

BEFORE THE STATE OF ALABAMA
JUDICIAL RESOURCES ALLOCATION COMMISSION

HEFLIN-TORBERT
JUDICIAL BUILDING
MEZZANINE CLASSROOM

THURSDAY, JANUARY 11, 2018

10:00 a.m.

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THE FOLLOWING PROCEEDING was held before
the Honorable Lyn Stuart, taken by Wendy Kendrick,
Certified Court Reporter and Commissioner for the
State of Alabama at Large, at the offices of the
Heflin-Torbert Judicial Building, 300 Dexter
Avenue, Montgomery, Alabama, commencing at 10:00
a.m., Thursday, January 11, 2018.

1
2 APPEARANCES:

3 COMMISSION MEMBERS:

4 Chief Justice Lyn Stuart, Chair

5 Honorable Bryan Taylor

6 Honorable Clay Crenshaw

7 Honorable Zack Collins

8 Honorable Jacob Walker

9 Honorable Michael Newell

10 Honorable James Reid

11 Honorable Michelle Thomason

12 Honorable Eugene Verin

13 Honorable Harold Stephens

14 Honorable Lee Carter

15 Honorable Joseph Boohaker

16
17 ALSO PRESENT:

18 Mr. Michael Gregory

19 Mr. Randy Helms

20 Mr. David Wilson

1
2 CHIEF JUSTICE STUART: Good morning,
3 everyone. Because of the
4 statute that created this
5 Commission sets forth certain
6 requirements, I want to be sure
7 that we make those requirements
8 of record. In order to comply
9 with the requirement in the
10 Judicial Resources Allocation
11 Act, the Commission is subject
12 to the Alabama Open Meetings
13 Act.

14 On December 1, 2017, the
15 Administrative Office of Courts
16 issued a press release informing
17 the public that this meeting
18 would be held -- the initial
19 meeting of the Judicial
20 Resources Allocation Commission
21 and that it would be conducted
22 today at 10:00 a.m., at the
23 Heflin-Torbert Judicial

1 Building. Notice and
2 information about this meeting
3 was also posted on
4 www.openmeetings.alabama.gov.and
5 www.alacourt.gov.

6 Additionally, to comply
7 with the requirement and the Act
8 of the Commission as subject to
9 Alabama Open Records Act, an
10 official transcript of today's
11 meeting will be prepared by
12 Ms. Wendy Kendrick, an official
13 court reporter. A certified
14 copy of the transcript of this
15 meeting and a copy of any
16 reports submitted to the
17 Governor and Legislature will be
18 published on the website of the
19 Administrative Office of Courts,
20 and that is www.alacourt.gov.

21 I am Lyn Stuart, and I am
22 the chairman of this Commission
23 pursuant to the statute enacted

1 by the legislature during this
2 last legislative session of
3 2017. That legislation set
4 forth the composition of this
5 Commission, and I want to make
6 of record both the composition
7 of the Commission and then who
8 is actually present for this
9 meeting.

10 Again, I am Lyn Stuart, the
11 Chief Justice of the Supreme
12 Court of Alabama. I am one of
13 the designated members of the
14 Commission and designated as the
15 chairman.

16 Judge Talmage Lee Carter is
17 present. He is the Judge of the
18 25th Judicial Circuit. He is
19 serving a three-year term and
20 was appointed by the Circuit
21 Judges Association President.

22 Judge Zack Collins is a
23 Judge in Russell County,

1 Alabama. He serves a three-year
2 term, and he was appointed by
3 the District Judges Association.

4 Judge Clyde Jones is not
5 present with us but is an
6 official appointee. He is the
7 Judge of the 10th Judicial
8 Circuit in Birmingham. He will
9 serve a four-year term, and he
10 was appointed by the President
11 of the Circuit Judge's
12 Association. And today because
13 Judge could not be present,
14 Judge Joseph Boohaker, who is
15 the Presiding Circuit Judge of
16 the Jefferson County Circuit
17 Court, is here in his stead.

18 Additionally, as a member
19 of the Commission pursuant to
20 the statute, Attorney General
21 Steve Marshall serves on this
22 Commission. I believe that
23 Attorney General Marshall will

1 be joining us later but is not
2 able to be present at this time.
3 And he has Clay Crenshaw, who is
4 the Chief Deputy of Attorney
5 General present at this time for
6 the Commission Meeting.

7 Judge Michael Newell of
8 Winston County is starting a
9 four-year term and was appointed
10 by the President of the District
11 Judges Association to serve.

12 Retired Judge James Reid of
13 the Baldwin County Circuit Court
14 is serving a four-year term and
15 was appointed by the President
16 of the Alabama Bar Association.

17 The Honorable Harold
18 Stephens of Bradley Arant Boult
19 Cummings in their Huntsville
20 office is serving a three-year
21 term and was appointed by the
22 President of the Alabama Bar
23 Association.

