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ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Appeal from the Administrative Law Court
The Honorable Deborah Brooks Durden, Administrative Law Judge
Case No.: 15-ALC-0033-AP
Appellate Case No.: 2016-000225

MAY 24 2016

SC Court of Appeals

DAVID ROSE, #91858,.....RESPONDENT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES,.....APPELLANT

SUPPLEMENTAL RECORD ON APPEAL

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1 system?

2 A. Yes.

3 Q. And making sure the recording is working,
4 right?

5 A. Yes.

6 Q. And number two, the second person, they're
7 calling cases, making sure the decision's memorialized,
8 making sure the next case is ready and making sure the
9 video is on the right place to hear a case?

10 A. Right.

11 Q. All right. What is recorded in the PIC
12 system?

13 A. The decision.

14 Q. Okay. Parole? No parole?

15 A. If it's parole or no parole.

16 Q. Okay.

17 A. Conditions.

18 Q. Okay.

19 A. Or for parole -- if there's parole, they'll
20 record what conditions there are. And if they're not
21 granted parole, then the reasons for it.

22 Q. Okay. Any tabulation of the vote in the PIC
23 system?

24 A. Not currently.

25 Q. Has there ever been a tabulation of vote in

1 the PIC system?

2 A. There is not. Not to my knowledge.

3 Q. Is there a plan to include the vote?

4 A. There is.

5 Q. When will that happen?

6 A. That's outside my realm. You're talking IT
7 stuff so I could not tell you.

8 Q. Sure. So there's a plan to incorporate that
9 into the system when the IT folks can make it happen?

10 A. Not just them, but yes.

11 Q. Okay.

12 A. Yes. When everything is set up to be able to
13 move toward that, but, yes, there has been
14 conversation. Me, personally, it has taken place and
15 it's something that we are hoping to do sooner rather
16 than later.

17 Q. Why?

18 A. Just for better bookkeeping and just if the
19 capabilities are there, why not?

20 Q. If -- when you do that, do you expect to
21 record the vote totals and the identity of the people
22 making the vote, both?

23 A. Right now, it's a thought. So kind of hard
24 to say exactly according to any kind of issues or
25 hurdles or whatnot. I guess at that point maybe more

1 would be fine, so maybe having the names. But
 2 that's -- like I say, that's still just a concept right
 3 now.

4 Q. So that's still in the planning stage?

5 A. Yeah.

6 Q. Do you have an opinion about what it should
 7 look like, the reporting? You may not be making the
 8 final decision, right?

9 A. Right.

10 Q. What's your opinion as to what should be
 11 reported in the PIC system with respect to votes?

12 A. Just essentially the board member and what he
 13 or she voted.

14 Q. Okay.

15 A. Yes, no, or absent, not there. What, recused
 16 or abstained, whatever, trying to give that other
 17 column.

18 Q. All right. Currently, is there any -- we
 19 talked about the kind of paper documentation going on
 20 at the prison. There's a roster of stuff being written
 21 down. Is anybody writing down anything in the Devine
 22 Street office currently?

23 A. Yes.

24 Q. What's being written down?

25 A. Pretty much the same stuff as well as the

1 votes that the board members are making.

2 Q. All right. So currently we're writing
3 down -- and is this staff person number one we talked
4 about?

5 A. I don't know which is one or two, but the one
6 that's calling the cases and ensuring we're going to --

7 Q. I guess I have that as two, but it doesn't
8 matter.

9 A. Okay.

10 Q. You've got somebody doing that?

11 A. Yes.

12 Q. So they've got a sheet of paper?

13 A. Yes.

14 Q. With the names and the cases?

15 A. Yes.

16 Q. Date of birth? Does it look like the other
17 sheet?

18 A. It's the same thing. We use that same sheet
19 for every.

20 Q. Okay. And I understood the examiner doesn't
21 write down the votes, the one that's at the prison.
22 But this staff person at Devine Street will write
23 down --

24 A. Right.

25 Q. -- the number of votes for and against?

1 A. Uh-huh.

2 Q. And the identity of the people voting for or
3 against?

4 A. Yes.

5 Q. Okay. How long has that been going on?

6 A. I implemented it when I got there, so maybe a
7 year.

8 Q. Okay.

9 A. It's relatively new. Pretty recent.
10 Somewhere around the time that the whole Barton
11 situation took place for moving forward purposes
12 instead of us having to go pull recordings every day.

13 Q. All right. Any other documentation created
14 currently? You've told me about the PIC system and the
15 SCDC system. You've told me about staff person number
16 two recording stuff. Is there anybody else recording
17 anything? Writing anything? Recordkeeping? I'll give
18 you an example. Sometimes when boards meet, there's
19 formal minutes. This happened on this -- like a
20 secretary taking minutes. Does that happen?

21 A. That's our recording. The recording collects
22 everything.

23 Q. Got you. All right. So no paper minutes?

24 A. Right.

25 Q. You got your tape-recording and everything?

1 A. Right.

2 Q. All right. Good. So I guess the answer is,
3 then, no more documents are being created as part of
4 this?

5 A. I don't think. Victim services, they're not
6 under me --

7 Q. Sure.

8 A. -- but for opposition cases that are present,
9 they aren't keeping the details. But for that
10 particular case, they're letting the present opposition
11 know if they were granted parole or not. If granted
12 parole, then what the conditions are just so they'll
13 kind of have an idea. But that's really it.

14 Q. Okay. All right. I suppose if you're
15 granted parole, a document is generated, right? Is
16 that generated right then and there, or is it later?
17 Like the letter.

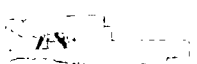
18 A. Are you referring to the certificate?

19 Q. No. I guess the -- I guess a document -- a
20 letter would be generated if you're denied and if
21 you're granted, too, right? A letter would come out
22 "Congrâtulations"?

23 A. I don't believe so.

24 Q. No?

25 A. No, sir. That essentially will be the



1 certificate when you have -- when you have essentially
2 completed all those conditions, either the one or two
3 conditions or the five conditions or whatever.

4 Q. You'll get a certificate?

5 A. You'll get a certificate and released.

6 Q. Well, let me focus then on if you're denied.

7 A. Right.

8 Q. I'm denied. I needed -- I had a full board.

9 I needed two-thirds because it's a violent crime. And
10 the vote -- I got two votes in favor and the rest
11 against. What does my letter look like that I'm
12 getting? My parole denial letter.

13 A. Assuming we're talking about all seven
14 members are there?

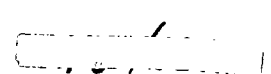
15 Q. Yeah, all seven members are there.

16 A. It's just basically Word -- a letterhead Word
17 document. "Your parole consideration was rejected.
18 You will be considered again in the future."

19 And we don't put specific day because so many
20 things can happen between now and a year, two years.

21 Q. So we don't say, "Hey, we'll see you again
22 September 28th"?

23 A. No. No. We tell you, you know,
24 approximately a year, approximately two years.
25 Because, you know, you just never know what may happen



1 in the system. In the system, I mean just an inmate
2 being in the system.

3 Q. Sure.

4 A. But it says, "You will be considered again."

5 And it gives you what the reasons for rejection were --

6 Q. Okay.

7 A. -- or are.

8 Q. All right. And the reasons, I've seen the
9 letters and I've heard the tapes. They talk about,
10 okay, rejected one and two or one and four or whatever.

11 What are those numbers? What are they referring to?

12 A. There are six different rejection reasons.

13 And instead of the board member having to read out that
14 brief sentence, they say the numbers. My staff member,
15 he writes the numbers down. When it's put into the
16 system, those numbers automatically coincide with
17 whatever that condition is.

18 So the letter doesn't say one, two, and
19 three. It says nature of crime, you know, whatever the
20 correlating sentence is.

21 Q. I got you. So those are criteria for
22 potential rejection, I guess?

23 A. Yes.

24 Q. Do those criteria appear in your State
25 Operations Manual?

1 A. I'm not sure if they're in our policy and
2 procedures. I don't know.

3 Q. Okay. Do you know whether they're in the
4 statute or not?

5 A. I don't know that.

6 Q. That's fine.

7 A. I don't know. I believe they're in the board
8 manual.

9 Q. Okay. All right. So there's a board manual,
10 and then there's policies and procedures?

11 A. Correct.

12 Q. Okay. All right. That letter of rejection.
13 Does it say, okay, you were rejected, nature and
14 seriousness of the crime, whatever the next one is, you
15 received two votes. That was my hypothetical, right?
16 I got two out of seven.

17 A. Right.

18 Q. Does it tell me that on the letter?

19 A. No. Not right now it does not.

20 Q. Okay. All right.

21 A. Once again, going back to a couple of
22 previous questions, we don't have the -- that
23 electronically right yet. So that's one thing we're
24 hoping to be able to get in to where it will be able to
25 tell you, you're rejected 7-0 or 0-7, however many.



1 Q. I gather by that answer there's a plan or
 2 some discussion about incorporating the vote totals on
 3 to the rejection letter?

4 A. Yes.

5 Q. Would you also incorporate the identity of
 6 the people who voted no, or no?

7 A. Most likely not.

8 Q. Not. Okay.

9 And is there any time by which you think that
 10 will occur, or is it still kind of up in the air as to
 11 whether it will occur?

12 A. I feel like it's less in the air as to
 13 whether it will occur, but as far as timeline, I don't
 14 know of one right now.

15 Q. Okay. So it's going to happen, you just
 16 don't know when?

17 A. I feel sure it will.

18 Q. All right. And you believe that to be a good
 19 idea?

20 A. I do, yeah.

21 Q. Why?

22 A. I mean, pretty much majority of our inquiries
 23 from inmates and/or attorneys would be cut in half if
 24 not more --

25 Q. Right.

1 A. -- because majority of the information
2 they're asking is going to be on that letter.

3 Q. We wouldn't call Matt so much.

4 A. There you go. I'm sure he'll appreciate it.

5 MR. DAYHUFF: I thought you enjoyed our
6 calls. You don't have to answer that.

7 THE WITNESS: He's not under oath. He can
8 answer it.

9 BY MR. DAYHUFF:

10 Q. All right. Okay. Susan wants to know the
11 rejection reasons we were talking about, I guess the
12 criteria for rejection, are there a certain number that
13 you do, one, two, or three, or I don't mean -- do you
14 have three reasons or four reasons or two reasons or
15 does it vary?

