

1                   MEETING OF THE ADVISORY COMMITTEE  
2           ON CHILD SUPPORT GUIDELINES AND ENFORCEMENT  
3                   FOR THE STATE OF ALABAMA  
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13           The following proceedings were held in the  
14   meeting of the Advisory Committee on Child  
15   Support Guidelines and Enforcement for the State  
16   of Alabama on Friday, August 26, 2016,  
17   commencing at approximately 10:04 a.m. at the  
18   Heflin-Torbert Judicial Building, 300 Dexter  
19   Avenue, Montgomery, Alabama, and was taken  
20   before Heather Tatum, Court Reporter and  
21   Commissioner for the State of Alabama at Large.  
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## 1 APPEARANCES

2 HONORABLE JULIE PALMER, Chair  
Domestic Relations Division  
3 Circuit Judge, Birmingham Division,  
Jefferson County

4  
MICHAEL A. POLEMENI  
5 Alabama Family Rights Association  
National Parents Organization

6  
HONORABLE WILLIAM K. BELL  
7 Madison County Circuit Judge (retired)

8 SHANE SMITH, Esquire  
Family Law Section of Alabama State Bar

9  
ANGELA S. CAMPBELL  
10 Alabama Child Support Association

11 LATHESIA SAULSBERRY  
Child Support Enforcement Division,  
12 Alabama Department of Human Resources

13 JENNIFER M. BUSH, Esquire  
State-Level Child Support Attorney,  
14 Alabama Department of Human Resources

15 PENNY DAVIS, Esquire  
Alabama Law Institute, Tuscaloosa, Alabama

16  
HONORABLE LYN STUART  
17 Acting Chief Justice  
Alabama Supreme Court

18  
L. STEPHEN WRIGHT, JR., Esquire  
19 Birmingham, Alabama

20 JIM JEFFRIES, Esquire  
Mobile, Alabama

21  
HONORABLE AUBREY FORD, JR.  
22 District Court Judge, Macon County  
Macon County Courthouse (retired)

23

1     STEPHEN R. ARNOLD, Esquire  
2     Birmingham, Alabama

3     HONORABLE MARY MOORE  
4     Perry County Circuit Clerk

5     BRAD MEDARIS, Esquire  
6     Supreme Court Clerk's Office

7     SCOTT HOYEM, Esquire  
8     Administrative Office of Courts

9     BOB MADDOX, Esquire  
10    Administrative Office of Courts

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1                   CHAIR PALMER: It is 10:04. Let's go  
2 ahead and get started. I would like  
3 everybody to be sure your phone is on  
4 silent or any other device that you may  
5 have that makes noise like that.

6                   And I am Judge Julie Palmer. I'm  
7 the chair of this Committee out of  
8 Jefferson County. I have been informed  
9 that our court reporter is fairly new to  
10 this type of situation, so if you would,  
11 at least for the first hour, let's say  
12 that if you say something, that you say  
13 your name first so that she is sure to get  
14 -- so she gets a chance to recognize  
15 everybody. And if you can maybe turn your  
16 name plate towards her so that she can  
17 see. Okay.

18                   Well, welcome. And I'm calling  
19 this meeting of the Advisory Committee of  
20 the Child Support Guidelines Enforcement  
21 meeting of -- to the Alabama Supreme Court  
22 to order. Today is Friday, August 26,  
23 2016. It is 10:05. And I want to welcome

1           everybody. And to make sure we have a  
2           quorum, let's everybody give your name for  
3           the court reporter, and we'll go from  
4           there. Michael.

5           MR. POLEMENI: Michael Polemeni.

6           HONORABLE BELL: Billy Bell.

7           MS. DAVIS: Penny Davis.

8           MR. WRIGHT: Steve Wright.

9           MS. BUSH: Jennifer Bush.

10          MS. SAULSBERRY: Lathesia Saulsberry.

11          MS. CAMPBELL: Angela Campbell.

12          CHAIR PALMER: Julie Palmer.

13          HONORABLE FORD: Aubrey Ford.

14          MS. MOORE: Mary Moore.

15          HONORABLE STUART: Lyn Stuart.

16          CHAIR PALMER: Do we have a quorum,

17          Mr. Medaris?

18          MR. MEDARIS: We do.

19          CHAIR PALMER: Okay. Also in the  
20          room is Bob Maddox and Brad Medaris, so  
21          you may hear them from time to time. So  
22          if y'all would identify yourself, if you  
23          make a comment, for the court reporter

1           because I don't know if she can see your  
2           name tags either -- or name plates.

3                       So we have a quorum. That is  
4           great. Now we need approval of the  
5           transcripts. It was 1500 pages or  
6           something like that, Mr. Maddox.

7                       MR. MADDOX: Not exactly. I'll have  
8           to look back at it.

9                       CHAIR PALMER: But he knows exactly  
10          how many pages it was. I'll tell you that  
11          much.

12                      MR. MADDOX: 180 pages.

13                      CHAIR PALMER: Is that all? Okay.  
14          180 pages. So I tell you what, we've got  
15          two more members that have just walked in,  
16          so y'all get a seat, make yourself at  
17          home.

18                      MR. MADDOX: The revised transcript  
19          is under Tab A. There were several  
20          corrections that needed to be made. And  
21          if you want to know, they were minor  
22          corrections, mostly name changes, and  
23          Title IV-D was spelled with a number

1           instead of a Roman numeral. So we wanted  
2           to correct that all the way through. So  
3           if you need to see what changes were made,  
4           I made them in handwriting on two handouts  
5           on the left-hand side of your notebook, on  
6           the very back. It's just as simple as  
7           that. So if you have any questions as to  
8           what was changed, it's just minor changes,  
9           nothing substantive in my mind.

10                   CHAIR PALMER: Well, while the  
11           members are coming in -- we've got three  
12           people that have just walked in -- I'm  
13           going to let everybody look under Tab A  
14           and just peruse these, please. If you  
15           could get Mr. Arnold -- okay. Well, we  
16           definitely have a quorum now. So if we'll  
17           start with -- Mr. Arnold, if you'll just  
18           introduce your name. It's going to be  
19           kind of hard for us; but the court  
20           reporter, she's fairly new to this, so she  
21           needs to see your name plate as well.

22                   MR. ARNOLD: I'm Steve Arnold,  
23           private practicing lawyer in Birmingham.

1                   MR. SMITH:   Shane Smith.   I'm a  
2                   private practicing lawyer in Birmingham as  
3                   well and chair of the Family Law Section.

4                   CHAIR PALMER:   And, Mr. Jeffries, if  
5                   you'll introduce yourself.

6                   MR. JEFFRIES:   Jim Jeffries from  
7                   Mobile.   I practice at Jeffries Family Law  
8                   there.

9                   CHAIR PALMER:   All right.   Well, we  
10                  were just reviewing, under Tab A, the  
11                  minutes from our last meeting which was  
12                  March the 3rd.   Bob Maddox had told us  
13                  that he highlighted any changes that he  
14                  made, which was mainly spelling of names  
15                  and IV-D from a Roman numeral -- from a  
16                  spelled out four to a Roman numeral four.  
17                  And so are the minutes approved?

18                  HONORABLE FORD:   So move.

19                  CHAIR PALMER:   Okay.   Aubrey Ford  
20                  moved that.   Any second?

21                  MR. WRIGHT:   Second.

22                  CHAIR PALMER:   Okay.   Steve Wright  
23                  seconded.   Everyone agree?   Say yes.



1 (Committee members in favor of the  
2 motion so indicated.)

3 CHAIR PALMER: Opposed? No?

4 All right. The transcript is  
5 approved. A few minutes ahead of  
6 schedule. How about that?

7 Well, next on the agenda is a  
8 presentation on update of the schedule.  
9 We have Mark Rogers, who, for some of us  
10 who were here in 2007 and 2008, I believe,  
11 he gave us a presentation then. And he is  
12 here. We put out an -- or Mr. Maddox put  
13 out an RFP.

14 MR. MADDOX: Mr. Scott Hoyem is here.

15 CHAIR PALMER: Oh, I apologize.

16 MR. MADDOX: Also I wanted him to  
17 state on the record he did send a notice  
18 to the media and the public --

19 CHAIR PALMER: Okay.

20 MR. MADDOX: -- about this meeting.

21 CHAIR PALMER: So, Mr. Hoyem, my  
22 apologies.

23 MR. HOYEM: If I could, let the

1           record reflect that we sent out notice to  
2           media electronically of today's meeting,  
3           statewide, and published a notice as well  
4           on our website.

5                   CHAIR PALMER:   Okay.   Yes.   And that  
6           notice went out on July the 25th of 2016.

7                   MR. HOYEM:    Yes, ma'am.

8                   CHAIR PALMER:   Okay.   Thank you.  
9           Anything else?

10                   Okay.   Well, so now we're back to  
11           presentation, update of the schedule.  
12           When we were here last, Mr. Maddox sent  
13           out, I believe, it's an RFP -- to how many  
14           people, Mr. Maddox, or organizations?

15                   MR. MADDOX:   We sent it to every  
16           college and university in the state of  
17           Alabama with economics departments, Dr.  
18           Jane Venohr in Colorado and Mr. Rogers in  
19           Georgia because they were previous  
20           vendors.   And Mr. Rogers was the sole  
21           awardee.

22                   CHAIR PALMER:   Okay.   So thank you,  
23           Mr. Rogers, for that.

1                   Mr. Rogers is going to give us a  
2                   presentation on the Alabama Economic  
3                   Report and Alternative Child Support Cost  
4                   Schedules and related issues. He is an  
5                   independent economic consultant and is  
6                   nationally recognized educator of child  
7                   cost as related to family law issue --  
8                   independent issues.

9                   And I want to say you were here  
10                  back when we revised these in 2009. Was  
11                  that correct, sir.

12                 MR. ROGERS: The last time we -- you  
13                 discussed the issue, yes.

14                 CHAIR PALMER: Okay. So with that,  
15                 Mr. Rogers, I'm going to turn the program  
16                 over to you.

17                 MR. ROGERS: Thank you. I appreciate  
18                 you having me here and being involved in  
19                 this process, and I'm -- of all the folks  
20                 here, I'm the lucky one. I'm merely the  
21                 economist who gets to crunch the numbers  
22                 and, hopefully, educate. You're the ones  
23                 that get to make a decision to make a

1           change or not. My job is easier than  
2           yours, but part of my job is to help  
3           educate. And that's a key goal here  
4           today, to learn what the numbers are.  
5           That helps you make your decisions.

6                       So in my mind, there's no question  
7           that's not important if it helps  
8           illuminate on the issue. So feel free to  
9           ask questions as we go, but we're going to  
10          have a Q and A after the presentation.  
11          But definitely the times -- as I work with  
12          the numbers a lot, sometimes I forget how  
13          to actually clarify what it's all about,  
14          and that's the goal here today.

15                     A little bit of warning, I am a  
16          pacer so that's just how I talk. I can't  
17          talk if I'm not moving. I'll try to stay  
18          out of the screen.

19                     Basically I was asked to help  
20          update the cost schedule portion of your  
21          Child Support Guidelines, and my proposals  
22          had several components. Not just the cost  
23          tables but also doing comparisons between

1           states and this general geographic region  
2           and maybe selected other comparisons. And  
3           sometimes those comparisons can help you  
4           decide if a given version of my child cost  
5           estimates is preferable to another.

6                       So a key part of what I want to  
7           talk about is I have four sets of Alabama  
8           data. One of the important things is to  
9           understand what's under each set. They're  
10          all different in different ways. So  
11          that's probably one of the key areas of  
12          focus, what's different about each set of  
13          the tables.

14                      One of the sets of tables is to  
15          adjust national data. Most standard child  
16          cost tables are based on national data.  
17          One of the objectives was to have cost  
18          tables that were relative to the cost of  
19          living in Alabama.

20                      So four versions. There's a  
21          standard -- this is the starting point.  
22          This is an important issue. My starting  
23          point for all of my numbers is the

1           standard methodology for what is called  
2           income shares.

3                   I did not do my own study on child  
4           costs as other vendors do. The study that  
5           is generally used is one produced by a  
6           professor at University of Notre Dame,  
7           David Betson. So he has the original  
8           detailed numbers, and I take those numbers  
9           and apply them to the Alabama situation  
10          which includes your state tax code. So,  
11          you know, some states it makes a notable  
12          difference; others it doesn't. So the  
13          starting point is the standard income  
14          shares table updated to 2016 numbers.

15                   That's the starting point.  
16          Starting point is based on national  
17          data -- I'm probably jumping ahead. Let's  
18          see. All right. Let's go through some of  
19          the key points, then we'll get to the  
20          differences. The starting point, again,  
21          is the David Betson study from 2010,  
22          updated to 2016. We'll talk about this a  
23          little bit later. It's important to

1           understand what the numbers really mean.  
2           I'm going to treat this as a teaser. The  
3           child cost tables probably are not what  
4           you think they are, but they are the  
5           standard method. Just because it's the  
6           standard method doesn't mean it's what you  
7           think it is. We'll talk about that  
8           briefly.

9                     The methodology is called the  
10           Rothbarth methodology. That's based on  
11           some work from an economist during World  
12           War II that studied household spending.  
13           So then the second version, starting with  
14           the standard version -- standard version,  
15           everything originates based on Betson's  
16           study and then changes being made.

17                    The primary starting point is based  
18           on national data, also on data for intact  
19           households. A lot of people don't know  
20           that. It's based on spending patterns for  
21           households where the husband and wife live  
22           in the same house. Just out of curiosity,  
23           how does that differ from most child

1 support cases?

2 CHAIR PALMER: You won't have child  
3 support cases if they're still in the  
4 intact family.

5 MR. ROGERS: We know the answer. It  
6 is an important point as we go today. The  
7 standard tables are based on data only  
8 from intact families. In other words, the  
9 husband and wife, father and mother, live  
10 under the same roof, share the same house  
11 expenses. Then again it's based on  
12 national data.

13 One of the objectives is to make it  
14 comparable to the cost of living in  
15 Alabama. So I take cost of living data  
16 and create a second set of numbers using  
17 the cost of living adjustment with data  
18 from the Council for Community Economic  
19 Research. And a third table, set of  
20 tables, is based on what I believe is  
21 closer to the reality of child support  
22 cases where you have two parents under two  
23 different roofs with two sets of utility



1 expenses. It's really an issue of what  
2 income is available for spending on the  
3 children and other things, what income is  
4 available after paying for housing.  
5 That's an adult overhead. You've got to  
6 have housing.

7 So there's a difference in  
8 available income going from sharing one  
9 roof, one set of utilities, to two roofs,  
10 two mortgages, two rent payments,  
11 whichever it is, plus two sets of  
12 utilities. There's not as much available  
13 income. It's available income that  
14 determines how much you can spend on  
15 children and everything else.

16 And then I do a version -- a fourth  
17 version that combines the cost of living  
18 adjustment plus the adjustment for having  
19 two households -- two sets of housing  
20 costs instead of one. And just as mere  
21 technicalities, I adjust for state income  
22 tax rates, FICA. And then the  
23 self-support reserve is based on poverty

1 guidelines at the federal level.

2 So we have four sets of data with  
3 different underlying facts, starting  
4 point. And I'm going to have to fast  
5 forward and skip a lot of charts to stay  
6 within the time frame. Some obvious  
7 findings, the current Rule 32 cost table  
8 is more than a decade old. That is, over  
9 time, the spending patterns have shifted  
10 with the cost of living; more  
11 specifically, real after-tax income  
12 compares differently to current dollars  
13 than under the old table, so we have to  
14 adjust for that.

15 There's a new study, 2010 versus  
16 the other version. And there's some  
17 differences from the latest study that  
18 impacts how the latest cost numbers shift  
19 compared to the current Rule 32.

20 Second bullet is very important for  
21 the changes in the pattern. This --  
22 again, these are not my numbers. These  
23 are Professor Betson's numbers. And he

1 shows higher percentages at higher income  
2 levels for spending on children and he  
3 shows lower percentages at lower incomes.  
4 So when we compare the 2016 dollar levels  
5 to the current Rule 32, we're going to see  
6 very little change at the low end, even  
7 though we had inflation.

8 So we've had inflation across the  
9 board; but on the low end, the new study  
10 says, oops, we overestimated, sorry about  
11 that. So the low end moves very little.

12 The higher end moves notably more,  
13 both due to inflation and the new data  
14 from the latest study. It's a minor  
15 technicality because of how things are  
16 calculated. The underlying data comes  
17 from the Consumer Expenditure Survey  
18 produced by the Bureau of Labor  
19 Statistics. They decide how they conduct  
20 their data creation for this survey. They  
21 decided to organize it in outlays instead  
22 of expenditures.

23 If you're an economist, you can get

1           excited about it; but if you're not, well,  
2           it's a technicality and it doesn't matter.  
3           Expenditures can include the total  
4           purchase price, for example, on an auto.  
5           You go buy a car and the whole purchase  
6           price is included. How often does the  
7           average person pay for the entire car when  
8           they walk into the dealership and then  
9           walk out with a car? Happens once in a  
10          while but not often. Usually what does  
11          the consumer do? Car note, installment  
12          payments. So outlays is going to be based  
13          on installment payments, not the purchase  
14          price of the car, but over time the  
15          numbers are similar. Because you don't  
16          buy a car every year, but somebody else  
17          does. You don't, but someone else does.  
18          But overall it dampens the effect on  
19          costs. And we'll talk about it more.

20                 Current Rule 32 -- and this is  
21                 going to involve a possible issue of  
22                 equity between lower versus higher income  
23                 situations. The current rule uses what's

1           called income realignment to adjust the  
2           national numbers to so-called Alabama  
3           numbers. And that is, Alabama doesn't  
4           have as many workers, earners, and high  
5           income as the U.S. average. So there's an  
6           adjustment from the U.S. distribution  
7           pattern to the Alabama.

8                     And the idea -- here's the  
9           important idea. It's all about  
10          percentages being spent on children. Low  
11          incomes spend higher percentages on  
12          children than high incomes. High incomes  
13          are buying adult luxury items. They're  
14          saving and investing.

15                    So when you shift according to  
16          income distribution, what we're doing is  
17          we're shrinking the distribution of those  
18          percentages into a narrower range. You  
19          don't know it. This is the high income  
20          hand. This is the low income hand. We  
21          have the U.S. distribution -- remember  
22          high income, small percentages on  
23          children. When we shrink that down,

1 notice what happens with the low income  
2 hand. What happens? Nothing. I didn't  
3 move it. It's at zero. You can't move  
4 below zero. So we're shrinking the  
5 distribution down, and we're using low  
6 percentages from the U.S. at a lower  
7 income in Alabama. We compress those  
8 percentages down.

9 So we're seeing some notable impact  
10 at middle and high income from this  
11 realignment compression; but at the low  
12 end, you can't go below zero. So with  
13 realignment, there's negligible impact at  
14 low income. So which incomes are affected  
15 by realignment? Middle and high income.  
16 Low income, essentially next to zero,  
17 isn't it? So there's a question of equity  
18 in this realignment methodology.

19 Cost of living adjustment. Based  
20 on the data, the cost of living in Alabama  
21 on average is 11 percent less than the  
22 U.S. average. You apply 11 percent  
23 reduction to all income levels. All

1           income levels are treated the same. So  
2           that's, in my mind, a more equitable way  
3           to adjust the issue of spending in Alabama  
4           on children.

5                     Now, the good news is when you make  
6           your decision, you have actually more  
7           options than -- actually, there are five  
8           obvious options. You could pick one of  
9           the four sets that I've developed or you  
10          can not change, keep Rule 32 as is. So  
11          that's five obvious options. There are  
12          tons of other options that only a few  
13          states -- and this is duh. You can do  
14          something in between because you get to  
15          make that decision.

16                    For example, State of New Mexico is  
17          presented with the standard cost tables  
18          from the usual vendor and decided, you  
19          know what, that's way higher than we  
20          thought it should be. Let's just raise it  
21          by -- I think they decided 25 percent of  
22          the difference. So one of the options is  
23          you can pick current Rule 32 and another

1 updated alternative and choose a partial  
2 phase-in. You're the ones in charge. You  
3 can pick, you know, if you want to average  
4 two particular sets or if you want to  
5 average Rule 32 with another.

6 There's an infinite number of in  
7 between options. But the important point  
8 from my perspective, I give you the  
9 benchmarks and what they're based on and  
10 then comparison tables so you can actually  
11 feel what the data are.

12 Again, the data currently are  
13 outdated. It's outdated in two different  
14 directions. The percentages were  
15 overestimated in current Rule 32 at low  
16 income and, according to Betson,  
17 underestimated at higher incomes.

18 Let's just quickly look at some  
19 summary bar charts. These are percentages  
20 of net income on spending on children.  
21 Remember this is net income. And the two  
22 bars in each grouping to the right are  
23 probably those that you're most interested



1           in. This bar is the underlying study for  
2           Rule 32 currently. The whitish bar is  
3           based on the 2010 study by Betson, which  
4           is the foundation for my four sets of  
5           data, the starting point.

6                   And for low incomes, we see a sharp  
7           drop in the percentage here. It's still  
8           modest income here, here, here. Then when  
9           we get to middle income or upper middle  
10          income, not much change, not much change  
11          here, but then higher income the  
12          percentages are higher. So that's the  
13          pattern we're going to see.

14                   This is for one child. This is  
15          where the changes are the most muted. If  
16          we go to two children, the effects are  
17          sharper. Here, significantly lower. And  
18          over here especially, very high income,  
19          it's notably higher. And then for three  
20          children even more so, especially for  
21          higher incomes.

22                   And because of the methodology,  
23          there's really -- Betson really only does

1           numbers for one to three children. And a  
2           separate study comes up with ratios of  
3           four children to three children, five  
4           children to three children, six children  
5           to three children; and those ratios are  
6           applied. So because they're just  
7           straightforward applied ratios, the impact  
8           of three children changes, carry forward  
9           to four, five, and six.

10                   All right. This table which is  
11           actually -- I broke it up to fit on the  
12           slide, but we're talking about page 23.  
13           These are the summary numbers that go into  
14           my programming, come up with the standard  
15           Rothbarth. We'll talk about that in a  
16           minute.

17                   CHAIR PALMER: I think -- you said  
18           page 23, but it looks like ours might be  
19           page 7.

20                   MS. DAVIS: It is. It is 23 from  
21           what was sent out.

22                   CHAIR PALMER: Okay. But in the  
23           binder.

1                   MR. ROGERS: Oh, in the slide, it's  
2                   different. I'm talking about in the full  
3                   report. In the full report, it's all on  
4                   one page.

5                   MS. MOORE: It's on --

6                   MR. ROGERS: Here I just broke it  
7                   into two pieces so I could use bigger  
8                   fonts.

9                   MR. POLEMENI: Yeah. Page 13 and 14  
10                  are on page 7.

11                  CHAIR PALMER: Okay. There's two  
12                  page 23s apparently.

13                  MR. ROGERS: Anyway, these --

14                  HONORABLE FORD: Keep going.

15                  CHAIR PALMER: Let's make sure we're  
16                  all there. I've got two page 23s. So  
17                  this is the chart. Keep on going, as  
18                  Judge Ford says. It's going to look like  
19                  this on your other page 23.

20                  MR. ROGERS: Right. My point is this  
21                  slide and the next slide are two parts of  
22                  the same table. I just wanted to use  
23                  bigger font. But these are the numbers

1           from Betson. They're his numbers. I used  
2           them. I put them into my programming to  
3           kick out tables for Alabama.

