for the
2 Palmetto Unified School District?

3 A I have I don't know that I have in the last
4 month or so, but I have seen it

5 Q Okay But you know they do have a website,
6 don't you?

7 A Yes, sir

8 Q As part of that website they have contact
9 information, don't they?

10 A Yes, sir

11 Q Okay I'm going to hand you a document and ask
12 you to take a look at it See if that's
13 something familiar to you

14 A Yes, sir Apparently, it hasn't been updated,
15 but yes, sir

16 Q If it's the one that's currently on the web, it
17 hasn't been updated, is that fair?

18 A Yes, sir

19 Q Okay

20 **MR NICKLES** Mr Summers, do you have any objection
21 to my sharing this with the with the
22 members of the committee?

23 **MR SUMMERS** The only concern I have is there's no
24 printed date at the bottom which would indicate
25 it was at least on the copy you provided

1 me

2 **MR NICKLES** It just says SCDC 2008

3 **MR SUMMERS** I would I'd certainly acknowledge
4 that this was a printout that was generated
5 sometime this year

6 **MR NICKLES** Okay

7 Q And, of course, Ms Miro, if any of the panel
8 members were interested in making sure that
9 this is the most recent, they could look at the
10 website, couldn't they?

11 A I would hope

12 **MR SUMMERS** And, ultimately, as that issue came up,
13 obviously the attorney can advise the panel as
14 to what would constitute evidence and proper
15 review of materials, but that's not an issue
16 right now

17 **MR NICKLES** Mark this Number Three, please

18 **(Grievant Exhibit Number Three was marked for**
19 **identification purposes)**

20 Q Looking at this particular document, Ms Miro,
21 let's go through it It says Palmetto Unified
22 School District Number 1, PUSD

23 A Yes, sir

24 Q Is that just a general abbreviation of the
25 district?

1 A Yes, sir, it is

2 Q And that's commonly used within the Department
3 of Corrections, isn't it?

4 A Yes, sir

5 Q Okay And this indicates contact information
6 and the location is at the headquarters
7 building for the central administration, is
8 that correct?

9 A Yes, sir

10 Q Is Dr Reagan still the Superintendent of
11 Education?

12 A Yes, sir, he is

13 Q And about how long has he been there?

14 A He has been with us over a year, not quite two
15 years, I think

16 Q Okay Now, did he work in the Department of
17 Corrections before he became superintendent?

18 A No, sir He came from the outside

19 Q The outside meaning?

20 A He was he was not an employee of the
21 agency I'm sorry

22 Q Was he an employee of any school district to
23 the best of your knowledge?

24 A Yes, sir, he was

25 Q And where was that school district located?

- 1 A It's somewhere in the upstate I knew I
2 know that it was around the Greenville area
3 Q Okay In the State of South Carolina?
4 A Yes, sir
5 Q Okay So was he in the, what we call the
6 public school systems, of the State of South
7 Carolina?
8 A Yes, sir, he was
9 Q And came to you folks as superintendent?
10 A Yes, sir
11 Q Did you participate in selecting him as the
12 superintendent?
13 A Yes, sir I sat in on the interviews
14 Q Okay Were there other applicants for that
15 position?
16 A Yes, sir
17 Q Was one of the requirements for that position
18 that the individual be certified as a
19 superintendent by the State Department of
20 Education?
21 A Yes, sir
22 Q And that's an important criteria for that job,
23 is it not?
24 A Yes, sir
25 Q Ultimately, the superintendent is responsible

1 for the educational aspects of the district,
2 would that be fair?

3 A Yes, sir

4 Q Sometimes in public education, they call them
5 the educational leader of the district Is
6 that an accurate description of what Mr Reagan
7 is supposed to do?

8 A Yes, sir I would say so

9 Q Okay And then at the various facilities, the
10 principals would be the educational leaders of
11 those facilities, is that fair?

12 A I would think

13 Q And that's what you looked to your principal to
14 do at Allendale while you were the warden
15 there, correct?

16 A Correct

17 Q You talked about there could have been issues
18 relating to security, or I think you used the
19 word technical issues

20 A Yes, sir

21 Q Could we use the word educational issues? For
22 example, you gave some some indications
23 that the principal would be looked to to make
24 certain that the teachers stayed on their
25 curriculum for example

1 A That's correct

2 Q That the curriculum was appropriate to the
3 student?

4 A Correct

5 Q That the students were being instructed,
6 correct?

7 A Correct

8 Q That the students were being graded?

9 A Correct

10 Q That there was appropriate advancement in the
11 programs educationally?

12 A We would hope, yes

13 Q Okay And, of course, you probably got some
14 kind of information from the principal that,
15 you know, this year so many people got their
16 GEDs?

17 A Yes, sir

18 Q And that's something that was an important
19 aspect of the program at your school, correct?

20 A Yes, sir

21 Q Okay And many of those GEDs would be folks
22 who had unfortunately not had the opportunity
23 to receive adequate education while they were
24 under the age of 21, is that fair?

25 A Yes, sir

1 Q Now, there are also other parts of the, I
2 guess, environment at a prison Security, for
3 example

4 A Yes, sir

5 Q And you told the panel a little bit about there
6 can be security challenges at any prison

7 A Yes, sir

8 Q And those challenges, as as you've
9 observed, may affect all the aspects of the
10 services being offered within that setting,
11 correct?

12 A Yes, sir

13 Q And I believe you testified there was a little
14 bit of tension between the security side and
15 the educational side from time to time?

16 A There was a little bit of tension with me and
17 the education I don't know that the that
18 was not something that I would have allowed to
19 exist between my security people and my

20 Q But you said that you spoke to those educators

21 A I did

22 Q And you said, folks, we're all a part of the
23 same family?

24 A Yes, sir

25 Q And, by golly, no more problems, correct?

1 A We worked through it

2 Q Worked through it?

3 A Yes, sir

4 Q Okay And you said that you were proud of
5 those people?

6 A Yes, sir

7 Q And they did a good job?

8 A Yes, sir

9 Q Okay And they were a positive influence in
10 the prison, were they not?

11 A Yes, sir

12 Q I'm going to hand you something else from the
13 website for the Palmetto Unified School
14 District and ask if you are generally familiar
15 with with this information, please

16 A Yes, sir

17 Q Okay

18 A Generally, yes, sir

19 Q And does this appear to be what is on the web
20 for the Palmetto Unified School District?

21 A Yes, sir

22 Q And that's a part of the Department of
23 Corrections general website, is it not?

24 A Yes, sir

25 Q You can go to Department of Corrections, click

1 on Palmetto Unified School District and it'll
2 take you to this information, won't it?

3 A Yes, sir It may have been updated or but
4 but, yes, sir This is the kind of
5 information that you would see

6 Q And certainly that's subject to verification,
7 isn't it?

8 A Yes, sir Yes, sir

9 MR NICKLES Mr Summers?

10 MR SUMMERS No objection Again, let the record
11 reflect on this particular copy there appears
12 to be a date in the bottom right corner of
13 every page of November 7, 2008

14 MR NICKLES Which was

15 MR SUMMERS Last week

16 MR NICKLES last week Four, please

17 (Grievant Exhibit Number Four was marked for
18 identification purposes)

19 Q Now, it gives a brief history at the very
20 beginning of this It was began in 1981 You
21 were already a decade into your service with
22 the

23 A No, I wasn't

24 Q How long were you at the Department in 1981?

25 A About four years

1 Q Four years, I'm sorry

2 A Yes, sir

3 Q Well, I meant you started in the 70s

4 A It felt like it, yes, sir

5 Q All right You started in the 70s?

6 A Yes, sir

7 Q That's like when I tell people I've been
8 practicing law I started in the 70s I don't
9 tell them when And it says because PUSD is a
10 sanctioned school district, it is also mandated
11 to comply with the regulations of the South
12 Carolina Department of Education Do you see
13 that?

14 A The last sentence

15 Q Yes

16 A of the paragraph, yes, sir

17 Q And that's accurate, is it not?

18 A Yes, sir

19 Q Okay It says the Division of Education is one
20 of eight areas that comprise the Division of
21 Programs and Service That's your general
22 area, correct?

23 A Yes, sir

24 Q So that statement is correct, right?

25 A Yes, sir

1 Q And I believe you testified earlier than when
2 you talk about the Division of Education, you
3 can pretty much substitute Palmetto Unified
4 School District, and they mean one in the same?

5 A Yes, sir

6 Q And PUSD is a school district It has a
7 governing Board of Trustees, as well as a
8 district superintendent That's accurate as
9 well, isn't it?

10 A They have executory responsibility the more it
11 does

12 Q Right Whatever the law says?

13 A Yes, sir

14 Q Okay And I'm not suggesting to you that this
15 is anything other than what what the law
16 says, the law says

17 A Yes, sir

18 Q We agree on that, right?

19 A Yes, sir

20 Q Okay And then it's got something about the
21 purpose of the district and the three Rs,
22 rigor, relevance and relationship Do you see
23 that?

24 A Yes, sir

25 Q Okay So, does the the school district

1 within the Department of Corrections has its
2 own special mission, does it not?

3 A Yes, sir

4 Q Okay And you have to rely primarily on Dr
5 Reagan and his staff to make sure that mission
6 is ushered forward, don't you?

7 A Yes, sir

8 Q Okay Now, there are nine high schools in the
9 district, aren't there?

10 A Yes, sir

11 Q Now that's a significant reduction from what it
12 was in past years, isn't it?

13 A Yes, sir

14 Q Because Allendale used to have a high school,
15 didn't it?

16 A We did

17 Q Okay And that's no longer the case?

18 A No, sir

19 Q Okay In fact, do you know where those
20 those nine high schools are located? And I'm
21 not trying to trick you

22 A I'd have to think about it

23 Q Well let me hand you something that's a
24 publication of the district and see if you
25 recognize that document generally

- 1 A Not particularly It may be a part of some
2 reports that I get, but I don't know that
3 Q It's actually part of the website
4 A Let's see, it has Columbia International on it
5 So it's a fairly recent document Let me see
6 Palmetto Unified okay Then I can tell
7 from here, yes
8 Q Okay Mr Summers You see it talks about EFA
9 high schools?
10 A Yes, sir
11 Q Okay And you don't profess to be an expert in
12 the field of educational finance, do you?
13 A Oh, no, sir
14 Q But you've used the term EFA in your testimony
15 with Mr Summers, and you know that generally
16 means Education Finance Act?
17 A Yes, sir
18 Q And it generally relates to those students who
19 are age 21 and younger, correct?
20 A 17 through 21, yes, sir
21 Q Okay So in looking at this document that I've
22 handed to you, does it indicate where the
23 academic high schools are located under the
24 Palmetto Unified School District?
25 A It shows that there are nine on here

1 Q Yes, ma'am

2 A One is at Camille Graham for Women One is at
3 Lee, a medium maximum security facility

4 Q Is that accurate?

5 A I

6 Q You believe that to be?

7 A I would believe it to be accurate

8 Q Okay

9 A One at MacDougall I think that is accurate

10 Q All right

11 A Ridgeland is correct Stevenson is correct

12 Q Okay

13 A Trenton, correct

14 Q Okay

15 A Turbeville, correct Tyger River and Wateree
16 are both correct

17 Q Okay And if my fingers are correct, that's
18 nine of them?

19 A That's nine

20 Q Okay, all right So does this document
21 accurately reflect where the nine EFA high
22 schools are located?

23 A Yes, as far as I know

24 Q All right

25 **MR NICKLES** Any objection?