16 A. Has at least one up to six.

17 Q. Okay. All right. All right.

18 A. The reason up to six is because that's all
19 there is is just six.

20 Q. I got you.

21 The documentation that we mentioned
22 currently, you know, you've got the roster at the
23 prison, they're taking down stuff. And then you've got
24 one of your staff members taking down the votes and
25 everything else on paper.

1 How long are those documents retained?

2 A. I guess currently until no longer needed.

3 Q. Okay.

4 A. Which as far as the individual votes go, it's
5 such a new practice, we have them still.

6 Q. Okay. The "until no longer needed," where is
7 that guidance? Is that a policy or a standard or a
8 law?

9 A. I'm not completely sure if it comes from
10 state archives or if it's in law. But it's mandated.
11 It's not just us throwing that out there.

12 Q. All right. And I had heard, I don't know if
13 it's true or not, that there was a policy, and maybe
14 it's on old policy, that said you would keep that type
15 of documentation until the inmate died or was paroled.
16 There was some other. Died or was paroled or maxed
17 out.

18 A. Or maxed out.

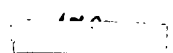
19 Q. Right.

20 A. Or no longer needed.

21 Q. Or no longer needed.

22 A. Which the three previous reasons would deem
23 them no longer needed. If you're out, we don't need to
24 know what your vote count was.

25 Q. Very true.



1 A. If you're dead or maxed out, don't need it
2 anymore either.

3 Q. It's not as useful as it used to be.

4 A. Right.

5 Q. So is that what you understand to be your
6 current policy with respect to retaining that type of
7 documentation?

8 A. Yes.

9 Q. All right. So you can get rid of it if it
10 maxed out, the inmate has died, if the inmate has been
11 paroled, or until no longer needed?

12 A. Right.

13 Q. And does "until no longer needed," does it
14 add anything that the three previous have said? I
15 mean, is there another reason you wouldn't need it?
16 That's a very inartful question, right?

17 A. Yes.

18 Q. I'm asking does this fourth criteria, "until
19 no longer needed," give you another opportunity to get
20 rid of the documents? Dispose of the documents?

21 A. I suppose so, yes.

22 Q. Okay. Under what circumstances would that
23 be?

24 A. Right now, I could not say for sure.

25 Q. Okay.

1 A. We do our best to try and hold on to what we
2 can as long as we can for purposes of, you know --

3 Q. I got you.

4 A. We try and be as open and honest.

5 Q. As you sit here today, you can't think of
6 another reason to dispose of that type of parole
7 documentation other than -- specific reason, other than
8 max out, death of the inmate, or granting parole?

9 A. Well, I mean, I guess due to so much being on
10 paper, so much, you know, kind of like law, kind of
11 like courts and things like that, they keep things for
12 space purposes and things of that sort for a certain
13 amount of time and then they dispose of them. So, I
14 mean, kind of the same -- along the same lines as what
15 courts and other hearing procedures would be.
16 Eventually space runs out.

17 Q. Right. Right. So that would be a no longer
18 needed --

19 A. I would --

20 Q. -- category?

21 A. I would think.

22 Q. Okay.

23 A. If you're in for life and you come up for 40
24 years' worth of parole hearings --

25 Q. Right.

1 A. -- probably the first ten may be no longer
2 needed.

3 Q. And is there any specific policy or rule that
4 applies to that? Like you mentioned a lifer. A lifer
5 has been up 20 times. Is there a time period that
6 you're keeping these or -- does that make sense?

7 A. Yeah.

8 Q. That you're deciding, okay, as of this date,
9 we're no longer keeping this, or this document has been
10 around 20 years, this vote tally? Is there a rule?

11 A. To my knowledge, right now there's not. Not
12 today there's not, but there is going to be very soon.

13 Q. A plan. Okay. Well, what's the plan?

14 A. We're in conversation with archives, state
15 archives right now. So according to what we can or
16 can't do, but the plan will be for a lot less than
17 until not needed.

18 Q. Okay. All right. All right. 2001. Let's
19 go back there and see what you know about 2001. I
20 guess that was before your time, wasn't it?

21 A. Yeah.

22 Q. But you do have, I assume, some kind of
23 institutional knowledge of the way things used to work.
24 You've had to deal with the Barton issue among other
25 things, right?

1 A. Right.

2 Q. I guess you're currently dealing with people
3 coming to you today and saying, "Hey, I got the right
4 number of votes in 2001, 2002, 2005," whatever it was?

5 A. Right.

6 Q. I guess Barton -- do you remember what year
7 Barton was?

8 A. That the ruling --

9 Q. The ruling.

10 A. Wasn't it '14?

11 Q. It was '13.

12 A. Late '13. Okay.

13 Q. I think we started litigating in 2012, and I
14 think the Supreme Court spoke on it in 2013.

15 A. Okay.

16 Q. So I imagine, do you have a rough sense of
17 how many people come to you to say, "Hey, I got the
18 right number of votes" back in the day?

19 A. That have actually gained the right number or
20 inquired about?

21 Q. Come to you, right.

22 A. A lot.

23 Q. Really? Roughly over ten?

24 A. I would say upwards of 20.

25 Q. Okay.

1 A. That may be lowballing. I don't know.

2 Q. Okay. And they're coming to you through
3 what, sending you a letter?

4 A. Either them and/or attorney.

5 Q. Okay. All right. Back in 2001, you've
6 explained to me what the current process is and I'm
7 particularly interested in how they were recording
8 things. What is different or the same about what was
9 going on? Do you know how they were voting, for
10 example?

11 A. How do you mean, how they were voting?

12 Q. Well, you told me about the box, right?

13 A. Right.

14 Q. They're clicking the box and they're doing
15 voice votes when it's not unanimous. Do you know how
16 they did it back then?

17 A. No.

18 Q. Okay. All right. Do you know whether they
19 had the red light, green light box?

20 A. No, sir.

21 Q. All right. Do you know -- they had tapes,
22 right? Minutes/tapes?

23 A. Yes. Yes.

24 Q. Because I've seen tapes.

25 A. Yes.

18

1 Q. I've listened to tapes.

2 How far back do the tapes go, do you know? I
3 don't mean -- I know that some have been destroyed, but
4 do you know when that practice of taping began?

5 A. I cannot say for sure. I want to say late
6 '90s. I'm not sure exactly, though.

7 Q. I think I've seen that. Late '90s up until
8 the present day we're taping?

9 A. It's not cassette tapes anymore, but, yes,
10 they're recording stuff. Yes.

11 Q. It began with those little cassettes?

12 A. Correct.

13 Q. Okay. All right. And now we're doing some
14 sort of electronic recording?

15 A. Yes.

16 Q. On discs? I've seen the discs, I guess.

17 A. It's replicated on to discs.

18 Q. Okay.

19 A. But we keep it in our database storage.
20 Whatever -- whatever it is.

21 Q. All right. So do you know whether the staff
22 person who presumably would have been working for PPP
23 at the prison at a hearing in 2001 would have had a
24 roster with the names of the cases and parole yes or
25 no?

1 A. I couldn't say.

2 Q. Okay. Do you know whether there was even a
3 person there?

4 A. I couldn't say. I was -- according to what
5 month we're talking about, I was either a junior or
6 senior in high school.

7 Q. You hadn't looked ahead and you didn't know
8 what your future was going to be?

9 A. Not quite. Not quite. I was just trying to
10 get through 12 years of school at that point.

11 Q. I hear you. I was a junior, too. No, that's
12 not true, is it?

13 A. Okay. So we don't know.

14 A. The only thing I can tell you is our hearings
15 were conducted at Broad River. So instead of being in
16 Columbia, everything converged in Broad River.

17 Q. Okay. Do you mean that the parole went to
18 the prison?

19 A. Inmates, all my staff, everything. It was
20 the -- everything was obviously on paper. It was
21 packed up. Everybody went to Broad River Correctional.
22 Every institution around the state brought the
23 parole-eligible inmate to Broad River, victims, parole
24 boards, the parole board members. Any and everything
25 that had to do with that hearing on that particular day

1 went to Columbia's Broad River.

2 Q. So more than likely you just didn't have one
3 person there. You had lots of staff and the whole
4 board. And wow. Okay.

5 All right. So they may have in 2001, they
6 may have written down parole, no parole?

7 A. May. I couldn't say.

8 Q. They may have written down the number of
9 votes?

10 A. May have written down all kinds of stuff.

11 Q. They may have written down the identity of
12 the people who voted yes or no?

13 A. They may have drawn pictures like they a lot
14 of times do in the famous court hearings.

15 Q. So we don't know, right?

16 A. I don't know.

17 Q. Well, does anybody at your agency know?

18 A. Yes. I'm sure they -- I'm sure they do.

19 Q. Who would know?

20 A. I know Roosevelt Hicks' letter will have a
21 better idea.

22 Q. Because he's been around a little longer?

23 A. He was actually working here at that point in
24 time.

25 Q. Excellent.

1 A. Now, exactly how much working knowledge of
 2 that particular information he has, I can't speak to.
 3 But as far as actually being in the department at the
 4 time.

5 Q. Okay. So his tenure goes back that far, so
 6 he may know that answer.

7 What about your deputy director, would he
 8 know? Or she? I can't remember.

9 A. He.

10 Q. He.

11 A. He was here with us. I don't -- he was -- I
 12 don't know. I really don't know because his job
 13 function at the time would have been different. So I
 14 don't know.

15 Q. Okay. Back in 2001, do you have -- what was
 16 he doing in 2001?

17 A. He was either a hearing officer or probably
 18 an agent in charge.

19 Q. Okay. And I -- neither of those two would be
 20 parole board support, right?

21 A. Right.

22 Q. So if that's the case, it's probably likely
 23 that he wasn't there?

24 A. Right.

25 Q. I guess he may have heard what used to go on

1 back in the day.

2 A. Right.

3 Q. Okay. Was there anybody else, then, other
4 than Roosevelt?

5 Let me ask, is Roosevelt the best person that
6 we have left at the agency to answer these questions
7 about what was going on in 2001?