4                     Without getting into a lot of  
5           tech -- there's a fair amount of detail in  
6           the report; but broadly speaking, his  
7           study looked at spending percentages. And  
8           that's what we have in the right half of  
9           that table. This is the right half. This  
10          is the left half.

11                    His spending percentages were as a  
12          share of net income. And your cost tables  
13          are based on gross income. So what we  
14          have to do is calculate what gross incomes  
15          are comparable to these net incomes. It's  
16          a minor technical detail. You know, the  
17          tax code is what it is and you just apply  
18          the numbers. But his study has  
19          percentages based on net income. So  
20          within my programming, I'm working with  
21          net income -- bottom line is he has a lot  
22          of percentages, but we deal with dollar  
23          levels.

1                   So simply speaking, I apply  
2           whatever category it is. Here we have --  
3           he's got household consumption as a  
4           percent of net income. That's all of  
5           household consumption. It's on mother and  
6           father. Remember, it's intact. Mother,  
7           father, and the children. So these are  
8           the percentage of total household spending  
9           of net income.

10                   What do you do if you want a dollar  
11          level? You take the percentage and  
12          multiply it times the total net income.  
13          So that's what I'm doing in the initial  
14          first phase of my calculations. I'm  
15          taking whatever the appropriate percentage  
16          is, multiplying against dollar net income,  
17          and then I'll subtract or add depending on  
18          what's going on. And then at the end,  
19          I'll say, oh, by the way, the comparable  
20          gross income is X dollars for the various  
21          levels.

22                   All right. Notice -- this is one  
23          of the issues. Percentages. What can

1 percentage of anything -- you know, if  
2 there's a limited quantity, what do the  
3 percentages range from? It's not a trick  
4 question.

5 HONORABLE BELL: Zero to 100.

6 MR. ROGERS: Zero to -- what if it's  
7 all of them? 100 percent. What stands  
8 out here? Consumption is a percent of net  
9 income. Are those numbers greater than  
10 100? Here's one of the shockers. We're  
11 taking numbers from the Consumer  
12 Expenditure Survey. Essentially, income  
13 is self-reported. Outlays are  
14 self-reported. So, you know, whoever --  
15 you know, some low-income person says I  
16 made X dollars last year, and then there's  
17 a report asking you what did you spend on  
18 different categories, and lo and behold,  
19 you add up the spending and it's more than  
20 net income. So that is, anytime you see a  
21 number greater than 100, this is based on  
22 the actual survey data as made available  
23 to the public, which Betson used.

1                   Spending is shown in the survey to  
2                   exceed net income. Over the long run, can  
3                   you do that? No, you can't. So in my  
4                   calculations and in other vendor's  
5                   calculations -- all right. This is not --  
6                   and I had to make sure. This is not a  
7                   typo. What percent is that? Somebody say  
8                   it.

9                   MR. POLEMENI: 4,684.7 percent.

10                  MR. ROGERS: Per 100. That's what  
11                  percent means. Houston, we have a  
12                  problem.

13                  MR. POLEMENI: Uh-huh.

14                  MR. ROGERS: The sort of fix is  
15                  anytime this figure exceeds 100, we set it  
16                  to 100. It's like we'll just assume  
17                  you've got everything right other than --  
18                  well, we make the spending not exceed 100,  
19                  but it still strongly suggests there's a  
20                  problem with the data. And this -- these  
21                  numbers reflect the Bureau of Labor  
22                  Statistics attempting to fix the  
23                  underreporting problem. They improved it,

1           but they didn't completely fix it, so  
2           there's still an underreporting issue on  
3           income.

4                   All right. Then we had spending on  
5           children as a percent of this: Of total  
6           spending, how much goes to children? And  
7           it varies according to whether it's one  
8           child, two, or three. So again we can get  
9           dollar income -- dollar levels for one  
10          child and so on by multiplying here to  
11          here, not to exceed 100, and then times  
12          net income. So basically it's applying  
13          the summary statistics, which are mainly  
14          percentages, to get dollar levels.

15                   Then we have child care and  
16          medical, so we calculate dollar levels for  
17          child care and take it out of the total.  
18          Why? Because child care is an add-on in  
19          your child support award calculation.

20                   Medical for unreimbursed is treated  
21          separately. However, we do include in the  
22          cost table 250 per child per year is added  
23          back in just to cover incidental medical



1 expenses, band-aids, you know, a few  
2 co-pays. Basically, 250 per child per  
3 year is built in.

4 I'm not going as fast as I had  
5 hoped. We just talked about those things.  
6 All right. High income. That creates a  
7 special issue. Let's go back to the  
8 tables. These are the brackets that  
9 Betson used. And I actually took this  
10 table from a Maryland study, using the  
11 same numbers. So the brackets here are  
12 5,000. And then at some point, it starts  
13 being 10,000 for a bracket 10,000, 10, 10,  
14 15,000, 25,000, then the bracket goes up  
15 to a million dollars. So the last bracket  
16 is massive.

17 Now watch this. The issue is how  
18 valid are the data.

19 Betson basically estimated these  
20 percentages for each bracket. And how  
21 valid the data are depends on how many  
22 observations you have for each bracket.  
23 Even though it says midpoint, these are

1           the observations for the brackets. So  
2           we've got modest numbers, low incomes, but  
3           the brackets are fairly small. So it's  
4           not terrible. We've got pretty good  
5           number of observations in the middle, but  
6           then watch this. At face value, the  
7           number of observations looks okay at the  
8           very high end except what do we remember  
9           about the size of these brackets compared  
10          to the size of these brackets? These  
11          brackets are very wide, which means there  
12          are big gaps between midpoints. And we  
13          apply these percentages to midpoints and  
14          then smooth in between.

15                 So when we get to the very high  
16          incomes, we really don't have much data.  
17          We really don't. Plus when you have large  
18          brackets and you go from one midpoint to  
19          the next, it appears as a straight line.

20                 Here's what you get. We've got a  
21          midpoint way out here off the chart,  
22          literally. So we're doing calculations  
23          based on midpoint here to midpoint out

1           here. It's going to appear as a straight  
2           line. Yet, for everything prior to high  
3           income, there's -- you know, this is gross  
4           income, so changes in tax brackets create  
5           some wobbles; but basically it's what's  
6           called a logarithmic curve. It's curving,  
7           rising, but at a decelerating pace.

8                       What the other vendor typically  
9           does is just straight line it. We're just  
10          going to use a midpoint off the chart and  
11          just fill it in in dollar values.

12                      Now, this is the one time I did  
13          make a decision on my own. I decided,  
14          first, there's not really data to support  
15          this. There are not enough numbers. So I  
16          took the pattern statistically and then  
17          carried it forward to high incomes. It's  
18          called logarithmic extrapolation. That's  
19          a reasonable statistical approach. In  
20          terms of economic soundness, I would say  
21          this is not economically sound.

22                      There are two alternatives. One,  
23          an okay approach is statistical

1           extrapolation, and I carried it up to  
2           25,000 monthly gross income. Or the  
3           alternative, you stop having any numbers  
4           when the data are too scarce. If you took  
5           that approach, you'd end up with a cost  
6           table that's stopped roughly around  
7           18,000. If you only had a table that  
8           included statistically valid data, it  
9           would stop here. You could decide to do  
10          that; you know, just cut the table off.

11                       However, I statistically  
12          extrapolated this curve to extend to  
13          \$25,000. That was my choice. You can  
14          choose, hey, that's a good idea. You  
15          could choose let's just stop at 18,000.  
16          That's a relatively low table. However, I  
17          will strongly argue this is economically  
18          unsound. However, you're going to see it  
19          again.

20                      This is where I get to talk about  
21          economist speak versus how normal people  
22          think and speak. This is definitely part  
23          of the education aspect. And please

1           consider yourself normal people.  You're  
2           going to think what normal people think  
3           about child costs.

4                       I'm going to ask if there's a  
5           volunteer.  You don't have to.  Would  
6           anyone like to volunteer?  Just say it's  
7           not what you think; it's what you think a  
8           normal person would think.  What would a  
9           normal person think child costs are in  
10          your child support schedule?  Any  
11          volunteers?  What would a normal -- just  
12          say, hey, a normal person would say what.

13                   MR. POLEMENI:  Basically what I can  
14          spend on my child.

15                   MR. ROGERS:  All right.  Well, keep  
16          going.

17                   MR. POLEMENI:  If I have excess, if I  
18          have a tax return that comes back high, I  
19          have money to spend more on my child.

20                   MR. ROGERS:  Yeah, more income more  
21          expense.

22                   MR. POLEMENI:  More expense, yeah.

23                   MR. ROGERS:  And more spending on

1 everything else.

2 MR. POLEMENI: Right.

3 MR. ROGERS: Describe what you think  
4 goes into your cost table numbers or a  
5 normal person's. What goes into that --  
6 what data are collected that X dollars are  
7 spent on the child if you have 50,000  
8 annual income? What's under those  
9 numbers?

10 CHAIR PALMER: You've got groceries,  
11 utilities -- is that what you're talking  
12 about?

13 MR. ROGERS: Yeah.

14 CHAIR PALMER: Groceries, utilities,  
15 possibly keeping a roof over their head,  
16 gasoline, car insurance to transport them  
17 from one place to the other. But I was on  
18 the Committee when we changed it last  
19 time, so I don't think a normal person  
20 thinks of that. I don't know. As far as  
21 the car insurance and that sort of thing.

22 MR. ROGERS: Well, they would think  
23 of a lot of it. You know, that data must

1 include how much is spent on groceries, on  
2 clothing, you know, gasoline to get the  
3 kid to school. You know, you had a study  
4 and collected data on clothing, housing,  
5 and so on. That's what a normal person  
6 would think your numbers have in them,  
7 right?

8 MR. ARNOLD: It's actually zero,  
9 isn't it?

10 MR. ROGERS: That's not what's in the  
11 cost. This --

12 MS. DAVIS: I would think one way to  
13 do it would be to look at couple A that  
14 has X amount of dollars and no kids and  
15 couple B and look how expenditures for  
16 families are compared to those two.

17 MR. ROGERS: But would you do it by  
18 how much is spent on clothing, with and  
19 without; how much is spent on  
20 transportation, with and without? Is that  
21 what you're saying?

22 MS. DAVIS: I think you'd have to  
23 look at the two and compare them. If you

1           had four people in a family, your grocery  
2           bill would be more, for example, than your  
3           two people household.

4           MR. ROGERS: All right. Well, even  
5           though I'm an economist, I think I know  
6           some normal people. I think I do. And  
7           that's what they would say. However, to  
8           fully understand what's going on with your  
9           cost tables plus the ones that I've  
10          developed, it is important to understand  
11          what it really means for child costs. And  
12          the issue is even though we've got all  
13          this detailed data from the Bureau of  
14          Labor Statistics, it's hard -- it's got by  
15          category clothing, foods, electricity, and  
16          so on. But for some categories it's hard  
17          to say -- well, they are household  
18          numbers, not here's how much you spent on  
19          dad, here's how much you spent on mom, and  
20          here's how much you spent on children,  
21          food.

22                       Based on the Beaver Cleaver  
23          concept, you're sitting around the family



1           table and the food is put on the table and  
2           when the food is still on the stove, do  
3           you know which portion is going to the  
4           adults and which portion is going to the  
5           children? No. It's sitting on the stove  
6           or in the oven, and then it plops on the  
7           table and everybody gets their share. All  
8           we have from the data is what's sitting on  
9           the stove. We don't know who ate how  
10          much.

11                       Now, the theoretical idea you get  
12          around this problem of, well, we've got  
13          household data, but we don't know how much  
14          the adults use and how much the children  
15          use. Sometimes you do. There's adult  
16          clothing and children's clothing. Well,  
17          we know that one, but that's really about  
18          it.

19                       It's called income equivalents.  
20          And the idea goes back to these studies  
21          from World War II. The idea is this. How  
22          much income does it take to -- all right.  
23          Theoretically, two adults without children

1           spend their money in a certain way, and  
2           they have a sense of well-being from what  
3           they spend on themselves, sense of  
4           well-being. Then they have children.  
5           They spend less on themselves, certain  
6           amount on the children.

7                       So the idea is how do we measure  
8           well-being for the adults before children  
9           and after children. Now, it wasn't my  
10          idea, but this is the standard  
11          methodology. Notice I am not saying one  
12          word about clothing, housing,  
13          transportation. I'm only talking about a  
14          generic phrase, the adult sense of  
15          well-being. So the idea is let's look at  
16          data and see, compare situations. Two  
17          adults before children, two adults after  
18          children. Pick some package of purchases  
19          that measures a sense of the adult  
20          well-being. Then the question is how much  
21          income do you need to restore spending on  
22          that set of adult goods and then the sense  
23          of well-being is restored.

1                   Child costs in the Rothbarth  
2           methodology is also called income  
3           equivalents. Child costs are the amount  
4           of income needed to restore the adult's  
5           spending on that adult goods. So it's an  
6           indirect measure of child costs.

7                   So then the question becomes is it  
8           a good measure. Theoretically, how could  
9           you tell if an estimate of child costs is  
10          a good estimate? You would compare it to  
11          what? Actual. If we could compare the  
12          estimate to actual child costs, then we  
13          could tell if it were a good measurement.

14                   Now, what's the little tiny  
15          problem? If we had actual child costs, we  
16          wouldn't need an estimate. We'd use  
17          actual child costs. We do not have actual  
18          child costs. We only have a measure of  
19          the sense of the adult's well-being. Then  
20          -- all right. The phrase income shares  
21          originally comes from not the fact that  
22          you share the cost according to income  
23          shares, it comes from the idea that child

1           cost is the child's share of household  
2           income. Sharing incomes. Income shares  
3           is child cost being defined as the child's  
4           share of household income and with that  
5           income defined as income needed to restore  
6           the adult sense of well-being prior to  
7           having children.

8                       So we have a methodology that  
9           estimates child cost indirectly. Then the  
10          question is can we use reason to think  
11          through does it make sense, or are there  
12          some obvious issues. All right.  
13          Originally, the idea is pick adult goods  
14          that are not contaminated by spending on  
15          children. The original bundle was three  
16          items -- adult goods, remember -- alcohol,  
17          tobacco, and adult clothing. And it was a  
18          target measure of adult well-being. Now,  
19          if you're going to use that approach, the  
20          bundle was not a bad choice other than it  
21          looked politically stupid. You know,  
22          people learn child costs are based on  
23          alcohol and tobacco, what?

1                   Betson decided, I'm going to dump  
2                   alcohol and tobacco. Today's version only  
3                   looks at spending on adult clothing. So  
4                   the target measure is how much do -- how  
5                   much does a household spend on adult  
6                   clothing.

7                   CHAIR PALMER: Mr. Rogers.

8                   MR. ROGERS: Yes?

9                   CHAIR PALMER: You have 15 minutes.

10                  MR. ROGERS: I know.

11                  CHAIR PALMER: Okay.

12                  MR. ROGERS: Here's the problem. Is  
13                  it a good idea. One of the arguments is  
14                  using this methodology means once adults  
15                  have children, some economists argue that  
16                  adults decide, oh, these children are  
17                  getting on my nerves. I need something to  
18                  make me feel better. I'm going to spend  
19                  more on myself. That actually could be a  
20                  credible argument if you still used  
21                  alcohol and tobacco. The idea is adults  
22                  act selfishly, and that causes it to be  
23                  statistically harder to get back to the

1 same percentage as before on adult goods.

2 The alternative. One, I believe,  
3 is after having children -- remember we're  
4 talking about intact families -- adults  
5 enjoy, for the most part -- despite the  
6 challenges, adults, intact families,  
7 generally enjoy their children, so there's  
8 a shift in preferences toward spending on  
9 children. Yeah, I'm going to buy them an  
10 extra Christmas present or, yeah, I think  
11 we're going to take two vacations instead  
12 of one. But this shift in preferences  
13 messes with this methodology and leads to  
14 an overestimate of child costs. Do we  
15 really know? No. If we knew, we would  
16 have actual child costs. I believe this  
17 methodology overstates child costs because  
18 parents do want to spend on their  
19 children.

20 All right. How do I hit the  
21 highlights? We've got my four sets plus  
22 I'm going to show the current Rule 32.  
23 And on the low end, we do have

1           self-support built in. And the poverty  
2           threshold has risen so that impacts the  
3           very low end being lower than Rule 32, but  
4           anyway we've got the standard measure  
5           here. This is for one child. The dollar  
6           level combined, household spending that  
7           two parents share. This is before the  
8           sharing. It's the combined in the table  
9           typed figure. This is using purely the  
10          methodology that's been used in the past  
11          at the national level. And the numbers  
12          are vastly higher than current Rule 32.  
13          And we have the second household  
14          adjustment. The bottom line is everything  
15          is based on applying spending percentages  
16          to net income.

17                 So what I did is I take the cost of  
18          a second set of housing costs and subtract  
19          that from net income. So it's adjusted  
20          net income that the percentages are  
21          applied to. And this dashed line is the  
22          standard. It's still national data, but  
23          adjusted for reduced available income.

1           Except middle range, it's about the same  
2           as current Rule 32. Then we have the  
3           standard again and then the COLA adjusted.

4                     This is for one child. Bear in  
5           mind there wasn't much change -- all  
6           right. This is self-support affected.  
7           This basically reflects lower percentages  
8           in the 2010 study and then higher  
9           percentages somewhat for one child at  
10          higher incomes. Then going to two  
11          children. The gap between the national  
12          data and current Rule 32, which has  
13          realignment for Alabama income, it's  
14          vastly higher.

15                    And again I argue that the  
16          Rothbarth indirect methodology overstates  
17          child costs. Here we have the second  
18          household adjusted. Not a lot of  
19          difference in middle income. There's the  
20          inflation drift, and the percentages are  
21          about the same, but here you've got  
22          inflation drift plus higher percentages.  
23          And if you don't like this gap being so



1           large, this is when you might want to  
2           consider blending or averaging.

3                   Then we have the COLA adjusted for  
4           two children. Not a lot of difference at  
5           middle income. Higher due to the higher  
6           percentages at higher income plus  
7           inflation drift. Not nearly as severe as  
8           the national set. And you have the same  
9           pattern -- well, we had the second  
10          household plus the COLA. And it's  
11          actually a little lower at middle incomes  
12          and higher at higher incomes. And we have  
13          the same pattern for three children. We  
14          talked about realignment. It did look at  
15          several major metro areas, and it's 11  
16          percent lower supplied across the board.

17                   Why would you want to do the second  
18          household adjustment? If you believe  
19          ability to pay is a key concept, then  
20          ability to pay and available income are  
21          important issues. For intact families,  
22          that's not the current situation. The  
23          legal issue is do you want a presumption

1           that matches typical circumstances in  
2           cases before the Court? Traditionally, if  
3           case circumstances diverge from  
4           presumptive facts, the presumption is  
5           rebutted. That's what attorneys tell me  
6           anyway. So that's why you might want to  
7           do that.

8                       We've got a chart showing the  
9           dollar awards. And, you know, it's going  
10          to have the same pattern as what we saw in  
11          the dollar levels of the total, but it  
12          does give you some actual dollar figures.  
13          Let's quickly -- we've got a summary  
14          table. Basically we're looking at a new  
15          study. We talked about that. The data  
16          sources come from CDX plus the COLA and  
17          the IRS housing. Believe me, the IRS  
18          allowance is not generous, so it's a  
19          conservative estimate of housing costs.  
20          Both use Rothbarth spending on adult,  
21          children as the target. And we have  
22          versions that are standard. Standard is  
23          COLA, second household, and then combined.

1 Self-support has been shifted due to the  
2 higher poverty threshold. And basically  
3 we can see the self-support area extends  
4 according to the number of children.

5 All right. Quick comparison state  
6 by state. We've got southeastern states.  
7 Mississippi is included in dollar award  
8 comparisons but not tables because  
9 Mississippi is percentages instead of cost  
10 schedules. Colorado is thrown in because  
11 it's national data plus a little bit of  
12 COLA but with inflation. Since it was  
13 implemented, it kind of washes out, but  
14 it's a good comparison with the national  
15 numbers. Georgia is very different. I  
16 was very involved with that but things  
17 don't always turn out exactly as planned.

18 The cost table was way too high and  
19 that was a political issue, a long story.  
20 South Carolina is similar to Alabama.  
21 It's got a downward COLA. Tennessee is in  
22 the Southeast.

23 So here we go. Real fast. Georgia

1 is at the top because it uses an old  
2 methodology that's very high. This is  
3 still high even though it's ten years old  
4 now, unchanged. I think they finally  
5 realized I was right, that what they  
6 adopted was the wrong table. And  
7 subsequently, they've just been biding  
8 time, literally, to let inflation -- see,  
9 it was worse five years ago, but inflation  
10 has been eating into it a little bit.  
11 Blue dash line Colorado and here we see  
12 the national numbers very high. And the  
13 standards -- it's tracking the current  
14 Rothbarth except at the high income  
15 levels.

16 This is the straight line. This is  
17 essentially straight line extrapolation  
18 instead of logarithmic extrapolation. So  
19 it's very high here, and you see that  
20 aberration of a straight line instead of a  
21 curved line. Rule 32 is similar still to  
22 South Carolina, and their numbers are  
23 not -- they are only a few years old.

1 Tennessee is higher. It's closer to  
2 national numbers.

3 Two children, we're going to see  
4 more of a gap at higher incomes for the  
5 newer nationally based numbers. Rothbarth  
6 is way up here. Standard. With COLA,  
7 it's a lot more moderate. There's some  
8 upward drift here due to the newer study,  
9 with higher percentages plus inflation  
10 drift.

11 I'm going to just wind up and not  
12 be in a hurry for questions other than --  
13 you get to set the schedule.

14 Recommendations. Current data are  
15 outdated. They're more than ten years  
16 old. Based on the study, more than ten  
17 years old. One of the questions is do you  
18 want to take into account available income  
19 reflecting two sets of housing data. You  
20 really need to adjust the self-support  
21 reserve, bring it more up to date. A  
22 question was asked, yes, it is based on  
23 national data without an adjustment for

1 Alabama cost of living; but the current  
2 Rule 32 self-support reserve is the same  
3 way, just based on earlier data.

4 I could go on and on and on. And  
5 I'm happy to answer questions now; and if  
6 you want to submit additional questions, I  
7 do have e-mail and can get back. So I  
8 guess we're in Q and A.

9 CHAIR PALMER: I guess we are. I  
10 don't know if we want to go take a break  
11 and get our lunch and then come back or  
12 if -- I guess my first question is the  
13 numbers you've just shown us, are those  
14 from 2004 through 2009? Those numbers are  
15 seven years old?

16 MR. ROGERS: They're the underlying  
17 data from the consumer expenditure survey  
18 are from those years, but I've updated  
19 them with the Consumer Price Index being  
20 applied to the net income brackets.

21 CHAIR PALMER: Through '15 or through  
22 current date?

23 MR. ROGERS: Through March '16.

1 CHAIR PALMER: Okay.

2 MR. ROGERS: So the number has been  
3 updated. I guess one point I do want to  
4 emphasize, for the standard Rothbarth, it  
5 precisely followed standard calculations.  
6 If another vendor who does the same thing  
7 calculated the standard Rothbarth, those  
8 numbers would differ from mine only by  
9 rounding differences, you know, a few  
10 dollars, plus the very high end where I do  
11 logarithmic instead of straight line.