1 Pursuant to statute, the
2 Governor's legal adviser -- in
3 this case, I believe he is
4 referred to as General Counsel
5 -- Brian Taylor serves as a
6 member of the Commission, and
7 that is a standing appointment
8 to the Commission.

9 District Judge Michelle
10 Thomason, who is from Baldwin
11 County, Alabama, is serving a
12 five-year term. And she was
13 appointed by the President of
14 the District Judge's
15 Association.

16 Judge Eugene Verin of the
17 Bessemer Division of the
18 Jefferson County Circuit Court
19 was appointed by the President
20 of the Alabama Lawyers
21 Association and will be serving
22 a five-year term.

23 And Judge Jacob Walker of

1 the 37th Judicial Circuit, which
2 is Lee County, was appointed by
3 the President of the Circuit
4 Judge's Association and will be
5 serving a five-year term.

6 Again, as I stated earlier,
7 Brian Taylor has a conflict as
8 far as another committee or
9 commission that he's required to
10 attend but will be joining us
11 later.

12 As far as the schedule for
13 today, we have lunch coming in
14 at about 11:30. I would hope
15 that we will be through by
16 11:30. If we're not, we will
17 recess at that time, have lunch,
18 and then come back. But I
19 believe we will be finished by
20 that point in time.

21 Prior to beginning a
22 discussion relative to the
23 provision of the Judicial

1 Resources Allocation Act, I
2 asked Judge James Reid, who
3 chaired a committee that was
4 appointed to study Judicial
5 Resources within the State of
6 Alabama and the possibility of
7 reallocation, to give just a
8 brief history of what that
9 committee did.

10 MR. REID: Thank you, Chief Justice.

11 In 2009, I wrote a letter
12 to Chief Justice Cobb at the
13 time telling her about the
14 difficulties that Baldwin County
15 had with the increasing
16 population and the fact that
17 judges -- the appointment of new
18 judges was not keeping up with
19 the population growth in our
20 county.

21 And Justice Cobb, being the
22 good administrator that she was,
23 immediately appointed a

1 committee and named me chairman
2 of the committee.

3 And just to give you a
4 little historical background, I
5 went on the bench in 1989 in
6 Baldwin County. And I am proud
7 to say that Chief Justice Stuart
8 is from our county and really
9 experienced most of the things
10 that we are going to be talking
11 about today.

12 But we -- we just had a
13 huge population growth beginning
14 about 1990, people moving out of
15 Mobile and also people retiring
16 and moving to the Gulf Coast,
17 and we just -- just could not
18 seem to be able to catch up with
19 the workload with the judges
20 that we had.

21 When I went on the bench,
22 we had two district judges and
23 three circuit judges. We now

1 have five circuit judges and two
2 district judges. So, we did get
3 two new circuit judges during
4 that time, which did help with
5 the workload but just would not
6 allow us to just keep up with
7 the workload. And I -- I just
8 -- I was just puzzled about how
9 we just could not seem to get
10 enough judges in our area to
11 manage the workload.

12 And I just started doing a
13 little research and reading
14 these memos that AOC would send
15 out. You know, those memos that
16 normally you just put on the
17 back credenza behind you and
18 ignore for a while. But I
19 started reading those, and I
20 started seeing these, the
21 discrepancy between the
22 caseloads in some counties and
23 the caseloads in other counties.

1 It just didn't look quite right
2 to me.

3 So, in 2009, I wrote Chief
4 Justice Cobb a letter and told
5 her what my concerns were, and
6 she appointed the committee.
7 And that's kind of why we're
8 here today is because of that,
9 that action.

10 I'm happy to be here. I
11 think that, because of my
12 involvement in this issue, I
13 don't have as many friends as I
14 once had among the judges in the
15 state. But, you know, so be it.

16 Alabama is not a wealthy
17 state. We have so many needs in
18 education and law enforcement
19 that really we just can't afford
20 not to use all of our resources
21 and our money wisely. And it
22 looked to me like if we could
23 kind of come up with a system

1 that would move judges around to
2 where they are actually needed,
3 it would be a more efficient use
4 of the resources of the state.

5 And just to share a little
6 antidote with you, I think one
7 of the most frequent complaints
8 that I used to get when I was
9 doing this was people would say:
10 You know, Justice Heflin built
11 this system. He devised this
12 system, and here you are coming
13 along and trying to change it.
14 So -- and I really never had an
15 answer to that, about why
16 Justice Heflin didn't address
17 this issue. And a very bright
18 law clerk that we had found a
19 law -- an article at a speech
20 that Justice Heflin had given
21 while he was Chief Justice, and
22 he addressed this very issue.
23 He said that this was an issue

1 that was not addressed in the
2 judicial article, that it needed
3 to be addressed and that it
4 would have to be addressed in
5 the future. And I think that's
6 why we're here today. I think
7 we're here to address an issue
8 that needs to be addressed.