8 A. I don't want to say definitively because I
9 could be wrong, but right offhand, I would think so.

10 Q. Is there anybody else that's rolling around
11 in your mind, "This guy would really be better"?

12 A. Not with the department. Anybody still at
13 the department, I don't think so.

14 Q. Okay.

15 A. I don't think so.

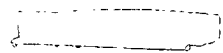
16 MR. DAYHUFF: That's fine. I'm going to get
17 some more coffee. You want to take a two- or
18 three-minute break?

19 THE WITNESS: Sure.

20 (A recess transpired.)

21 MR. DAYHUFF: We were talking about document
22 retention. This was produced to me by your attorney.
23 Take a look at it, then we'll ask our court reporter to
24 mark it.

25 (APPELLANT'S EXHIBIT 1, Records Retention



1 Schedule, was marked for identification.)

2 MR. DAYHUFF: Now, you can give that one to
3 Tommy. You should have the one with the sticker on it.

4 THE WITNESS: All right.

5 MR. DAYHUFF: Tommy will walk off with the
6 one with the sticker on it.

7 MR. EVANS: I have one of those.

8 BY MR. DAYHUFF:

9 Q. This was produced to me in this case. Take a
10 look at it and read it and then tell me if you can
11 identify it.

12 A. It looks familiar.

13 Q. All right. What is it?

14 A. This is our -- I guess our retention policy.
15 Our kind of -- yeah, retention policy for minutes.

16 Q. And you mentioned to me that the Department
17 of Archives and History worked with you guys to
18 determine retention policies, right? Or you worked
19 with them?

20 A. Currently. I don't know in the past. But,
21 yes, I do know now we're having conversations with
22 them.

23 Q. Okay. Obviously, it looks like this came
24 from them, right? South Carolina Department of
25 Archives and History at the top.

1 A. Oh, yeah, there you go.

2 Q. So is this the policy that applied in -- I
3 think it was produced to me as applying in 2001. Do
4 you know whether that's the case? It's got a date on
5 the bottom of 1994.

6 A. To the best of my ability, I would say so.

7 Q. All right. So this applied in 2001. Does
8 this apply now, currently?

9 A. Yes.

10 Q. The "Retention, Until no longer needed for
11 reference, destroy." You kind of gave me a phrase that
12 sounded an awfully lot like that. Is that where you
13 think that comes from?

14 A. I think it may be amended to include the
15 max-out death. But, I mean, for all intents and
16 purposes, until no longer needed.

17 Q. Okay. All right. You can just set that
18 aside. That's her copy.

19 Have you had occasion to look at any of the
20 attorney general's opinions regarding your agency and
21 the retention of documents and the Freedom of
22 Information Act?

23 A. A little bit of Freedom of Information Act,
24 but not retention.

25 Q. What's your understanding of whether or not

1 the Freedom of Information Act applies to the votes an
2 inmate gets and the identity of the people voting?

3 A. For the most part being it's an open forum, a
4 public hearing, very little is -- if anything, is
5 privileged, I guess.

6 Q. Secret? Confidential?

7 A. Right.

8 Q. Okay. All right. So it's your understanding
9 under the Freedom of Information Act, whether an inmate
10 gets parole or not, public information?

11 A. Right.

12 Q. Whether an inmate gets two votes or three
13 votes, public information?

14 A. Right.

15 Q. Whether Karen Walto or somebody else votes
16 one of those three affirmative, public information?

17 A. Right.

18 Q. All right. Let's talk about 2013, the Barton
19 case comes out. We talked a little about this already.
20 You're generally familiar with that decision, right?

21 A. Uh-huh.

22 Q. What did that decision change at the agency
23 with respect to voting?

24 A. The number of votes how -- based on the
25 particular case as to what the ratio of votes needed to

1 be.

2 Q. Okay. And the way I think about Barton's is
3 kind of two part. Right? There's the ex post facto
4 part. Which is legal mumbo jumbo. Do you know what
5 the ex post facto element of this was?

6 A. Pretty much goes back, right?

7 Q. Right. Right. We're retroactively applying
8 a new statute.

9 A. Retroactive.

10 Q. The new statute that was being retroactively
11 applied to some was the two-thirds majority
12 requirement, right?

13 A. Right.

14 Q. So the court said "Don't do that," right?

15 A. Right.

16 Q. So if I got convicted when there wasn't a
17 two-thirds majority requirement but there was a
18 majority, that's all I need to show to get out? So
19 that was part of it.

20 A. Right.

21 Q. The other part of it was how we count the
22 votes. Which I think is what you were explaining to
23 me, right?

24 A. Right.

25 Q. That the quantum of votes you need to get

1 parole varies with how many people show up.

2 A. Present board members, right.

3 Q. Right. So if there's seven board members
4 that show up and you need a majority, it's four, right?

5 A. Right.

6 Q. If five members show up, you need three.

7 A. Uh-huh.

8 Q. Back in the day, that wasn't happening,
9 right? How were they doing it back in the day?

10 A. They were basing the majority on the number
11 of sitting board members.

12 Q. All right. Seven, right?

13 A. It's seven all the time on those panels.

14 Q. Right. So if you needed -- if you had
15 two-thirds, you always needed five, right?

16 A. Yes.

17 Q. Okay. So that -- we're not doing that
18 anymore?

19 A. Right.

20 Q. The agency is not, PPP?

21 A. Right.

22 Q. Now, we know that happened to Barton, but
23 there have been others that claim that's happened to
24 them --

25 A. Right.

1 Q. -- in the past. And the agency took action
2 in response to that Supreme Court decision, right?

3 A. Right.

4 Q. And you guys have a policy about -- well, you
5 change the way you're voting?

6 A. Right.

7 Q. And you changed the retroactive application?

8 A. Uh-huh.

9 Q. And you have a policy in your State
10 Operations Manual on Barton, right?

11 A. Right.

12 Q. I'll show it to you. This was produced to me
13 by your attorney. I've got the entire manual, but this
14 is just one piece of it.

15 This came out of the current manual, right?

16 A. Yes.

17 MR. DAYHUFF: I haven't compared it word for
18 word.

19 MR. EVANS: Right.

20 MR. DAYHUFF: If you need to refer to the
21 full manual, I've got one here. I'll just put it in
22 the middle.

23 THE WITNESS: Thank you.

24 (APPELLANT'S EXHIBIT 2, Operations Manual
25 Page 35, was marked for identification.)

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1 BY MR. DAYHUFF:

2 Q. All right. Mr. Patton, have you had a chance
3 to review that?

4 A. Yes.

5 Q. I want to ask a few questions about it.

6 A. All right.

7 Q. So you don't have any question, do you, that
8 this is out of your State Operations Manual?

9 A. Right.

10 Q. Right. And your agency follows this policy?

11 A. Yes.

12 Q. Okay. So it looks to me -- I'm looking at
13 Number 10, Barton hearings, that there's essentially a
14 two-step process to deal with people who fall into that
15 or may fall into that Barton category. Okay. That
16 they may have received enough votes back when we
17 weren't counting votes right or when we were
18 retroactively applying the two-thirds, right?

19 A. Right.

20 Q. And the two steps are -- the first step is
21 the agency, your agency, undertakes an investigation.
22 The inmate comes to you and says, "I got the right
23 number of votes."

24 The agency undertakes an investigation to
25 determine whether that's so --

1 A. Right.

2 Q. -- right?

3 "If an offender's old vote is brought to the
4 Department's attention, the office of Parole Support
5 Services --" that's your office, right?

6 A. Right.

7 Q. "-- staff will investigate to verify the
8 offender did receive the proper number of votes, and
9 the Department's Office of Legal Service will verify if
10 it qualifies under Barton."

11 All right. So how many of those
12 investigations has your department -- I don't know if
13 you know the exact number.

14 A. No.

15 Q. But roughly, how many investigations? Is
16 that the 20 you mentioned to me earlier?

17 A. I would say at least 20. I would maybe say
18 upward.

19 Q. All right. How do you determine -- how does
20 your staff determine whether the offender received the
21 proper number of votes?

22 A. We go back and relisten to the hearings
23 and -- because, like I said, if it's a voice vote, then
24 we know exactly who it was. At the beginning of the
25 hearings, the board members say who's present or

1 whatnot, and so if it's unanimous voting, then we know
2 according to the decision. Obviously being reject or
3 we wouldn't be asked for the numbers, then we would
4 know that it would all be reject from all present board
5 members.

6 Q. So the agency staff members. Who is actually
7 making that decision? Is that you?

8 A. What decision?

9 Q. Inmate comes to you and says, "Hey, back in
10 2005, I got four votes out of the six that were there
11 and all I needed was two-thirds."

12 A. Right.

13 Q. Comes to you and tells you that. Who is
14 actually doing the investigation then making that
15 decision?

16 A. Roosevelt.

17 Q. Roosevelt makes the decision?

18 A. Yes.

19 Q. You have supervisory authority over
20 Roosevelt, right?

21 A. Correct.

22 Q. Does that decision ever come up to you, "Hey,
23 here's what I've decided"?

24 A. He does let me know what's going on and just
25 kind of let me know, "Hey, this Joe Blow has asked

1 this," and then a day later, a week later, you know,
2 according to when he gets to it, he'll come and say,
3 "Hey, here's the --"

4 Q. Mr. Blow?

5 A. "-- the five hearings that we was asking
6 about and he was unanimous on all of them," or "This is
7 the only one that was even close" and that's ...

8 Q. Okay.

9 A. So he gives me a heads-up.

10 Q. Are you making the decision when he comes to
11 you? I mean, do you have the authority to say, "Yes,
12 Roosevelt." "No, Roosevelt"?

13 A. The board's made the decision. We are just
14 reiterating what the board said or didn't say.

15 Q. No. I got you.

16 So as in Rose's case, we're talking about a
17 2001 board, right?

18 A. Right.

19 Q. So Rose comes to you and says, "Okay, I got
20 the right number of votes."

21 You guys, the agency, Roosevelt and you, are
22 reiterating the board's wishes with respect to that
23 hearing?

24 A. Correct.

25 Q. Okay. After you investigate?

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1 A. Right.