12 CHAIR PALMER: But the Rothbarth is  
13 based on an intact family, correct?

14 MR. ROGERS: Yes.

15 CHAIR PALMER: Okay.

16 HONORABLE BELL: Mr. Rogers, I'm  
17 Billy Bell. I have a problem after seeing  
18 this -- and I wasn't on the original  
19 Committee, but it looks like we've based  
20 Rule 32 on fairly irrelevant data, if it's  
21 based on intact families. I wish I had a  
22 dime for every time I told a family in my  
23 court that listen, y'all are living to the

1           hilt on the incomes while y'all are  
2           together, there's no way to live that same  
3           way if you separate and live in two  
4           separate households.

5                     Is there no way to break up the  
6           income so the parties can apply an  
7           adjusted percentage of expenditures for  
8           the child to that? Looks like when we put  
9           it together, it's not going to be fair  
10          probably to either side.

11                    MR. ROGERS: Well, actually, you do  
12          raise an interesting issue. And I've put  
13          a little bit of thought into that. What I  
14          did is have a standard methodology using  
15          IRS data. What could be done -- it would  
16          be a little more work for you. It  
17          wouldn't have to be a lot of extra work.

18                    What's always good is for the judge  
19          to make the attorneys or the parties do  
20          the work, and usually that's done through  
21          financial affidavits. If you had a  
22          credible list of each parents'  
23          post-divorce or, you know, modification of



1           current house expenses, you could add up  
2           the mortgage or the rent and the utilities  
3           you choose. You could even set a cap and  
4           say, look, you're spending \$300 on cable.  
5           No. I mean you can; I don't. You know,  
6           I'll let you spend 75 on cable, but, no,  
7           if you want to spend 300, you're going to  
8           have to squeeze it out. It's not going to  
9           be a part of the calculation.

10                   So you could take case-specific  
11           housing data and then adjust the table.  
12           It could be set up in an Excel file.

13                   HONORABLE BELL: Is there no  
14           standardized way to do that where --

15                   MR. ROGERS: There could be.

16                   HONORABLE BELL: Yeah.

17                   MR. ROGERS: There could be. Let me  
18           just real fast finish that. What could  
19           happen, like I said, starting point, have  
20           financial affidavit that lists what you  
21           want information on: Rent, mortgage  
22           payment, electricity, water. Add them up.  
23           And then there could be a simple Excel

1           spreadsheet that does the basic  
2           calculation for the presumptive award.  
3           Then you just key in here's parent A's  
4           housing cost, parent B's housing cost, and  
5           then it makes an automatic adjustment. It  
6           could happen. As opposed to applying the  
7           same formula to everyone.

8                       Somebody over here was --

9                       MR. JEFFRIES: I was just going to  
10           make a comment. I understand exactly what  
11           Judge Bell is saying, but I was under the  
12           impression that the charts that you were  
13           talking to us about had the second  
14           household adjustment. Is that not what  
15           that is?

16                      MR. ROGERS: Two of the four versions  
17           has an adjustment, yes.

18                      MR. JEFFRIES: So there is a way for  
19           the Guidelines --

20                      MR. ROGERS: It treats everybody's  
21           housing the same for a given level of  
22           income.

23                      CHAIR PALMER: So that's number

1           three, which has two parents with two  
2           different roofs and two different power  
3           bills. And then the fourth version you  
4           talked about was cost of living adjustment  
5           for two different households.

6           MR. ROGERS: Well, it's COLA. The  
7           fourth version is COLA and second housing  
8           expenses. That's going to be the lowest  
9           value set of tables. So you go from the  
10          standard national intact family data --  
11          all right. National data, intact family.  
12          Then it goes to national data adjusted  
13          with a COLA for Alabama, then national  
14          data with the second household adjustment,  
15          then national data with a COLA and second  
16          household adjustment. So that's --

17          CHAIR PALMER: Mr. Arnold has a  
18          question.

19          MR. ARNOLD: I'm going to defer to  
20          Penny and then y'all come back to me.

21          MS. DAVIS: No. I was just going to  
22          say I think what's passed out, I had to go  
23          through and I narrowed it down to 14

1           questions that I had and gave that to  
2           Judge Palmer last night or yesterday  
3           afternoon. And I think this morning he  
4           had gone through, and some of the  
5           questions do relate to some of the details  
6           of what we talked about. I don't know if  
7           you want to go through this or not.

8                   CHAIR PALMER: Right now I want to  
9           turn to page 28 in brackets in the binder.  
10          It's titled Alabama 2016 Income Shares  
11          Rothbarth with Second Household  
12          Adjustment, Schedule of Basic Child  
13          Support Obligations, New Estimates Minus  
14          Current Rule 32. It's a bracketed.

15                   MR. ROGERS: Is this the --

16                   CHAIR PALMER: Bracket 28 and 29. It  
17          shows negative and positive numbers.

18                   MR. MADDOX: It's almost at the end.

19                   CHAIR PALMER: It's almost to the  
20          end.

21                   HONORABLE BELL: Oh, way in the back.  
22          What tab is it under?

23                   CHAIR PALMER: Well, it's in B, but

1           it's --

2                   MR. JEFFRIES:   You go to C and back  
3           up to 28 in brackets.

4                   HONORABLE BELL:   Oh, okay.

5                   CHAIR PALMER:   Yeah.

6                   MR. ROGERS:   Oh, it's in one of the  
7           appendices?

8                   CHAIR PALMER:   Yes, sir.

9                   MR. ROGERS:   Okay.   I don't have  
10          those.   I could look on my laptop.

11                   CHAIR PALMER:   There's 28.   That  
12          shows Rothbarth.   I'm looking at page 28.  
13          There is then -- and then on page 41 is an  
14          income shares Rothbarth second household  
15          adjustment and COLA.   This is -- that  
16          shows, I guess, what our current numbers  
17          would be.   If we picked one of these, it  
18          would go down?

19                   MR. ROGERS:   Yeah.   There's a --

20                   CHAIR PALMER:   In some places, it  
21          would go down and some places --

22                   MR. ROGERS:   The second appendix is  
23          the comparison.   Yeah.   That was the point

1           of that table, to show how much it goes up  
2           or down.

3           CHAIR PALMER: But those do show with  
4           the second household adjustment, correct?  
5           It says Rothbarth, but it's not an intact  
6           family.

7           MR. ROGERS: Well, Rothbarth --  
8           unless I say with second household  
9           adjustment, it is intact family.

10          CHAIR PALMER: Okay. Well, this does  
11          say with second household adjustment.

12          MR. ROGERS: Okay. Then that's with  
13          an adjustment, yes.

14          CHAIR PALMER: So these numbers show  
15          like if you've got one child and the  
16          combined gross income is \$1,200, that our  
17          current rate should go down \$174.

18          MR. ROGERS: In that version, right.  
19          Remember it's tied to the fact that  
20          Betson's study most recently versus the  
21          study for Rule 32 shows lower percentages  
22          at modest -- not very moderate incomes,  
23          higher percentages. So if you look at the

1 higher incomes, it's probably going to be  
2 an increase.

3 CHAIR PALMER: And it is in some  
4 cases, but then if this says second  
5 household adjustment, you're using 2004  
6 through 2009 numbers.

7 MR. ROGERS: Well, those are the  
8 study numbers that I update with the  
9 consumer pricing.

10 CHAIR PALMER: Okay.

11 MR. ROGERS: So all of my tables  
12 essentially are on a 2016 basis.

13 CHAIR PALMER: Okay. Well, then,  
14 let's look over to page 41 in that same  
15 appendices. And if someone would share  
16 with Mr. Rogers or we could give him  
17 another book. There's a book right there.

18 MR. ROGERS: Okay.

19 CHAIR PALMER: I'm in appendices,  
20 page 41. Jim says go to Tab C and work  
21 your way backwards to page 41. This one  
22 says 2016 Income Shares Rothbarth with  
23 Second Household Adjustment and Cost of

1           Living Allowance.

2           MR. ROGERS:   Right.

3           CHAIR PALMER:   So how is that  
4           different than the one without the cost of  
5           living allowance?

6           MR. ROGERS:   Basically, I take -- all  
7           right.   In steps, step one is the standard  
8           national data, intact national data.   Then  
9           I adjust for the second household housing  
10          expenses.   Then I take that adjusted data  
11          and reduce it 11 percent for the cost of  
12          living.

13          CHAIR PALMER:   Because on the second  
14          one, starting with page 41, until you get  
15          to about \$10,000 -- until you get to about  
16          \$8,900, which is page 46, it shows that  
17          every -- all these rates should go down,  
18          one child to six children.

19          MR. ROGERS:   That set of data --  
20          remember, there are four different sets  
21          that -- you know, there are ranges that  
22          they fall in.   The one that is -- it has  
23          two adjustments to it.   It's going to be



1           on the low end. Comparison is Rule 32,  
2           which is intact family data with income  
3           realignment. The realignment lowers the  
4           standard data ten years ago for mid and  
5           higher incomes and does not lower it for  
6           low incomes. So we're having two sizable  
7           adjustments.

8                     And the question is do you want  
9           to -- well, you've got five basic options.  
10          Pick one of my four sets of numbers or  
11          don't change it.

12                    CHAIR PALMER: Okay.

13                    MR. ROGERS: Then you could choose  
14          some combination of whatever you want to  
15          choose a combination of.

16                    CHAIR PALMER: Okay. Well,  
17          everybody, now let's go to page 2 of this  
18          appendices, and we may have apples to  
19          apples on this one. This one says 2016  
20          Income Share Standard Rothbarth, comparing  
21          the new numbers to the old numbers.  
22          Apparently when we adopted this -- or the  
23          Supreme Court adopted on our

1           recommendations, we were doing the  
2           Rothbarth with an intact family, correct?

3           MR. ROGERS:   Yes.

4           CHAIR PALMER:   So that page 2 is  
5           apples for apples.  It's the same type of  
6           study that was used for our current child  
7           support versus what you're doing now.

8           MR. ROGERS:   Well, this one does not  
9           have a COLA.

10          CHAIR PALMER:   Exactly.

11          MR. ROGERS:   Rule 32 has income  
12          redistribution, so the income  
13          redistribution lowers most of the numbers  
14          relative to the national average.

15          CHAIR PALMER:   Are we comparing  
16          apples to apples if we look at this one?

17          MR. ROGERS:   If you want to compare  
18          apples to almost apples.

19          CHAIR PALMER:   Okay.

20          MS. DAVIS:   That had realignment.  
21          The other one had, right?

22          MR. ROGERS:   Excuse me?

23          MS. DAVIS:   This -- the chart that

1           you have here that's the Rothbarth, that's  
2           the one closest. The problem is it  
3           doesn't have the realignment for Alabama  
4           incomes. Isn't that what the chart on  
5           page 33 of your handout -- is that what  
6           you're talking about?

7                   MR. ROGERS: Well, the first version  
8           has no adjustments from the national  
9           intact data.

10                   MS. DAVIS: Yeah, but on page 33,  
11          what she's asking, I think, is does your  
12          first chart -- do any of your charts take  
13          Rule 32 as they exist now and use the same  
14          comparison?

15                   MR. ROGERS: Yes. Yes. Everything  
16          is compared to current Rule 32.

17                   MS. DAVIS: Except on page 34, it  
18          says you don't include the realignment  
19          that currently is in there. That was the  
20          realignment you were talking about  
21          earlier. On page 34 on your chart.

22                   MR. ROGERS: No. There's no  
23          realignment or COLA on page 34. It's just

1           the second household adjustment.

2           MS. DAVIS: But the realignment is in  
3           the current Alabama Rule 32.

4           MR. ROGERS: Yes.

5           MS. DAVIS: So none of these take --

6           MR. ROGERS: Are 100 percent exact.

7           MS. DAVIS: Right. And that's what I  
8           think we could do is originally, what we  
9           had asked for was take the current Rule 32  
10          and then update economically. That would  
11          include that.

12          MR. ROGERS: Well, that was not --

13          MS. DAVIS: Oh, is that not what we  
14          asked for?

15          CHAIR PALMER: Is that not what we  
16          asked for?

17          MR. ROGERS: That was not how the  
18          contract was worded. However, it can be  
19          done. It just wasn't what was requested  
20          in black and white.

21          CHAIR PALMER: Okay. Sure. Steve?

22          MR. ARNOLD: What are you  
23          recommending this Committee do that

1           closely approximates real life?

2           MR. ROGERS:   My honest answer is  
3           trash the Guidelines and go case by case,  
4           but you don't want to hear that.

5           HONORABLE FORD:   We can't do that.

6           MR. ARNOLD:   We kind of fall out of  
7           federal requirements if we do that.

8           CHAIR PALMER:   Time-wise it would  
9           just be --

10          MS. DAVIS:   Am I correct -- and  
11          that's one of the questions I asked is  
12          what other states -- what percentage of  
13          other states use the second household  
14          adjustment, and you indicated that Kansas  
15          is the only state that does that.

16          MR. ROGERS:   It's the only one I know  
17          of.   There may be -- it's the only one I  
18          know of.

19          MS. DAVIS:   So we would be  
20          substantially different if we chose to do  
21          that.   Then my other question related to  
22          that was does the household adjustment  
23          include the principal equity that the

1 parties were building, and I understand it  
2 does.

3 MR. ROGERS: It does. But it --

4 MS. DAVIS: The reason I ask that  
5 question is because that was something  
6 that was asked before.

7 MR. ROGERS: It would be minimal.  
8 Plus the standard data include that for  
9 the custodial parent. It would be  
10 treating both the same way.

11 MS. DAVIS: Okay. But that was --  
12 the reason I asked that question is -- you  
13 weren't around for that conversation.  
14 That was part of the conversation. We, of  
15 course, had concern. And then another  
16 question I had relating to the  
17 self-support reserve, build in a  
18 self-support reserve, which I assume  
19 included housing and utilities and things  
20 like that.

21 And I was concerned that having a  
22 second household was a duplication to some  
23 extent of that.

1                   MR. ROGERS: Not really. At the low  
2                   income levels, the self-support reserve  
3                   calculation is the major factor impacting  
4                   the numbers. In fact --

5                   MS. DAVIS: But doesn't that same  
6                   self reserve include -- if you were  
7                   setting aside, say, a thousand dollars for  
8                   a person. They've just got to live off a  
9                   thousand dollars, aren't we assuming that  
10                  part of that goes towards his rent,  
11                  utilities, and that sort of thing?

12                 MR. ROGERS: Right.

13                 MS. DAVIS: So that seems duplicative  
14                 to me, but I may be missing something.

15                 MR. ROGERS: Well, the process is  
16                 self-support is the last calculation. And  
17                 regardless of which method you're using,  
18                 the self-support calculation phases out  
19                 when it has no impact on income that's  
20                 available relative toward paying something  
21                 on child costs.

22                 MS. DAVIS: Okay. So it duplicates  
23                 part of the time, but some -- what's the

1           bright line point where it no longer is  
2           factored in?

3                   MR. ROGERS:   When it's not shaded.  
4           But my point is the methodology that you  
5           use primarily affects when the shaded area  
6           runs out.  It doesn't affect what goes  
7           into the shaded area.

8                   CHAIR PALMER:   So when you say runs  
9           out, earlier when you were talking about  
10          going off the chart --

11                  MR. ROGERS:   No.  The shaded area  
12          becomes not shaded when the calculation  
13          doesn't change the award amount.

14                  CHAIR PALMER:   Sure.  Yeah.

15                  MR. ROGERS:   So once you're actually  
16          using the table number as is, then you're  
17          into the range of whatever version it is,  
18          whether it's the national intact data or  
19          whether the national with a COLA for  
20          Alabama.

21                         All right.  Here's kind of how I  
22          see it.  You've got my four versions, all  
23          of which have a starting point standard



1 methodology, standard underlying study.

2 The only thing you can point to, oh,

3 that's Mark Rogers' fingerprints. The

4 only thing you can point to is the very

5 high income where I use a logarithmic

6 extrapolation instead of straight line

7 based on an off-the-chart number that has

8 no statistical validity. Otherwise it's

9 -- everything is standard.

10 Then I take standard numbers for a

11 COLA. Anybody can do the same calculation

12 if they have the numbers. Same thing with

13 the second household adjustment. IRS

14 data, public data. Make a calculation for

15 how much to adjust net income. So it's

16 understanding what are the four versions.

17 And the national intact is going to be the

18 highest dollar levels; the lowest is going

19 to be national adjusted for both COLA and

20 second household.

21 In between is national adjusted

22 only for COLA. National adjusted only for

23 second households. Those two in the

1 middle are not terribly different, but the  
2 one that is closest to what Rule 32 does  
3 with realignment is the national with only  
4 a COLA adjustment. And you have to  
5 remember it's going to be different from  
6 Rule 32 because there's a new study with a  
7 shift in the pattern of percentages, lower  
8 and lower incomes and higher and higher  
9 incomes, plus inflation drift on net  
10 income.

11 CHAIR PALMER: So let me get this  
12 straight. So you said that the one  
13 closest would be the 2016 Income Shares  
14 Rothbarth with Alabama COLA Adjusted?

15 MR. ROGERS: Just the COLA adjusted.

16 CHAIR PALMER: Okay. That's page 15.

17 MS. DAVIS: That's not closest to the  
18 current Rule 32.

19 MR. ROGERS: Yeah, it is, in terms of  
20 methodology.

21 MS. DAVIS: In terms of dollars, is  
22 it?

23 MR. ROGERS: Well, no. You've got

1           two things. You've got inflation drift  
2           plus a change in the pattern from the  
3           underlying study. Now, it really is going  
4           to boil down one -- you know, it is  
5           important to understand the differences  
6           between the options. Then it's  
7           important -- see, normal people -- I've  
8           been a -- well, I'm still a parent. I've  
9           been a noncustodial parent, I've been a  
10          custodial parent, and I've been a  
11          stepparent. I know what it costs to spend  
12          on a child. Odds are you do too.

13                       So one of the issues is, you know,  
14          you can look at any of the sets of data  
15          and decide, based on what you know about  
16          spending in Alabama, what do I feel good  
17          about.

18                      CHAIR PALMER: But through all your  
19          studies and what I heard you say is that  
20          the Rule 32, as it was adopted in 2009,  
21          did overestimate the lower incomes.

22                      MR. ROGERS: (Nodded.)

23                      CHAIR PALMER: So if nothing else

1           wasn't exact, we need to pick a bright  
2           line and say where is lower income and  
3           possibly adjust those like you had on some  
4           of your charts, where it went from like 25  
5           percent to 20 percent and that sort of  
6           thing.

7                   MR. ROGERS: Well, I have seen states  
8           where they splice one type of number  
9           series with a different. Kentucky does  
10          that. Indiana does that. And at some  
11          point, they'll say, all right, we're going  
12          to merge them at such and such income or  
13          this version stops here, this version  
14          starts here, and in between we'll just  
15          draw a straight line.

16                   Now, what is important for, you  
17          know, federal funding and all that --  
18          you've read 45 CFR 302.56. What is  
19          actually required is you consider the cost  
20          of raising children according to economic  
21          data, emphasis on consider.

22                   Then there's the issue of legal  
23          presumptions, to what extent is the

1           presumption not arbitrary. My  
2           understanding is arbitrary presumptions  
3           are generally frowned upon. So it's good  
4           to have some kind of statistical  
5           foundation. And then if you say this is a  
6           good starting point, but. Other states do  
7           the but. South Carolina has a lower  
8           adjustment. Indiana, Kentucky say, well,  
9           this makes sense for this income range;  
10          this makes sense for that income range.  
11          You can say, you know, based on our  
12          experience -- and we've seen case after  
13          case after case. I mean, we looked at  
14          what the awards would look like under each  
15          scenario. We think, you know, such and  
16          such adjustment reflects what we really  
17          do, and we build it into a presumptive  
18          formula.

19                 Now, it wasn't part of the  
20          contract. What I could do or if you're  
21          bored and want to be entertained with  
22          numbers, I probably could put together an  
23          Excel spreadsheet that, you know, you key

1           in his and her incomes and then it lines  
2           up the different versions. If you want a  
3           special average or whatever, that could  
4           probably be thrown in too and you could  
5           play with the numbers.

6           CHAIR PALMER: Well, let's look for  
7           -- one more thing from me. In our binder,  
8           page 5, your slide looks like number 10,  
9           page 10.

10          MR. ROGERS: Slide 10?

11          CHAIR PALMER: I don't know if it's  
12          slide 10, but on the bottom, do you see it  
13          says like on the one that's up there?

14          MR. ROGERS: Yeah.

15          CHAIR PALMER: It's got the number 10  
16          on there.

17          MR. JEFFRIES: Page 5.

18          CHAIR PALMER: Page 5 in the binder.  
19          I made -- of course, these are based on  
20          net income, one child, but it looks like  
21          -- plus all the numbers that you -- four  
22          different scenarios. It still looks like  
23          -- and this is under your recommendations

1           -- that for the numbers that were used and  
2           for the 2009 when we updated it to  
3           current, which is the white line, that  
4           it's like a 4 percent adjustment for the  
5           less than 15,000, approximately 4 percent  
6           adjustment for 15 to 20,000, approximately  
7           a 3 percent adjustment for 20 to 30,000,  
8           and then possibly a 2 percent adjustment  
9           from 30 to 40, and then everything else  
10          kind of levels out and remains the same of  
11          where we are, but it's always just in the  
12          lower incomes that we need to possibly  
13          look at an adjustment.

14                 MR. ROGERS: Yeah. One child is a  
15                 little bit -- two and three and higher  
16                 have --

17                 CHAIR PALMER: And that's on the next  
18                 pages, but it's still showing adjustments.

19                 MR. ROGERS: Yeah. The two, three,  
20                 and higher show stronger swings from the  
21                 prior study.

22                 HONORABLE BELL: Mr. Rogers, let me,  
23                 if I can -- and we're not shooting the

1 messenger. We're getting a lot thrown at  
2 us. Two things. Number one, judges are  
3 not going to calculate child support on a  
4 case-by-case basis.

5 MR. ROGERS: No, they're not.

6 HONORABLE BELL: I'm retired. I  
7 could care less.

8 CHAIR PALMER: We used to.

9 MR. ROGERS: Well, you had guidelines  
10 to give federal money.

11 CHAIR PALMER: Well, that too.

12 HONORABLE BELL: Yeah. And number  
13 two, we can make all the adjustments we  
14 want, but if the base number we're  
15 adjusting off of is not statistically  
16 supported by the data, then anything you  
17 adjust, the result is still going to be  
18 wrong and potentially unfair, isn't it?

19 MR. ROGERS: Well, if you -- I agree  
20 with what you're saying. And what you're  
21 saying is if you start with a number  
22 that's questionable and then are  
23 completely rational in your calculated



1 adjustments, what you end up with still  
2 isn't quite right. However, this does  
3 happen. Judges know what makes sense  
4 after they hear the case. And they have  
5 the starting point that may or may not be  
6 questionable, but they know where they  
7 want to end up. And then somehow,  
8 miraculously, they end up where they want  
9 to end up.

10 But if you think through it as, you  
11 know, I want every step to be super  
12 documented, there being some kind of  
13 formula that reflects this case. For  
14 example, you could have travel expenses  
15 for exercising visitation and do some kind  
16 of mileage calculation and, you know, be  
17 completely rational, but it's applied to a  
18 total number, beginning point is  
19 questionable. That's your point.