1 MR SUMMERS No objection

2 MR NICKLES Thank you Mark that Number Five,
3 please

4 (Grievant Exhibit Number Five was marked for
5 identification purposes)

6 MR NICKLES Let me see if I have some additional
7 copies of that I'll have to ask you to share,
8 if you would

9 Q All right, we've talked about you were formerly
10 the warden at Allendale, correct?

11 A Yes, sir

12 Q And if you look, please, there is a tabbed
13 small notebook in front of you And let's look
14 at Tab Number 4, please It would be page 188
15 of the record And, Ms Miro, this is a
16 listing of reduction in force competitive areas
17 for the 2003 RIF Do you see that identified?

18 A Yes, sir

19 Q Allendale would have been in area number seven
20 Do you see that?

21 A Yes, sir

22 Q Let me ask first did you participate in any way
23 in the drawing of the competitive areas for
24 this reduction in force?

25 A No, sir

1 Q Did you participate in any way in the
2 designations of individuals to be selected for
3 reduction in force?

4 A No, sir

5 Q Let's look at the the map on the next page
6 where it shows the locations of the competitive
7 areas On this map, I believe your home is
8 between circles, isn't it?

9 A Yes

10 Q Okay, over in Orangeburg County When you
11 worked in, I believe you said Allendale?

12 A Yes, sir

13 Q You went down to what they've got circled there
14 as number seven?

15 A Yes, sir

16 Q And when you work currently in Richland County,
17 you're up there in number one?

18 A Yes, sir

19 Q If you worked in have you worked down in
20 the what the the Berkeley County area
21 also?

22 A Yes, sir, which would have been six

23 Q Down in number six?

24 A Yes, sir

25 Q Have you hop-scotched around any of the other

1 circles on this map in your 30 years of working
2 with the agency?

3 A No, sir, just those

4 Q Those three?

5 A Yes, sir

6 Q Okay Looking at where the high schools are
7 now located, let's just go through this and
8 locate them on the map if we can, okay

9 A All right

10 Q Camille Graham is in number one, isn't it?
11 That's in in the Broad River area?

12 A Yes, sir

13 Q Let's see, Lee would be number two, wouldn't
14 it?

15 A Lee?

16 Q Lee would be in number two Lee, L-E-E

17 A Thirteen would be in number two, yes

18 Q Number two, okay We go over to MacDougall,
19 and that's down in Berkeley County?

20 A That would be six, yes, sir

21 Q Number six, okay We look at Ridgeland, that's
22 down in number eight, isn't it?

23 A Eight, yes, sir

24 Q Stevenson would be in number one, wouldn't it?

25 A Yes, sir

1 Q Trenton would be in number nine?

2 A Is that nine? Yes, sir

3 Q Is that correct?

4 A Yes, sir I just couldn't tell whether it was
5 I couldn't tell what it was, but I think
6 that is a nine

7 Q Okay Turbeville is back in number two, isn't
8 it?

9 A Yes, sir

10 Q Tyger River's up in number eleven up in the
11 upstate?

12 A Yes, sir

13 Q Okay And Watkins is back in number two?

14 A Yes, sir

15 Q Okay

16 A Wateree

17 Q Wateree, excuse me Watkins doesn't have a
18 high school, doesn't it?

19 A No, sir

20 Q It's Wateree

21 A Yes, sir

22 Q Thank you for correcting me So we've got
23 three high schools in number two circle, two
24 high schools in the number one circle, one in
25 number nine, one in number eleven and one in

1 number eight Is that nine of them?

2 A Yes, sir, I think so

3 Q Okay So we don't have any high schools in
4 number three?

5 A There's

6 Q And they don't even draw number three on here,
7 do they?

8 A There's only

9 Q There it is It's up at the top

10 A There's only one facility in that area, and
11 that's Catawba

12 Q Catawba doesn't have a high school, does it?

13 A No, sir

14 Q Okay Number four doesn't have any?

15 A No, sir

16 Q Number five doesn't have any? That's where
17 Kershaw is

18 A No, sir

19 Q Number seven doesn't have any? That's where
20 poor old Allendale is, your

21 A Yes, sir

22 Q your alma mater And number ten doesn't
23 have any?

24 A No, sir

25 Q Okay Now, you had some vocational instruction

1 also that went on in Allendale when you were
2 there, correct?

3 A Yes, sir

4 Q And according to this matrix, at least
5 carpentry and horticulture goes on down there
6 Do you know whether or not that's those are
7 certified people that perform those duties down
8 in Allendale?

9 A The carpentry instructor I knew and was
10 became certified once he came to us

11 Q Okay

12 A And the other was HVAC

13 Q Uh-huh (affirmative response)

14 A And the gentleman who was there when I was
15 there could not be certified after a number of
16 years, and so we could not keep him, but I
17 think they did get a certified person there

18 Q Looking over at at Perry, the line where
19 Perry is on this list

20 A Yes, sir

21 Q Of course there's no high school there now, but
22 they do have some vocational services Do you
23 see that?

24 A Yes, sir

25 Q One of those is carpentry, and it's got PU by

1 carpentry Do you see that? If you scroll
2 down a little bit back at that line there

3 A Yes, sir

4 Q Carpentry at Perry Do you know Mr Cal Bell?

5 A No, sir, I don't

6 Q James C Bell?

7 A No, sir, I don't

8 Q Where it says PU, does that mean to you that
9 the Palmetto Unified School District provides
10 that service?

11 A Yes, sir

12 Q Okay Do you know whether that's listed by the
13 agency as a certified position or a program
14 coordinator position?

15 A I don't I don't know without looking at it

16 Q Okay That's really kind of beneath your
17 radar, is it not?

18 A Well, not beneath my radar, but that's just one
19 I can't quite keep up with

20 Q Okay Did you know Ms McClanahan who used to
21 teach horticulture there in and around the
22 headquarters area?

23 A I know Beverly, yes, sir

24 Q Okay And when she was working for the agency,
25 I believe she taught at Broad River for a

1 while, didn't she?

2 A Yes, sir

3 Q Okay Do you know whether she was listed as a
4 certified horticulture instructor or maybe
5 something else, like a lieutenant or a
6 vocational trainer?

7 A I don't know what she was listed before I came
8 on board I think she took a lieutenant's or
9 was assigned a lieutenant's job or somehow
10 wound up in a lieutenant's position, but I
11 don't know prior to

12 Q But she actually did some instruction in
13 horticulture in that position, didn't she?

14 A I would yes, sir I think so

15 Q Now, in some of these institutions where, like
16 Allendale, the high school program was
17 eliminated, the education division just farmed
18 out some of the instruction to the local school
19 districts, hasn't it?

20 A Yes, sir Some of the school districts were
21 there when we had a school, but yes

22 Q Well, when you were in Allendale those local
23 school districts were ancillary, weren't they?

24 A Yes, sir

25 Q But nowadays they may be fully responsible for

1 the GED instruction, isn't that right?

2 A In some cases, yes, sir

3 Q Okay And that's done through whatever that
4 local school district is Ya'll don't have
5 institutional control over that, do you?

6 A Explain what that means

7 Q Well, I mean they pick the teachers

8 A Yes, sir

9 Q And then they provide like a night school type
10 of instruction

11 A Yes, sir

12 Q Correct?

13 A Yes, sir

14 Q It's not what you had at Allendale?

15 A No, sir

16 Q Okay So it's different, and you don't have
17 your own staff doing that instruction, do you?

18 A We don't have our own staff, that's correct

19 Q Okay When you were talking with Mr Summers,
20 he asked you a question about had you ever
21 heard Mr Ozmint say anything to the effect
22 that say anything negative about the
23 teachers in terms of the lawsuit Do you
24 remember that question?

25 A Yes, sir

1 Q And you said to him, I think I remember
2 correctly, I never personally heard him say
3 that

4 A No, sir I just said I had never heard him say
5 that

6 Q Okay Anybody else indicate to you that they
7 had heard him say that?

8 MR SUMMERS I'm going to object as to

9 MR CORNING Sustained Counsel, you're soliciting
10 hearsay

11 MR NICKLES Okay I just wanted to clarify her
12 testimony That's fine I accept the ruling,
13 okay

14 Q One other thing I'd like to ask you to take a
15 look at if you would, please I've handed you
16 something that is a list of 2008 meeting dates
17 and trustees Do you generally recognize

18 A Yes, sir

19 Q these people?

20 A Yes, sir

21 Q Does this appear to be, at least for 2008, an
22 accurate representation of who the board
23 members are at the Palmetto Unified School
24 District?

25 A Yes, sir, as I remember it

1 Q Okay

2 MR NICKLES Mr Summers, any objection?

3 MR SUMMERS No, as long as I would think it's
4 part of the same packages you've handed up
5 already It's just a different document in
6 that

7 MR NICKLES Number Six, please

8 (Grievant Exhibit Number Six was marked for
9 identification purposes)

10 MR SUMMERS And this is Number Five, correct, sir?

11 MR COOPER It's Six

12 MR SUMMERS Forgive me That's why I'm asking
13 Thank you

14 Q Now, the board meet quarterly, I suppose?

15 A Yes, sir

16 Q There are four meetings?

17 A Yes, sir

18 Q And it has a chair and a vice chair, correct?

19 A Yes, sir

20 Q You know Ms Caroline Williams down in the
21 Barnwell area?

22 A I have met them all I probably would know her
23 if I saw her Some of them I remember very
24 well, and some of them I just don't

25 Q Do you know Ms Williams is a superintendent

1 herself?