2 Q. And if the inmate wants to submit stuff to
3 you, you would receive that, right?

4 A. Right.

5 Q. Okay. Is Roosevelt making a recommendation
6 to you that's then approved or not?

7 A. No, sir.

8 Q. Okay. He's coming to you and saying, "Here's
9 my decision"?

10 A. No. "Here are the facts."

11 Q. "Here are the facts," right?

12 A. "Here's what the board said."

13 Q. How about this, "Here's the result of my
14 investigation"?

15 A. Yes.

16 Q. Right? So that's what he's doing.

17 And the agency takes the results of that
18 investigation and decides whether the inmate received
19 enough votes to go get conditions for parole, right?
20 Because if they did, they could go get conditions.

21 A. In the sense of legals makes a decision as to
22 if this is legally a Barton case or not. That's the
23 only decision that the department's making at this
24 point.

25 At this point we're not deciding anything

1 other than what hearing -- going off the basis that the
 2 case is needed to be taken back to the board because
 3 the proper number of votes were granted, then the only
 4 decision the department is making, is, A, does this
 5 legally fall under Barton; and, B, what's the next full
 6 board hearing to take this to after we have notified
 7 the victims and all of that.

8 Q. Right. And you told me you're essentially
 9 trying to discern the vote that that original board
 10 made back in 2001, right?

11 A. Uh-huh.

12 Q. We're not doing another parole hearing.

13 A. No.

14 Q. We're deciding what they decided. We're
 15 investigating and determining what they decided in
 16 2001?

17 A. Right.

18 Q. Then you go back to the parole board, the
 19 current parole board, because the 2001 doesn't exist.

20 A. Right.

21 Q. And it says, "During a full board day, the
 22 board will hold a Barton hearing on the offender."

23 Right?

24 A. Right.

25 Q. This hearing will not require the presence of

1 the victim or the offender?

2 A. Right.

3 Q. And then it tells you what happens at the
4 Barton hearing, right?

5 A. Right.

6 Q. "At the Barton hearing, the board may impose
7 any conditions on the offender as it feels necessary,
8 including all statutory conditions. The board will
9 then sign a special Barton order of parole which
10 ratifies the votes of the previous board members which
11 would have granted conditional parole."

12 Okay. So the board's role, it looks like to
13 me, is since we've already had the parole decision in
14 2001, what we didn't have in 2001, was part two, which
15 is the conditions, right?

16 A. And signatures.

17 Q. And signatures. Okay.

18 And why didn't we have part two in 2001?

19 A. Because this law ruling didn't take place
20 back then.

21 Q. They didn't know that they needed to move to
22 part two?

23 A. They were going under the current law.

24 Q. Right. They thought the inmate was rejected
25 so they never got to conditions --

1 A. Right.

2 Q. -- and the signatures?

3 A. Correct.

4 Q. So that's what the new parole board, the
5 current parole board does in the Barton hearing?

6 A. Yes.

7 Q. They impose conditions, and then, I guess,
8 they sign the special Barton order of parole?

9 A. Yes. It's -- the order isn't a special
10 Barton order. It's an order parole, but that's for the
11 purpose of that hearing at the moment. It is a special
12 Barton hearing.

13 Q. All right. So the -- in the Barton hearing
14 process, the current parole board is not hearing from
15 the victim witnesses again?

16 A. Right.

17 Q. They're not hearing from the offender again?

18 A. No.

19 Q. They're not hearing from the offender's
20 attorney again?

21 A. Right.

22 Q. Because they don't need to.

23 A. Right. The decision is made.

24 Q. The decision was made in 2001.

25 A. Yes, whenever.

1 Q. Right. And then the agency has decided
2 through the investigation that Roosevelt does, and then
3 you have some supervisory role on, that the appropriate
4 number of votes have been obtained to have a Barton
5 hearing?

6 A. Right.

7 Q. Okay. And legal helps you with that too?

8 A. Yes.

9 Q. Okay. Do you know how many people have gone
10 through that process? I know 20 have asked about it.

11 A. Yeah.

12 Q. I think Tommy provided it to me in an
13 interrogatory?

14 A. Probably about four or five.

15 MR. EVANS: A bit more than that.

16 MR. DAYHUFF: Let me read the interrogatory
17 answer and see if this is -- all right. I asked,
18 "Please identify the inmates who have challenged the
19 Parole Board's decision on the basis that he/she
20 received enough favorable votes at the parole hearing
21 to be eligible pursuant to Barton."

22 The answer was, "Thalma Barton, Gene
23 Richardson, James Plyer, Francis Campbell, Charles
24 Sink, Robert Miller, Shariah Muhammad, Kenneth Green."

25 That sound right?

1 A. That sounds ...

2 Q. And I guess David Rose has made the claim
3 too.

4 A. Yes.

5 Q. All right. So Thalma Barton was given a
6 Barton hearing, right?

7 A. Right.

8 Q. The agency determined she had received enough
9 votes to move to the Barton hearing?

10 A. Right.

11 Q. Gene Richardson, are you familiar with his
12 case at all? He was one of our guys.

13 A. Yes. A little bit.

14 Q. Did the agency determine he had received
15 enough votes to move to the Barton hearing?

16 A. Yes.

17 Q. And that was Roosevelt and you?

18 A. Right.

19 Q. James Plyer, I don't know him.

20 Did the agency determine he had received
21 enough votes to move to a Barton hearing?

22 A. Once again, can't say a hundred percent.
23 But, I mean, presumably yes.

24 Q. Francis Campbell, same question.

25 A. Yes.

1 Q. Charles Sink?

2 A. Yes.

3 Q. Robert Miller?

4 A. Yes.

5 Q. Shariah Muhammad?

6 A. Yes.

7 Q. Kenneth Green?

8 A. Correct.

9 Q. Okay. All right. So under this Barton
10 hearing process, the agency has the power to determine,
11 after the investigation, whether the inmate has got
12 enough votes in the past, right?

13 A. Right.

14 Q. The parole board has the power to impose
15 conditions?

16 A. Right.

17 Q. All right. Before I forget, backing up, back
18 to the criteria, I'm not sure I understand that, you
19 know, you rejected one and two --

20 A. Right.

21 Q. -- or three. I understand the votes where
22 they're voting with the lights. How do they -- do they
23 deliberate about which of the criteria is the basis, or
24 does the chair decide that? How does that work?

25 A. They'll deliberate if needed. It's kind of

1 both. More times than not the chairman will, but there
2 will be some members if they feel, "I want number 2 in
3 there," then the chairman will say, "And number 2."

4 So it's just ...

5 Q. So is this fair, the chairman will announce
6 what he or she thinks are the criteria for rejection?

7 A. Right.

8 Q. If the parole board members want to change
9 that or discuss that, they can?

10 A. Correct.

11 Q. But generally it just rolls through with what
12 the chairman has announced?

13 A. Right.

14 Q. Okay. There's no quota, is there, of any
15 kind for numbers of people who should be released per
16 meeting, per year?

17 A. Is there --

18 Q. Any standards or guidelines?

19 A. There are averages -- there are averages but
20 no standards, guidelines, quotas, anything like that.

21 Q. So the legislature, like the penal committee
22 doesn't come to you and say, "Look, we need some action
23 here. We want X number of people paroled over the
24 course of the next couple of years."

25 A. I guess they could. I don't know of them

1 doing that.

2 Q. So you're aware of no quotas that would
3 apply?

4 A. Right.

5 Q. Okay. All right. Let's talk about
6 David Rose a little more. I think you're familiar with
7 David Rose's cases, I guess. David Rose has been
8 litigating with the agency --

9 A. For a little while.

10 Q. -- since you were in high school, right?
11 2001, I think.

12 A. Yeah. That was his first.

13 Q. Well, you know, he got his hearing in 2001.
14 Are you familiar with that he has been litigating with
15 the agency for about ten years?

16 A. By litigating, we mean ...

17 Q. Filing cases.

18 A. Like coming up for parole?

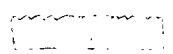
19 Q. No. I mean filing cases.

20 A. No.

21 Q. Okay.

22 A. Or if I was, it was mentioned in conversation
23 and I didn't take major note of it.

24 Q. So you don't know whether over the past ten
25 years Mr. Rose has filed, one, two, three, four actions



1 in court claiming that he received four votes in 2001.

2 A. Not offhand.

3 Q. Okay.

4 A. Perhaps.

5 Q. Okay. That's fine. That's fine. I'm sure
6 someone's --

7 A. I'm sure it was mentioned in conversation,
8 but you saying that, I hadn't. I can't say that I did.

9 Q. All right. Do you dispute that Mr. Rose has
10 been litigating with PPP for the greater part of ten
11 years claiming that he received four votes out of six
12 in 2001?

13 A. No.

14 Q. Okay. All right. Of course, we're here
15 about the latest case, right?

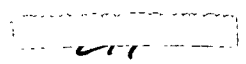
16 A. Right. He's done it at least once.

17 Q. At least once that you know of because you're
18 right here.

19 A. Absolutely.

20 Q. I hear you. Okay.

21 Now, the case before this case, there was a
22 case before a guy named Judge Addy, the Honorable
23 Judge Addy, and I don't remember which circuit, but it
24 was in circuit court in South Carolina. Are you
25 familiar with that matter?



1 A. Not offhand.

2 MR. DAYHUFF: Okay. Fair enough.

3 Let me see. I'll give you a letter.

4 - Mr. Patton, I'll let you read that, and I'll ask you a
5 couple of questions about it.

6 (APPELLANT'S EXHIBIT 3, Letter Dated February
7 13, 2015, was marked for identification.)

8 BY MR. DAYHUFF:

9 Q. Have you had a moment to look at it?

10 A. Yes, sir.

11 Q. Can you identify that for the record, what's
12 been marked Exhibit 3?

13 A. 3. . You want me to read it?

14 Q. Just tell me what it is.

15 A. It was a letter from our department on behalf
16 of me responding to Mr. Rose stating that we have
17 completed an investigation due to Judge Addy's order to
18 ensure that we went through all known files and
19 information to try and determine if he -- Mr. Rose did
20 or did not receive the correct number of parole votes
21 in the June 20, 2001, hearing.