20 So what it again boils down to, I  
21 presented four alternatives plus you have  
22 the alternative of no change. You do have  
23 that. You could decide that. Because as

1           of now, you have considered economic data  
2           meeting the federal requirement. But  
3           you're now at the point of deciding which  
4           of those four sets of numbers are you  
5           comfortable with that make sense for the  
6           cases you see. And, yes, you're going to  
7           have to have a presumptive formula. And  
8           you would like it to make sense as a  
9           starting point.

10                   MS. DAVIS: Am I understanding you  
11           there is no national study or research  
12           that does what I think Billy would like,  
13           which would be to have research based on  
14           two separate households? There's no  
15           national study?

16                   MR. ROGERS: No.

17                   MS. DAVIS: So as much as we'd like  
18           it, it doesn't matter. We don't have it.  
19           We can't get it. Is that correct?

20                   MR. ROGERS: The only data set that  
21           has detail that allows for these kinds of  
22           studies is consumer expenditure survey.  
23           There's just very, very little data on

1           single parent households. And the data  
2           that's there is mostly modest to moderate  
3           income at best. There's almost no data on  
4           upper middle, high income single parent  
5           house -- you know, they exist, but in the  
6           survey, the numbers are almost  
7           nonexistent.

8                     All right. I'm stating the  
9           obvious. This is a messy process with the  
10          data. It's not -- this -- you know this  
11          as well as anybody. This process changes  
12          people's lives. It does. So it's  
13          important to get it right, but it's a  
14          messy process. And my goal was to present  
15          standard numbers with alternative  
16          adjustments and also maybe get you to  
17          think, well, you know, there is some room  
18          for creativity.

19                    And to be honest, say -- you know  
20          what I would really like to do when I have  
21          a general expression or general thought, I  
22          could probably say how you do it with  
23          data. I can, you know, say, gee, it would

1           be nice if, whatever. There's probably a  
2           way to do it with the data. But bottom  
3           line is you're going to have to be  
4           comfortable that the presumptive number is  
5           a good starting point for the cases you  
6           hear.

7                       And I've been around enough to know  
8           there are those that have agendas higher  
9           or lower. As an economist and not as an  
10          individual -- like I said, I've been  
11          noncustodial, custodial, stepparent. Now  
12          my objective is to present data  
13          objectively and then try to educate.

14                     CHAIR PALMER: Got one more question  
15          here.

16                     MR. JEFFRIES: I didn't want to  
17          interrupt you, but I was mentioning it to  
18          Ms. Palmer that we have a scheduled  
19          discussion about guideline application to  
20          joint custody situations where both  
21          parents have all the children 50 percent  
22          of the time. We have certain judges who  
23          do it in an informal way that -- we have

1 surveyed other states, and thanks to  
2 Penny, we now realize that the way those  
3 judges informally do it in the state of  
4 Alabama is done -- it's done the same way  
5 in a lot of other states.

6 I was just curious, since you're  
7 here -- and I know this is not part of  
8 your presentation, but how would you -- in  
9 your expert opinion, how would you  
10 consider these Guidelines as they exist  
11 now to apply to joint custody situations  
12 when you do it a certain way, or is that  
13 possible?

14 MR. ROGERS: All right. Just stating  
15 the facts about the data. The standard  
16 numbers are based on intact families. The  
17 standard table has no built-in adjustment  
18 for a noncustodial's parenting time. It  
19 assumes the children are in the same house  
20 with both parents all the time. There are  
21 different methodologies in terms of  
22 formulas, and you can always do it case by  
23 case, but, you know, there's a lot of work

1           involved. There are different formulas.  
2           And actually, Jane Venohr's prior report  
3           covers -- and I did make a point to review  
4           them. I've seen them many, many times.

5                     There's the cross-crediting  
6           approach, and then there's what's the  
7           Arizona graduated type percentage credit.  
8           I think in terms of ease of use and  
9           fairness, the Arizona formula is fairest  
10          and reasonably approximates what on  
11          average happens in those situations.  
12          However, one of the caveats is that it  
13          assumes that the parents actually do what  
14          they say they're going to do or what  
15          they're awarded in terms of parenting  
16          time.

17                    MR. JEFFRIES: Can I interrupt you  
18                    for a second?

19                    MR. ROGERS: Sure.

20                    MR. JEFFRIES: On our survey that I  
21           have viewed, I happened to have picked out  
22           -- myself, just from reviewing it, I  
23           happen to have picked out Arizona's method

1           and believe that it seems to be one of the  
2           closer approximations to what our judges  
3           have done informally, using our current  
4           Guidelines. Meaning they take -- they use  
5           the split custody sort of calculation or  
6           assume that each parent has the children,  
7           and you take the difference from the --  
8           subtract the lower from the higher amount  
9           and then you divide it in two.

10                       So are you saying that the Arizona  
11           type of calculation is an appropriate  
12           calculation using our Guidelines?

13                       MR. ROGERS: I think it is.

14                       MR. JEFFRIES: Did I say that right?  
15           Does everybody understand what I'm asking?

16                       MR. ROGERS: There are actually two  
17           versions of their adjustment. There's one  
18           version where when you get to the  
19           noncustodial parent having a high share of  
20           time, you know, still below 50 but, you  
21           know, starting to get near it. One  
22           version assumes the parent incurs housing  
23           costs and expense money on duplicated

1 expenses like clothing. Then there's  
2 another version that says, well, based on  
3 what the parents are telling me, you know,  
4 there is extensive parenting time but  
5 there's not really much more in housing.  
6 There's not -- you know, the custodial  
7 parent is still buying all the clothes.  
8 So there's a second version, which I think  
9 is good.

10 One thing I have learned testifying  
11 in court, flexibility. My first rule that  
12 I learned as an expert witness is never  
13 tell a judge what he or she should do  
14 because you said so. You just say, well,  
15 here's some options. I present options.  
16 That's all I do. And that's what the  
17 Guidelines should do is be good starting  
18 points for options. Arizona does both.  
19 Doesn't mean you have to go with Arizona,  
20 but it's well worth looking into.

21 CHAIR PALMER: That got us right into  
22 where we should be timewise, so why don't  
23 we take a quick break.



1 MR. POLEMENI: Well, I have --

2 CHAIR PALMER: Okay. Michael.

3 MR. POLEMENI: Everything in here is  
4 income based, correct?

5 MR. ROGERS: Yes.

6 MR. POLEMENI: We've got a thing out  
7 of Sixth Circuit of Florida and basically  
8 the headline is income-based child support  
9 is unconstitutional. And so --

10 MR. ROGERS: What's the date on that?

11 MR. POLEMENI: I'd have to look at  
12 that. I think it's around 2003, somewhere  
13 in there. So I may have --

14 MR. ROGERS: Is that lower court  
15 or --

16 MR. POLEMENI: Yeah, I think it was  
17 lower circuit. It's not an appeals court.

18 HONORABLE FORD: Was it appealed?

19 MR. POLEMENI: I'd have to go back  
20 and -- I don't have the resources to --

21 MR. ROGERS: I'm sure the state  
22 agency would have appealed that.

23 MR. POLEMENI: Yeah. This was

1 Florida Department of Revenue against a  
2 parent, and they wound up -- basically the  
3 outcome was they took away alimony as a  
4 payment to offset it as the final outcome.  
5 But that's the question on my side. Is  
6 income-based -- or we're back to the  
7 question how much does it cost to raise a  
8 child in reality.

9 MR. ROGERS: Just as a complete  
10 aside, you know, I've heard debate on both  
11 sides. I personally think, you know,  
12 there are times when courts use child  
13 support partially as alimony, and my  
14 reaction is why don't you just award  
15 alimony more often and keep them separate.  
16 That's my view.

17 CHAIR PALMER: I don't know that  
18 anybody in here does that. I doubt  
19 anybody in here does that so --

20 MR. ROGERS: Well, I'm glad to hear  
21 it.

22 CHAIR PALMER: Okay. Let's take a  
23 quick break.

1 MR. ROGERS: I'm not in any hurry.

2 CHAIR PALMER: Okay. Can you stay  
3 for a few more minutes?

4 MR. ROGERS: I can stay a while.

5 CHAIR PALMER: Okay. Great. Well,  
6 let's take a -- everybody go get your  
7 food.

8 MR. ROGERS: As long as I get home in  
9 time for dinner.

10 CHAIR PALMER: Well, that's all of us  
11 in this room.

12 (Brief recess)

13 CHAIR PALMER: Let's get back on the  
14 record. Let's talk about all of this  
15 information that we just got presented to  
16 us. I don't even know where to start.

17 The main thing that I'm hearing  
18 from this is that, number one, we don't  
19 have to do anything because we have  
20 considered this, but it just seems  
21 unjustly unfair if every one of these  
22 charts show at least up to about \$4,000,  
23 sometimes up to \$10,000, for at least one

1 child. But especially with an average  
2 income of like 5,000 -- a combined income  
3 of about \$5,000 a month. Even if it's  
4 just \$35 for one child, that's going to  
5 make a difference for somebody. \$106 if  
6 combined income is \$3,000 a month.

7 HONORABLE BELL: No. I think that's  
8 the difference, isn't it?

9 CHAIR PALMER: Yeah. That's going to  
10 make a difference. \$109, that's going to  
11 make a difference on both sides. If  
12 you're not getting that \$109, that can be  
13 the power bill but yet on the other side,  
14 that could be the power bill there too.

15 MS. MOORE: Child care.

16 CHAIR PALMER: Child care is added in  
17 as extra and insurance is added as well.

18 HONORABLE BELL: I appreciate what  
19 you're saying. But those of us that are  
20 as old as I am can remember pre Rule 32  
21 and post Rule 32 and how dramatically the  
22 child support being paid went up, because  
23 there was a lot of squealing and gnashing

1           of teeth. And I don't think we need to  
2           worry about whether it's fair to one side  
3           or the other. We just need to make sure  
4           we're being as statistically honest as we  
5           can be and that the methodology is fair to  
6           both sides based on the current situation.  
7           That's just my thoughts about it.

8                   CHAIR PALMER: Well, I do believe  
9           we've got to consider out of all of these  
10          four charts -- if we consider anything, we  
11          have to have the cost of living because  
12          when the rules were passed in '09, the  
13          information was so old even then and it  
14          was in 2004 that we adopted and got  
15          adopted in '09 from like 1996 to 1999  
16          information.

17                   Now, this is from '04 to '09, and  
18          Michael is always bringing up deflation  
19          because we have had some deflation. The  
20          cost of a gallon of gas is lower now than  
21          it was. So I don't know.

22                   MR. ROGERS: Regarding --

23                   CHAIR PALMER: Mr. Rogers knows. All

1 right.

2 MR. ROGERS: Regarding inflation  
3 issues, the CPI adjustment that I used was  
4 cumulative so it includes the soft  
5 periods. There really were no strong  
6 periods since the last position, so it  
7 goes through March of 2016, so that issue  
8 has been taken into account.

9 CHAIR PALMER: And that's with the  
10 COLA adjustments?

11 MR. ROGERS: Yes.

12 CHAIR PALMER: If it does not say  
13 COLA on there, that's not been included.  
14 Is that correct?

15 MR. ROGERS: Well, all of the studies  
16 have been updated to 2016 dollars, but  
17 then there are four sets, all of which are  
18 2016 dollars. One, again, is national and  
19 intact. One is national with a COLA. One  
20 is national with a second household  
21 adjustment. And then the fourth is  
22 national as a starting point, COLA, and  
23 second household adjustment.

1                   CHAIR PALMER:   And, Mr. Rogers, you  
2                   talked to me as we were walking back to  
3                   lunch that you meant to say one thing  
4                   during your presentation and you had  
5                   forgotten.   Now that your mouth is full,  
6                   I'm going to let you tell us all about it.

7                   MR. ROGERS:   Yes.   As I was putting  
8                   the presentation together, it was pretty  
9                   obvious to me that I did a fairly sizable  
10                  data dump on you.   And believe me, I can  
11                  do more and more kinds of numbers.  
12                  However, you may specifically have certain  
13                  calculations in mind.   Gee, I wish I had  
14                  the data converted to whatever it is.  
15                  Odds are, very high odds, I can get you  
16                  that type of conversion if you just let me  
17                  know.   So if you wish the data were in  
18                  such and such format, let me know.

19                  MR. POLEMENI:   I'll bring it up now.  
20                  Georgia just got their child support --  
21                  their online child support calculator  
22                  going.   And are you familiar with that at  
23                  all?   If so, what is your opinion of that?

1                   MR. ROGERS: First of all, they asked  
2                   me to play with it when I had a busy week  
3                   at work. I've used online -- we've had an  
4                   online calculator in Georgia for a while.  
5                   They just updated it. Also, they want to  
6                   phase out the Excel spreadsheets that are  
7                   also used currently. They're going to  
8                   keep those for a while. I don't know how  
9                   much longer. My guess is the idea is that  
10                  if it's online, the numbers can be dumped  
11                  quickly into a common database.

12                  On the other hand, how -- you know,  
13                  what are the issues of convenience? I  
14                  personally like the Excel worksheets, and  
15                  it's a pain in the butt to go online,  
16                  upload everything, make sure you save it.  
17                  So there are pluses and minuses to online  
18                  versus pure Excel. So there are pluses  
19                  and minuses. The idea is that they both  
20                  result in the same calculation, and I can  
21                  only guess as to what the ulterior motives  
22                  are for going only to online.

23                  MR. POLEMENI: My perception was that



1           you -- it was for everyone, not just the  
2           judges but for the consumer or the -- as  
3           well, so they can go in there and they  
4           won't be surprised in court. I can  
5           calculate it real quick and easy. So is  
6           that a --

7                   MR. ROGERS: Well, yes. But you can  
8           also -- the public can download the Excel  
9           calculators right now. However, I will  
10          say average member of the public probably  
11          is more comfortable going online and you  
12          know, slowly going through it as opposed  
13          to, gee, this is an Excel spreadsheet.  
14          What do I do?

15                   MR. POLEMENI: Uh-huh. Judge Bell --  
16          we mentioned that the Court has a  
17          calculator already. Now, is that open to  
18          the public where the public can use it?

19                   HONORABLE BELL: This is on our  
20          judges' alacourt. It's got tools and drop  
21          down box. One of them is CS calculator.

22                   CHAIR PALMER: But to my knowledge,  
23          it's out there for the public to use. To

1           my knowledge, it is.

2                   MR. POLEMENI:   Okay.

3                   CHAIR PALMER:   Mr. Maddox, do you  
4           know any different than that?

5                   MR. MADDOX:    I'll check on it.

6                   CHAIR PALMER:   Okay.   Because I have  
7           self-represented litigants who come in  
8           with it already done.

9                   MR. POLEMENI:   Yeah.   And I know I've  
10          gone on and had to direct people to go to  
11          the form and just download the form and  
12          fill out the form, but it was -- if they  
13          could do it all online, that would be  
14          wonderful.

15                  CHAIR PALMER:   They probably got --  
16          if they fill it in online and print it  
17          off, I don't know that they can save it  
18          online because we can't save it online on  
19          ours.   We can calculate it, print it off,  
20          but then it's gone.

21                  All right.   Now, we're to joint  
22          custody discussion.   And, Jim, I think  
23          you've started a very good discussion

1           about the Arizona plan. And then Mr.  
2           Maddox may be the results of the -- or  
3           maybe Jim is going to cover that as far as  
4           the results of the survey.

5                   MR. JEFFRIES: Well, the last time  
6           that we met, there was, I think, a motion  
7           to not change Rule 32 and address joint  
8           physical custody situations, to apply that  
9           in situations to our Guidelines. And we  
10          ended up agreeing that we would at least  
11          like to see how other states do it. And  
12          personally I had no idea, prior to looking  
13          at this memo, that Penny did and her  
14          office did how other states deal with  
15          joint physical custody. I was really  
16          surprised to see that the way Judge Bell  
17          and other of our judges in this state  
18          handle joint physical custody is used by a  
19          significant number of states who have  
20          these income-share type guideline rules  
21          like Alabama does.

22                   That was the main thing that I take  
23          away from this memo. Whether the

1           Committee still wants to address that any  
2           further or not, I guess is what we need to  
3           decide now. And I can talk more about the  
4           memo and how other states do it.

5           CHAIR PALMER: If you would, since  
6           we're all feeding our face. I'm going to  
7           let you talk and we will listen.

8           MR. JEFFRIES: It's -- from what it  
9           appears, there are two basic types, other  
10          than the states that are like we have  
11          officially, which is it's just -- there's  
12          no guidelines. It's just up to the  
13          discretion of the court. And the two  
14          different versions of how states do it are  
15          -- that are like the Arizona plan that Mr.  
16          Rogers mentioned and is in the handbook.  
17          Again, I picked that state out of my  
18          review as one that seems to me like is  
19          exactly like Alabama's informal rule. And  
20          if you can go to -- if you look at  
21          Arizona, Penny's office did a sample  
22          calculation.

23          CHAIR PALMER: What tab?

1                   MR. JEFFRIES: It's in C. If you go  
2                   to C, the first page is the memo. If you  
3                   go to the third page of the memo, Arizona  
4                   is just past the middle of the page. And  
5                   it shows how you use the split custody  
6                   calculation and then you deduct the low  
7                   from the high and then you divide it in  
8                   half, which is how the -- I haven't had  
9                   time to review the survey that we did to  
10                  compare, but that's my understanding of  
11                  how most judges do it. They either divide  
12                  it half at the end or they leave off the  
13                  last step and basically use the exact same  
14                  calculation as the split custody. I am  
15                  not able to really review or analyze which  
16                  is fair or not. But the -- those are the  
17                  ways that I know judges in Alabama do.

18                 There is another -- the other way  
19                 that states do it is more like Virginia,  
20                 where they -- let me see if I can find it.  
21                 You can go to the end of the memo. Bob  
22                 has -- the end of the memo and then the  
23                 end of the chart, there's a three to

1 four-page chart. But there's a sample --  
2 excuse me -- of Virginia's child support  
3 guideline worksheet in the handout, and I  
4 have always personally thought that the  
5 states who use a percentage of the  
6 parenting time as a guide to how much  
7 child support you pay in joint custody  
8 situations was way too complicated, just  
9 -- I mean way too complicated.

10 If you look at California for  
11 example, they have this really involved  
12 process, and I just don't think it's  
13 workable at all. But Virginia's  
14 calculation is very similar to our current  
15 calculation. It just adds in the center a  
16 percentage of custody share is how -- what  
17 they call it. That applies to the  
18 Guidelines, and it's a relatively simple  
19 calculation if we wanted to consider that.  
20 And I just point that out for comparison  
21 purposes, that maybe it's not as  
22 complicated as we might think, depending  
23 on the calculation.

1                   And that's kind of the issue in a  
2                   nutshell, I think. But, again, back to  
3                   what we've got to decide is do we want to  
4                   consider putting joint physical custody  
5                   guidelines in our Rule 32. And again just  
6                   to add one more thing, I am now confident  
7                   that -- especially based on what Mr.  
8                   Rogers has said, that the way we have been  
9                   informally doing it, which is again like  
10                  Arizona's calculation, could be perfectly  
11                  appropriate based on our Guidelines and  
12                  numbers that go into it and all that.

13                MS. MOORE: I do think if we consider  
14                the joint physical custody and the  
15                Guidelines, then we're going to have to  
16                come up with a definition of what is joint  
17                physical custody, because some courts look  
18                at it differently. Is it the 50 percent  
19                with one parent, 50 percent with the  
20                other? Is it per agreement? And I was  
21                reading on the survey where one judge says  
22                if the parents agree that it's joint  
23                physical custody, then they do not do a

1           visitation order or a specific order who  
2           keeps when and where. So if you're going  
3           to do -- is that -- would that be an issue  
4           or --

5                   MR. JEFFRIES: Let me say two things  
6           as far as what you've said. First of all,  
7           the calculation for Arizona, for example,  
8           does not address what exact percentage of  
9           time the parents have the children. It  
10          assumes that the parents have the children  
11          50 percent of the time and that's it.  
12          Now, whether the parents actually have the  
13          children 50 percent of the time would be  
14          determined by what the judge says is the  
15          type of custody that is being awarded.

16                   In other words, if a judge says  
17          joint physical custody, joint legal and  
18          joint physical custody or shared custody,  
19          whatever the language is, then you use  
20          this calculation. It doesn't get into is  
21          it only Wednesday to Monday rather than  
22          Wednesday to Wednesday. That's where you  
23          get to -- that's where you get to the



1           Virginia type of calculation, where it  
2           says you have X percentage of the whole  
3           year or month or however they look at it.  
4           I'm not sure.

5                     The other part of your question is  
6           it would not be appropriate as an order in  
7           Alabama, as I understand it, because there  
8           has to be some calculation that is in the  
9           judge's order. They can't just say, okay,  
10          because it's joint custody, I'm not going  
11          to order there to be any schedule. There  
12          has to be a schedule.

13                    MS. MOORE: Okay.

14                    MR. POLEMENI: Correct me if I am  
15          wrong, but isn't there -- doesn't the law  
16          read that if it's agreed upon that the  
17          parties -- both parties come to the judge  
18          with an agreed upon settlement and that  
19          that -- that's what's implemented? Is  
20          that --

21                    MR. JEFFRIES: Are you talking about  
22          custody or child support?

23                    MR. POLEMENI: Yeah, custody. Both

1           or either/or.

2                   MR. JEFFRIES:  No, that's not  
3           necessarily correct.

4                   CHAIR PALMER:  It could say an hour  
5           with me, an hour with you, an hour with  
6           me, an hour with you.  If that's in the  
7           agreement, I'm not going to sign that.

8                   MR. JEFFRIES:  I have a judge that I  
9           practice in front of who does not believe  
10          that joint physical custody -- like 50  
11          percent custody arrangements are in the  
12          best interest of children.  I don't care  
13          if you've got two parents that come before  
14          her and under oath testify that this is  
15          what they believe as parents is  
16          appropriate, she will sometimes not order  
17          that.

18                   MR. POLEMENI:  Okay.  So we're back  
19          to the same thing.  We're still a diverse  
20          state as far as the way things operate.

21                   MR. JEFFRIES:  And the discussion  
22          that we're having today is not whether  
23          joint custody is appropriate, what judges

1           grant it, what judges don't. It's if  
2           you're going to do it.

3                   MR. POLEMENI: Uh-huh.

4                   MR. JEFFRIES: If it's going to be  
5           ordered, are we going to have Rule 32 deal  
6           with it, from a guideline standpoint, how  
7           child support is calculated?

8                   MR. POLEMENI: Uh-huh.

9                   HONORABLE BELL: Number one, I think  
10          we definitely need some way to make an  
11          adjustment to child support that's  
12          consistent across the state where joint  
13          custody is awarded. If you have any doubt  
14          about that, look at the questionnaire  
15          answers. I was shocked at what I saw from  
16          judges that wouldn't award joint custody  
17          even if the parties agreed to it, up to I  
18          always do it 50/50. We're looking for  
19          consistency and fairness and a standard to  
20          apply.

21                   You can always deviate from Rule  
22          32, but you've got to state reasons for  
23          it, and you thinking it's just not fair is

1 not a good reason. But probably the best  
2 comment that I had was from this person  
3 that says if you folks actually want to  
4 make an all-encompassing rule, bless your  
5 hearts. I like that person.