2 A Yes, then I know she is, yes, sir

3 Q Superintendent Williams?

4 A Yes, sir

5 Q Some of these folks are appointed by the
6 governor, aren't they?

7 A Yes, sir, four of them

8 Q Some appointed by the Superintendent of
9 Education?

10 A Four appointed by the Director, four by the
11 well, no One by the Director, four by the
12 governor and I think four by the legislature,
13 I think

14 Q Okay

15 A I think that's the way it goes I'd have to
16 look at the law and see I

17 Q I'm not trying to pull anything over on you
18 Let's look at in fact, I'll show you Tab
19 Number 19 in here, and it's page 832 It
20 designates nine members

21 A Yes, sir

22 Q Four shall be appointed, it says, by the
23 Director You see that?

24 A Yes

25 Q Four by the state superintendent of education?

1 A Yes

2 Q And one by the governor?

3 A And one by the governor, correct

4 Q So we've got our numbers straight?

5 A Yes, sir

6 Q And then they have specific terms, and if they
7 do something really, really bad, they will be
8 kicked off the board?

9 A Yes

10 Q Nobody's ever been kicked off the board, have
11 they?

12 A No, sir, not that I can remember

13 Q Okay, all right And you've indicated that
14 they do provide a service to the district,
15 don't they?

16 A Yes, sir

17 Q Okay And you you try to go to meetings if
18 you can?

19 A Yes, sir

20 Q The superintendent is expected to attend all
21 the meetings, is he not?

22 A Yes, sir

23 Q But he's not a member of that board?

24 A No, sir

25 Q Okay And do you is it your experience in

1 your dealings with them that these citizens
2 attempt to carry out whatever it is that's
3 their designated purpose under statute?

4 A Yes, sir

5 Q And they are attentive to the needs of the
6 district, are they not?

7 A Yes, sir, they are

8 Q Okay You indicated that in looking at the
9 retirement incentive that the Department
10 offered, I believe it was in July of 2003, and
11 that's at Tab Number 20 It's page 1106 of the
12 record

13 A Yes, sir

14 Q Some folks did take advantage of that, did they
15 not?

16 A Yes, sir, some did

17 Q Okay Some folks in the Palmetto Unified
18 School District took advantage of it, didn't
19 they?

20 A Yes, sir I think they did

21 Q I believe Superintendent Blanton even did it,
22 didn't he?

23 A I think he did

24 Q Okay So this enabled folks to both receive
25 their retirement, and if the Department was

1 willing, return and make up to \$50,000,
2 correct?

3 A Yes

4 Q And I mean that has some appeal, doesn't it?

5 A If they were eligible There were no
6 guarantees

7 Q Right

8 A But yes, sir If they were eligible, they
9 could come back and and earn, and it it
10 certainly had appeal for for a number of
11 people

12 Q Okay, all right Now, you've talked about, you
13 know, times being tough and and anybody who
14 reads the newspaper can see that we're not
15 swimming in money in South Carolina

16 A Yes, sir

17 Q And that's not unique to the Department of
18 Corrections or the Palmetto Unified School
19 District, is it?

20 A Absolutely not

21 Q But in carrying out your duties as director of
22 these eight divisions, you expect the people
23 who lead those divisions to follow the law,
24 don't you?

25 A I would expect

1 Q Okay And just because times are tough doesn't
2 mean that we can ignore the law, does it?

3 A That's correct

4 Q All right Now, in some circumstances, Ms
5 Miro, do you know whether positions that used
6 to be filled by certified employees to do
7 instruction have been filled by people who are
8 not certified? Do you personally know whether
9 that's the case?

10 A I'm trying to think

11 Q Okay

12 A Probably

13 Q Probably, okay I don't believe I have any
14 other questions for this witness at this time

15 **MR SUMMERS** I have a few follow up with the panel's
16 indulgence, Mr Corning, your indulgence as
17 well

18 **MS MIRO - RE-DIRECT EXAMINATION BY MR SUMMERS**

19 Q Obviously, you've got the documents that Mr
20 Nickles handed to you during his time to
21 question you, don't you, ma'am?

22 A Yes, sir

23 Q Let's start with some basics

24 A Okay

25 Q I believe it's been marked as Grievant's

1 Exhibit Number Four

2 **MR NICKLES** I don't believe yours have any numbers
3 on them, ma'am

4 **MR SUMMERS** Okay Then we'll

5 **MR NICKLES** I'll be happy to mark those for you

6 **MR SUMMERS** That would be for the record

7 A Okay

8 **MR NICKLES** All right, these start at Three This
9 is Three This one is Four

10 **MR COOPER** The chart is Five The trustees is Six

11 **MR NICKLES** Okay There you are

12 A Thank you

13 **MR NICKLES** Sure

14 Q Did you find Number Four, ma'am?

15 A Yes, sir

16 Q Okay Just to make sure we're on the same
17 track, that I'm matched up with you, Grievant's
18 Exhibit Number Four has, I guess in bold type,
19 is history of Palmetto Unified School District
20 Do you see that?

21 A Yes, sir

22 Q Thank you, sir Let the record reflect that
23 Mr Cooper very kindly came over and showed me
24 what constitutes the official Grievant's
25 Exhibit Number Four And let the record also

1 reflect that as these were handed to Ms Miro
2 and admitted before the panel, that they will
3 not appear on the screen So we'll just go off
4 hard copies

5 A All right

6 Q Mr Nickles had you read or refer to the last
7 sentence of the paragraph immediately
8 underneath the bold text which reads history of
9 Palmetto Unified School District Do you
10 recall him talking about PUSD being sanctioned
11 as a school district?

12 A Yes, sir

13 Q Could you read to the panel the sentence
14 the next to last sentence of that paragraph?

15 A Where it starts the district?

16 Q Yes, ma'am

17 A The district constitutes the South Carolina
18 Department of Corrections Division of Education
19 and is governed by its policies and procedures

20 Q And that applies to all personnel under your
21 authority?

22 A Yes, sir

23 Q And again, are there any different policies and
24 procedures governing educators under your
25 authority?

1 A No, sir

2 Q Now, let's turn to Grievant's Exhibit Number
3 Three And for the record, this document has
4 contact information Mr Cooper, I think they
5 can see it from there Yes, sir Thank you
6 very much I'm glad I saved you a two or three
7 step walk And Mr you recall Mr Nickles
8 reviewing this with you?

9 A Yes, sir

10 Q And Grievant's Exhibit Number Three shows
11 contact information for the PUSD, correct?

12 A Yes, sir

13 Q And you talked to Mr Nickles about the
14 headquarters building?

15 A Yes, sir

16 Q Let's go through let's talk about what's
17 not reflected on this contact information Is
18 there a point of contact on Grievant's Exhibit
19 Number Three that deals with a payroll
20 official, a payroll officer for the Palmetto
21 Unified School District?

22 A No, sir

23 Q Is there a contact a point of contact
24 listed for a separate Palmetto Unified School
25 District budget and finance official?

1 A No, sir

2 Q Is there a point of contact referenced for a
3 separate division of human resource director or
4 head or leader for the Palmetto Unified School
5 District?

6 A No, sir

7 Q Why is that?

8 A Because all of those are functions of the
9 agency of the Department of Corrections, and
10 we're all governed by that

11 Q Now yes, ma'am Thank you for answering
12 that question Let's talk about Grievant's
13 Exhibit Number Five That's the matrix

14 A Yes, sir

15 Q I don't think Mr Cooper needs to show that one
16 to me, let the record reflect At the bottom
17 of the page well, let me start with the
18 top, okay You'll do you see the words
19 Palmetto Unified School District?

20 A Yes, sir

21 Q Is there a parenthetical next to it?

22 A SCDC

23 Q And beneath that line, what's the next line
24 read?

25 A Education Programs and Services

1 Q And that's under your authority?

2 A Yes, sir

3 Q Now, at the bottom of the page there's a
4 I'll call it a key Do you see that, ma'am?

5 A Yes, sir

6 Q Or a legend And let's go through that real
7 quick PU means?

8 A The Palmetto Unified School District

9 Q Could that also mean SCDC?

10 A Yes, sir

11 Q So they're interchangeable?

12 A Yes, sir

13 Q LD means?

14 A Any of the local school districts If we have
15 an adult ed program, that's the local school
16 district that will come in and provide that

17 Q Now under questioning from Mr Nickles, he
18 asked you about institutional control over
19 those folks and you hesitated for a moment

20 **MR NICKLES** I'm going to object to leading the
21 witness now

22 **MR SUMMERS** It is re-direct, but I will rephrase
23 the question

24 Q What type of control does the Department of
25 Corrections have over educators from local

1 school districts who come into an institution
2 to teach?

3 A They have to follow the same guidelines
4 They're responsible for the same kind of
5 security measures that every other employee is
6 responsible for And if there are problems or
7 issues with them, we didn't hire them, so we
8 can't terminate them, but we certainly can not
9 allow them to come into our facilities

10 Q Do you evaluate them?

11 A We are able to provide some feedback to the
12 local school districts and tell them whether or
13 not we think they were appropriate for our
14 environment

15 Q But they're not part of the family?

16 A Oh, no I mean I and I don't want to
17 I don't want to say that we do not appreciate
18 their presence and that they don't provide a
19 valuable service, but they are not our
20 employees, no, sir

21 Q And I understood the distinction I'm sure the
22 panel did, too Thank you, ma'am Next line
23 says MTC

24 A Midlands Technical College

25 Q And I'll go without asking a question for each

1 one

2 A Okay

3 Q FDT?

4 A Florence Darlington Tech

5 Q PTC?

6 A Piedmont Technical College

7 Q GTC?

8 A Greenville Technical College

9 Q And then over in the next column, CIU?

10 A Columbia International University

11 Q CTC?

12 A Central Carolina Technical College

13 Q Okay Now, describe for the panel your

14 understanding of how personnel from those

15 entities come on to the institution, or the

16 agreement that the Department of Corrections

17 has with those entities

18 A We contract with these schools, well, with

19 with all of them except CIU We contract with

20 them to provide us services Piedmont

21 Technical College and Greenville Technical

22 College will come in and provide a service

23 Like they will teach forklift operations to

24 inmates That was one of the things that we

25 brought in after we lost some of our vocational

1 programming from when we had the RIF So we've
2 tried to augment it with as many things as we
3 could from technical schools and the local
4 school districts to help us to provide the
5 services But that's the kind of thing that we
6 get from them

7 Q And, if you could, there's a line above the key
8 that says junior achievement Do you see that?
9 It's the next line on the actual matrix The
10 last

11 A Yes, yes

12 Q What is junior achievement?

13 A It's an initiative from the Department of
14 Corrections pretty much like it's it's
15 just one of the the the smaller
16 programs Sometimes we'll get a little bit of
17 grant money for something, and we'll have a
18 program We have a a little program that
19 helps inmates to read to their children We
20 provide them with tape recorders They read a
21 book, and that child is then able to take that
22 book home or that recording home and hear the
23 mother's voice It's just one of those
24 those programs that we have

25 Q Now, let's go ahead and go to Grievant's Number

1 Six You see that one, ma'am?

2 A Yes, sir

3 Q And just for the sake of the record, Grievant's
4 Number Six provides a listing of district
5 Palmetto Unified School District Board of
6 Trustees meeting dates Do you see that?