22 Q. All right. So this letter, I believe, was
23 generated as a result of the action that preceded this
24 one in circuit court?

25 A. Right.

1 Q. Right? And Judge Addy was the judge?

2 A. Yes.

3 Q. All right. And you mentioned this,
4 Judge Addy apparently ordered the department to
5 investigate whether Rose received -- how many votes
6 Rose received.

7 A. Right.

8 Q. Right. So that investigation -- in the
9 interrogatories, I asked if an investigation was
10 conducted regarding whether Rose received four votes,
11 who did it? And the answer was Larry Patton, Director
12 of Office of Board Support Services.

13 So you did that investigation, right? Did
14 you have any role in that investigation?

15 A. I had a role, but it would have been
16 Roosevelt who actually did the listening to the --
17 hearing --

18 Q. Okay.

19 A. -- or digging through and trying to find.

20 Q. And then he reports to you and says what he
21 finds?

22 A. Right.

23 Q. And then you provide the results of that
24 investigation to the judge and to Mr. Rose, right?

25 A. Right.

1 Q. Okay. And you understood, right, that
2 David Rose -- at this time David Rose was claiming that
3 he got four out of six votes?

4 A. Yes.

5 Q. Okay. So Roosevelt participated in the
6 investigation with you, you were involved in the
7 investigation. Anybody else at the agency?

8 A. Not -- I mean, obviously coming down from
9 legals and stuff, but as far as the actual
10 investigation, no.

11 Q. Right. I imagine you're getting legal advice
12 about this case, which you don't need to tell me about,
13 right?

14 A. Right.

15 Q. Tommy is working this case with Judge Addy;
16 is that right?

17 A. Right.

18 Q. Okay. So you reference it looks like here,
19 "We've completed the investigation to see if you got
20 the number of votes to be conditionally paroled
21 pursuant to Barton," right?

22 So that's back to this Barton hearing
23 process, right?

24 A. Right.

25 Q. So this was step one that we talked about.

1 The agency needs to decide whether you got enough
2 votes, Mr. Rose, to go get a Barton conditions hearing,
3 right?

4 A. Right.

5 Q. And the answer was no, you did not?

6 A. Right.

7 MR. DAYHUFF: Right. Now, it mentions in
8 here that you reviewed an affidavit. Let me just show
9 it to you to make sure we're talking about the same
10 thing.

11 Mark that, please.

12 (APPELLANT'S EXHIBIT 4, Attachment to Carlos
13 L. Bell's Affidavit, was marked for identification.)

14 BY MR. DAYHUFF:

15 Q. Have you had time to look at it? It's pretty
16 long. I'll give you a second.

17 A. Yeah.

18 Q. Is that the -- your first sentence
19 references, "Thank you for providing us a copy of the
20 affidavit of Mr. Carlos Bell testifying to what he
21 remembered to have transpired at the parole hearing in
22 2001."

23 Is that what you reviewed?

24 A. Yes.

25 Q. Did Roosevelt also review that?

1 A. I'm not sure if Roosevelt actually reviewed
2 this. He may have.

3 Q. But you know you did?

4 A. Yeah.

5 Q. Okay. All right. And so I guess if we're
6 thinking about the evidence that you have before you,
7 you're making this decision of whether he got the right
8 number of votes. You have that piece of evidence that
9 says he did get the right number of votes?

10 A. Right.

11 Q. And you also had Mr. Rose's statement that he
12 received the right number of votes?

13 A. Right.

14 Q. Right. That's his claim. It's been his
15 claim for ten years. Did you have anything else, any
16 other evidence other than what Mr. Rose had said and
17 Mr. Bell had said that supported the claim that
18 Mr. Rose received four votes?

19 A. Not to my knowledge.

20 Q. Okay. Well, you were the guy who did the
21 investigation.

22 A. I don't recall seeing anything else.

23 Q. Okay. What was on the other side of the
24 ledger? What information, if any, did you have that
25 indicated he didn't get four of six votes?

1 A. His rejection of parole.

2 Q. Help me understand what that is. What is his
3 rejection? The fact that he's still in jail.

4 A. Yes. I mean, we keep records of each hearing
5 and things of that sort, so ...

6 Q. Okay. All right. So was there a document
7 you looked at that said, "David Rose was rejected,"
8 during the investigation?

9 A. In the computer it shows the historical
10 hearings.

11 Q. So is this the PIC system?

12 A. No.

13 Q. So you log into the PIC system, and it shows
14 David Rose. And it says what?

15 A. I'm assuming we're talking about that
16 particular screen where it shows the history of the
17 hearings?

18 Q. Okay. I don't know what the screens look
19 like. You tell me.

20 A. It shows all kind of stuff. It's a
21 snapshot -- it's a working document from SCDC's
22 information as well. But you go into the hearing
23 ledger and it shows his -- if he's been scheduled, when
24 his next hearing is and then what his past hearings are
25 or were and the reasons for rejection, things of that

1 sort.

2 Q. I got you. So you were able to look back and
3 see every prior hearing and you -- I assume you went
4 back to 2001. That was the key one, right?

5 A. Right.

6 Q. And it said what, rejected?

7 A. Yes.

8 Q. Denied? What were the actual words?

9 A. "Reject."

10 Q. Reject. Did it have the reasons, like one
11 and two or ...

12 A. I don't remember.

13 Q. That's all right.

14 A. Being -- I don't know.

15 Q. Did it have the number of votes he received
16 and didn't receive?

17 A. Huh-uh, no.

18 Q. Because that wouldn't even be recorded,
19 right?

20 A. Right.

21 Q. All right. So when you mentioned to me that
22 that's on the other side of the ledger, right? We
23 talked about the information that supported his claim.
24 The information that opposed his claim that he got four
25 was the PIC system and the 2001 hearing rejected?

1 A. Uh-huh.

2 Q. Anything else?

3 A. There had been information in the records,
4 files, and things of that sort, rejection letter he
5 received.

6 Q. Okay. So did you look at the rejection
7 letter, or did that pull up in PIC too?

8 A. No, I didn't look at it.

9 Q. Okay. But you assume that he would have a
10 letter from 2001 that says, "You're rejected"?

11 A. Yes.

12 Q. Okay. All right. Help me understand this.
13 In 2001, he may well have gotten the rejection letter
14 and the PIC may well have said "rejected." But at the
15 time, they didn't know that four of six votes would get
16 you out, right?

17 A. Right.

18 Q. So that seems to me to be a -- kind of a flaw
19 in that piece of the evidence. Do you agree?

20 A. I just know more so than hearsay from a
21 so-called friend or whatnot.

22 Q. I hear you.

23 A. So I mean ...

24 Q. Right. I guess I'm asking, you understand
25 the -- the concern that that PIC entry and the letter

1 back from 2001 really wouldn't get at the issue of
2 Barton, right?

3 A. Right.

4 Q. Because they weren't counting votes right
5 back then, right?

6 A. Wasn't counting votes, right, for today's
7 ruling, but back then --

8 Q. Hindsight's 20/20, sure.

9 A. Right.

10 Q. And they were applying the two-thirds statute
11 retroactively back then?

12 A. Right.

13 Q. All right. All right. So anything else that
14 you considered in this investigation of whether he got
15 the right votes or not that we haven't talked about
16 already?

17 A. I don't think so.

18 Q. Okay. The letter talks about, Hey, sorry, we
19 don't have any records. "Unfortunately, we've been
20 unable to locate any information from your parole
21 hearing as records have been destroyed given that your
22 hearing was 14 years ago."

23 So you guded looked?

24 A. Yes.

25 Q. What records did you think you would find?

1 You thought you would find a tape?

2 A. Tape, letters.

3 Q. The letter you talked about, the rejection
4 letter?

5 A. Right.

6 Q. Okay.

7 A. Something to that effect, or, I mean, even
8 just something that may for whatever reason show a vote
9 count.

10 Q. Just like notes?

11 A. Anything.

12 Q. Right.

13 A. Anything that would have been directly
14 related to him.

15 Q. And there was nothing?

16 A. Right.

17 Q. Okay. Who did the looking for the documents?

18 A. Roosevelt.

19 Q. Okay. All right. So after that
20 investigation, the agency, PPP, you, acting for the
21 agency, made the decision he didn't receive enough
22 votes?

23 A. Correct.

24 Q. And you had the authority to make that
25 decision?

1 A. Correct.

2 Q. Just like you had the authority -- the agency
3 has the authority to decide some people did get the
4 right number of votes to move on to a Barton hearing?

5 A. Right.

6 Q. Okay. Did you learn how the documents with
7 respect to records, whatever, the records, tapes,
8 whatever they would have made, did you learn how they
9 were destroyed?

10 A. No.

11 Q. Okay. Did you learn when they were
12 destroyed?

13 A. No.

14 Q. Did anybody ask? Was that a subject of
15 inquiry?

16 A. Not so much for me.

17 Q. You just dealt with what you had?

18 A. Right.

19 Q. So you don't know, for example, if the
20 records were destroyed in 2008 or '9 or '10 or the day
21 before? You don't know?

22 A. I don't know.

23 Q. Okay. Under the 1994 retention schedule,
24 should those records have been kept as they were
25 needed?

1 A. Hard to say what my predecessor or anybody
2 before her would have decided.

3 Q. Let me ask it this way. Were those records
4 needed in February of 2015? Hard to say they weren't
5 needed?

6 A. I will say I think they could have been
7 beneficial, but for the course of 14 years, I don't
8 think they were really needed prior to.

9 Q. If you could go back in time, and I know you
10 can't, and preserve those records, you would have liked
11 to have those records in front of you in February 2015
12 to help you make the decision, right?

13 A. Yeah. Like you said, if I could go back in
14 time.

15 Q. Right. Right. Why?

16 A. Because we probably wouldn't be here.

17 Q. Okay. And you would want to look at all the
18 information that was available to make your decision,
19 right?

20 A. Right.

21 Q. That just makes sense, right? You want to do
22 a good job, be thorough, and to reach the right
23 decision. And to reach the right decision, it's best
24 to have all the information and records, fair?

25 A. Right.

1 Q. All right. Let me see if I have any other
2 questions about the interrogatories. You need a break
3 or are you okay?