6 MS. DAVIS: It's signed Billy Bell.

7 (Laughter)

8 HONORABLE BELL: But we need  
9 consistency.

10 HONORABLE FORD: One thing Jim and I  
11 were talking about is the fact that very  
12 few judges, despite the fact that you can  
13 deviate, use that -- take that option.

14 HONORABLE BELL: That's right.

15 HONORABLE FORD: And I don't know if  
16 it's a training issue or whether or not  
17 it's just easier just to do it as you  
18 always have done.

19 MR. JEFFRIES: Let me make one  
20 comment, Billy, just to follow up with  
21 what you said. To me, the issue of  
22 appropriateness of shared custody is not  
23 an issue. It's appropriate according to

1           the Code of Alabama that has been in place  
2           for decades and decades, so that's not  
3           really an issue. I agree with you,  
4           basically. There needs to be some sort of  
5           guidance.

6                     CHAIR PALMER: Bob Maddox.

7                     MR. MADDOX: I just wanted to briefly  
8           cover the survey results, how we did this.  
9           At the last meeting, the Committee  
10          requested that we try to do both a paper  
11          survey and do -- we have SurveyMonkey in  
12          AOC, which is tremendous because we can  
13          put questions in both with multiple choice  
14          and essays. If you could take one and  
15          pass it down.

16                    And this is another survey result.  
17          I happened to go back down to my office  
18          about ten minutes ago, and there was one  
19          more response this morning. So I wanted  
20          the Committee to have all the responses.

21                    We have a total now of 67 responses  
22          from both judges and family law attorneys.  
23          I appreciate Mr. Smith sending the survey

1 out. But both judges and attorneys, we  
2 had 67 responses total, both from paper  
3 surveys at conferences or SurveyMonkey.

4 Now, I will tell y'all I'm not a  
5 technical-type person so I had to get  
6 assistance with the links to this, and I  
7 apologize to Mr. Smith. I did send you  
8 the wrong link. You may have noticed. I  
9 sent the judge's survey link instead of  
10 the attorney survey link, but happily the  
11 questions are the exact same, so it's not  
12 fatal. They were asked the same  
13 questions. They were just in a little  
14 different format. They're still the same  
15 questions so just don't -- I didn't panic  
16 about it. In fact, it's probably easier  
17 for y'all to see compiled anyway in one  
18 big document, so I wanted to clarify all  
19 that.

20 And I think at the last meeting,  
21 Mr. Wright and Mr. Arnold were asked to  
22 see if they could survey colleagues in  
23 other states if they went to the AAML

1 conference, and I wanted to see if they  
2 found out anything also.

3 MR. WRIGHT: I did do that. I talked  
4 to a member from a number of states.  
5 Every answer I got was the same. The  
6 judge deviates from the Guidelines based  
7 on the amount of time the children were  
8 spending with --

9 (Court reporter interrupts for  
10 clarification.)

11 MR. WRIGHT: Yes. All of the people  
12 that I talked to -- and I did not talk to  
13 anyone from our state -- said that in  
14 their state, it's discretionary for the  
15 judge to deviate from the Guidelines based  
16 on the amount of time that the children  
17 actually spend with each parent, so  
18 there's no definite guidelines that they  
19 follow. It's discretionary judgment,  
20 case-by-case basis. There are so many  
21 variations of what people call joint  
22 custody. I don't know how it could be any  
23 other way.

1                   MR. MADDOX:   And it's also  
2                   interesting that the chart that I think  
3                   Penny Davis's students or whoever  
4                   compiled, the deviation in 22 states,  
5                   sliding scale in 23 states, and equal  
6                   custody formula was in six states.  So  
7                   it's kind of half and half, roughly,  
8                   between deviation versus sliding scale in  
9                   the states.  District of Columbia was  
10                  included.

11                 CHAIR PALMER:  Do we have any more  
12                 questions for Mr. Rogers?  I want him to  
13                 get home to dinner.  We need to think  
14                 about this.  I mean we need to summarize  
15                 each one of these topics.

16                 So I guess what we need to do as  
17                 far as this chart goes, or charts, is I  
18                 don't know that we need to do anything.  
19                 Do we need to do something?  Do we need to  
20                 take all of this, digest it, and come back  
21                 on another day?  I see a lot of heads  
22                 nodding on that part.

23                 Would we want Mr. Rogers to come



1 back, or we would want -- Mr. Bell is  
2 shaking his head yes.

3 HONORABLE BELL: I think we could  
4 spend two days with Mr. Rogers hashing  
5 this out.

6 MR. ARNOLD: You can spend two days  
7 with Mr. Rogers.

8 (Laughter)

9 HONORABLE FORD: Well, we're retired.

10 HONORABLE BELL: I'm retired.

11 MR. ARNOLD: He's a nice man, but the  
12 weekend, I don't want him.

13 HONORABLE BELL: Every day is  
14 Saturday to me.

15 CHAIR PALMER: The two retired judges  
16 are shaking their head that they would  
17 like to spend more time with Mr. Rogers.

18 Well, to summarize that, then, I  
19 don't know when we're going to come back;  
20 but, Mr. Rogers, we would -- I don't know  
21 if that's part of your contract. Now, he  
22 had made an offer to possibly take some of  
23 the information that he gave us and put it

1           on an Excel spreadsheet if he does come  
2           back, so that may be something that we can  
3           talk about and then Bob can let him know  
4           if we need that or not.

5                       But as far as right now, I am  
6           saying -- and everybody can agree or  
7           not -- that we're just going to table this  
8           right this second. We're going to try to  
9           hopefully meet by the end of the year and  
10          have something to present and maybe just  
11          spend -- everybody get each one of these  
12          charts, spread them out. If we have to  
13          come back and spread them out on the floor  
14          or put them up on the walls and go through  
15          and look at, then that's just what we're  
16          going to have to do. And then our final  
17          decision might be we do nothing. That is  
18          still an option out there.

19                     MR. JEFFRIES: I think just to  
20          emphasize, I don't know that everybody  
21          heard, but you mentioned maybe applying  
22          the lower income part of the chart and not  
23          the higher income.

1 CHAIR PALMER: Yeah. That's also --

2 MR. JEFFRIES: It could be a  
3 combination.

4 CHAIR PALMER: Yeah. Just like he  
5 suggested, we don't have to take any one  
6 of these in the absolute form that they're  
7 in. We can adjust them. Do I hear any  
8 seconds or comments?

9 MS. DAVIS: Would it be possible to  
10 get a subcommittee to work and spend some,  
11 you know, workshop time?

12 CHAIR PALMER: Well, I think our two  
13 retired judges and our retired person from  
14 the Alabama Law Institute and anything  
15 else are excellent choices for that  
16 subcommittee.

17 HONORABLE BELL: I've got a pretty  
18 busy tree-trimming business.

19 MR. ARNOLD: That one tree in your  
20 yard.

21 MR. POLEMENI: But your liability is  
22 higher.

23 CHAIR PALMER: Probably a

1           subcommittee would not be bad, but we  
2           still need to come back sometime in  
3           December, I would think.

4           MS. DAVIS: I didn't mean in lieu of.  
5           I just mean in addition to.

6           CHAIR PALMER: Yeah, in addition to.

7           HONORABLE BELL: But is an overnight  
8           meeting a possibility?

9           CHAIR PALMER: I don't see why not.

10          HONORABLE BELL: I mean we drive from  
11          Huntsville, and it takes us three hours to  
12          get here, assuming there's not wrecks or  
13          work on the road, then we have a four-hour  
14          meeting, and we drive three hours back. I  
15          wish we had more time together.

16          CHAIR PALMER: And I don't see --  
17          Bob, is there any prohibition about that  
18          especially or just financing the  
19          subcommittee to come down ahead of time?

20          MR. MADDOX: I believe that Ms.  
21          Saulsberry -- we're in the process of  
22          doing our budget for next fiscal year  
23          between our office and DHR.

1                   CHAIR PALMER: And your office -- and  
2                   that starts October the 1st?

3                   MR. MADDOX: Correct. And that's  
4                   another thing. Mr. Rogers' contract with  
5                   our office expires on September 30th, so  
6                   if this Committee wishes to retain him to  
7                   come back and do more work, we will enter  
8                   into another contract for the next fiscal  
9                   year.

10                  CHAIR PALMER: All right. So I guess  
11                  we need to vote on that. I can't see  
12                  him -- well, I don't know if we need the  
13                  report from the subcommittee. If we need  
14                  to, like I said, get all four of these  
15                  tables and put them in a big form and look  
16                  at them and then maybe possibly do the  
17                  percentages and then invite him back or --  
18                  Mr. Arnold, what say you? You've been on  
19                  this Committee since I think it originated  
20                  so -- you and Mr. Rogers -- and you too?

21                  MR. ROGERS: I just want to make a  
22                  couple of comments. When you think about  
23                  numbers that you would possibly like to

1           see your blending issue, the charts that  
2           show the dollar levels of the different  
3           alternatives, just simply pay attention to  
4           the differences in what's going on at the  
5           low income for this version, what's going  
6           on at the high end, so you can think in  
7           terms of, you know, what would you like to  
8           blend or not, what would you like to  
9           average or not. Averaging and blending is  
10          largely copy and paste and maybe some  
11          smoothing.

12                        So don't view it as a, you know,  
13          long, drawn-out process. It's really an  
14          issue of what would you like to see. You  
15          know, numbers are me. That's what I do.  
16          So it's not a long, drawn-out process.

17                       And one quick comment on the  
18          custody thing. From Georgia, there's some  
19          things I like about the Guidelines, some  
20          things I don't. One thing that I think is  
21          good if you're going to address the  
22          custody issue more, in Georgia there's  
23          what's called a two-year rule on

1 prohibition of modifications from the most  
2 recent modification. There are two  
3 exceptions, 25 percent loss of income or  
4 change in actual exercise of parenting  
5 time from what was awarded.

6 So that could be something you want  
7 to include in your code. You know, we're  
8 going to have an adjustment, but if the  
9 exercise is more than ordered or less,  
10 that's grounds for a modification.

11 CHAIR PALMER: Well, it's my  
12 remembrance that when we updated the  
13 Guidelines that were adopted in 2009, the  
14 years before that, that we did take into  
15 consideration that the noncustodial parent  
16 at a minimum would have what's called in  
17 most states standard visitation. Every  
18 other weekend, 30 days in the summer,  
19 every other spring break, Christmas,  
20 Thanksgiving, those types of things, so  
21 that the noncustodial parent had the child  
22 about one-third of the time, and that was  
23 part of the calculations as I remember it.

1 I see Judge Ford shaking his head in  
2 agreement and Mary as well.

3 MR. ROGERS: But it's not a part of  
4 the actual data in the schedule. It's not  
5 built in.

6 CHAIR PALMER: I thought it was.

7 HONORABLE FORD: That's what we  
8 thought we were doing.

9 MS. DAVIS: When you say it's not in  
10 the data, do you mean the new data you  
11 presented or the old data?

12 MR. ROGERS: Both. It was -- the  
13 standard without the second household  
14 adjustment is purely intact family  
15 household data. Assumes the child is in  
16 one household only.

17 HONORABLE BELL: That's the major  
18 problem I have with the basic methodology.  
19 It doesn't seem accurate. It doesn't seem  
20 relevant.

21 MR. ARNOLD: From the data, there was  
22 a rotation involved.

23 MR. ROGERS: From the -- exactly. If



1           you look at it -- I mean, criminal law  
2           applies due process issues far more  
3           heavily than family law. And,  
4           theoretically, if the case -- if a  
5           presumption does not fit case facts, it's  
6           rebutted. Intact family data. Well, are  
7           we dealing with intact families in child  
8           support awards?

9           HONORABLE BELL: No.

10          MR. ROGERS: Theoretically, it should  
11          be rebutted in every case.

12          MS. DAVIS: Can I ask a question?  
13          I'm a little bit disturbed about what the  
14          figures do or don't incorporate. We  
15          thought it incorporated the --

16          MS. MOORE: Standard visitation.

17          MS. DAVIS: We thought it also  
18          incorporated the tax implications with the  
19          custodial parent getting all that. Does  
20          your data -- does that include --

21          MR. ROGERS: (Shakes head.)

22          MS. DAVIS: None of that is included?

23          MR. JEFFRIES: It also includes, as

1           you mentioned earlier, the \$250 incidental  
2           noncovered medical expenses. That's my  
3           understanding.

4                   CHAIR PALMER: That's what I --

5                   MR. ROGERS: That is included.

6                   MS. DAVIS: Is that the only thing  
7           that's included?

8                   MR. ROGERS: That's the only thing  
9           that's included.

10                   HONORABLE BELL: So not the tax  
11          exemption automatically going --

12                   MR. ROGERS: No. It's not built in.

13                   CHAIR PALMER: But now our actual  
14          rules in 2009 say that. They say that,  
15          don't they?

16                   MR. ROGERS: They do say --

17                   MR. ARNOLD: In part, yes.

18                   MR. ROGERS: They -- well, it's more  
19          than in part.

20                   HONORABLE BELL: What we're doing --  
21          and the big problem I have, as I've  
22          already stated, we're working on a  
23          presumption that two parents living

1           separate and apart are presumed to spend  
2           the same amount of money on their children  
3           living separate and apart as they did when  
4           they lived intact. I don't know. I don't  
5           think that's a good presumption.

6                   MS. MOORE: It's not.

7                   MR. ROGERS: Well, all right. Let me  
8           state the obvious. You have a legal  
9           requirement for the obligor to pay child  
10          support based on intact family patterns.  
11          The custodial parent receives the money,  
12          and this is a common idea in economics in  
13          terms of consumer behavior. Consumers  
14          behave according to who and what they are.

15                   You know, I'm limited by my income.  
16          I'm married; but if I were single, I'd be,  
17          you know, paying rent by myself. I would  
18          behave in one manner versus being married  
19          and sharing the house. So we behave --  
20          the custodial parent receives the payment  
21          as if everything going on is in one roof,  
22          under one roof. Well, the custodial  
23          parent spends the money as if -- and I'll

1           be stereotypical. It's okay -- as if she  
2           were a single parent. Why? Because she  
3           is a single parent. Why should we be  
4           surprised a single parent spends as if  
5           she's a single parent? But the  
6           noncustodial parent pays as if he's living  
7           in an intact household.

8                     There's a legal constraint, in  
9           other words: Son, you're in arrears,  
10          you've got a problem, versus, okay, you've  
11          got the money, we're going to count on you  
12          and trust you to spend it correctly.

13                    HONORABLE BELL: I agree.

14                    MS. DAVIS: Since Kansas is the only  
15          state that actually uses second household,  
16          do they take into consideration, like a  
17          lot of families, when they first break up,  
18          which is when you'll first be doing the  
19          income, one or the other one will go back  
20          and live with their parents, for example,  
21          or relative or someplace? So do they use  
22          the actual figures there, or do they use  
23          the figures as if they're actually living

1           and incurring expenses they're not, or  
2           does that -- hopefully you don't have  
3           circumstances where it traps the person to  
4           having always to live with their mama and  
5           daddy because their support is based on  
6           that. I want to know what Kansas does.

7                   MR. ROGERS: Here's the bottom line  
8           starting point for any of these facets.  
9           Federal regulations -- and I apologize for  
10          using that phrase. But there is --  
11          federal regulations require that  
12          guidelines be uniform statewide, same  
13          formula for all kinds of cases, no  
14          exceptions. As presumptive, you can  
15          deviate in any case. So in Kansas, they  
16          have a standard formula that's  
17          presumptive, and it's based on average  
18          circumstances.

19                   I've seen a lot of cases where  
20          judges see, well, you know, certain  
21          situations are occurring now out of  
22          necessity. You know, somebody is living  
23          in the basement again. We're not going to

1           force that until the person collects  
2           social security. We're going to go with  
3           the guideline formula; and if later on you  
4           feel like we still need to deviate, you  
5           can come back. So there's always the  
6           option to deviate. And there's that  
7           possibility, you know, they're both low  
8           income; he's living in the basement again  
9           as well. You know, it's not happy  
10          circumstances, but you've got to buy  
11          diapers. You've got to buy formula. And,  
12          you know, you're going to have to bite the  
13          bullet until things get better. So there  
14          is a presumptive uniform formula based on  
15          average.

16                 MS. DAVIS: Average what? Income or  
17                 average expenses?

18                 HONORABLE BELL: Circumstances.

19                 MR. ROGERS: There's an income  
20                 equivalence.

21                 MS. DAVIS: Is it counted -- So it's  
22                 not counted by county. In your report --

23                 MR. ROGERS: No.

1 MS. DAVIS: -- it's showing where  
2 they had -- you could -- as an example, I  
3 guess it was if it wasn't used in the IRS  
4 numbers --

5 MR. ROGERS: Well, I use county data,  
6 but I basically combine it statistically  
7 for a statewide formula. So it's like,  
8 yeah, you've got individuals. With the  
9 consumer expenditure survey, we don't say,  
10 well, it's -- well, that's individual  
11 data. Well, it consists of individual  
12 data, but we pull it all together.  
13 There's risk of violating that federal  
14 requirement if you do have guidelines  
15 where there's some non-statewide  
16 component.

17 MS. DAVIS: Which we have that for  
18 child custody so --

19 MR. ROGERS: Care.

20 MS. DAVIS: Yeah, child care. So  
21 could you do that for --

22 MR. ROGERS: Well, all right.  
23 Sometimes there's language and code where

1           maybe it breaks some rule but nobody cares  
2           because it's fair. Well, that's probably  
3           a rule that breaks a federal regulation,  
4           but apparently everybody or close to  
5           everybody thinks it's fair and don't care  
6           that it broke some federal regulation.

7                       For example -- and this falls in  
8           the who really cares category, but it's an  
9           example. You're supposed to have a  
10          formula that is uniform statewide for all  
11          incomes, a formula that includes extremely  
12          high income. The way some states,  
13          including Georgia, does it, there's a cost  
14          table and it goes up to \$30,000 combined  
15          monthly; and then beyond that, the highest  
16          level is the presumptive number which can  
17          be rebutted.

18                      In actual practice -- okay. We  
19          have a number that meets the formula so we  
20          conform to the federal requirement. But  
21          in actual practice, judges can use  
22          discretion when one of the parents makes a  
23          million dollars a year. Alabama has



1           different wording where it says above  
2           20,000, discretion is used. Well,  
3           technically you're supposed to have a  
4           number with any given income level; but in  
5           practice, you're doing the same thing.

6                       So in reality, your wording might  
7           technically could be improved but in  
8           actual practice it makes no difference.  
9           You're doing the same thing but using  
10          different wording. But there are other  
11          situations, like with child care, probably  
12          breaks a federal regulation, but if nobody  
13          cares and it's fair, I'm not going to file  
14          a lawsuit. So anyway.

15                      CHAIR PALMER: Well, I know  
16          California has a chart that goes up to  
17          \$649,000 a month because I just had a case  
18          where it was a professional football  
19          player and that's what he made. She made  
20          nothing. And he would have to pay her  
21          \$19,500 a month in child support. I'm  
22          sure it went past the 659 dollars a month  
23          in California, so they had a formula for

1           that amount.

2                   MR. ROGERS:   They have a very curious  
3           formula.

4                   CHAIR PALMER:   All right.   We have to  
5           move on.   We have a schedule here.   I'm  
6           looking for recommendations as to what  
7           we're going to do with this.   I think  
8           we're going to table it -- is that  
9           correct -- and have a subcommittee  
10          appointed, which is going to be Judge  
11          Billy Bell and Judge Aubrey Ford.

12                   HONORABLE BELL:   No.   I don't think  
13          we need a subcommittee.   I think we just  
14          need to sit down and talk about it and  
15          hash it all out.   I don't know what a  
16          subcommittee is going to do other than  
17          what Mr. Rogers has done, and that's give  
18          us our options.   We just need to sit down  
19          and talk about it.

20                   CHAIR PALMER:   Okay.   But do we want  
21          to do that today, or do we want to put  
22          that -- let us have a chance to go over  
23          all these numbers?

1                   HONORABLE BELL: I'm not prepared to  
2                   do it today. Personally, I'm not.

3                   CHAIR PALMER: Is that a motion?

4                   HONORABLE BELL: I move to table --  
5                   defer this to a future meeting.

6                   MR. ARNOLD: Second.

7                   CHAIR PALMER: Okay. A bunch of  
8                   seconds. Aubrey Ford will say seconded,  
9                   and all in favor say aye.

10                  (Committee members who favored the  
11                  motion so indicated.)

12                  CHAIR PALMER: Anybody opposed to  
13                  this?

14                  Okay. That's what we'll do. We're  
15                  just going to have to find a date.

16                  HONORABLE BELL: I have another  
17                  motion. I'd like to un-table the joint  
18                  custody discussion on Rule 32, bring it  
19                  back up, and have it presented -- have a  
20                  proposal presented -- have an estimation  
21                  for us to vote up or down.

22                  CHAIR PALMER: Okay. So that's a  
23                  motion. Do I have anybody who --

1 MR. WRIGHT: Second.

2 CHAIR PALMER: Okay. Anybody --  
3 everybody agree?

4 Okay. Got to say something. She  
5 can't write down head nodding. Come on.  
6 We're in court.

7 (Committee members who favored the  
8 motion so indicated.)

9 CHAIR PALMER: Anybody opposed?

10 Okay. All right. Well, that gets  
11 us on schedule.

12 Penny, I think you're next with the  
13 legislative update.

14 Yes, sir?

15 MR. POLEMENI: I have one question  
16 for Mr. Rogers. On your comments, you  
17 said that there's really no data for two  
18 households. Is that correct? There's  
19 not --

20 MR. ROGERS: There's no data for  
21 single-parent households after separation.

22 MR. POLEMENI: Yeah. Okay.

23 MR. ROGERS: You have to try to come

1 up with a methodology that gets you in the  
2 right direction.

3 MR. POLEMENI: Uh-huh. Now let me  
4 ask this question. Is it feasible that  
5 the judicial system could make that data  
6 available to somebody to calculate and so  
7 that there's data points out there? You  
8 know, here's the divorce situation -- you  
9 know, without names, I'm sure -- but just  
10 a thought in trying to accumulate data so  
11 that researchers can have data to work  
12 with? Is that a feasible --

13 MS. CAMPBELL: I'm not an attorney.  
14 I'm with DHR Child Support Association.  
15 But -- and correct me if I say this  
16 incorrectly. But the current model we  
17 have now is based on intact households  
18 where child support is calculated. So  
19 it's based on each person's proportionate  
20 share of the total income based on the  
21 guideline.

22 Well, the noncustodial parent, yes,  
23 he has to pay rent -- I say he. I'm

1           sorry. He or she has to pay rent but yet  
2           the custodial parent is left with the same  
3           household that she has to pay rent with no  
4           income, not the full income. So I think  
5           proportionate share is -- what we've got  
6           now is about as close as we can get.

7                   MR. POLEMENI: Yeah.

8                   MS. CAMPBELL: Am I saying it wrong?

9                   MR. POLEMENI: I don't have a problem  
10          with that statement. I'm just saying  
11          there's no data out there for anybody  
12          other than people that are in the system  
13          that know -- well, like Judge Bell was  
14          saying that doesn't seem to compute and,  
15          you know --

16                  CHAIR PALMER: We don't really  
17          collect data as far as, you know, maybe  
18          somebody has an exhibit. But usually we  
19          have your budget, and that's more like for  
20          alimony cases or over the Guidelines.  
21          Child support is the only time we would  
22          ever collect data, really, and that would  
23          be an exhibit in court.