7 A Yes, sir

8 Q And that's for the current calendar year?

9 A Yes, sir

10 Q And then below that there's a block of
11 information about Palmetto Unified School
12 District Board of Trustee members Do you see
13 that?

14 A Yes, sir

15 Q Now, if you could, there's a bound volume I
16 think you've worked with it before Leave
17 Grievant's Number Six in front of you Right
18 in the middle of the table Yes, ma'am, you
19 just put your hand on it

20 A All right

21 Q And if you could, go to, forgive me, Tab 2

22 A All right

23 Q And go two or three pages in three pages in
24 to page 1243

25 A Yes, sir

1 Q Let's, if you could, ma'am, read for the panel
2 the second paragraph

3 A Okay The SCDC contends that administrative
4 policy allows the agency director or designee
5 to take RIF actions without the involvement of
6 the district's board This position is
7 contrary to state law that delegates to the
8 board primary responsibility for the
9 administrative functions of the district,
10 including maintenance of a twelve month
11 educational program These same statutes
12 assign the agency director the limited role of
13 consent and concurrence

14 Q Okay, ma'am And if you could, in the same
15 volume thank you for reading that Let's
16 go ahead to Tab 19

17 A Yes, sir

18 Q And if you could, in that tab go to page
19 you'll see the first page designation at the
20 top right corner is 828

21 A Yes, sir

22 Q Go to page 835

23 A Yes, sir

24 Q And do you see a statutory designation?

25 A Yes, sir

- 1 Q Would you read please read it for the
2 panel?
- 3 A It's 24-25-70 and it's powers and duties of
4 school board
- 5 Q Okay Would you please read the first
6 sentence?
- 7 A With the consent and concurrence of the
8 Director of the Department of Corrections, the
9 board of the school district shall operate as
10 executory agent for the schools under its
11 jurisdiction and shall perform administrative
12 functions as follows
- 13 Q Yes, ma'am Thank you for reading that Now,
14 let's talk about the role of the board
- 15 A Yes, sir
- 16 Q and the functions of the board, okay, as
17 identified in Grievant's Exhibit Number Six
- 18 A Yes, sir
- 19 Q Okay Does the board hire anybody?
- 20 A No, sir
- 21 Q It doesn't hire the superintendent?
- 22 A No, sir
- 23 Q Does the board hire any of the points of
24 contact listed in Grievant's Exhibit Number
25 Three?

1 A No, sir

2 Q That'd be the one

3 A No, sir They don't hire anybody

4 Q Is the board responsible for the day to day
5 operation of educational programs and services
6 within the Department of Corrections?

7 A No, sir

8 Q As you understand it, what does the board do?

9 A As I understand it, the board is to help us set
10 goals and help us to articulate the mission of
11 the school district and to serve as an advocate
12 and then advisor to the board to the school
13 district And when they can, they will also
14 try to serve as advisors and try to help us to
15 with any kind of legislation that's pending
16 that might impact on on the the school,
17 school district

18 Q Well let's read there's a I'm sorry,
19 number two in parenthesis

20 A Yes, sir

21 Q Okay And it talks the preceding sentence
22 that you've already read talks about
23 administrative functions One of those
24 administrative functions appears at number two
25 Do you see that?

1 A Yes, sir

2 Q Please read that one

3 A Enter into agreements and contracts with other
4 school districts, technical schools, colleges
5 and universities

6 Q And let's go back to Grievant's Number Five,
7 that's the matrix

8 A Yes, sir

9 Q Is that what

10 **MR NICKLES** I object to the form

11 **MR SUMMERS** I'm sorry, I'll try to rephrase it

12 Q Ma'am, if you could, refer to the legend at the
13 bottom

14 A Yes, sir

15 Q Are those universities, colleges, technical
16 schools and other school districts referenced
17 at the bottom there in the legend on Grievant's
18 Exhibit Number Five?

19 A Yes That would be the technical schools, yes

20 Q Now, let's go back up to that first sentence
21 And I know you've already read it, but or
22 you may not have read it But let's read the
23 first section before the comma

24 A With the consent and concurrence of the
25 Director of the Department of Corrections

1 Q Yes, ma'am So if the Director did not consent
2 to an agreement or contract, for example, with
3 Midlands Technical College, would Midlands
4 Technical College be able to come onto any of
5 the institutions and perform any kind of
6 teaching program?

7 A No, sir He's the last person to sign any of
8 our contracts

9 Q And the same would apply to all those entities
10 listed at the bottom

11 A That is correct

12 Q that are outside the scope of the
13 Department of Corrections?

14 A Yes, sir He has to sign the contract that
15 agrees to allow us to do that

16 Q Now, do ya'll have a General Counsel's Office?

17 A Yes, sir

18 Q Do you interact with General Counsel's Office?

19 A Yes, sir

20 Q Tell the panel why you do so

21 A Because they provide us with guidance, and they
22 let us know what is what is legal for us to
23 do in terms of entering into contracts and
24 agreements They assist us with making any
25 kind of legal decision that would affect my

1 division I I have a lot of things that
2 deal with the law, and so they let me know
3 whether a contract is valid, whether I can
4 enter into an agreement with someone, what the
5 wording should be to protect the agency, what
6 is in the best interest of the agency, whether
7 or not we're going to get the best bang for our
8 buck or whether the people can actually provide
9 the service, legally provide the service that
10 they're offering to us So I I I'm in
11 constant contact with them

12 Q Now, ma'am, let's go back to page 835

13 A All right

14 Q And I talked to you about the item that's
15 designated by the two with the parenthesis Do
16 you recall talking about that line?

17 A Yes

18 Q Let's talk about the line designated by the
19 number four in the parenthesis

20 A All right

21 Q Could you read that for us, please?

22 A Establish vocational and trade courses as
23 appropriate for preparation for employment

24 Q And again, ma'am, going back up to the top part
25 of this paragraph or section, it says with the

1 consent and concurrence of Department of
2 Corrections, is that correct?

3 A Yes

4 Q So if the Director determined a need or
5 determined that such vocational and trade
6 courses as appropriate for preparation for
7 employment are not in the best interest of the
8 Department of Corrections, he's the final say,
9 correct?

10 MR NICKLES I'm going to object to the form
11 Please don't lead your own witness

12 MR SUMMERS I'll rephrase

13 Q Reading the part that you read before the comma
14

15 A Yes, sir

16 Q What type of authority does the Department have
17 I'm sorry, the Director of the Division of
18 Corrections have over the activity enumerated
19 in number four?

20 A He has the power to determine whether or not
21 vocational and trade courses are appropriate or
22 inappropriate for our our agency and
23 whether or not they will be allowed to exist

24 Q Does that authority extend to all of the eight
25 items enumerated there in that section?

1 A Yes

2 Q And, ma'am, let's go to page 838

3 A Yes, sir

4 Q And is that another statute?

5 A Yes, sir

6 Q Could you read the statutory numerical
7 designation and the title?

8 A It's 24-25-90, superintendent and other
9 personnel to be employed according to
10 Department of Corrections policies

11 Q And could you read that into the record,
12 please, the actual sentence?

13 A The superintendent of the district and all
14 other educational personnel shall be employed,
15 supervised and terminated according to the
16 South Carolina Department of Corrections
17 personnel policies and procedures

18 Q And under whose supervision does the
19 superintendent and all other educational
20 personnel of the Palmetto Unified School
21 District fall under?

22 A The Director of the South Carolina Department
23 of Corrections

24 Q Ma'am, I have no further questions Mr
25 Nickles may have some, of course the panel may

1 have some

2 **MR NICKLES** Do I get a re-cross?

3 **MR CORNING** I don't think so, counsel

4 **MR MCCLARY** Any questions?

5 **MS KUDELKA** I have a question, and I want to see if
6 you can help me understand this Ms Miro,
7 this was discussed a little bit earlier, but
8 there was also testimony early on that some of
9 the positions that were some of the
10 employees whose, I guess, jobs were eliminated
11 as a part of the reduction in force, at least
12 a couple have been hired back in other
13 positions following the RIF They've been
14 hired back One of those that was mentioned
15 this morning was Mr Cal Bell, I believe, is
16 his name My question is when those employees
17 have come back, they contend that the jobs that
18 they are doing now are the exact same job that
19 they were doing before but under a different
20 job title So my question is if they come back
21 under a different job title and they are still
22 teaching, are they required to be certified?

23 A I can only hazard a guess

24 **MS KUDELKA** Okay

25 A And the guess would be no, but I I can't

1 say that for sure

2 **MS KUDELKA** Okay Well let me ask you this If
3 they came back and it wasn't a requirement of
4 the job but they are certified, would they be
5 required, do you know, to be paid according
6 as if they were a certified teacher, if you in
7 fact hire a certified teacher, whether that
8 requirement is there or not?

9 A We didn't do that for anybody else that we let
10 go and brought back doing similar work that had
11 been certified or qualified in their area and
12 then came back We did not require
13 certification again, and we did not we paid
14 them the starting salary that we paid them,
15 which was probably significantly lower than
16 when they originally were there

17 **MS KUDELKA** Okay

18 A And I can think of a couple of instances where
19 that happened So I would say no

20 **MS KUDELKA** Okay So then they didn't have to be
21 Their job requirement was not that they had to
22 be certified But if you in fact hire them and
23 they are certified, does that make a difference
24 in how they have to be paid, do you know?