4 A. I'm fine. Yes, sir.

5 Q. This interrogatory answer says, "There exist
6 --" it says "exist," but exists "-- no record of who or
7 when the tape was destroyed."

8 Is that your understanding?

9 A. Yes.

10 Q. This interrogatory response says, "There
11 exists no records detailing the final vote of Appellant
12 Rose's hearing."

13 Is that true?

14 A. To my knowledge.

15 Q. Let me ask you about -- so your
16 South Carolina Department of PPP State Operations
17 Manual is amended from time to time?

18 A. Right. Now, that -- if I'm -- this is the
19 board's manual. This isn't for the entire department
20 or anything. This isn't our policy and procedures.

21 Q. Okay.

22 A. This is right there, it's enacted by the
23 chair. So this is the -- this is the board's policy
24 procedure manual.

25 Q. All right. So you understand, when we were

1 looking at the Barton hearing, that comes out of this,
2 right?

3 A. Right.

4 Q. So you have a stand-alone set of policies and
5 procedures --

6 A. Right.

7 Q. -- for your agency?

8 A. Right.

9 Q. Okay. Do those policies and procedures for
10 the agency have, like, document retention policies that
11 are incorporated into them?

12 A. Yes.

13 Q. Okay.

14 A. The Exhibit 1, I suppose that would be ...

15 Q. Exhibit 1 came out of your agency policies
16 and procedures?

17 A. I would assume so, yeah.

18 Q. Okay. All right. Okay. Thank you for
19 clearing that up. I was thinking these were the agency
20 policy and procedures.. This is the board?

21 A. That is due to them being autonomous, that is
22 the board's policies and procedures. And we, being my
23 staff, have separate policies, procedures may
24 intertwine, but they are separate.

25 Q. I got you. We went through with some care at

1 the Barton hearing a process from in here.

2 A. Right.

3 Q. Does that process differ in your agency
4 policies and procedure from what we discussed?

5 A. No. Because as far as our stance being the
6 department and my examiners, the process is no
7 different for a Barton hearing as opposed to a regular
8 hearing.

9 Q. Okay.

10 A. The information is compiled the same. It's
11 all there.

12 Q. So the discussion we had 30 minutes ago
13 applies to the agency as well as to the board --

14 A. Yes.

15 Q. -- with Barton hearings?

16 A. Yes.

17 Q. All right. Okay. Does Mr. Rose bear any
18 blame for the agency disposing of his records?

19 A. Does he --

20 Q. Did he play any role in the agency's
21 disposing of his records?

22 A. Other than being in the system and having
23 records, no.

24 Q. Okay. Have you seen Mr. Hicks' affidavit
25 that was submitted as part of the -- I think as --

1 well, I don't know. Yeah, it's copied to Judge Addy.
2 It's part of the Judge Addy case. Have you seen his
3 affidavit?

4 A. I don't know.

5 MR. DAYHUFF: I'll show it to you just in
6 case. If you haven't, that's fine.

7 (APPELLANT'S EXHIBIT 5, Letter Dated May 27,
8 2014, was marked for identification.)

9 BY MR. DAYHUFF:

10 Q. You're not copied on it, but it doesn't mean
11 you didn't see it.

12 Just looking at the dates, it looks like,
13 Mr. Patton, you got involved in February of 2015. This
14 is going back to May of 2014. So it's a little
15 earlier.

16 A.. Right.

17 Q. It looks like it's related to discovery that
18 Mr. Rose had submitted as part of the case.

19 A. Right.

20 Q. So I guess the question is, were you involved
21 in the Judge Addy/Rose case back in May of 2014?

22 A. Not in the middle of it. Not to my
23 knowledge.

24 Q. So you don't recall reviewing this affidavit?

25 A. No.

1 Q. Do you know who drafted this affidavit?

2 Obviously Roosevelt signed it.

3 A. Most likely Roosevelt because he does
4 oftentimes because people are writing in asking for him
5 to investigate their hearings, he lot of times has to
6 sign affidavits saying that --

7 Q. I got you.

8 A. -- he's legally saying the person did or
9 didn't or whatever he heard.

10 Q. All right. So with respect to Mr. Rose,
11 after your February 13th, 2015, decision, which was you
12 didn't get enough votes --

13 A. Right.

14 Q. -- he didn't proceed forward to the current
15 board for a Barton hearing where he would receive
16 conditions that they wanted to impose?

17 A. Right.

18 Q. His case stopped there?

19 A. Correct.

20 MR. DAYHUFF: Okay. All right, sir. You
21 want to talk for a minute? I think we're about done.

22 (A recess transpired.)

23 BY MR. DAYHUFF:

24 Q. All right. Just a couple more.

25 Did your -- I think her name was Kristine,

1 your records person, records administration person, did
2 she participate in the 2015 investigation of whether
3 you had documents or not?

4 A. I don't know.

5 Q. Okay. But Roosevelt did?

6 A. Right.

7 Q. Okay. Anybody else participate other than
8 Roosevelt and I guess you?

9 A. I'm sure we did ask for, I don't know whom,
10 but I'm sure we did ask for some help from someone in
11 records to look through things, but that's about as
12 specific as I can be.

13 MR. DAYHUFF: I got you. That's it. That's
14 all I got.

15 You have any questions?

16 MR. EVANS: Yes.

17 EXAMINATION

18 BY MR. EVANS:

19 Q. Mr. Patton, of course you are aware Mr. Rose
20 is currently serving time in incarceration, right?

21 A. Correct.

22 Q. And of course you had an opportunity to look
23 at his case summary, things of that nature?

24 A. Right.

25 Q. He's eligible for parole now; is that

1 correct?

2 A. Right.

3 Q. He's having a hearing next month; isn't that
4 correct?

5 A. I believe so.

6 Q. And you are aware that he's currently serving
7 a sentence for kidnapping?

8 A. Right.

9 Q. And of course you're aware that's a violent
10 offense?

11 A. Right.

12 Q. Now, you have a chance in the case summary,
13 are you aware that Mr. Rose was granted parole in the
14 '80s sometime? I can't remember when, but in the '80s
15 he was granted parole.

16 A. I do believe so because I believe he was
17 revoked. Vaguely, I -- yes.

18 Q. He was revoked in 2000, right?

19 A. Right.

20 Q. And his -- and according to parole board
21 policy, when you're revoked, you get a hearing the next
22 year, correct?

23 A. You must wait one year, yes.

24 Q. Right. So he got revoked in 2000, correct?

25 A. Yes.

1 Q. And he got a hearing the next year; is that
2 correct?

3 A. Right.

4 Q. Okay. Now, under your experience, how many
5 individuals receive a granting of parole a year after,
6 especially in a violent offense, a year after they've
7 been revoked?

8 A. In my experience?

9 Q. Yes.

10 A. It doesn't happen.

11 Q. It doesn't happen.

12 A. Not that I've experienced.

13 Q. Okay. And how long have you been working in
14 your capacity?

15 A. Two, two and a half years.

16 Q. Okay. So I would assume you've seen a good
17 bit of, you know, persons coming back before the parole
18 board?

19 A. Right. Yes.

20 Q. And you've never seen a person being granted
21 parole a year after it being revoked?

22 A. No, not that quickly.

23 Q. Now, of course, you were in high school in
24 2001, right?

25 A. Right.

1 Q. But I'm sure you've been aware of our board
2 and their granting practices back in that time?

3 A. Yes.

4 Q. Okay. What have you learned about how the
5 board conducted their granting back in 2001?

6 A. They didn't. Very seldom did they grant
7 parole at all.

8 Q. Okay. Now, Mr. Dayhuff asked you about the
9 Freedom of Information Act, correct?

10 A. Right.

11 Q. And of course the board falls under that act?

12 A. Correct.

13 Q. And part of the information that we must
14 release or the board must release is the recordings of
15 the hearings.

16 A. Right.

17 Q. And if an individual pays 17.50, it might be
18 more now, we give them a recording of the hearings.

19 A. Right.

20 Q. Are you aware if Mr. Rose received his
21 recordings?

22 A. I do not know.

23 Q. Well, I'll refresh your memory. He did
24 receive those recordings.

25 A. Okay. Doesn't surprise me.

1 MR. DAYHUFF: Object to the form.

2 BY MR. EVANS:

3 Q. Now, Mr. Dayhuff talked to you about a
4 hearing held before Judge Addy in May of 2014.

5 A. Okay.

6 Q. Okay. I'm going to read part of the
7 transcript where Mr. Rose specifically stated -- and he
8 stated, "So what I did, I turned around and ordered the
9 tape of the hearing."

10 Well, first of all, before I get to this, you
11 said earlier that there was a voice vote if the vote is
12 not unanimous, correct?

13 A. Current standards. I don't know about 2001.

14 Q. You don't know about 2001. But it could have
15 occurred in 2001?

16 MR. DAYHUFF: Object to the form.

17 BY MR. EVANS:

18 Q. Under your opinion, it could have occurred in
19 2001?

20 MR. DAYHUFF: Objection.

21 BY MR. EVANS:

22 Q. You're not quite sure, but it could?

23 A. Yes. Yes, it could.

24 Q. Okay. And what you stated is a voice vote
25 that was not unanimous, so each member said yes or no,

1 if that happens?

2 A. They would specify either parole or reject or
3 deny.

4 Q. Okay. Now, if it's unanimous, nothing is
5 said, correct?

6 A. Correct.

7 Q. They move on?

8 A. Correct.

9 Q. Now, according to Mr. Rose, he stated in that
10 hearing in 2014 before Judge Addy -- yes, sir.

11 A. I'm sorry, there's nothing said as far as
12 voting, but they state the reasons if it's rejected or
13 they state the conditions if it's paroled.

14 Q. Okay. All right. Now, he stated, "What I
15 did, I turned around, ordered the tape of the hearing.
16 It's not on the tape. And it says a duplicate of the
17 hearing. It does not even have the recording of the
18 votes on it."

19 Okay. And you just earlier said that there's
20 no recording of the votes if it's unanimous, right?

21 A. Correct.

22 Q. And you earlier said that very rarely a
23 person -- well, you said it doesn't happen if the
24 person comes up for parole after being revoked and gets
25 granted, correct?