1                   MR. POLEMENI: Yeah. I'm just trying  
2                   to see, you know.

3                   MS. CAMPBELL: I think all I was  
4                   saying is that we need to make sure that  
5                   we understand that the second household,  
6                   usually we're talking about the  
7                   noncustodial parent. We need to not  
8                   forget the custodial parent, who also has  
9                   full household expenses that she or he has  
10                  to pay.

11                 MR. POLEMENI: Oh, absolutely.

12                 MS. CAMPBELL: And I may be stating  
13                 it incorrectly.

14                 HONORABLE BELL: No. You're stating  
15                 it from a DHR point of view. But if we're  
16                 trying to stay fair to both sides, the  
17                 base number, in my opinion, is not the  
18                 right opinion, but maybe it's the only one  
19                 we've got.

20                 MR. POLEMENI: Yeah, that's the  
21                 problem.

22                 CHAIR PALMER: All right. So we've  
23                 got the presentation for the updated

1           schedule that's going to be tabled, and  
2           we'll all have a chance to review it.

3                     Yes, sir?

4                     MR. MADDOX: Real quick, before we  
5           leave the discussion on the schedule, is  
6           it this committee's preference to have Mr.  
7           Rogers come back at the next meeting? Did  
8           I hear that?

9                     CHAIR PALMER: I heard one yes and I  
10          heard one no. Judge Bell thinks he's  
11          given us all this information we need to  
12          regurgitate. Ms. Davis is shaking her  
13          head, saying he needs to come back. So I  
14          don't know. What does the Committee  
15          think? Steve?

16                    MR. ARNOLD: I'm trying to think it  
17          through, and I'm not convinced of my own  
18          suggestion. But as a suggestion, we have  
19          our next meeting to hash through what we  
20          have presented. We all look at it  
21          independently, we reconvene, look at what  
22          has been presented to us, have our  
23          discussion. We've already got a list of



1           questions, but there may be more  
2           questions, more discussion. It may be  
3           more productive for Mr. Rogers to come  
4           back soon after that.

5           MS. DAVIS: But we have to  
6           budget-wise --

7           MR. ARNOLD: I know that has a lot to  
8           do with budgets and --

9           MR. MADDOX: That's why I'm asking.  
10          We have to renew the contract. And I  
11          thought I heard Mr. Rogers say that he was  
12          not clear in the language we put in his  
13          last contract, and I apologize for that.  
14          So we probably need some really clear  
15          language for him to go by what we want him  
16          to do.

17          CHAIR PALMER: Well, I don't -- what  
18          was the cost this time?

19          MR. MADDOX: 14,000.

20          CHAIR PALMER: 14,000. If you come  
21          back, you're not going to have to reinvent  
22          this wheel. You might have to tweak it  
23          some, so would the cost be 14,000 again

1           for you to come back?

2           MR. ROGERS:   If you would like to pay  
3           that much.   No.

4           MR. MADDOX:   We have it in the budget  
5           for the amount if it's approved.   We're  
6           pending approval.

7           MR. ROGERS:   No.   Plus, don't forget  
8           there's such things as conference calls,  
9           and you know it's --

10          CHAIR PALMER:   And Skype.

11          MR. ROGERS:   I'm not buying a flight  
12          ticket to Montgomery.

13          CHAIR PALMER:   All right.   So I think  
14          we should possibly budget something for  
15          the fiscal year coming up on October the  
16          1st, but I don't think it should be the  
17          \$14,000.   Everybody agree with that?

18          MR. POLEMENI:   Yes.

19          CHAIR PALMER:   How much that's going  
20          to be, I don't know.   Maybe you and I and  
21          Mr. Rogers need to speak to that.

22          MR. ROGERS:   I would suggest an up-to  
23          amount, and then it could be less.

1 CHAIR PALMER: Okay.

2 MS. DAVIS: I'd like to make a motion  
3 that we ask the Court if the Court --

4 (The court reporter interrupts.)

5 MS. DAVIS: If the Court approves the  
6 budget -- but anyway, my motion is that we  
7 ask whoever we're supposed to ask that we  
8 have a budget up to \$10,000 to invite Mr.  
9 Rogers back to consult with the Committee  
10 in person or via electronic communication  
11 of some sort as needed.

12 CHAIR PALMER: Okay. Anyone second  
13 that?

14 HONORABLE FORD: I second that.

15 CHAIR PALMER: Judge Ford. All in  
16 favor say aye.

17 (Committee members who favored the  
18 motion so indicated.)

19 CHAIR PALMER: Opposed? Okay.

20 MR. MADDOX: Does the Committee want  
21 to go over specifics, what you want Mr.  
22 Rogers to do so --

23 CHAIR PALMER: Well, I think that's

1           going to be for the next meeting. I don't  
2           know right now that we know what we want  
3           Mr. Rogers to do.

4                   HONORABLE FORD: May even be a third  
5           meeting after we go through it; and at  
6           that point, we can decide what questions  
7           we want to ask.

8                   CHAIR PALMER: Yes. I don't think  
9           that we're to that stage yet.

10                  MR. ROGERS: Let me just remind you,  
11           if you just want to see some data slightly  
12           reorganized, I do numbers. The task is  
13           probably trivial.

14                  CHAIR PALMER: Okay. That's good to  
15           know.

16                  MS. CAMPBELL: Can we possibly submit  
17           questions via e-mail or however you'd like  
18           us to do it? Can you run stuff for us  
19           like even during this fiscal year, this  
20           budget time? Would your cost cover those  
21           follow-up questions and follow-up data  
22           that you're talking about? Like run the  
23           spreadsheets and copy and pasting.

1                   MR. ROGERS: I think the answer to  
2                   all that is yes.

3                   CHAIR PALMER: But we don't know what  
4                   those questions are yet, I don't think,  
5                   until everyone has a chance to read and  
6                   recalculate all this in their head.

7                   MR. ROGERS: Regarding these  
8                   questions, I would suggest you draft a  
9                   list and I could quickly say, oh, this is  
10                  interesting to look at or, well, if you  
11                  really understood the data, you really  
12                  don't want to think about this idea.

13                  CHAIR PALMER: So we need to compile  
14                  it to one list like through Bob.

15                  MR. ROGERS: I don't want to do -- I  
16                  mean, it's not going to take a long time,  
17                  but I still don't want to do numbers that  
18                  don't make sense. I want to do numbers  
19                  that make sense using what we already have  
20                  for a starting point. I see these numbers  
21                  all the time so I can quickly recognize,  
22                  oh, that's a good question to ask or  
23                  that's an interesting way to look at it.

1           Let's look at it.

2                   CHAIR PALMER: Or that question is  
3           the same as number three above. We've  
4           just asked it in a different way.

5                   MR. ROGERS: Right.

6                   MR. MADDOX: In fairness to Mr.  
7           Rogers, whenever we set the next meeting  
8           date, I would suggest we maybe do  
9           questions at least four to six weeks out  
10          so it gives you time to respond.

11                   MR. ROGERS: Well, the thing is, the  
12          actual work probably will not take a lot  
13          of time. The question is what does the  
14          rest of my schedule look like and where  
15          does it fit in the schedule. The amount  
16          of time, probably, when I'm actually doing  
17          it is modest. So it's really an issue of  
18          -- this year has been pretty busy. There  
19          are some times that are less busy. You  
20          don't know in advance.

21                   CHAIR PALMER: Okay. Well, thank you  
22          very much.

23                   MR. ARNOLD: I just want to state

1           what I'm going to offer to do for myself;  
2           and if anybody else wants to do likewise  
3           it might make things more efficient. When  
4           I look through and have looked through  
5           some of this already, I've got some  
6           readied questions. I will try and submit  
7           them through our coordinators in writing,  
8           and they can all be assembled in advance  
9           of the next meeting. It might make our  
10          life more expeditious.

11                   CHAIR PALMER: I think that's an  
12           excellent idea and if we all will just do  
13           that.

14                   MR. POLEMENI: Duplications could be  
15           washed out in that.

16                   CHAIR PALMER: Yeah. That's what I  
17           was thinking.

18                   Okay. Thank you so much, sir, for  
19           your time. You can stay and finish up our  
20           meeting with us, or I think you're free to  
21           go.

22                   MR. ROGERS: It's two o'clock in  
23           Atlanta. I want to be home for dinner

1           with my favorite wife. By the way, I only  
2           have one. Anyway, I appreciate you having  
3           me involved, and I've enjoyed working with  
4           you. And it's all about trying to do a  
5           good job as best as we can.

6                   CHAIR PALMER: And you actually made  
7           this very interesting by the way, at least  
8           for me.

9                   HONORABLE BELL: To me too, even with  
10          what Steve said.

11                  MR. ARNOLD: What's that, Billy?

12                  HONORABLE BELL: I said it was  
13          interesting to me too. I know that's  
14          scary but even aside from what you said  
15          about not spending two days with Mr.  
16          Rogers.

17                  MR. ARNOLD: To be honest, I didn't  
18          want to spend two days with you.

19                  CHAIR PALMER: With that, we're going  
20          to move on.

21                         Penny, do you have a quick  
22          legislative update for us? I know there's  
23          handouts.



1 MS. DAVIS: Yes. There's a handout  
2 under Tab D. And I was asked to just give  
3 a quick overview of the first -- highest  
4 court says, the legislation when we amend  
5 the law. And so I'm not going to spend --  
6 I just briefly want to mention these, kind  
7 of, getting ready to -- I want to focus  
8 more on what relates to this Committee.  
9 So grandparent visitation is a major law  
10 change that relates to -- there's three  
11 grandparent visitation statutes in  
12 Alabama, and this relates to the Title 30  
13 and did not replace Title 26 which is  
14 adoption or the Title 12.

15 The real major change in the law is  
16 the abolition of common-law marriage  
17 effective January 1, 2017. There's a  
18 statement there. The element of  
19 common-law marriages are in existence and  
20 still effective; you just have to prove  
21 that all the elements are met prior to  
22 January 1, 2017. Clearly, that can have  
23 some implications on child support and the

1           issue of parenting that comes into play  
2           with common-law marriage.

3                   The next couple that -- the laws  
4           passed rules that do not relate to the two  
5           child custodies. I'll just give you the  
6           highlights of that. Page 6, the bottom  
7           slide, talks about a protection device  
8           that's now being available for the  
9           financial aspect relating to elderly  
10          adults primarily.

11                   On 7, at the top, it relates to  
12          successor guardianships for juvenile  
13          cases. And then the bottom of page 7 was  
14          a law that was passed that relates to  
15          seeking visitation in guardianship  
16          settings. And this visitation -- and then  
17          on page 9 is your caregiver immunity  
18          provision for volunteer caregivers. Those  
19          are the primary family law type fields  
20          that were enacted.

21                   I think what was more important  
22          perhaps in this meeting is the next  
23          category, which will be proposed

1           legislation 2017. These were bills  
2           proposed and all of them passed at least  
3           one house in 2016, so they have a fairly  
4           substantial chance of passing. The first  
5           one relates to an updated retirement  
6           benefits upon divorce. It starts on page  
7           10. I won't go through the details of  
8           that. There are some changes.

9                   The next one is relating to alimony  
10           on page 13. There are some very  
11           substantial changes relating to alimony.  
12           We have more implications for this meeting  
13           on page 19, custody bill amendments, which  
14           would be the amendment of existing custody  
15           laws, and it does make some fairly  
16           significant changes. We go away from the  
17           concept of custody and visitation. The  
18           types of awards of custody -- of physical  
19           custody would be joint physical custody,  
20           and then -- joint physical, then you'd  
21           have a primary physical custody for one  
22           parent and the second parent, then instead  
23           of having visitation rights, would be

1           granted the non-status, nonresidential  
2           custodial parent with the idea they're not  
3           visitors, they're parents. And the third  
4           type of custody would be restricted. That  
5           would be situations where maybe a parent  
6           has drug addiction problems or something  
7           like that and you would have supervised  
8           visitations.

9                   A significant part of that plan is  
10           on the bottom of page 20, which is  
11           parenting plans. And this is kind of what  
12           Michael was alluding to earlier. In  
13           existing law, both parents are required,  
14           if they want joint custody, to submit  
15           parenting plans. And then if they submit  
16           them, then generally the court will accept  
17           them. If not, then they have to give  
18           specific reasons why not. Discretion is  
19           still there.

20                   The difference would be that if  
21           this bill passes, it would require both  
22           parents in all cases to submit parenting  
23           plans. The idea there is to have the

1           parents' input about them and know more  
2           about their custody arrangements to make  
3           that decision. Again if both parents  
4           submit the same plans, then it would have  
5           the same effect that the joint custody  
6           would be. Judges would accept those plans  
7           unless they come forward with specific  
8           reasons why not to accept those.

9                       What's also I think beneficial is  
10          the factors the court can now put in their  
11          statutes. This is particularly helpful  
12          because there are a number of judges that  
13          don't do family law, that they're either  
14          appointed or become new judges. And so  
15          they will have benefit of case law that we  
16          have which basically primarily exists in  
17          case law. That will be in there.

18                      Another, I think, significant  
19          change is we put in statutory remedies so  
20          that if the parents do not -- let's say  
21          the custodial parent doesn't let the  
22          noncustodial parent exercise their -- what  
23          we would call their custody rights, then

1           there's remedies in there including the  
2           right to have make-up visitation. We  
3           would make up custody time. Not only  
4           that, but the noncustodial parent, if  
5           they're not granted custody or their  
6           custodial parent is prohibiting them or  
7           interfering with that opportunity, then  
8           the noncustodial parent can get attorney's  
9           fees and go in and seek that remedy.

10                       So those are substantial changes.  
11           Now, in terms of modern parenting plans,  
12           if you turn to page 22, we have a  
13           subcommittee that's made of child custody  
14           experts that are academic setting, social  
15           workers, PhDs. We also have people that  
16           are in the trenches with the judges now  
17           that are working on the particular  
18           difficult custody cases from both  
19           Tuscaloosa and Birmingham. I'm the  
20           reporter and know Polemeni is also on the  
21           subcommittee. So we've come up with a  
22           fairly substantial amount of model  
23           parenting plans.

1                   Now, this looks overwhelming. What  
2                   we were charged with was -- the negatives  
3                   that we had received from the legislators  
4                   is they felt like there was not  
5                   uniformity, and they were standard plans  
6                   that did not take into consideration all  
7                   the factors relating to the children. So  
8                   we tried to come up with some model plans  
9                   that took into consideration a lot of  
10                  different factors to present so that there  
11                  would not just be that every-other-weekend  
12                  and maybe one-day-during-the-week plan out  
13                  there.

14                 So we took -- in 2010 there were  
15                 some research that compiled what judges at  
16                 that time in Alabama were doing. You may  
17                 have been on that committee with Noah.  
18                 Mr. Bell was involved with that working  
19                 with the Legislature. And then we looked  
20                 at those states and what those states are  
21                 doing, and so that's model plans that have  
22                 been developed. We've tried to simplify  
23                 them as best we could but also provide a

1           lot of resources.

2                   If you want -- if the parents or  
3           the court decides joint custody are  
4           appropriate, there are white plans for  
5           most of the top of page 22. If you're  
6           going to have a custody situation where  
7           one parent has primary custody, the other  
8           parent is a nonresidential custodial  
9           parent, then you have -- you use the blue  
10          plans, and then if you have one parent  
11          that's going to be primary custodial  
12          parent and the other parent has  
13          restrictions because of drug addiction or  
14          something, that's the red plans.

15                   Then they are subdivided into  
16          categories that are planned to age. So  
17          plan A are plans that are specifically for  
18          children birth to three. Plan B is  
19          preschool children. Plan C, elementary  
20          and middle school, and plan D are for  
21          teenagers. And then among the blue plans,  
22          we'll also subdivide those into parents  
23          that live in close proximity, same



1 community, and then parents that live some  
2 distance, like out of state or in state or  
3 Mobile or to Montgomery or to Huntsville,  
4 that sort of thing.

5 So what our Committee is going to  
6 do is draft model plans. This is a draft  
7 handbook for judges and handbook for  
8 parents. It's going to have the  
9 information that the child experts suggest  
10 that are related to the maturity of the  
11 children, how children respond when  
12 they're away from parents based on the  
13 ages and things like that.

14 So that's a quick overview.

15 MR. POLEMENI: One question. Was any  
16 consideration given to the possibility of  
17 having the weekend be pick them up at  
18 school and drop them off at school on  
19 Monday?

20 MS. DAVIS: Yes. There are plans  
21 that -- there may be eight different plans  
22 for birth to three. There would be eight  
23 different plans or six different plans for

1 elementary, and clearly -- like for joint  
2 custody, one plan may be one week one  
3 parent has them, the other parent the next  
4 week. One plan might be they go Sunday at  
5 six o'clock until Wednesday or whatever  
6 and the other one picks up. And there  
7 will be in between.

8 We were also asked to do some plans  
9 that consider when the noncustodial parent  
10 is gone for a period of time like for  
11 military or for people that their jobs are  
12 such that work on oil rigs. So we have  
13 some that are for plans that will work  
14 with children so they can be re-acclimated  
15 towards the parent, especially the younger  
16 children who won't remember them for a  
17 period of time. We have those types of  
18 plans. We have some that are for people  
19 that are on and off shifts, so just trying  
20 to consider what real families are like.

21 MR. POLEMENI: Sounds promising.

22 MS. DAVIS: These are model plans.

23 Nobody has to use any of them, and they

1           are -- the discretion is still left with  
2           the parents and the judges.

3                   CHAIR PALMER: And that sounds like  
4           there's a great plan that I use and I know  
5           Michelle Thomason uses that they teach us  
6           at judges' school, and that's the Arizona  
7           plan. It's much like that. It's got five  
8           different plans for a five-year-old, birth  
9           to three. They've got from birth to three  
10          months, three months to six months, six  
11          months to nine months, nine months to 12  
12          months, just on the mental development of  
13          the child, how often they need to see a  
14          parent to form an attachment and get that  
15          imprinting going on. So I think that's  
16          going to be very good.

17                   MS. DAVIS: We started with more  
18          categories and wound up -- the feedback we  
19          got from the Legislature was that it was  
20          too complicated, so it went down to four  
21          categories. As people get more  
22          comfortable, we can expand it.

23                   The other thing I would say as an

1           aside, we just now started working with a  
2           student from the computer honors program.  
3           And what we hope to do is do a program  
4           that can be put on a website, and it will  
5           be a point and click and fill in the  
6           blank, that kind of thing. We'll try to  
7           accommodate the pro se parents so they'll  
8           have the same maturation, maturity of  
9           information when they're making choices  
10          about parenting plans, so they'll know if  
11          you've got a three-month-old child, you  
12          need parenting plans that have more  
13          frequent contact with both parents. You  
14          know, a teenager can remember who their  
15          mom or their daddies are if they've been  
16          away for three weeks or whatever, but a  
17          young child can't. So the plan A, you  
18          will have more frequent contacts.

19                 Now, we do -- we also go through  
20                 and pick out advantages and disadvantages.  
21                 For example, you've got a plan that has  
22                 several, you know, like four or five  
23                 different times during the week when they

1           see the other parent. Those are not good  
2           plans for high conflict parents because --  
3           so we'll say the advantage of these plans  
4           are one, two, three, four. The  
5           disadvantage for this plan is five, six,  
6           and seven. So more information for  
7           parents and judges.

8                   CHAIR PALMER: Great.

9                   MR. POLEMENI: Let me go on a tangent  
10           here. Is that something that the school  
11           systems would benefit from, you know, that  
12           information to where they could run it  
13           through their social sciences program, or  
14           have you thought about it?

15                  MS. DAVIS: I think what we hope to  
16           do is make it available to the public at  
17           large so if the school system felt like  
18           that would be beneficial to put in some  
19           kind of curriculum or something.

20                  CHAIR PALMER: I think he's talking  
21           more like college as well.

22                  MR. POLEMENI: No. I'm talking about  
23           high school level so they don't get into

1           the problem to begin with, you know. It  
2           sounds interesting.

3           MS. DAVIS: If you have a curriculum  
4           that includes life experiences that would  
5           include what happens if you divorce, then,  
6           yeah, I think you could see it.

7           CHAIR PALMER: Yeah, definitely.  
8           Along with finances and everything.

9           All right. Anybody have any  
10          questions about this topic?

11          MS. MOORE: Actually it goes back to  
12          what I was thinking earlier about defining  
13          joint custody, primary physical custody.  
14          So this does address that?

15          MS. DAVIS: Yeah, it does tinker with  
16          it, doesn't it? Well, we did need the  
17          concept that all joint custody is not  
18          always 50/50.

19          MS. MOORE: Exactly.

20          MR. POLEMENI: So what's the next  
21          step? That goes to the Legislature and  
22          they have to vote on it?

23          MS. DAVIS: Well, the model parenting

1 plans that we develop can be out there  
2 regardless, you know. Right now just  
3 because the law does not require parents  
4 to submit plans doesn't mean they can't.

5 CHAIR PALMER: Okay. Now, Penny,  
6 before you get too relaxed over there --

7 MS. MOORE: I have a question. Are  
8 there any single parents on this  
9 Committee?

10 MS. DAVIS: Yeah. Some of the people  
11 are, yeah. I would have to stop and think  
12 how many there are, but several of them  
13 are.

14 HONORABLE FORD: Any TANF parents on  
15 this Committee?

16 MS. DAVIS: Pardon?

17 HONORABLE FORD: Any TANF parents on  
18 this Committee?

19 MS. DAVIS: Any what?

20 CHAIR PALMER: TANF. It's temporary  
21 aid to families.

22 MS. DAVIS: I don't know their  
23 personal financial history. I would think

1           probably not.

2                   HONORABLE FORD:   Well, they receive  
3           benefits from DHR.

4                   MS. DAVIS:   Oh, I don't know if they  
5           ever have or not.   Some of them are about  
6           the age now their kids are grown, so I  
7           don't know what their circumstances would  
8           be.

9                   HONORABLE FORD:   It's going to be  
10          interesting working with parents who are  
11          receiving TANF.

12                  MS. DAVIS:   Well, this Committee is  
13          looking at the custody, not the financial  
14          aspect of it.

15                  HONORABLE FORD:   I don't mean -- not  
16          the financial but the fact that we'll  
17          probably have many parents that the only  
18          relationship they've ever had was a sexual  
19          relationship or the sexual relationship  
20          they had was very limited, and sometimes  
21          so much anger comes out of that, such that  
22          you're dealing with that before you even  
23          get to the custody case.



1 MS. DAVIS: Well, we do have people  
2 on the Committee that have clients that  
3 are -- that have never been married. Yes.  
4 They themselves may not have been in that  
5 category, but they do have clients. And  
6 like I said, several of them specifically  
7 deal with what you're talking about, high  
8 conflict situations where the parents  
9 don't get along, whether it was because  
10 they weren't married or because they were  
11 married.

12 CHAIR PALMER: Anybody else? Okay.  
13 Well, Penny, you were going to talk about  
14 social security disability offset  
15 discussion. That's your Tab E.

16 MS. DAVIS: Tab what?

17 CHAIR PALMER: E.

18 MS. DAVIS: E. Okay. I would just  
19 ask to go through and pull up what was the  
20 discussion -- based on the discussion we  
21 had last time, and we had chosen or seemed  
22 to favor the Michigan section. And so  
23 what subsection (a) is as drafted now, if

1           it's underlined or struck through, that's  
2           the difference between what Michigan has.  
3           And what it reflects is the conversation  
4           that was at the Committee that instead of  
5           just talking about social security,  
6           retirements, and things like that, then we  
7           also want to include veterans benefits,  
8           railroad, and basically any other  
9           third-party type of benefit that was  
10          derived based on the payer's earnings.