25 A I don't know

1 MS KUDELKA Okay, thank you

2 MS ELMORE What's what's the position of the
3 agency on utilizing teachers who aren't
4 certified to teach?

5 A There are some schools that we can do it, that
6 we can can hire a teacher who is who
7 has a degree but is not specifically certified
8 in their area But for the EFA students, for
9 those students who are 17 through 21, of course
10 those teachers have to be certified, and they
11 have to be certified in the area We would
12 like to get the best employees we can If we
13 can find a teacher who is certified in area who
14 will come to work for us for what we can pay in
15 a school that does not EFA students, we would
16 jump at the chance If we find a teacher who
17 is certified in an area other than their area
18 of certification and they're willing to come to
19 work for us in a non EFA school, then of course
20 we we welcome them as well We just do the
21 we do the best we can

22 MS ELMORE And if you have a vocational teacher
23 position, you need a vocational teacher, but
24 you hire them under some other title other than
25 a teacher but utilize them as such, what would

1 be the benefit in that or lack or maybe no
2 benefit?

3 A We try to fill in the plugs where we can We
4 we had folk who were hired for other areas
5 or for other divisions who were not
6 necessarily If I can give you a for instance,
7 we eliminated the entire division of substance
8 abuse That was one of my my divisions or
9 would have been one of my divisions And there
10 were about thirty people who were in that
11 division They were eliminated The entire
12 place was division was eliminated We kept
13 one lady because we had some grant funds So
14 somebody had to administer, so we kept one
15 person She generally or essentially was a
16 classification person She was not a substance
17 abuse person, but she happened to have the
18 degree, and she happened to have the bumping
19 rights to get into that So that's who we
20 wound up having And so what you try to do is
21 you try to help them to learn the skills They
22 don't necessarily have them all the time, but
23 you try to help them to learn the skills
24 We've got officers who are doing some
25 vocational stuff for us We try to help them

1 to learn those skills to help the inmates, and
2 that's what we've done probably for the last
3 three or four years

4 **MR MCCLARY** Herb?

5 **MR COOPER** I'm not sure I understood your answer to
6 that question

7 A Probably not, but I'll try it again

8 **MR COOPER** Well I probably wasn't listening as
9 close as I should have What what is your
10 rules on certification? When do teachers have
11 to be certified, and when do they don't have to
12 be certified?

13 A The ones who teach in the EFA schools well,
14 all of them have to have some have to have
15 a teaching credential, but they some of
16 them work off certificate or work out of their
17 area We may have a teacher who is an
18 elementary education teacher and she will teach
19 in one of our schools If it's not the EFA
20 at that time if was not an EFA school, we could
21 keep that teacher If it's an EFA school, that
22 teacher then has to be certified in language
23 arts or whatever the those requirements are
24 for our school district It's there was a
25 time in the public schools that you could teach

1 off a certificate for a long time, just any
2 any number of years

3 **MR COOPER** But you said earlier, you testified that
4 that you knew of some people not certified
5 right now who are teachers

6 A Oh, I didn't mean that If I said that, I did
7 not mean that I know that there are some who
8 are not certified in their area who are
9 teaching that are not in their certification
10 area

11 **MR COOPER** So your procedures and policies right
12 now are such that you're not violating the
13 laws?

14 A No, sir We have not been cited for anything
15 at this point by any of the audits that we've
16 had So, to my knowledge, they've been very
17 careful not to not to have the wrong ratio,
18 an overage or an underage in any of those
19 areas

20 **MR COOPER** Thank you

21 **MR CORNING** I have one question that I wanted to
22 ask There was some talk earlier about
23 transfers, some prior testimony that there were
24 a number of prisoners moved around about this
25 time Do you know anything about that?

1 A Yes, sir I know there were some inmates moved
2 because we were trying to get more inmates into
3 those schools where they had where they had
4 would have access to EFA schools Little
5 pockets of inmates were in some facilities that
6 hadn't because everybody had a school

7 MR CORNING So you're talking about under 21?

8 A Yes, sir

9 MR CORNING The under 21s were moved, some of them?

10 A Probably, some of them were If an inmate
11 and this was before my time So a lot of that
12 took took place before I actually assumed
13 responsibility because they knew they were
14 going to lose these teachers So a lot of the
15 moves took place before I came on board in
16 April But I would imagine that for those
17 inmates who were very close to getting a GED or
18 who had the opportunity, they thought, to get
19 a GED, they probably would have moved them if
20 they knew they were going to close the school
21 That's just an assumption

22 MR MCCLARY Have you ever had the the
23 misfortunes I heard you say that if you
24 brought in someone from the local school
25 district, you couldn't fire them because they

1 weren't your employees

2 A Yes, sir

3 **MR MCCLARY** Have you ever had the misfortune of
4 terminating someone from the Palmetto Unified
5 Palmetto Unified School District?

6 A Yes, sir

7 **MR MCCLARY** You have?

8 A Yes, sir

9 **MR MCCLARY** Okay, thank you, ma'am Anymore
10 questions? We'd ask that she be excused

11 **MR NICKLES** No objection

12 **MR SUMMERS** That would be our wish as well

13 **MR MCCLARY** Thank you, ma'am

14 A Thank you

15 **COMMITTEE MEMBER** for a few minutes to receive
16 legal counsel?

17 **MR SUMMERS** Yes, ma'am, subject to the remainder of
18 the

19 **MR MCCLARY** I second

20 **MR CORNING** This doesn't start the five minutes
21 running Our five minutes will start after
22 Counsel needs five minutes

23 **MR SUMMERS** As does this counsel

24 **MR NICKLES** Lake, you've got one other witness?

25 **MR SUMMERS** That's correct

1 MR NICKLES Is that excuse me, is that your
2 only other witness today?

3 MR SUMMERS For this morning Then it'll be the
4 Director this afternoon, too

5 MR NICKLES Okay

6 MR CORNING Counsel, do you anticipate any as
7 long as we're talking about witnesses, any
8 witnesses after the Director?

9 MR SUMMERS No, sir

10 MR CORNING Well, the one witness which is

11 MR SUMMERS Two of the grievants

12 MR NICKLES Two witnesses Our grievant, as I said
13 earlier this morning, is currently trying to
14 get here

15 MR CORNING Yeah I mean but after, except for
16 your

17 MR NICKLES And then we have a deposition de bene
18 esse

19 MR CORNING Well I understand that I mean

20 MR SUMMERS Just as far as today?

21 MR CORNING live live witnesses

22 MR NICKLES Right

23 MR SUMMERS The Director, we hope, would conclude
24 our presentation to the panel, obviously
25 subject to the activity that Mr Nickles

1 indicated

2 **MR MCCLARY** All right All in favor of receiving

3 counsel legal counsel?

4 **MS ELMORE** Aye

5 **MS KUDELKA** Aye

6 **MR COOPER** Aye

7 **MR MCCLARY** Opposed?

8 **MR SUMMERS** We will then leave the room

9 (Off the record)

10 **MR MCCLARY** Mr Nickles, would you like to wait for

11 Ms Guffey to get here?

12 **MR NICKLES** No, we can proceed

13 **MR MCCLARY** Okay Mr Summers, we're ready when

14 you are ready

15 **MR SUMMERS** Very well, sir

16 **MS THRAILKILL - DIRECT EXAMINATION BY MR SUMMERS**

17 Q Obviously, let the record reflect that Pat

18 Thrailkill has taken the stand And you've

19 already been sworn, obviously I've said your

20 name You've already provided your name to Mr

21 Cooper and members of the panel Would you

22 please introduce yourself to the panel?

23 A My name is Patricia S Thrailkill I'm

24 currently the Assistant Director for the

25 Division of Human Resources, South Carolina

1 Department of Corrections I have a high
2 school diploma I began my career with state
3 government in 1968 I believe that's right,
4 '68 or '69, with the South Carolina Department
5 of Mental Health I served in the registrar's
6 office there for about seven and a half years
7 and then transferred to the South Carolina
8 Department of Corrections I've served in
9 various capacities there as an accounting
10 technician, administrative assistant to the HR
11 director, branch chief for classification and
12 compensation, branch chief for the payroll and
13 benefits area Currently, as I said, I'm the
14 Assistant Director for the Division of Human
15 Resources And I am responsible for the
16 supervision of our recruiting and employment
17 services branch, our classification and
18 compensation branch, our payroll branch and our
19 attendance and benefits branch

20 Q And let the record reflect that Ms Thraillkill
21 has been here every day of the proceeding I
22 think that would lead to why she was able to
23 provide all that information up front without
24 too much prompting at all Thank you, ma'am
25 I don't know if I got this in your explanation,

1 but when did you start at the Department of
2 Corrections?

3 A I don't think I said That was in 1976

4 Q Now, are you on are you a retiree who's
5 come back to work?

6 A I am currently retired That is correct

7 Q For the sake of the record and for the panel,
8 how did that work in your particular instance,
9 what happened?

10 A I retired in 2003 based on a program that was
11 being offered by the Department of Corrections
12 which is called the retirement opportunity In
13 an effort to conserve more dollars and cents
14 for the agency because of a budget situation,
15 the Director offered for employees if they
16 retired within a specific period of time, he
17 would hire us back into a temporary position at
18 75 percent of our income And that program was
19 offered in three fiscal years

20 Q Well, ma'am, that's ultimately part and parcel
21 of why I've submitted you to the panel for
22 testimony today Could you turn on the bound
23 volume that Mr Nickles prepared? It's the
24 very last tab I believe that's Tab 20 And I
25 believe there's only one document at Tab 20

1 And for the record, it's page 1106 I take it
2 you found it, ma'am

3 A I did

4 Q And again, as you know from your experience
5 here in the proceedings, the image is also
6 available on the screen at the front of the
7 room

8 A Okay

9 Q This is a memorandum, is it not?

10 A It is

11 Q Okay What's the date on this, ma'am?

12 A July 16, 2003

13 Q Okay And what's the subject?

14 A Retirement opportunity

15 Q Okay Now, we've heard the term retirement
16 incentive, and we've heard the term retirement
17 opportunity You've heard those two terms?