1 A. Correct.

2 Q. Okay. Now, let me see. And you didn't
3 receive a copy of the recording from Mr. Rose, did you?

4 A. I don't believe so.

5 Q. Okay. All right. Let's go to the Barton
6 hearings. There have been about seven or eight
7 individuals that have been released on parole under
8 Barton, correct?

9 A. Right.

10 Q. And sometimes under those hearings, actual
11 board members sign affidavits stating, "Yes, I did vote
12 for him," correct?

13 A. That has happened.

14 Q. You didn't receive any affidavits from any
15 board member that heard the 2001 hearing, did you?

16 A. I don't believe I have.

17 Q. Did you receive any information from anyone
18 present other than Mr. Bell saying he got four votes?

19 A. No.

20 Q. Okay. And the only information you received
21 is this affidavit from Carlos Bell, which is, I think,
22 Exhibit Number 4, correct?

23 A. Yes.

24 Q. Okay. Now, in looking at this affidavit,
25 Mr. Bell stated that he is the cousin of Mr. Rose,

1 correct?

2 A. Yes.

3 Q. Okay. Also in his affidavit Mr. Bell says
4 that he hired Alvin Neal to represent him?

5 A. Yes.

6 Q. And he actually paid Mr. Neal to represent
7 him, correct?

8 A. Yes.

9 Q. Now, during this affidavit, according to this
10 affidavit, Mr. Rose heard from Mr. Neal. I mean not
11 Mr. Rose, Mr. Bell heard from Mr. Neal that he received
12 four votes, correct?

13 A. Yes.

14 Q. Mr. Bell never stated in his affidavit that
15 he heard it specifically from anybody from the board
16 that he received four votes?

17 A. Correct.

18 Q. Okay. So what was your opinion of this
19 information when you received it?

20 A. Pure hearsay. I mean, it was today's
21 practices, which I can't imagine would be as far as in
22 this sense, I wouldn't imagine being very far off from
23 what was done back then, there's not going to be much
24 conversation as to the hearing numbers and things of
25 that sort on the spot. There's a lot going on. And

1 like I said, this is just someone who's saying that
2 they heard this.

3 Q. Well, actually, Mr. Bell is saying he heard
4 it from someone else who said he heard it from someone
5 else.

6 A. Right.

7 Q. So actually this is hearsay in front of
8 hearsay.

9 A. Third, fourth person, something like that.

10 Q. And you received no other information
11 regarding him and the amount of votes he received?

12 A. No.

13 Q. Even though Mr. Rose stated on the record
14 during the hearing to a circuit court judge that he had
15 the recordings of this hearing?

16 A. I haven't seen anything.

17 Q. Okay. All right. Now, according to the
18 policies and procedures of the parole board, they have
19 a separate policy and procedures than this; isn't that
20 correct?

21 A. Yes.

22 Q. And the reason being because the parole board
23 is a separate entity from the department, correct?

24 A. Right.

25 Q. The director cannot make the board do any

1 manner -- the director cannot say, "You're going to
2 grant somebody parole, you're going to deny somebody
3 parole"?

4 A. Correct.

5 Q. You cannot do that, correct?

6 A. Correct.

7 Q. And nobody else in the agency can do that?

8 A. No.

9 Q. As far as you know, the board is appointed by
10 the governor; isn't that correct?

11 A. Yes.

12 Q. So even the director cannot remove anybody
13 from the board, as far as you know?

14 A. Right.

15 Q. That's why they have separate policies and
16 procedures because they have separate duties that they
17 must adhere to?

18 A. Correct.

19 Q. And part of that is Barton --

20 A. Right.

21 Q. -- the Barton hearings?

22 Are you aware if there is even a mention in
23 the Barton hearings in the department's policies and
24 procedures?

25 A. I don't -- I don't believe currently there

1 is.

2 Q. Because our policies must be about a thousand
3 pages.

4 A. Absolutely. This policy and procedure manual
5 for the board pertains only to the board, their actions
6 and the hearings. Our agency part of policy and
7 procedure pertains to everything from HR information to
8 supervising offenders to leave. I mean, just
9 everything.

10 Q. Yes.

11 A. Every business practice.

12 Q. All right. And if you received sufficient
13 information showing he received four votes, what would
14 you have done from there?

15 A. At that point we would have gotten -- in this
16 case, most likely wouldn't have been able to, but in
17 typical cases, we would get the summary -- the parole
18 summary for the actual hearing in question, and then we
19 would get the most recent parole summary, put them on
20 the schedule for the -- for the fall -- the next
21 available eligible full board hearing, meaning we would
22 have to go through the 30-day notice and things of that
23 sort for victims. And then we would present the case
24 to the parole board. Let them make their decision. We
25 would present them with the number of votes, things of

1 that sort.

2 Q. Okay. Now, explain on the record exactly
3 what occurs on the Barton hearing.

4 A. We go on record. We tell the board this is a
5 Barton hearing and now that they are familiar with
6 Barton hearing, we don't have to go into much more
7 detail. But we inform them there's a Barton hearing
8 takes place, and we tell them what date the person was
9 granted with the new ruling parole. What the vote was.
10 They have requested that we inform them of who the
11 voters were. Because we do have a couple members that
12 are currently on the board back -- from back then and
13 they don't want to sign yes when they originally voted
14 no.

15 So we do that. And then we, like I said,
16 present them with the current summary, and they have
17 the opportunity to place any kind of conditions or
18 whatnot on them. Or even rescind the hearing at this
19 point.

20 Q. Okay.

21 A. Or rescind the decision.

22 Q. And when you say that the board don't want to
23 sign; you mean the certificate, correct?

24 A. The order of parole.

25 Q. The order of parole.

1 A. Not the certificate.

2 Q. The order of parole that's done in the Barton
3 hearing, they don't do a certificate?

4 A. All hearings have an order of parole.

5 Q. Okay.

6 A. And then the department conducts -- compiles
7 the certificate.

8 Q. Okay. Now, the order of parole, is that
9 signed by, like, four members, five members? How many
10 people actually sign?

11 A. However many vote, yes.

12 Q. Okay. All right.

13 A. Only in a granting of parole. If it is a
14 rejection, then the one or two people who vote yes
15 won't have to sign.

16 Q. Okay. Are you aware that the initial case
17 for Mr. Rose was a post-conviction relief action, are
18 you aware of that?

19 A. Am I aware of the --

20 Q. Initial hearing that Mr. Rose conducted was a
21 post-conviction relief action? It wasn't against the
22 department. Are you aware of that?

23 A. I think we -- I think it's been mentioned.

24 Q. Okay.

25 A. But I'm not familiar with the details of it.

1 Q. All right. And Mr. Dayhuff asked about the
2 state statute of policies that we follow at the
3 department. Are you aware that one of the policies is
4 that the parole board must sign the certificate
5 ordering somebody on parole?

6 A. Yes.

7 Q. Okay. And it doesn't mention within any --
8 as far as your knowledge, it doesn't mention any law
9 that a judge is allowed to grant someone parole?

10 MR. DAYHUFF: Object to the form.

11 THE WITNESS: Right.

12 BY MR. EVANS:

13 Q. Okay. Have you ever seen a judge grant
14 somebody parole in your eight and a half years working
15 for the department?

16 A. I have not.

17 Q. Have you ever seen anyone in your eight and a
18 half years working at the department, other than the
19 board, grant anyone parole?

20 A. I have not.

21 Q. And if you received more documentation
22 regarding any board members' affidavits or actual tapes
23 saying -- showing he received four votes, you would
24 have furthered that along for potential Barton hearing;
25 is that correct?

1 A. Correct.

2 Q. Okay. But you never received any other
3 information other than the affidavit from Mr. Bell?

4 A. Right. We have worked -- we have handled
5 this case as we would any case with this amount of
6 evidence -- amount of information.

7 Q. Do you have ever give any recommendations in
8 the Barton hearings to the board?

9 A. Do I? No. Not my stuff.

10 Q. No one gives recommendations?

11 A. We present -- the only recommendations for
12 the conditions, and that is on the most recent summary.

13 Q. Okay.

14 A. But that's -- that's it.

15 Q. But if you recommend conditions, the board
16 can do what it wants?

17 A. Absolutely.

18 MR. DAYHUFF: Okay. One minute.

19 (Off the record.)

20 BY MR. EVANS:

21 Q. Okay. I'm referring to Exhibit Number 3.
22 This is the letter, Mr. Patton, that you sent to
23 Mr. Rose informing him that you're not going forward
24 with the Barton hearing.

25 At the end of the letter you said that the

1 department cannot release you on parole. Did you mean
2 the entire department or the board or what did you mean
3 when you wrote that, that last sentence? Or was that
4 an error on your part stating that?

5 A. I mean, I guess it could be worded a little
6 better. Due to the fact it's the board that releases
7 someone. But the department -- I mean, the board is,
8 through the department in this sense, because the
9 department is the person -- the entity monitoring,
10 supervising a parolee and that's what the intent of
11 that particular wording is geared toward. So I said
12 perhaps maybe better worded, but that's the intent of
13 that.

14 Q. All right. Did you mean the department can
15 release anybody on parole?

16 A. No. We have no authority to do so.

17 Q. Okay. And from your experiences in parole
18 board hearings -- and you stated earlier that the
19 chairman had the lights and the votes are done pretty
20 much under the table during the hearings?

21 A. Yes.

22 Q. Okay.

23 A. That's where the switches are.

24 Q. The switches are, correct.

25 A. The switches are mounted to the bottom of the

1 table.

2 Q. Okay. And you wasn't aware of how the actual
3 hearings were conducted before you came into your
4 position?

5 A. Right. No.

6 MR. EVANS: Okay. That's something I can ask
7 later.

8 I have no further questions.

9 MR. DAYHUFF: Let me just ask a few
10 follow-ups, and I'll start with the last piece.

11 REEXAMINATION

12 BY MR. DAYHUFF:

13 Q. You weren't aware of how hearings were
14 conducted in 2001?

15 A. Correct.

16 Q. You were in high school in 2001, correct?

17 A. Right.

18 Q. When you were offering your thoughts on how
19 the board considered parole and how tough or not tough
20 they were, you have no personal knowledge of that, do
21 you?