11                        So that was the language that's  
12          added in the subsection (a). And  
13          subsection (b) is the list based on the  
14          discussion that we had about things that  
15          we did not think should receive credit.  
16          And that was, for example, the payment  
17          that was received in excess of the amount  
18          of child support. You wouldn't get credit  
19          for that. Payments based on the child's  
20          own disability. So those are enumerated  
21          here.

22                        And then the Alabama comments  
23          reflect that the -- basically the

1 subsection (b), which excludes credits,  
2 are all -- that are listed here are all  
3 consistent with current law, like SSI  
4 benefits, number five. That's not --  
5 parents don't get credit for that. That's  
6 not based on credits on the parents' work  
7 history. And then there's -- like number  
8 six there on the subsidy that's paid for  
9 adoptive parents of special needs  
10 children, most of them have a positive  
11 decision that was made that was in the  
12 2011 case.

13 So this is not a draft based on any  
14 personal deeds that I have. It's just  
15 what I think is reflecting what the  
16 conversation was that day.

17 MR. JEFFRIES: So (a) and (b) do not  
18 go together as the statute?

19 MS. DAVIS: I think you would want  
20 them to go together. That's up to y'all.  
21 I just tried to reflect what was the  
22 discussion.

23 MR. JEFFRIES: Just in -- and I may

1           be missing something here. On  
2           (a)(2)(a) -- how do (a)(2)(a) and (b)(3)  
3           relate to each other? It seems that  
4           they're opposite things as I understand  
5           it. Am I wrong?

6                   CHAIR PALMER: (a)(2)(a)?

7                   MR. JEFFRIES: Yeah. Where it says,  
8           if the children's payer-based benefit  
9           exceeds the total support, then no  
10          additional support -- then it says, any  
11          payment received in excess of the amount  
12          of child support owed to the child will  
13          not be credited toward the support payer's  
14          child support.

15                  MS. DAVIS: That would be like for  
16          future payments, other payments. Like if  
17          the child -- as I understood it -- and I  
18          may not know -- I don't know that much  
19          about the way Michigan does it, but if --  
20          for example, if the parent sends -- if the  
21          child receives -- is ordered to pay \$800  
22          but the child receives a thousand from the  
23          government, then the 200 more the child

1 receives could not be used --

2 MR. JEFFRIES: Oh, I got you.

3 MS. DAVIS: -- for future payments or  
4 more often than not --

5 CHAIR PALMER: Or for arrearages.

6 MR. JEFFRIES: Credited. I see.

7 MS. DAVIS: -- we're taking away --  
8 if it's not worded correctly, it's  
9 confusing. And that's something that can  
10 be cleared. That's just -- the language  
11 in (a) is a little awkward from my  
12 perspective. The Committee suggested  
13 Michigan as being the simplest.

14 CHAIR PALMER: I guess the only thing  
15 that I have about it is at the discretion  
16 of the court. Which case law right now  
17 gives the judge the discretion of the  
18 court.

19 MS. DAVIS: That's why I put that in.  
20 Not because I felt we -- we had just  
21 discussed that, if the intent was to take  
22 away the court's discretion or not. So I  
23 put it in there so it would be a point of

1 discussion.

2 CHAIR PALMER: Okay. All right.

3 Well, let's hear what anybody has to say.

4 Jennifer, anything about that?

5 MS. BUSH: About the discretion or  
6 the credits?

7 CHAIR PALMER: Any of this.

8 MS. BUSH: Angela and I -- Angela  
9 Campbell and I were discussing prior to  
10 the meeting, and Angela brought up the  
11 point that there are times -- for example,  
12 social security benefits will end at age  
13 18, whereas, in Alabama, current support  
14 goes through 19. So the Committee may  
15 want to consider some language that  
16 addresses that, whether the current  
17 support -- just to clarify that the  
18 current support would then be owed if the  
19 benefit ends for whatever reason, either  
20 because the child reaches the age where it  
21 ends or for some other reason that we're  
22 not foreseeing right now.

23 MS. DAVIS: I guess my assumption was

1           since this was a credit that the child was  
2           no longer receiving it, then the  
3           noncustodial parent would no longer be  
4           getting credit for it anyway, but I think  
5           what I understood Judge Palmer is talking  
6           about is because these credits are not  
7           addressed currently, specifically in Rule  
8           32, these have been -- these decisions  
9           have been by the judges, so it's their  
10          discretion.

11                       So I guess the initial question is  
12          do we want to -- and I wasn't going to  
13          take away any judge's discretion. Billy  
14          gets real mad at me. So do we want to  
15          take away the discretion to say they  
16          automatically get credit for it, or do we  
17          want to leave it?

18                      CHAIR PALMER: I think we can put in  
19          there under limited circumstances, the  
20          judge does not have to apply this, but if  
21          I'm on disability and -- or Jim is on  
22          disability and he owes me \$10,000 in back  
23          child support and now I get -- he's gotten

1           his back SSDI now, I've gotten it for the  
2           child and I get \$10,000, I don't know that  
3           the judge has any discretion. Shouldn't  
4           that \$10,000 right off, because of his  
5           disability, go towards his arrearage that  
6           he owes the child?

7                   MS. DAVIS: I don't have a dog in the  
8           fight.

9                   CHAIR PALMER: Okay.

10                   MS. BUSH: And I do think as far as  
11           discretion, I wouldn't want to take away  
12           judge's discretion, but if you want to be  
13           consistent across the state from case to  
14           case, I don't know that you have to  
15           necessarily put that language in there.  
16           If you don't put the language "at the  
17           discretion of the court," I don't think  
18           you're necessarily taking the court's  
19           discretion away; it may just then fall  
20           under a deviation and explaining why  
21           you're deviating.

22                   MS. DAVIS: I'm not sure that's  
23           correct. I think you're saying you get



1           through states and they get credit for  
2           this, then I think it's -- they get credit  
3           for it. I think you have to do -- you  
4           could do something like, unless the court  
5           specifically gives specific reason why not  
6           or finding why not, then that happens,  
7           which, like I said, I presented that as a  
8           matter of getting discussion from the  
9           judges and those of you who feel strongly  
10          one way or the other.

11                 MR. JEFFRIES: Just for purposes of  
12           discussion, I tend to agree more with  
13           Julie. The whole purpose of this, in my  
14           mind, was to set up a statute that  
15           dictates how this will be done, and we  
16           don't need to say at the discretion of the  
17           court.

18                 MS. DAVIS: I understand what you're  
19           saying. If you take that out, then there  
20           would be --

21                 MS. MOORE: Uniformity.

22                 MS. DAVIS: There would be  
23           uniformity, but there would also be no

1           discretion as opposed to what you would --

2                   CHAIR PALMER:   And limited with  
3           specific findings.  You know, almost  
4           like --

5                   HONORABLE STUART:  There would still  
6           be the right to deviate but you would have  
7           to explain why.

8                   MR. JEFFRIES:  It wouldn't change  
9           everything else that's there.  So maybe  
10          technically, discretion would really still  
11          be there anyway.

12                   MS. DAVIS:  You would need to put  
13          this in the list of places where you could  
14          deviate if you want to use that bill where  
15          you deviate.

16                   HONORABLE STUART:  I think you would  
17          have to make sure it was in that part.

18                   MS. DAVIS:  That's what you want.

19                   MS. BUSH:  If you want to, and I just  
20          want to say I do agree with you, Judge  
21          Palmer, that it needs to be uniform, and I  
22          don't know that we necessarily want there  
23          to be a lot of deviation.  You don't want

1           some county where they're deviating  
2           constantly and another county follows it  
3           strictly. The more uniform it can be, the  
4           better.

5                   HONORABLE BELL: We're also making it  
6           clearer because we have so many laypeople  
7           who are trying to figure out what their  
8           child support is. We need to set the  
9           rule. And then if there's going to be a  
10          deviation, the judge ought to have to  
11          state the reason why he or she is  
12          deviating. But everybody needs to be able  
13          to understand what the rule is in a clear,  
14          consistent way, in my humble opinion.

15                   MS. MOORE: And having said that, I  
16          think we need to include some language  
17          that will include the 18-year-old cut off  
18          and child support continuing until 19.

19                   HONORABLE STUART: That might be in  
20          the comments rather than the provision.

21                   MS. MOORE: I think it needs to be  
22          addressed.

23                   MS. DAVIS: So are you suggesting

1           that you put in the Rule 32 under (A)(1)  
2           where it's got reason to deviate from the  
3           Guidelines, a specific provision related  
4           to credit, under reference back to the  
5           credit section, or just leave it -- in  
6           theory, I guess it could fall under -- and  
7           we could probably add a comment to this  
8           subsection (g) says, other facts or  
9           circumstances the court finds contribute  
10          to the best interest of the child for whom  
11          the child support is being determined. We  
12          could take out the "at discretion of the  
13          court" there but put in the comments under  
14          in reference (A)(1)(g) that the court will  
15          still have discretion.

16                 CHAIR PALMER: If everybody will look  
17          in your binder, there's a copy of the  
18          rules, Rule 32, and it's page 2 on the  
19          back, (g) is what Penny is talking about.  
20          So we'll all be looking at the same  
21          document. On the first page, it says  
22          number one, reasons for deviating from the  
23          Guidelines. And she's talking about (g)

1 of the factors and circumstances.

2 MR. MADDOX: The copy is in the  
3 left-hand flap.

4 CHAIR PALMER: Should be in the  
5 left-hand pocket. Okay.

6 HONORABLE BELL: You can fix  
7 Jennifer's concerns real easily. In the  
8 first paragraph that will end before the  
9 colon, where it says, "shall be credited  
10 against that parent support obligation,  
11 comma, for so long as it is being received  
12 by the custodial parent," should be "by  
13 receiving parent, comma, as follows."

14 MS. BUSH: Thank you.

15 CHAIR PALMER: Let's see if you can  
16 remember what you just said. For so long  
17 as --

18 HONORABLE BELL: It is being received  
19 by the payee parent -- or the support  
20 payee to be consistent with the support  
21 payer, comma, as follows.

22 MS. CAMPBELL: Can we put something  
23 in there -- mine is still the 18 to 19.

1           Because if the benefit stops when the  
2           child turns 18, you're going to have to do  
3           that in the Guidelines anyway to see what  
4           the support amount would be to give  
5           credit. Would you maybe list that --  
6           recommend that they list that in the order  
7           saying that will continue -- starts at age  
8           18 or 19 unless someone files a  
9           modification or the circumstances change?  
10          Because if a child is going to lose their  
11          benefit at age 18, I'm concerned about (a)  
12          where it says there's going to be no child  
13          support order because the benefit is  
14          higher -- the credit is higher than the  
15          actual support that's going to be ordered,  
16          so that's going to be zero support.

17                   And if you come to age 18 to 19,  
18          some will have to go back to court and  
19          modify it so it's not zero anymore. Am I  
20          correct?

21                   HONORABLE BELL: I don't think you  
22          have to because I think if it says you get  
23          a credit for so long as it's around.

1           You're crediting a known amount already.

2           MS. CAMPBELL:   So you're going to put  
3           a known amount in the order along with the  
4           guideline --

5           HONORABLE FORD:   It's still going to  
6           be a child support amount.

7           MS. CAMPBELL:   Number 42.

8           HONORABLE BELL:   Because the benefits  
9           may change, but the support amount will  
10          not.

11          CHAIR PALMER:   There might be day  
12          care in there and now this child is 18,  
13          then that day care doesn't need to be in  
14          there.   So somebody should have to file a  
15          petition to modify at that point if they  
16          don't want that old amount from, let's  
17          say, ten years ago to kick in because the  
18          custodial -- bless you.

19          MR. POLEMENI:   Thank you.

20          MS. BUSH:   Theoretically -- with the  
21          inclusion of your language, theoretically,  
22          if the social security ends at 18 and  
23          nobody goes back to court, then whatever

1           that child support was originally set way  
2           back when would be the amount for the  
3           remaining year. It gets modified or it  
4           doesn't get modified. It's still there.

5                   HONORABLE BELL: Right.

6                   CHAIR PALMER: It's my understanding  
7           that it stops at 18 or when they graduate  
8           high school. Because let's say they turn  
9           18 in January but they don't graduate  
10          until May. Don't they keep getting that  
11          benefit until they graduate?

12                  HONORABLE FORD: No. It's 18 you're  
13          off. That's it.

14                  MS. DAVIS: Okay. I'm going to be  
15          the scrivener on this one. So as I  
16          understand it, then, at this point, we  
17          will be on (a), first line deleting "at  
18          discretion of the court" and after word  
19          "obligation," an introductory paragraph  
20          will be added "for so long as it is being  
21          received by the support payee, comma,"  
22          both that sentence being in comma, that  
23          partial sentence being in comma. Then



1 I'll add in the comment a reference to the  
2 court's discretion as it relates to  
3 (A)(1)(g).

4 CHAIR PALMER: That sounds good.

5 MS. DAVIS: For deviation.

6 CHAIR PALMER: Does everybody agree  
7 with that?

8 MS. MOORE: I want to say 18, 19.

9 CHAIR PALMER: Mary still wants the  
10 18, 19.

11 MS. MOORE: I think in the comment --

12 HONORABLE BELL: I think it needs to  
13 be in the comment too, Mary. I think you  
14 could put social security benefits under  
15 current regulation stops at age 18. Child  
16 support under Alabama law continues to the  
17 age of majority, which is presently 19.

18 HONORABLE FORD: That's a good idea.

19 MS. DAVIS: So put that in there.

20 MS. MOORE: And I will not say  
21 another word.

22 MR. JEFFRIES: You can actually make  
23 it clear that it stops for any reason, not

1           just because you hit 18 and age out or  
2           whatever. Kind of a reminder.

3                   MS. DAVIS: If the credit being  
4           received terminates for whatever reason,  
5           then the original order remains effective.

6                   CHAIR PALMER: Yes.

7                   MR. JEFFRIES: Payment.

8                   MS. MOORE: Yes, child support  
9           payment.

10                   CHAIR PALMER: So Penny is going to  
11          work on this.

12                   And, Judge Bell, it looks like we  
13          are going to have to come early next time  
14          and spend the night because we've got a  
15          lot to finalize.

16                   HONORABLE BELL: Penny suggested that  
17          we meet at the 4-H Center like we have  
18          before, which is nice accommodations, good  
19          meeting rooms. It's reasonably priced.  
20          I'm assuming the State pays for it.

21                   CHAIR PALMER: The DR judges are  
22          going to have their sixth or seventh  
23          annual retreat there November 16th and

1           17th. While it's not December, we're  
2           already there. We already have use of the  
3           facility. So we'll talk about that as we  
4           finish up. All right.

5                       So, Penny Davis is going to work on  
6           that language for the next time.

7                       All right. Jennifer Bush, the  
8           effects of the Affordable Care Act on the  
9           Guidelines, if any.

10                      MS. BUSH: Okay. Under Tab F, you  
11           will see there are two federal regulations  
12           there, 45 CFR 303.31 and 45 CFR 302.56.  
13           Let's look at 302.56 first because that is  
14           just the federal regulation that requires  
15           guidelines. And if you look under that  
16           one under (c)(3), that is where it says  
17           that the Rule 32 Guidelines need to  
18           address the health care needs of the  
19           children through health insurance coverage  
20           or through cash and medical support. And  
21           it refers to 45 303.31, which is the other  
22           regulation that we have here.

23                      This 303.31 was enacted in 2008,

1           and all the requirements that are in here  
2           have been adopted by the Committee and by  
3           the Supreme Court and are incorporated in  
4           Rule 32, and so we have met all the  
5           requirements there.

6                       As far as how the Affordable Care  
7           Act affects the Guidelines, I could not  
8           find any discernible impact. There's  
9           nothing from the Federal Office of Child  
10          Support Enforcement that indicates there's  
11          any kind of impact other than just what  
12          you would expect, that it's another avenue  
13          to obtain private insurance. If a person  
14          is able to obtain the private insurance  
15          through the Affordable Health Care Act, it  
16          could be included in the Child Support  
17          Guidelines, but it has not made a big  
18          impact.

19                     HONORABLE BELL: Depending on what  
20          the cost is, it's under the 10 percent  
21          reasonable cost.

22                     MS. BUSH: Yes. That's exactly  
23          right. But it would be treated just like

1           any other insurance. It's just that it's  
2           procured through the Affordable Health  
3           Care Act. I didn't see any real impact on  
4           what we're doing.

5           CHAIR PALMER: Okay. There's really  
6           nothing for us to do on that.

7           MS. BUSH: Not on that.

8           CHAIR PALMER: Well, I had just asked  
9           that the back of the -- I'm next -- child  
10          support instructions form, I had just  
11          asked that the back of the forms be  
12          updated. And that is not in here.

13          MR. MADDOX: It's actually, Judge, in  
14          your packet with 41.

15          CHAIR PALMER: With 41.

16          MR. MADDOX: It's in the back of the  
17          rules. CS-41.

18          CHAIR PALMER: It's page 29 in the  
19          packet that has the -- that says Alabama  
20          Rules of Judicial Administration Rule 32.  
21          It looks like three has been changed to  
22          include furnished automobile, clothing  
23          allowance, and housing allowance.

1                   Now, I don't know that this one is  
2                   part of it, on number four, where it says  
3                   other nonemployment related income shall  
4                   include but not be limited to dividends,  
5                   interest, annuities, capital gains, gifts,  
6                   prizes, and pre-existing periodic alimony.  
7                   Has that always been in there? Okay.

8                   MR. ARNOLD: You and I had a case on  
9                   that.

10                  CHAIR PALMER: We sure did, didn't  
11                  we, Steve? Now that you say that --

12                  MR. ARNOLD: Look who's right.

13                  CHAIR PALMER: Let me write that name  
14                  down. I think he's in my court on Monday  
15                  or Tuesday.

16                  MR. ARNOLD: Let me get some  
17                  residual. I've got Julie. I've got  
18                  Billy. Judge Ford, you're next.

19                  CHAIR PALMER: I don't have the old  
20                  form to compare the new form with. Do we  
21                  have that, Bob?

22                  MR. MADDOX: No, ma'am. I'm sorry.

23                  CHAIR PALMER: Okay. Does anybody

1           have an old form on them?

2                   HONORABLE BELL:   An old what?

3                   CHAIR PALMER:   What it used to say.

4                   HONORABLE BELL:   Yeah.   I've got the  
5           old form on page 28.   Are you talking  
6           about the CS-41?

7                   CHAIR PALMER:   Yeah.   The back of  
8           CS-41.   I'm just going to ask that  
9           everybody take this back and compare it to  
10          what -- hopefully everyone got one.   Maybe  
11          we can just do something like this via  
12          e-mail.   Does everybody agree with that?  
13          Just review it and then we'll follow up in  
14          about a week on that.   Let everybody have  
15          a chance to review any change in wording  
16          on that.

17                   Okay.   It says we're going to take  
18          a break, but we're going to keep on going.

19                   MR. MADDOX:   Judge, before we leave  
20          that topic, at the last meeting, I think  
21          there were a lot of comments about the  
22          rebate of interest being placed on the  
23          back of the petition.   And those forms are

1           actually done at the Alabama State Bar,  
2           not AOC. And they're the PS forms, which  
3           does stand for pro se. I think I was  
4           asked at the last meeting. It stands for  
5           pro se.

6                       I've been talking with Tracy  
7           Daniel. She's with the Alabama Law  
8           Foundation at the State Bar, and she works  
9           with the committee on forms, the pro se  
10          forms, and she's passed that along to that  
11          committee or group that reviews those  
12          forms that tries to get that language on  
13          the back. So I have followed up with that  
14          as well as the substantial hardship  
15          enclosed to the forms so they will be  
16          together.

17                   CHAIR PALMER: Okay. Anybody have  
18           anything else on the child support  
19           interest rebate and how to request it?  
20           Okay.

21                   All right. Mr. Arnold.

22                   MR. ARNOLD: I was tasked with doing  
23           some preliminary research regarding the



1 child care allowances in the formula  
2 versus reality. I did some independent,  
3 informal surveying that does not include  
4 child care facilities that are public --  
5 subject to public assistance. I don't  
6 have access really to that information.  
7 You're my best resource. If any of that  
8 exists, I don't have it. But my purpose  
9 was to really look -- at this stage, look  
10 at the high end and see how it compares  
11 with what reality is when we do the  
12 calculation.

13 And I think it bears informally  
14 intuitively what we all know, and that is  
15 when we compare our clients' actual cost  
16 of day care and what the out-of-pocket is  
17 versus what they're allowed on formula,  
18 there is a pretty broad disparity, which  
19 in many cases results in a parent who has  
20 the predominant amount of time utilized in  
21 day care because of work suffers a greater  
22 portion of that day care cost, which means  
23 it eats into, at a greater rate, the child

1 support that person receives.

2 So there is a disparity there that  
3 I think bears a lot more study and to see  
4 how it works against the chart that DHR  
5 puts out with the information they have.  
6 This is just a beginning of a long  
7 discussion for us.

8 CHAIR PALMER: Well, Jennifer says --  
9 hopefully, Jennifer, if you want to update  
10 the day care chart.

11 MS. BUSH: The day care chart is  
12 being updated but has not been released  
13 yet.

14 MR. ARNOLD: Okay. Then that would  
15 have some bearing on where this discussion  
16 goes. I think this discussion is going to  
17 be long-term. There's a lot to look at, a  
18 lot of different factors. There's a lot  
19 of different demographics in terms of  
20 better put geographic location, cost, and  
21 all that that just really make it  
22 inconsistent and hard to get a grip on.

23 This was the beginning of it. As I

1           said, intuitively, some places, the child  
2           care provision is out of skew. And we  
3           also need to look at that. I think it's  
4           very much related in part to the joint  
5           custody discussion we're having. I think  
6           there's some balancing there that needs to  
7           looked at.

8                        So that's the end of my report.  
9           There's nothing for us to do right now.

10                   CHAIR PALMER: Okay. Well, Jennifer,  
11           I know the statute says that's an issue by  
12           October the 1st of like in the odd year,  
13           one or two years, so would that be ready  
14           by October the 1st, or do you know?

15                   MS. BUSH: I think it will be timely  
16           completed. I have no implication that  
17           they're running behind. If it's due by  
18           October 1st, then I would feel confident  
19           it will be released by October 1st.

20                   CHAIR PALMER: Okay. Well, we'll  
21           table that one. And then are --

22                   MS. DAVIS: I'm a little disturbed  
23           about Mr. Rogers' comments about our rules

1 relating to day care expenses might not  
2 meet federal requirements, which I looked  
3 at Jennifer. I know Jennifer doesn't know  
4 everything about everything as it relates  
5 to child custody or child care, but that  
6 was a little disconcerting to me if that's  
7 correct or not in compliance with the  
8 federal law. He said as long as nobody  
9 complains and files a lawsuit you're okay.

10 MS. BUSH: I don't know what he was  
11 referring to. You and I did exchange  
12 looks. I don't know what he was  
13 referencing. If he -- and it may be that  
14 I can find out from him what regulation he  
15 thinks DHR is not following. I do know  
16 that all our programs that are federally  
17 funded are audited by the feds, and they  
18 will come in and look at the things that  
19 we do. So I'd like to think if DHR was  
20 not completely following the federal  
21 regulation, that we would know it and the  
22 feds would tell us. I have no reason to  
23 think that we're not.