18 A Yes, I have

19 Q Okay Let's first talk about the retirement
20 incentive What was or is a retirement
21 incentive?

22 A A retirement incentive is a program that has to
23 be developed and sent to the State Office of
24 Human Resources for review and approval The
25 South Carolina Department of Corrections did

offer retirement incentive in 2001, and that's where the agency would purchase years for employees if they would retire from the agency And it was for a specific period of time

Q Okay Now, ma'am, in that same tab that you have, or same notebook that you have we'll go back to the very last tab in just a moment If you could, go back to the I believe it's I'll double check for you It's Tab 2 And if you could, go to the very last page of that tab And that's designated by the record number 1245 Did you find that, ma'am?

A I did

Q Okay And Mr Cooper has that up on the screen And if you could, read the first sentence first sentence of the third paragraph on page 1245

A Retaliation is further evident in retirement incentive extended by the director by Director Ozmint on July 16, 2003, immediately after the RIF, OHR record, page 1106

Q Right And so if you go to Tab 20 again, and I'm sorry to bounce you back and forth What's the numerical designation in the top right corner?

1 A 1106, page 1106

2 Q Okay So the memorandum dated July 16, 2003,
3 says retirement opportunity, correct?

4 A That's correct

5 Q Is that different than a retirement incentive?

6 A Totally different because the agency offered
7 the retirement opportunity It does require
8 approval by OHR where you consult them on
9 offering that program but does not require
10 their approval

11 Q So there is the retirement incentive was in
12 2001?

13 A That's correct

14 Q Was there any retirement incentive in 2002?

15 A No

16 Q Was there any retirement incentive in 2003?

17 A No

18 Q The date on this memorandum at page 1106, July
19 16, 2003, when does the Department of
20 Corrections fiscal year run, from what calendar
21 day to what calendar day?

22 A State fiscal year runs from July 1st through
23 June 30th of each year

24 Q So the date on this memorandum was July 1,
25 2003, correct?

1 A The date's July 16th

2 Q July 16th, forgive me, I'm sorry You're
3 correct Was this a different fiscal year than
4 the reduction in force that went into effect on
5 July I'm sorry, June 1, 2003?

6 A That is correct The reduction in force was
7 effective June 1st of '03 The offering of the
8 retirement opportunity, as you indicated,
9 second paragraph, employees who retire between
10 August 1st through October 1, 2003, will be
11 allowed to return to work That would be a
12 different fiscal year That would be fiscal
13 year 03-04

14 Q And on page 1106, if you go further down, and
15 Mr Cooper can help me out a little bit Right
16 there, sir, that's fine There's some phrasing
17 that says, and I'll read it for you, re-
18 employment as a temporary employee after
19 retirement includes, and there are three bullet
20 points, correct?

21 A Yes, sir

22 Q Are you a temporary employee?

23 A Yes, I am

24 Q Describe for the panel how that works

25 A As a temporary employee, I'm paid by the hour,

1 the hours that I work I'm not paid for any
2 holidays I do not have any benefits When I
3 say benefits, that's health, dental, life
4 insurance as a temporary employee I do not
5 get any leave time as far as annual leave and
6 sick leave I do not get to observe holidays
7 and get paid for them

8 Q Now, ma'am, let's you're going to have to
9 go to the bigger notebook because we're looking
10 for page 1110 If you can find the volume that
11 has page 1110, and Mr Cooper has found it and
12 has placed it on the screen

13 A I have that

14 Q Yes, ma'am Have you seen this document
15 before?

16 A I have

17 Q It's addressed to who?

18 A Addressed to wardens and division directors
19 with carbon copies to members of executive
20 staff

21 Q And it's from?

22 A John A Near, Director, Division of Human
23 Resources

24 Q And the subject of the memo?

25 A Retirement opportunity

1 Q And the date of the memo?

2 A July 18, 2003

3 Q Okay And if you could, go down to the second
4 paragraph

5 A Okay

6 Q And read the first sentence of the second
7 paragraph

8 A By copy of this memorandum, we are providing
9 the human resource manager liaison at each work
10 location this information to be distributed to
11 employees who are projected to be eligible to
12 retire August 1, 2003, through August 1
13 excuse me, October 1st of 2003 The
14 distribution is based on information received
15 from the S C Retirement System on employees
16 who may meet eligibility requirements for
17 retirement The human resources manager
18 liaison should distribute this information
19 immediately For your information we have
20 attached a list of the employees at your
21 location who should be receiving this
22 information Employees are currently
23 employees who are currently on leave without
24 pay are denoted with asterisk by their name
25 Information should be mailed to these employees

1 certified return receipt

2 Q Now, ma'am, it talks about human and thank
3 you for reading the whole paragraph You got
4 ahead of me but that's that's perfect

5 A Sorry

6 Q It's quite all right It says human resource
7 manager liaison

8 A Yes, sir

9 Q What did that term mean?

10 A We have human resource managers at most of our
11 large institutions throughout the stated
12 institutions They're there to assist
13 employees with any issues relating to personnel
14 issues, assist our office when it comes to
15 annual enrollment, open enrollment The
16 liaisons are normally in a smaller institution
17 or in a division, and they do the same for us
18 But the human resource manager has greater
19 responsibilities

20 Q And were those folks Department of Corrections
21 human resources personnel?

22 A Absolutely

23 Q That didn't involve OHR personnel coming down?

24 A No, it did not Our human resource manager's
25 institutions actually prepared paper work for

1 submission to the central office human
2 resources for terminations, for any actions
3 affecting the employee's payroll check They
4 pre-processed new hires of coming into the
5 agency as new hires also

6 Q Now, ma'am, if you could, in that same volume
7 that you have, could you go ahead to page 1112,
8 just a few pages up And, ma'am, do you
9 recognize this?

10 A I do

11 Q Please tell the panel what appears at page 1112
12 of the record

13 A It is a system message that I prepared and sent
14 to employees throughout the agency about the
15 retirement opportunity being offered August 1st
16 through October 1st of 2003 The documents
17 were created on August 20th of '03 with a
18 projected delete date of 9/16 and the year is
19 cut off

20 Q Now, that does not look like a memorandum
21 format that we've seen before

22 A No, it's not

23 Q Is that an electronic message?

24 A We have a mainframe system at the Department of
25 Corrections where we're able to go in and do

1 messages statewide individually to employees

2 Q And if you can go to page 1120, and let the
3 record reflect that Mr Cooper has found that
4 page Ma'am, do you see that page?

5 A I do

6 Q Okay Tell the panel what that is

7 A That message again is a statewide message
8 reminding employees of the deadline is is
9 coming near for participation in the retirement
10 opportunity for fiscal year 03-04

11 Q And again, what was there's a delete date?

12 A There's a created date of 9/11/03, and there's
13 a delete date of 9/16 And I would assume it's
14 '03 It's cut off

15 Q And the delete date means what?

16 A The message will go away in the system

17 Q And, ma'am, let me go back one pay

18 A And let me clarify the delete date

19 Q Please do

20 A If an individual has not received a message, it
21 doesn't go away So they have to be able to
22 receive the message and then it would go away
23 at that point

24 Q So that is that a mechanism or a process
25 internal within the message system or is it

1 A It's a programming

2 Q Now, go back to page 1118 I know we're going
3 backwards in the record numerically And do
4 you recognize this document, ma'am?

5 A I do

6 Q Okay Again, the subject is what?

7 A Retirement opportunity

8 Q And it's from who?

9 A Jon Ozmint, Director

10 Q And it's to?

11 A All employees eligible for retirement

12 Q And what's the date on this one?

13 A March 25, 2004

14 Q Is that a different, separate retirement
15 opportunity for a different year?

16 A It's the same type of opportunity but offered
17 in a different fiscal year

18 Q So it's separate and distinct from the one that
19 was dated July 16, 2003?

20 A Yes, it is

21 Q Has the Department of Corrections offered the
22 retirement opportunity since March 25th of
23 2004?

24 A We also offered it in fiscal year 04-05

25 Q And what about any anything since?

1 A No

2 Q Well, ma'am, thank you for answering those
3 questions for me

4 A Okay

5 Q At this point what I want to do is let's go
6 into the bound volume that Mr Nickles
7 provided Ma'am, if you can turn to Tab 9
8 And let the record reflect that's page 780
9 Have you found it, ma'am?

10 A I have

11 Q Okay Now, there's been discussion before
12 about I guess we'll call it the labels on
13 this particular spreadsheet Far left hand
14 column it says effective date Do you see
15 that, ma'am?

16 A I do

17 Q Okay And there's been discussion about a few
18 folks on this list already Let me go through
19 and find if you'd flip to page 782, do you
20 see that, ma'am?

21 A I do

22 Q Okay Down towards the middle of the page
23 you'll see the name last name is Jones

24 A Eva W Jones?

25 Q Yes, okay She's listed twice, correct?

)

1 A She is

2 Q Okay And there's a job classification code,

3 correct?

4 A 9999

5 Q Okay State title column?

6 A Unclassified

7 Q Internal title?

8 A Classroom teacher

9 Q There's a band column?

10 A There's the zeros

11 Q Okay There's a level column?

12 A Yes, sir There's nothing there

13 Q Okay And then there's a location?

14 A Lee Correctional Institution

15 Q So let's talk about Ms Jones Let's go with

16 the one on the bottom with the date it says

17 effective date 7/29/03

18 A Okay

19 Q Okay What does that date mean in relation to

20 Ms Jones and this job classification with this

21 title and internal title?

22 A It's it's difficult for me to know what the

23 effective date means I mean the top of the

24 spreadsheet says response to question number

25 five, FTE/temp/temp grant employees Without

1 knowing what the question is, I don't know if
2 the effective date means a hire date or a
3 position move date I can speculate and say if
4 it's a hire date of July 29, 2003, Ms Jones
5 was hired for a temporary position 9999
6 indicates unclassified temporary And her
7 internal title at the agency was classroom
8 teacher There is no band and level associated
9 with a temp employee And she worked at Lee
10 Correctional Institution

11 Q And when you say band and level, some of the
12 panel members may already know this But for
13 the record, if nothing else, what does that
14 mean?