22 A. Personal knowledge being that I was there?

23 Q. That you observed it.

24 A. Correct.

25 Q. Okay. Have you looked at any statistics that

1 tell you how often parole was granted in 2001 versus,
2 say, 2015?

3 A. Yes, I can offhand tell you our rate. But I
4 have seen those, so yes.

5 Q. All right. And you don't have any personal
6 knowledge of how they were announcing votes in 2001?

7 A. Right.

8 Q. Right? Don't know if they were lights?

9 A. Right.

10 Q. Don't know if they were hands? I don't know
11 if they were voices?

12 A. I couldn't tell you any of it.

13 Q. Buzzers? Don't know?

14 A. I have no clue.

15 Q. Gene Richardson is one of the guys who got a
16 Barton hearing.

17 A. Uh-huh.

18 Q. He had a hearing in 2001. Did you know that?

19 A. I believe so because I think on the list -- I
20 don't know. I don't remember. There have been some
21 that we've had to say we have the information on this,
22 this and this hearing, but not this hearing. He may
23 have been one of those. I'm not sure.

24 Q. Okay. All right. The notion -- you don't
25 know in 2001 how the parole board considered revocation

1 of parole? I mean, you have no personal knowledge of
2 that. Whether they were harsh on people that have been
3 revoked or not harsh or never grant them in the first
4 year, you just don't know?

5 A. I can assume.

6 Q. Well, the question is, do you know?

7 A. No.

8 Q. You're speculating about that, right?

9 A. Right.

10 Q. Based on current experience, right?

11 A. Right. Yeah.

12 Q. Okay. There was some discussion of policies
13 and procedures I don't have, right?

14 A. Right.

15 Q. That's what I have.

16 A. Right.

17 Q. I think I was clear with your earlier
18 testimony that when we talked about Barton hearings and
19 the policy for Barton hearings, at least for your board
20 is right here, and we went through that, right?

21 A. Right.

22 Q. From the agency perspective, you all follow
23 this policy with respect to Barton hearings?

24 A. Yes.

25 Q. Okay. You mentioned to me that with respect

1 to the Barton -- not to me but to Mr. Evans that when
2 you have a Barton situation, you all have decided, you
3 and Roosevelt have decided that the inmate has enough
4 votes to get a Barton hearing?

5 A. Yes.

6 Q. You present that to the parole board, the
7 current parole board?

8 A. Right.

9 Q. And I think you said you tell them the date
10 that that inmate was granted parole?

11 A. The date in question, yes.

12 Q. Right. So that if Rose got one, and I know
13 he didn't, right, you would go in there and say this
14 inmate received parole, received four votes in 2001
15 from this old parole board. You would tell them who it
16 was?

17 A. Yes.

18 Q. In case there were any current people sitting
19 there, right?

20 A. Right.

21 Q. And then that parole board would sit and
22 decide conditions --

23 A. Right.

24 Q. -- right?

25 You mentioned something to me that was

1 interesting, that they could rescind the decision. Are
2 you saying that the current parole board, in our
3 hypothetical if Rose went up before them, and you
4 determined that Rose got four votes in 2001, are you
5 telling me that the current parole board could rescind
6 what the 2001 parole board did with respect to votes?

7 A. The way it currently stands, yes.

8 Q. How could that happen?

9 A. Because, like I said, you're getting the most
10 updated information. And let's say last year you
11 shanked somebody, well, your disciplinary record is
12 going to speak for itself. So they may rescind now
13 because you just killed someone a year ago or something
14 of that sort.

15 Q. So it would be based on misconduct in the
16 interim, you would allow them to do that?

17 A. That's just one example. Once again, I'm
18 just saying that's a possibility. Whatever. Once
19 again, the board is a -- the board --

20 Q. The board is the board?

21 A. -- is their own entity. They're their own
22 entity. They work outside of us. We provide them the
23 information, they get to --

24 Q. Is there any statutory, regulatory, or policy
25 authority for the board to rescind a parole that was

1 granted in the past?

2 A. Other than I believe you're asking the
3 only --

4 Q. In the Barton setting, right?

5 A. In the Barton setting, I don't believe
6 there's been anything. That's why I say, as it stands
7 now, I don't believe there have been any kind of
8 clarification at that point.

9 Q. So you couldn't point me to a statute or a
10 regulation or a policy that says when an inmate comes
11 before the parole board for a Barton hearing, that in
12 addition to imposing conditions, the parole board could
13 rescind and overturn what had been done in 2001 or
14 2002?

15 A. It was essentially -- it essentially falls
16 under the same as being granted parole and failing to
17 complete a condition or coming up for violation or
18 something, having your parole rescinded.

19 Q. And so the question is, can you point me to a
20 statute or a regulation or a policy that affords the
21 board that authority?

22 A. Yes.

23 Q. Okay. What is that?

24 A. Offhand, I could not tell you the numbers,
25 but I do know that -- I mean, that's the whole premise

1 behind them being the authority for violations and
2 things of that sort.

3 Q. And it's okay that you can't name it.

4 A. Yeah.

5 Q. So generally, it's their power to do what?
6 And I can look at it, right? Their power to rescind
7 based on --

8 A. Various. Earlier we discussed a waiver. You
9 know, the parole board could rescind based on a waiver.
10 Maybe they put -- in your opinion, you're the inmate
11 and you feel as if they gave you too many conditions.
12 Well, forget that, I'm not going to do it. I asked --
13 I'm going to waive, and so they'll rescind.

14 Q. I got you.

15 A. They tell you to go to drug class, you go to
16 drug class, you fail out. You test positive and you
17 fail out of drug class. They rescind you. You go
18 through the whole process, and, you know --

19 Q. I got you. For example, I think the drug
20 class example would be we grant you parole, it's
21 conditioned upon your completion of the ATU.

22 A. That's why every parole is conditional
23 parole.

24 Q. So when an inmate doesn't do well at ATU or
25 decides he's not going to do ATU, the parole board has

1 the authority to say, "Okay, that was a conditional
2 parole"?

3 A. Right. Well, all of them are conditional
4 because they're at least -- every parole has at least
5 statutory mandates. So that has at least a couple.
6 Every one of them is conditional.

7 Q. Any other basis that -- you mentioned the, I
8 guess, the bad behavior, failure to comply with
9 conditions. Any other reason that you believe the
10 parole board in a Barton setting would be able to
11 rescind the decision of an earlier board?

12 A. I hadn't -- like I said, the way things stand
13 now, I mean, that hasn't been something that's really
14 been done.

15 Q. What do you mean by that? That's just not
16 come up?

17 A. Right. We've had eight cases.

18 Q. Right. In those eight cases, you came to the
19 board and said, "Okay, Gene Richardson got four votes
20 and they moved to conditions --"

21 A. Right.

22 Q. "-- and that's over."

23 A. Right.

24 Q. Same thing with the others?

25 A. Right.

1 Q. So it hasn't happened otherwise?

2 A. Right. We're talking about hypotheticals in
3 some senses, so I'm just throwing that out as
4 hypothetical.

5 Q. I got you.

6 A. I mean, the only thing I could I guess say is
7 if they chose to completely abstain and not give
8 signatures because the law states signatures, not
9 votes.

10 Q. No, I hear you. This is part of your
11 explaining to me the separation between the board and
12 the agency?

13 A. Yes.

14 Q. They're different entities?

15 A. Yes.

16 Q. And the board has its power?

17 A. Yes.

18 Q. And you have a very broad interpretation of
19 that board's power, right?

20 A. Yes.

21 MR. DAYHUFF: Okay. Fair enough.

22 REEXAMINATION

23 BY MR. EVANS:

24 Q. All right. Now, Mr. Dayhuff talked to you
25 about a person going for a Barton hearing and the board

1 rescinding parole. That person hasn't received parole
2 yet, has he?

3 A. Not in traditional sense, no.

4 Q. Okay. So -- and there are circumstances
5 where the board, even if the board grants somebody
6 parole, they can rescind it?

7 A. Right.

8 Q. And it's in the policy manual, correct?

9 A. Yes.

10 Q. Could be for misconduct by the inmate, like
11 you say, shanking somebody a year ago?

12 A. Yes.

13 Q. It could be new criminal charges. Could it
14 be for that reason?

15 A. It could be various reasons that --

16 Q. After acquiring information about that
17 inmate --

18 A. Right.

19 Q. -- could be for that reason?

20 A. Yes.

21 Q. And it could be situations where the board
22 denied somebody parole and then information comes
23 before the board and they make the decision to grant?

24 A. Correct.

25 Q. It has happened before, also?

1 A. Yes. It can go either way.

2 MR. EVANS: It can go either way.

3 And Mr. Kenneth Green, he's had a -- I don't
4 know if I can go into that. I don't believe you asked
5 about that.

6 Nothing. That's it. I'm done.

7 MR. DAYHUFF: Okay. Thank you for your time.

8 (The deposition concluded at 11:38 a.m.)

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SIGNATURE OF DEPONENT

I, the undersigned, LARRY J. PATTON, do hereby certify that I have read the foregoing deposition and find it to be a true and accurate transcription of my testimony, with the following corrections, if any:

PAGE	LINE	CHANGE	REASON
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LARRY J. PATTON	DATE
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CERTIFICATE OF REPORTER

I, Sheri L. Byers, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 8th day of October, 2015, at Columbia, Richland County, South Carolina.

Sheri L. Byers



Sheri L. Byers,
Registered Professional Reporter,
Notary Public
State of South Carolina at Large
My Commission expires:
October 30, 2023

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

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Appeal from the Administrative Law Court
The Honorable Deborah Brooks Durden, Administrative Law Judge

SC Court of Appeals

Appellate Case No.: 2016-000225

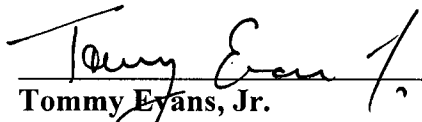
DAVID ROSE, #91858,.....RESPONDENT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES,.....APPELLANT

CERTIFICATE OF COUNSEL

The undersigned certifies that this Supplemental Record on Appeal complies with Rule 210(c), SCACR and with the South Carolina Supreme Court's order dated August 13, 2007, and contains all material proposed to be included by any of the parties and not any other material.



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May 23, 2016