1                   MS. DAVIS: I just would not want our  
2                   Committee to have made a recommendation to  
3                   the court.

4                   HONORABLE STUART: I didn't  
5                   understand him to say that what we had  
6                   didn't comply. I understood him to say  
7                   that we might do something that didn't  
8                   comply, and he didn't think it was a  
9                   problem if nobody complained, and I  
10                  disagree.

11                  HONORABLE FORD: I took it  
12                  differently. It seemed to -- I thought he  
13                  was saying that all states are just not in  
14                  compliance, but no one is raising issue  
15                  about it. I didn't think it was  
16                  specifically Alabama.

17                  HONORABLE BELL: Why don't we ask him  
18                  what he meant?

19                  MS. DAVIS: His comment was in  
20                  relation to everything had to be changed  
21                  to the same common report, and that's when  
22                  I asked him about -- referenced the fact  
23                  that we have categories based on

1 geographic locations for child custody and  
2 child care cost, and that's when I  
3 understood him to say that. I may have  
4 just misunderstood him.

5 HONORABLE BELL: No. That's what I  
6 understand.

7 HONORABLE STUART: Well, I would say  
8 that would surprise me if that was a  
9 violation of federal law.

10 MS. DAVIS: Me too. Maybe we could  
11 get Jennifer to double check with him or  
12 somebody to make sure.

13 MS. BUSH: Or maybe we can include  
14 that in one of the questions we send him.  
15 You know, since he made the comment to the  
16 entire Committee, I do think we need to  
17 know if it's something that's going to  
18 impact Rule 32, the state as a whole, or  
19 just DHR. I would like to know what  
20 regulation he's referencing and how he  
21 thinks it's being violated, either by  
22 Alabama alone or by all states.

23 HONORABLE FORD: Jennifer, do other

1           states look at their child support courts  
2           county by county, or do they just do  
3           something that's sort of regionalized?  
4           Because it's pretty difficult to do it  
5           county by county.

6           MS. BUSH:   You mean the child care  
7           rates?

8           HONORABLE FORD:   Yeah, child care  
9           rates.

10          MS. BUSH:   I don't know what other  
11          states do.

12          MR. POLEMENI:   I think you could make  
13          a statewide child care rate.

14          MS. BUSH:   There may be someone in  
15          the child care program who can tell you  
16          what other states are doing, but I can't  
17          tell you today what they're -- I don't  
18          know what they're doing.

19          HONORABLE BELL:   I don't think we  
20          need to take his legal advice.   I'm with  
21          Justice Stuart.   I can't imagine that  
22          would be in violation.

23          MS. DAVIS:   It's just disturbing to

1 me. Since we're talking about that so --

2 CHAIR PALMER: We're going to have  
3 some comments from the public in just a  
4 second. I want everybody, though, to look  
5 at your calendars. And, Bob, I think  
6 double check this with Cary, but if the  
7 Judge Bell had suggested the 4-H Center in  
8 Wilsonville -- and your phones don't work  
9 out there, folks. You've got to stand by  
10 the flagpole and hold it next to the  
11 flagpole for your phone to work, but that  
12 can be quite nice too. So the sixth  
13 annual DR judges retreat is going to be  
14 the 17th and the 18th of November. We  
15 usually start around noon, and then we  
16 leave around noon, I want to say. Judge  
17 Bell, do you remember that?

18 HONORABLE BELL: Do what? I'm sorry.

19 CHAIR PALMER: I know.

20 HONORABLE BELL: Penny talks to me.

21 CHAIR PALMER: We usually arrive  
22 there at noon on Thursday and leave around  
23 noon on that Friday.



1 HONORABLE BELL: That's right.

2 CHAIR PALMER: So I know that we will  
3 have the facilities. They will usually  
4 get to share it with about 300 fourth  
5 graders, and it's great fun seeing them so  
6 enthusiastic. So I would think possibly  
7 the 17th? November 17th.

8 MR. WRIGHT: That's also the judges  
9 conference.

10 CHAIR PALMER: That's the same judges  
11 conference. It's the DR judges  
12 conference. But we would get there early,  
13 let's say, and -- but we've got to check  
14 with Cary to see about a space, if it's  
15 available.

16 MR. MADDOX: Yeah. The logistics --  
17 are you saying meet while the DR judges is  
18 going on at the same time or --

19 CHAIR PALMER: Well, I just -- since  
20 the -- I think AOC is renting facilities  
21 anyhow that we might as well maybe see if  
22 they've got some extra meeting space. If  
23 they don't, then --

1                   MR. MADDOX:   So is it the intent to  
2                   meet at the same time as the DR judges  
3                   over those two days or just have a  
4                   meeting?

5                   CHAIR PALMER:   Just a one-day  
6                   meeting, but Judge Bell can spend the  
7                   night out in the woods in the 4-H camp, he  
8                   and Michael.

9                   HONORABLE FORD:   In a tent.

10                  CHAIR PALMER:   The facilities are  
11                  very nice.   Wednesday night we could spend  
12                  the night.

13                  MS. DAVIS:   You can do a two-day  
14                  meeting, say, arrive by 10, have a working  
15                  session a couple hours, eat, have a  
16                  working session that afternoon, spend the  
17                  night, have a work session that morning.  
18                  You get twice as much time as the  
19                  four-hour meeting here, and they would  
20                  only have to travel once for that.

21                  CHAIR PALMER:   Yeah.   And then also  
22                  since there's going to be a DR and JU  
23                  judges seminar by then, we might have come

1           up with some things that we can run past  
2           people that this is actually going to  
3           affect their jobs and say this is what  
4           we're looking at doing, you 50 judges  
5           across the state, what do you think?  
6           Maybe that's a big can of worms, but they  
7           just need to get it with Justice Stuart's  
8           signature on it saying this is what we're  
9           going to do and we don't care what y'all  
10          say.

11                   MS. DAVIS: That Wednesday morning if  
12           they could come in a little earlier, those  
13           that wanted to, and sit in on the --

14                   CHAIR PALMER: Yeah. We'll just have  
15           to see if the space is available. That's  
16           the only thing.

17                   MR. ARNOLD: With this being an  
18           official meeting, the guests here need to  
19           be notified. Everybody is welcome for  
20           sure, but I just want to make sure that  
21           that part is taken care of because if  
22           we're in an official meeting -- and I  
23           don't think we have anything but official

1 meetings.

2 MR. MADDOX: I will have to check on  
3 all this now because --

4 HONORABLE STUART: Let's just let Bob  
5 check into it and not make any firm plans.  
6 There are a number of considerations,  
7 space, money --

8 CHAIR PALMER: All right. Then do we  
9 need to look at an alternate date in  
10 December? Okay. Let's look at an  
11 alternate date in December.

12 MR. MADDOX: I checked, and December  
13 1st and 2nd looks like we have space in  
14 this building available.

15 CHAIR PALMER: Okay. That's what I  
16 was going to suggest because I don't want  
17 to get too close to the holidays. We'll  
18 try the 1st or 2nd right now. So right  
19 now anybody have any conflicts on either  
20 the 1st or 2nd, and then we'll follow up  
21 on that. Right now we're looking at  
22 either the 16th and possibly part of the  
23 17th that morning at the 4-H Center, but

1           Bob is going to check into that. They've  
2           got great facilities, like I said, for the  
3           public to be there.

4                   And then if those dates don't work,  
5           then we're looking at either December 1st  
6           or 2nd or possibly even both. We've got  
7           still a lot of work to do, but my goal is  
8           by the end of this year, we will get  
9           Justice Stuart something and rather than  
10          piecemeal it, like you said, they'd rather  
11          us give them one big package.

12                   You've got your expense reports to  
13          please fill out.

14                   And again from the public, we have  
15          Mr. Ray Maloy.

16                   MR. MALOY: Thank you, Honorable  
17          Chairman and members of the Committee, I'm  
18          a resident of a county north of here, and  
19          I guess I could say I come from a -- I'm  
20          here because I'm -- my son and I probably  
21          are shared victims of a high conflict  
22          situation. I've got a 13-year-old son I  
23          haven't seen in eight years. I spoke to

1           this Committee two years ago about this  
2           situation. I filed a Rule Nisi back in  
3           2008 -- January of 2008 regarding the  
4           visitation. It was sporadic, being jerked  
5           away from me on the weekends. My ex-wife,  
6           my son's mother -- his name is Noah -- she  
7           has a pocket full of money. She has about  
8           ten million dollars in her back pocket.  
9           So she was able to get me to capitulate  
10          after about four years. We have two and a  
11          half years of continuances. We finally  
12          had an agreement. We go back in 45 days  
13          after the agreement, she filed an appeal  
14          saying she was denied due process.

15                 So her attorney had to file the  
16          appeal to Montgomery. Montgomery came  
17          back and said that because she was denied  
18          due process -- because she wanted to  
19          provide verbal testimony, because she was  
20          denied due process of providing verbal  
21          testimony, we had to have another trial.  
22          So that went on for another year and a  
23          half. Meanwhile, during all this, I

1           haven't seen my son one day.

2                       So we go back in. We have a trial.

3           About day three, we're getting ready to  
4           put her back on the stand, and she wants  
5           another settlement. So we settle. We  
6           bring the child psychologist into it as  
7           part of the settlement.

8                       We're working into a telephone  
9           conversation and my son walks out of the  
10          room. The child psychologist says, he's  
11          11 years old, and he's six foot tall,  
12          wears a size 13 shoe, what could I do? My  
13          comment is the mother and the child  
14          psychologist, who are both adults, if they  
15          can't keep a child who's 11 years old in a  
16          room, what are they going to do when he  
17          turns 16?

18                      So I was a stock broker for 27  
19          years with two companies, straight  
20          commission. '08, '09, 2010 took a toll on  
21          me. Not seeing my son took a toll. I got  
22          out of the industry, too much stress. I  
23          can't afford to take her back to court.

1           She's got way too much money. I have half  
2           the income I used to have.

3                       So my question arises today, why am  
4           I here? I'm here to listen to what the  
5           Committee has to say, just as I was two  
6           years ago. And of course, Rule 32 when it  
7           comes to standard visitation, joint  
8           custody, either no visitation or no  
9           custody, and then there's a violation, as  
10          I understand you were talking about  
11          earlier, where if there's a violation, one  
12          custodial parent denies access to the  
13          child, that there's some remedial type of  
14          -- something could be put into place; and  
15          that, I would apply because there are  
16          people like me -- I don't know. I've got  
17          to be the most severe case I know of.

18                      Something has to be done. I can't  
19          afford to take somebody on who has ten  
20          million dollars in their back pocket and  
21          can drop ten grand off to their attorney's  
22          office on the way to the tennis club. I  
23          can't do that. I don't make the money I



1           used to. I'm in arrears to my child  
2           support. What do I do? I don't know.  
3           All I know is I'm here to try to say, hey,  
4           I'm trying to be a father. There's people  
5           like me who are trying to be a father.

6                     And all I've got to say is if I  
7           have a hard time dealing with it, as you  
8           can tell, imagine what he's going through  
9           or what he's been told. I don't know.  
10          But I would beg you to kind of look back  
11          at that remedial when you start putting in  
12          the Guidelines.

13                    I noticed he was talking about --  
14          Mr. Rogers mentioned, you know -- he said  
15          the data gets real thin when he starts  
16          talking about somebody who's making  
17          25,000, 30,000 dollars a month. He says  
18          it's a small population. I guess it is.  
19          It's only about 5 percent of the  
20          population. Obviously, it is a small  
21          population. But on the flip side, I'm  
22          that small dad that hadn't seen his son in  
23          eight years.

1                   So just as you make allowances for  
2                   that group out here on the income scale  
3                   who's making 25,000 or \$300,000 a year,  
4                   there needs to be some allowance for  
5                   somebody like myself who hadn't seen their  
6                   son in eight years, who wants to see their  
7                   son, who wants to be a father, who has a  
8                   daughter who wants to see her  
9                   half-brother. So that's what I've got to  
10                  just throw out and beg for your  
11                  consideration and thoughtfulness. Just be  
12                  mindful of that next time you meet  
13                  regarding these rules. And I thank you.

14                 CHAIR PALMER: Thank you.

15                 Kenneth Paschal.

16                 MR. PASCHAL: Thank you. I'm going  
17                 to go to the front, if you don't mind.  
18                 That way -- well, I have a hat on. I  
19                 wanted to make a point I wanted to make.

20                 My name is Kenneth Paschal. I'm  
21                 with an organization called Alabama Family  
22                 Rights Association, and I want to  
23                 emphasize the word family because the last

1           time I was here, someone mentioned  
2           fathers' rights. And I want it on the  
3           record I'm against fathers' rights. I'm  
4           against mothers' rights. We're an  
5           organization that's trying to preserve the  
6           child ratio with both parents, but I'm  
7           also retired United States Army first  
8           sergeant.

9           MR. ARNOLD: I have a real estate  
10          closing. If I'm not done on time, I lose  
11          my house. I'm not trying to be rude, but  
12          thank you.

13          MR. PASCHAL: We don't want you to  
14          lose your house. I put my hat on so I  
15          remember to make that comment because  
16          there's two things I think that's worth  
17          fighting for. That's our country and our  
18          kids. And hopefully, everyone in this  
19          room will agree with that.

20          There's a couple things I just want  
21          to kind of mention. The young lady here  
22          asked earlier about the Alabama law  
23          student committee, was there any single

1 parents on the Committee.

2 And my question to this Committee  
3 is are there any single parents on this  
4 Committee that have kids that's under  
5 18 -- well, 19? So that's my question to  
6 the Committee. If unable to answer today,  
7 that's okay, but I would like an answer to  
8 that question.

9 The cost for the report, that's  
10 already been answered. \$14,000, if I'm  
11 correct. And is there a report available  
12 to the public?

13 MR. MADDOX: Yes, sir. It's on the  
14 website. All of these documents we've  
15 handed out today are on our website,  
16 alacourt.gov.

17 MR. PASCHAL: Okay. Thank you.  
18 Press release. I heard earlier it was  
19 sent out to the media. My question is  
20 meetings, announcements, are they  
21 available on an Open Meetings Act our  
22 legislators just passed recently? They  
23 created a special website for all public

1 meetings, so that way if you're not me --  
2 I know to go to the website and look, but  
3 the average person in the public is not  
4 going to do that.

5 So my question is for the next  
6 meeting, can you place the meeting  
7 announcement on the Alabama Open Meetings  
8 Act website? The purpose of that is in  
9 this Committee, you are tasked with a big  
10 job here. You're going to make decisions  
11 that's going to impact people that's not  
12 on the Committee. So I think it's  
13 appropriate that people that's going to be  
14 impacted at least be aware of the meetings  
15 and the discussions. That's just the  
16 right thing to do. So you might not be  
17 able to answer that question today, but I  
18 would like an answer to that if we were  
19 able to place it on the Open Meetings  
20 website.

21 MR. POLEMENI: Well, I don't know  
22 about that specifically, but I know I  
23 personally called different media outlets

1           to let them be aware and there didn't seem  
2           to be a lot of interest in spreading the  
3           word.

4                   MR. PASCHAL:   Okay.   I thank you.  
5           But once again, you have a big task in  
6           front of you.   So once again, I appreciate  
7           what everybody is doing because, once  
8           again, the goal is to make sure our kids  
9           is taken care of.   And then if it's not  
10          able -- if you're not able to -- this  
11          Committee is not able to announce it to  
12          the public, maybe potentially do a polling  
13          of the public, say what are your thoughts.  
14          And it might not be within the scope of  
15          this Committee; but if we don't ask, we  
16          just don't know.

17                   It would be interesting.   What does  
18          it cost the people that's in DHR's system  
19          that's in the TANF program?   How much does  
20          it cost?   What type of hardships are you  
21          having based on the child support you're  
22          receiving?   If you're paying child  
23          support, what type of hardships do you

1           have every single day to put food on your  
2           table? So since we don't have the data  
3           with this individual paying \$14,000, how  
4           do we get that data?

5                     And the answer may be there's no  
6           way to get it. I'm just throwing ideas  
7           out there. If our goal is -- if we're  
8           going to make a change, let's make sure we  
9           do it putting Alabama number one in the  
10          country. Let's not do what other states  
11          is doing just because they're doing it.  
12          If we're going to do what other states is  
13          doing, let's do that because it's the  
14          right thing to do for our kids in Alabama.

15                    We're number one in football but  
16          we're 46 in the country when it comes to  
17          our child well-being rankings. We were  
18          45th last year. Now we're 46. So I want  
19          to be a part of the discussion to help  
20          make Alabama number one when it comes to  
21          our kids.

22                    Report. If there's an opportunity  
23          to get another report. Is this the only

1 person in the country? Is this the only  
2 person is in the southeastern part of the  
3 country that can provide this information?  
4 The answer may be yes, but I was sitting  
5 back and listening and thinking is this  
6 the smartest person in the country? And  
7 it may be.

8 I know I went to a national  
9 conference in DC a couple years ago and a  
10 professor from, I think, Missouri -- he  
11 wasn't even talking about what does it  
12 cost to raise a child. I'm going to go  
13 home tonight and look up my information  
14 and try to pull that and try to figure out  
15 -- let me get this professor's name. He  
16 might be able to provide some information  
17 to say what does it really cost to raise a  
18 child versus saying what does it cost  
19 whether or not -- let's calculate child  
20 support based on your income, not really  
21 what it costs to raise a child in the  
22 state of Alabama. We -- the presenter  
23 mentioned the only reason we have



1 guidelines for child support is for  
2 federal -- because of federal mandate. Is  
3 that correct?

4 HONORABLE BELL: That is correct.

5 MR. JEFFRIES: I don't know that it's  
6 the only reason, but it certainly is a  
7 requirement.

8 MR. PASCHAL: Right. Well, I'm  
9 against the government intruding to  
10 anybody through parental rights. I'm a  
11 child activist. But at the same time,  
12 guidelines is good. I think they need to  
13 be updated. And without guidelines, we  
14 get some answers that we saw with the  
15 questionnaire going around, just courts  
16 doing whatever they want because of their  
17 personal beliefs. But as far as  
18 guidelines and personal belief, you have  
19 to follow the guidelines and things will  
20 be consistent.

21 So you that were on the Committee  
22 last time that helped create the  
23 Guidelines, I want to applaud you for

1           that. I want to challenge you to let's go  
2           to the next level, or as we look at  
3           updating the Guidelines this time -- I  
4           mentioned about this. If we're going to  
5           do something as far as this Committee,  
6           let's do it because it's the right thing  
7           to do.

8                       I heard -- and as I talk with  
9           lawmakers, I hear people say what are  
10          other states doing. Let's remember  
11          slavery was accepted at one time and all  
12          the states was doing it. So let's not  
13          keep doing something because other states  
14          is doing it. Let's do it because it's the  
15          right thing to do for our kids in Alabama.

16                      So I really want to challenge you  
17          on that. I know you're talking about what  
18          are other states doing. That's a smart  
19          thing to do. Look at that; but at the  
20          same time, we want to be number one in the  
21          country when it comes to our kids. So I  
22          want to challenge you but let's not do  
23          anything because other states is doing it.

1                   Joint custody. I heard an update  
2                   on the legislation so far. One of the  
3                   things I heard was the proposed  
4                   legislation was to consolidate case law.  
5                   Let's remember if we have old and bad data  
6                   and facts and we consolidate them, they're  
7                   still bad data, facts, and practices. Our  
8                   current practices in Alabama is outdated  
9                   when it comes to custody. Our case law  
10                  from the appellate court, Supreme Court,  
11                  they're outdated. So even if you have  
12                  different case law and we consolidate them  
13                  in one place, guess what? Bad data  
14                  consolidated in one place is still bad  
15                  data.

16                  So I would just like to share with  
17                  this Committee, there are 40 studies --

18                  CHAIR PALMER: You've got one more  
19                  minute.

20                  MR. PASCHAL: -- throughout the  
21                  world, 112 social sciences that have  
22                  agreed shared parenting should be the  
23                  norm. So with that data, I would like to

1           share that with this Committee and  
2           actually base your Child Support  
3           Guidelines -- and I would ask that you  
4           base it off updated data, not every other  
5           weekend, as a starting point and deviate  
6           from that.

7                     But once again I think this  
8           Committee is doing a lot of great things,  
9           but I appreciate you allowing me to sit  
10          here and be a part of this discussion.

11                    And just one last thing, term  
12          limits. If you've been here for a while,  
13          look at remodeling the makeup of the  
14          Committee. With that, I will just say  
15          thank you for your time.

16                   CHAIR PALMER: Thank you. Any other  
17          business?

18                   MR. POLEMENI: One comment. Bob,  
19          didn't you say that Mr. Rogers was the  
20          only one that replied to the RFP?

21                    So he was the only one that even  
22          bothered to answer our RFP out of  
23          everybody, if that answers your question.

1 MR. PASCHAL: All right. Thank you.

2 CHAIR PALMER: Okay. So we're going  
3 to look at some dates, one in November.  
4 And Bob is going to check into the 4-H  
5 Center. And then we've also got December  
6 1st and/or 2nd that we're going to  
7 possibly meet again, and I really do  
8 really think possibly we need two dates if  
9 it's in the budget for overnight travel  
10 and accommodations so that we can -- I  
11 think one time we need just to hit the  
12 numbers and just to do that and then the  
13 other day for everything else on the list.  
14 But we've got to go through the numbers  
15 and see if we can work with what we have  
16 since we've already spent that money or if  
17 we need to call Mr. Rogers back for any  
18 reason. Say we've narrowed it down to  
19 these two or combined number one or number  
20 three or we just don't do anything. So we  
21 will work on that. I appreciate  
22 everybody's time. Safe travels.

23 MR. MADDOX: We have space available

1           December 1st and 2nd, so I will go on the  
2           record saying that's probably going to be  
3           the better days.

4                   CHAIR PALMER:   Okay.   Well, go ahead  
5           and mark those off for us.   I personally  
6           just want to thank Bob and Brad for all of  
7           their help.   I know this was a little  
8           discombobulated, but I've been really busy  
9           since about June, so anything that went  
10          right in this meeting, it was Bob and  
11          Brad.   They did it all, and I have to  
12          thank them so much for all their hard  
13          work.   By December, my life, one way or  
14          the other, is going to get settled.

15                   All right.   Thank y'all very much.  
16          Meeting dismissed.

17                   (The Committee adjourned at 2:18  
18                   p.m.)

19  
20  
21  
22  
23

## 1 REPORTER'S CERTIFICATE

2 STATE OF ALABAMA  
3 MONTGOMERY COUNTY

4 I, Heather Tatum, Court Reporter,  
5 Commissioner for the State of Alabama at Large,  
6 hereby certify that on Friday, August 26, 2016,  
7 I reported the testimony and proceedings in the  
8 foregoing cause and that pages contained herein  
9 are a true and accurate transcription of the  
10 proceedings.

11 I further certify that I am neither kin nor  
12 of counsel to any of the parties to said cause,  
13 nor in any manner interested in the results  
14 thereof.

15

16 /s/ Heather Tatum  
17 HEATHER TATUM, Court Reporter  
18 Commissioner for the  
19 State of Alabama at Large  
20 ACCR TL2046, Expires 5/30/2017  
21 MY COMMISSION EXPIRES: 1/22/2020  
22  
23

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