15 A In statement government, there's a number of
16 ways that employees can be paid We used to be
17 an old pay grade schedule of 50 We changed to
18 a band schedule, and we now have ten bands
19 Agencies were able to identify levels within
20 those bands And the band and level schedule
21 is used for classified FTE positions in state
22 government

23 Q What does FTE mean?

24 A Full time equivalency

25 Q Okay

1 A Of course, we're appropriate those FTEs through
2 the budget and control process Each position
3 that is classified permanent is considered an
4 FTE It has funding associated with it It
5 can be paid from state funds one hundred
6 percent It can be paid from state funds fifty
7 percent, federal funds fifty percent, or it
8 could be paid a combination of state, federal
9 or other dollars

10 Q Okay, ma'am

11 A And with saying that, I have to also say that
12 we have to insure that we balance those FTEs
13 with the Budget & Control Board on a daily
14 basis We cannot go over We cannot go under,
15 which can make it kind of difficult sometimes
16 for various areas areas in the agency If
17 if they want to try to fund a position that
18 is other funded, if they don't have a other
19 funded position, then there's no way to do it

20 Q So that balancing process you just described,
21 it's a daily activity?

22 A Well, it's quite serious for the Department of
23 Corrections We make sure that we balance by
24 state, federal and other dollars We check
25 every day because of being so large If we get

1 out of balance, we've got to be able to find
2 where we're out of balance and go back and get
3 in balance

4 Q It sounds like a complicated process

5 A It can be

6 Q Ma'am, if you could, go back to page 781 This
7 is still in Tab 9 of the materials that Mr
8 Nickles has assembled And go down towards the
9 bottom of the page And you'll see two entries
10 for Green, L S Do you see Green?

11 A I do

12 Q Okay You've got the column labeled effective
13 date We'll go with the bottom first There's
14 June 2nd '03, correct?

15 A It does

16 Q Then the name Green, L S appears there,
17 correct?

18 A That's correct

19 Q The next column is the job classification
20 column What does that read, ma'am?

21 A UB02

22 Q What does that mean?

23 A That is an unclassified education position, but
24 it's an FTE There is a full time equivalency

25 Q And if you can, describe for the panel

1 obviously, when you said it's a unclassified
2 position, but then you mentioned the FTE How
3 does that dynamic work?

4 A This position is an unclassified position, and
5 it's under our Unified School District within
6 the Department of Corrections We would pay
7 those individuals based on the education pay
8 scale, not by a band scale or a classified
9 position

10 Q Okay And then the far right column I'm
11 sorry, I skipped one There's a band column
12 again

13 A With L S Green?

14 Q Yes

15 A There is no band associated with it

16 Q Okay And then the next column I'm sorry,
17 the very last column is the location column

18 A That is correct, Camille Graham

19 Q Now let's go up one entry

20 A Okay

21 Q And the column that's labeled effective date
22 reads July 2, 2003 Do you see that, ma'am?

23 A I do

24 Q Okay And again, the name Green, L S appears,
25 correct?

1 A That's correct

2 Q And we'll go job classification column
3 reads what for that entry?

4 A UB02

5 Q State title column?

6 A Certified teacher

7 Q Internal title column?

8 A Classroom teacher

9 Q And let's go ahead and skip over to location
10 column

11 A Manning Correctional Institution

12 Q Okay So those changed?

13 A They did

14 Q Okay

15 A What do you mean

16 Q The location changed?

17 A That is correct

18 Q Okay

19 A That would appear to be a position movement

20 Q A position movement?

21 A Yes, sir

22 Q And what when you use the term position
23 movement, what does that mean in your line of
24 work?

25 A Meaning he vacated a certified position at

1 Camille Graham and moved into a certified
2 teacher position at Manning

3 Q Thank you for that explanation, ma'am What I
4 want to do now is turn you over to Mr Nickles
5 to see if he has any questions for you I'm
6 sure he does And then, of course, as you've
7 seen, it may come back to me or the panel

8 A Okay

9 **MS THRAILKILL - CROSS EXAMINATION BY MR NICKLES**

10 Q Thank you very much, Ms Thrailkill As you
11 know, I'm Al Nickles

12 A I do

13 Q And just like in my questioning of other folks,
14 I want you to please tell me if you don't
15 understand what I'm asking you Will you do
16 that for me?

17 A I absolutely will

18 Q Okay Now, I want to ask you to take a look at
19 that Tab Number 2 that you so kindly looked at
20 with Mr Summers and go down to the paragraph
21 that you talked about on page 1245 where the
22 term incentive is inartfully used Do you see
23 that?

24 A It's the third paragraph

25 Q There is an OHR record after the use of that

1 term Do you see that?

2 A I do

3 Q Page 1106

4 A Yes, sir

5 Q Mr Cooper, if you could, pull up page 1106
6 And that says retirement opportunity?

7 A Yes, sir, it does

8 Q When you looked at that piece of the record,
9 was it pretty clear to you what that term was
10 being used to relate to? It didn't confuse
11 you, did it?

12 A Well, when it for an HR person, wording
13 means a whole lot

14 Q Okay

15 A When I hear retirement incentive, I speak of
16 incentive Retirement opportunity, I think of
17 retirement opportunity

18 Q For a lay person, they might use those terms
19 interchangeably?

20 A They could

21 Q Okay Did you think there was any intent to
22 deceive when you saw that in that record?

23 A I'm not in a place to make that decision

24 Q Okay Certainly it made a direct reference to
25 what it was talking about, didn't it?

1 A The page number did, yes, sir

2 Q And you indicated that there was in fact this
3 retirement opportunity extended just after the
4 budget year began for 03-04, correct?

5 A That's correct

6 Q Now, you had to be employed in something other
7 than a temporary capacity to take advantage of
8 that opportunity, did you not?

9 A I'm sorry, say that again

10 Q You had to be employed as a permanent employee
11 for this opportunity to be helpful to you,
12 didn't you?

13 A That is correct You had to be eligible to
14 retire

15 Q All right So if I were already a temporary
16 employee, this really wouldn't apply to me,
17 would it?

18 A Let's see

19 Q Because you would already be in a temporary
20 capacity

21 A Well, but you can still even if you're
22 working temporary and you're contributing to
23 the retirement system you contribute to the
24 retirement system and you can retire even under
25 as a temporary employee

1 Q Do your temporaries contribute to the
2 retirement system?

3 A Yes, sir, they do

4 Q Both by the employer and the employee?

5 A Our positions were approved for police
6 retirement in 2000 So anyone who came to work
7 with the agency, whether it was temporary,
8 permanent, and if it met the criteria for
9 police retirement, they had no choice They
10 had to pay into the retirement system

11 Q Did you have any temporary employees take
12 advantage of this opportunity?

13 A I couldn't know without looking on this, sir

14 Q Okay Did you target temporary employees?

15 **MR SUMMERS** I'm going to object to the form of the
16 question

17 **MR NICKLES** I asked if she

18 Q Well, did you did you specifically send
19 this out to any temporary employees?

20 A I don't recall, sir I'm sorry

21 Q That's fine Now, you mentioned that this
22 reduction in force took place in fiscal year
23 02-03, correct?

24 A That's correct

25 Q But you had already received all your

1 designated appropriations for that budget year,
2 had you not?

3 A I would think so, but I'm not in budget So I
4 don't know for sure

5 Q Because it only impacted one-twelfth of that
6 budget year, right, from June 1 to July 1 of
7 '03, correct?

8 A It'd be a month's worth, that's correct

9 Q Okay So when we talk about budgetary years,
10 really the reduction in force was intended to
11 affect beyond the date of June 1, 2003, wasn't
12 it?

13 A It would, the next fiscal year

14 Q Okay And if you eliminated 148 people
15 effective June 1, 2003, it would have a more
16 material impact on the next year than it had on
17 the 02-03 budget year, would it not?

18 A That's correct

19 Q Okay Mr Summers asked you to look at Tab
20 Number 9, I believe, and the materials
21 contained therein And that's pages 780 and
22 forward of the record Now, Ms Thraillkill, it
23 has been previously stipulated that the
24 information contained in this particular
25 document responds to the following question

1 And I want you to listen to this Actually,
2 it's an instruction rather than a question
3 Produce a complete list of all employees
4 indicating the position and hire date, assigned
5 responsibilities that were performed by
6 certified educators prior to the reduction in
7 force, okay

8 A Uh-huh (affirmative response)

9 Q That's a mouthful, but it has the following
10 break down List of employees, and it gives
11 the position In here you stated state title
12 and internal title which sometimes don't
13 coordinate They're not the same sometimes

14 A No, they're not

15 Q All right And then we've got their hire date,
16 and you have an effective date listed on the
17 first column Do you see that?

18 A I do

19 Q And these were assigned responsibilities that
20 were performed by certified educators before
21 June 1, 2003, okay

22 A And if you're saying they were performed by
23 certified individuals, that would not appear
24 right on this list because there's correctional
25 officers on here

1 Q Exactly, and that's why I want to ask you a few
2 questions Let's assume that the Department
3 accurately responded to this question And
4 were you responsible for pulling this
5 information together yourself?

6 A I don't recall

7 Q All right Well, let's look Mr Summers
8 asked you to look at a couple, and I want you
9 to look at some also

10 A Okay

11 Q And it might be helpful, I guess is did
12 you track at all the folks that bumped from one
13 position to another in the reduction in force?

14 A We have a RIF final results report that would
15 show what occurred during the RIF process

16 Q Okay At least some people took advantage of
17 that opportunity, did they not?

18 A Retirement opportunity?

19 Q No, the bumping opportunity

20 A Oh, yes, sir Yes, sir I mean I can
21 Linda Bratton's on page one She bumped

22 Q Exactly Ms Bratton, you have a hire date of
23 6/2/03 She was, I believe Ms Bratton was
24 at Perry if we look at page 205 of the record
25 And that's also in a tab That's in Tab Number

1 7 if you want to look at that tab We can flip
2 back and forth a little bit between the two of
3 us Yes, ma'am On page 205 you see the
4 second person listed on that page is Linda
5 Bratton And she was designated for a RIF Do
6 you see that?

7 A Her position was designation for elimination,
8 that's correct

9 Q And she was at Perry And then we see on the
10 page we were just looking at in Tab Number 7,
11 that's page 780 actually, it's Tab Number
12 9, 780 We see that she found herself at Tyger
13 River So that would reflect a bump, would it
14 not?

15 A That's correct

16 Q And the same thing you talked about L S
17 Green over on page 781

18 A Yes, sir

19 Q Now, I don't know whether L S is a male or
20 female Do you?

21 A Not off the top of my head No, sir, I don't

22 Q Might have been a female because it's at
23 Camille Graham Correctional Institution That
24 was a female facility, wasn't it?

25 A It didn't have to necessarily be a female

- 1 Q You don't, all right Let's go through but
2 anyway, L S Green is on page 200
- 3 A Yes, sir
- 4 Q And went from Manning to Camille Graham, right?
- 5 A It appears so, yes, sir
- 6 Q That's another bump that you're talking about?
- 7 A Yes, sir
- 8 Q And you see that there are several folks, and
9 I'll just for example, Ronald Davis up
10 there on the same page, page 781, 6/2/03 Mr
11 Davis went from Perry to Tyger River Most of
12 the certified teachers who have a hire date of
13 6/2/03 are actually bumps, aren't they?
- 14 A It would indicate their position movements, not
15 hired
- 16 Q And they are listed, at least the ones that we
17 looked at you talked about the distinctions
18 between having a job classification of a letter
19 number combination and a 999 999 would
20 indicate to you temporary, correct?
- 21 A That is correct
- 22 Q All right And these UB02s and so forth, those
23 would be FTE or full time equivalent positions?
- 24 A Yes, sir
- 25 Q Okay

1 A Under the job class

2 Q Right And the further thing that you would
3 designate by these combinations of numbers and
4 letters would be that would be paid by the
5 Palmetto Unified School District on the teacher
6 pay scale, correct?

7 A Not necessarily

8 Q If it says certified teacher?

9 A If it says well, I mean if it's a temporary
10 employee

11 Q No, not just temporary If it's a UB02

12 A Yes, sir, it would be

13 Q Because UB02 and it says certified teacher,
14 and it says classroom teacher That means
15 teacher pay scale?

16 A That is correct

17 Q But if we look up, for example, on this same
18 page, you've got Bruce Easterling, and he's got
19 a 6/3/02 hire date Do you see that?

20 A Yes, sir

21 Q Now, Mr Easterling was hired as a JD40
22 Correctional Officer III, correct?

23 A That's correct

24 Q At a vocational ed trainer Do you see that?

25 A Yes, sir

1 Q And he's got a band level?

2 A Yes, sir

3 Q So he was not hired on the teacher pay scale,
4 was he?

5 A No, he was not He was hired into a classified
6 position

7 Q All right And if we look at Chad Clark up
8 there, the second one on page 781

9 A Yes, sir

10 Q He was hired 3/17/04 That would have been
11 within the RIF callback period, correct?

12 A That is correct

13 Q But he was hired, once again, as a temporary
14 unclassified vocational teacher, correct?

15 A That appears so

16 Q All right And that would not be on the
17 teacher pay scale, would it?

18 A To my knowledge, it would not be Temporary
19 employees in education, as I understand, if
20 they're in an EIA or EFA school, even if
21 they're temporaries, we have to pay them based
22 on the education pay scale

23 Q All right

24 A If they're not in an EIA/EFA school, then we
25 can pay them the rate that we feel is

1 appropriate

2 Q Look at Patsy Hatcock down near the bottom of
3 this page Hire date 10/27/03 That's in the
4 twelve month period, is it not?

5 A It is

6 Q Unclassified classroom teacher, Evans
7 Correctional Institution So that would have
8 been a temporary And to the best of your
9 knowledge, not on the teacher pay scale,
10 correct?

11 A I would have to look at her position set up to
12 determine that

13 Q Okay Well, let's look at one we have had
14 testimony about Look at on page 780,
15 we've got about a quarter of the way down James
16 C Bell You see that?

17 A Yes, sir

18 Q And he's got a hire date of January 17, 2006
19 You see that?

20 A Yes, sir

21 Q He's got a job class AH35

22 A Uh-huh (affirmative response)

23 Q Program Coordinator

24 A Uh-huh (affirmative response)

25 Q Program Coordinator I, band level 5

1 A That is correct

2 Q That would not be on the teacher pay scale,
3 would it?

4 A No, it would not

5 Q And that's at Perry Correctional Institution,
6 correct?

7 A That's correct But, of course, his effective
8 date is after the recall period, also

9 Q That's absolutely correct You see Kathy
10 Jackson over on page 782?

11 A Yes, sir

12 Q They've got two dates on Ms Jackson, 8/30/04
13 and 8/8/05 Both of them unclassified, both of
14 them temporary, education program supervisor
15 coordinator Is that what that means?

16 A Education program supervisor-corrections is
17 what that is

18 Q Corrections, okay And that says location
19 Palmetto Unified School District Number 1
20 That again would be a temporary position,
21 correct?

22 A That is correct Kathy participated in the
23 retirement opportunity

24 Q Okay And that she did that effective
25 8/30/04, correct?

1 A She would have retired before that date Her
2 first hire date back would have been August
3 30th of '04 based on this report

4 Q Okay So she retired and then came back in
5 this unclassified position?

6 A She went back to the same position that she was
7 in at the time she retired but at less pay

8 Q With less pay, and she re-upped at least one
9 more time for that, right?

10 A That's correct

11 Q You see Eva W Jones right below her 7/29/03
12 would have been within the RIF period, correct?

13 A The recall period?

14 Q Yes, ma'am

15 A Actually, that's beyond the excuse me,
16 you're correct I'm sorry

17 Q It's only a few months or so into it, correct?

18 A You're correct, my bad

19 Q Okay I get confused sometimes myself And
20 that's a temporary position, unclassified
21 classroom teacher Do you see that?

22 A I do

23 Q Okay There's one that's confusing here It's
24 at the top of page 783 The very first name is
25 William T Morenco Do you see that?

1 A I do

2 Q Now, it says effective date 6/2/03, classroom,
3 UB02, certified teacher, classroom teacher,
4 MacDougall Correctional Institution Do you
5 see that?

6 A I do

7 Q Now, you look at the next page, and it's got
8 Mr Morenco listed three more times as
9 unclassified Do you think that's a mistake
10 and you think he just

11 A No If I recall correctly, Mr Morenco
12 actually participated in the retirement
13 opportunity also

14 Q Okay But he was hired effective June 2, 2003,
15 according to this document?

16 A I don't think he was hired That may have been
17 a position move date

18 Q A position move date?

19 A Yeah, that he moved from one position to
20 another position

21 Q But he wasn't in the RIF according to your
22 records?

23 A I don't I don't know

24 Q Well we'd just have to look at the records, but
25 let's let's just assume he's not in there

1 A Okay

2 Q So he wasn't in the RIF You hired him at
3 MacDougall MacDougall there was nobody
4 cut at MacDougall, right?

5 A I don't think so

6 Q Okay So you were hiring new people in, let's
7 say, or at least according to this, he went to
8 MacDougall the day after the RIF But these
9 folks, you've heard their testimony, were
10 certified teachers, did not have that
11 opportunity to go to MacDougall?

12 A Without looking at his particulars, I can't
13 speculate

14 Q Okay You'll see Susan Mullis down here at
15 Camille Graham That's one of the RIF'd
16 institutions, isn't it?

17 A I believe so

18 Q Okay And Ms Mullis was hired January 14,
19 2004 That's within that twelve month period,
20 correct?

21 A Yes, sir

22 Q As an unclassified classroom teacher,
23 temporary, correct?

24 A That's correct

25 Q Okay

1 A And that could have been a retirement
2 opportunity also

3 Q Okay Now, if you are taking advantage of one
4 of these retirement opportunities, Ms
5 Thrailkill, you leave the employment of the
6 agency, correct?

7 A There was an agreement form that they signed at
8 the time they participated in the retirement
9 opportunity that stated that they would be
10 rehired back in the same position they were in
11 at the time they retired

12 Q Did the South Carolina Retirement System
13 approve that form?

14 A They wouldn't have to

15 Q Okay So your your understanding is that
16 you can retire and start receiving full
17 retirement benefits and be guaranteed a
18 position upon your return, you do not have to
19 reapply? Is that your understanding?

20 A Based on the agreement we worked up, we did
21 that, yes, sir

22 Q The agreement with whom?

23 A The agency developed it The retirement
24 opportunity was a program that was offered by
25 the agency in the agreement form that we

1 developed for the individuals who participated
2 It specifically stated the guidelines they had
3 to go by in order to be a participant There
4 was earnings limitations with retirement It
5 was their responsibility to insure they did not
6 exceed the earning limitations And they
7 understood that they would have to take a 15
8 day break each calendar year of appointment

9 Q Well, let's look back at at the plan
10 Actually, the reduction in force policy and
11 procedure It's Tab Number 3 in the material
12 in front of you And you see down at Section
13 2 3 on page 181 it says whenever a RIF is in
14 effect And a RIF was in effect beginning June
15 1, 2003, correct?

16 A That's correct

17 Q Then it says no additional new hires, internal
18 promotions or reassignments into vacant
19 positions in the competitive area And those
20 are those circles we talked about, right?

21 A Right

22 Q Will be allowed in any positions without first
23 determining through the Division Director of
24 Human Resources or designee those employees
25 with recall rights Do you see that?

1 A I do

2 Q Now, before you offered any of these folks who
3 took the retirement opportunity their jobs upon
4 their break service, after 15 days, before you
5 offered them the opportunity to return after
6 that 15 day break, did you notify those people
7 in the competitive area that those positions
8 had been vacated by a retirement opportunity?

9 A No, we did not, because temporary employees are
10 not subject to OHR guidelines

11 Q Temporary employees are favored over RIF'd
12 employees?

13 A Are not subject to state rules and regulations

14 Q Let's let's talk common sense, okay

15 **MR SUMMERS** Objection as to the editorializing

16 Q You have you have a reduction

17 **MR CORNING** Sustained, counsel Just just ask
18 the question

19 **MR NICKLES** I will

20 Q And I don't mean to be mean or nasty I don't
21 mean to be

22 A I understand

23 Q Okay You have these 148 people out there who
24 have been uprooted Their jobs have been
25 eliminated Some of them have served the

1 agency for more than 20 years, correct?

2 A That's correct

3 Q Now, we've seen various numbers in this record,
4 maybe 84 of them, maybe 87 of them, maybe as
5 many as 91 of them, were educators in one way
6 or another No matter the number you pick,
7 there were a lot of educators, right?

8 A Yes, sir

9 Q Okay And those folks were involuntarily
10 removed from their positions due to the
11 reduction in force, correct?

12 A That is correct

13 Q Now, you have these other folks who take a
14 retirement opportunity, and they voluntarily
15 leave the employment of the agency, at least
16 for a period of time, correct?

17 A That's correct

18 Q And they're obligated to leave the employment
19 of the agency for a period of time in order to
20 collect their retirement benefits, correct?

21 A That's correct

22 Q And they return if they return only as
23 temporary employees, as you chose to do,
24 correct?

25 A That's correct