9 So, that's kind of the
10 historical background of why I'm
11 here and why I think many of you
12 are here today. I really
13 appreciate the opportunity to
14 help resolve an issue. It's
15 something that I've worked on
16 for a long time, and I really
17 have great, great hopes that
18 we're going to do some very good
19 work on this committee.

20 CHIEF JUSTICE STUART: Thank you, Judge
21 Reid.

22 This Commission was
23 authorized and created by Act

1 2017-42 and became the law of
2 the State of Alabama on March
3 the 6th of 2017. The purpose of
4 the Act states that it is
5 related to courts and to
6 establish the Judicial Resource
7 Allocation Commission to
8 establish the criteria for
9 determining the need for
10 increasing or decreasing the
11 number of judgeships in district
12 courts and circuit courts and to
13 authorize the Judicial Resources
14 Allocation Commission to
15 reallocate judgeships based on
16 such criteria.

17 One of the important
18 provisions of the act was set
19 forth in Subsection 6-B. The
20 membership of the Judicial
21 Resources Allocation Commission
22 shall be inclusive and reflect
23 the racial, gender, geographic,

1 urban/ rural and economic
2 diversity of the state. The
3 appointing authorities must
4 coordinate together to achieve
5 this diversity. And I believe
6 that you will agree with me that
7 we have diversity on different
8 parts of the state, different
9 genders, different sizes of
10 courts, different types of
11 communities, and different
12 economic situations. And so,
13 that purpose of the Act I
14 believe has been complied with.

15 Subsection C says that the
16 majority of the Commission shall
17 constitute a forum with the
18 transaction of business. The
19 Commission shall meet at least
20 once annually beginning in the
21 first quarter of 2018. The
22 first committee meeting shall be
23 set by the Chief Justice and

1 members will serve without
2 compensation. This is that
3 initial meeting that has been
4 scheduled of the Commission.
5 And I declare at this time that
6 a quorum is present for the
7 transaction of business.

8 We are required as a
9 purpose and objective of this
10 Commission to determine the need
11 for increasing or decreasing
12 judgeships in the district and
13 circuit courts and to rank each
14 court accordingly. We are also
15 required pursuant to the statute
16 to provide a list to the
17 Governor and Legislature within
18 30 days of the determination.

19 Now, there is another
20 purpose of this Commission, and
21 I am just going to state for you
22 my interpretation of this
23 provision; and then if any of

1 you disagree, you may certainly
2 so state. But let me see if I
3 can give you the citation to
4 where it is. It is in Section
5 Five, Subsection B, page --
6 which is on page seven of the
7 Act. (As read): "No judgeship
8 shall be reallocated until three
9 years of data is available after
10 the revision of the factors
11 considered in the Judicial
12 Weighted Caseload Study as
13 provided in this section."

14 And I interpret this
15 provision to mean that at this
16 meeting and until that three
17 years have passed, this
18 Commission cannot reallocate at
19 all. We have the other
20 responsibilities in the Act, but
21 we won't actually be doing any
22 reallocation.

23 Does anyone have a

1 different interpretation?

2 JUDGE VERIN: Could you repeat that one
3 more time?

4 CHIEF JUSTICE STUART: Sure. Let me
5 just read it again, and then I
6 will say what I think it means.

7 JUDGE VERIN: Okay.

8 CHIEF JUSTICE STUART: All right. It
9 says (as read): "No judgeship
10 shall be reallocated until three
11 years of data is available after
12 the revision of the factors
13 considered in the Judicial
14 Weighted Caseload Study as
15 provided in this section."

16 I think the keyword is
17 "after." And because, you know,
18 this became law in March of
19 2007, all other actions taken
20 pursuant to the statute occurred
21 thereafter. We are required to
22 have this meeting. We are
23 required to rank the different

1 courts, and we are required to
2 file a report with both the
3 Governor and the Legislature.

4 But it's my interpretation
5 that we can do no actual
6 reallocation.

7 JUDGE BOOHAKER: To my comment, I have
8 worked with Judge Jim Hill
9 in-house and Mike Herbert from
10 the Birmingham Bar as we drafted
11 this thing, and I think that was
12 the intent of drafting it, that
13 there will be a three-year
14 period before we allocate just
15 as you said.

16 JUDGE VERIN: From this date, right?
17 Three years from now? We can't
18 allocate until three years from
19 now?

20 CHIEF JUSTICE STUART: It won't be
21 three years from this day. It
22 will be three years from a
23 date -- I haven't even

1 determined what that date is.
2 But it's not now. And at the
3 absolute earliest, in my
4 opinion, it would be for
5 election in the 2020 election
6 cycle.
7 JUDGE VERIN: Okay.
8 CHIEF JUSTICE STUART: Anyone else want
9 to comment on that?
10 JUDGE VERIN: I agree with that
11 interpretation.
12 CHIEF JUSTICE STUART: Okay. I would
13 just add, sort of as a side, to
14 let you know that Randy Helms,
15 who is actually present here
16 today, will be administrator of
17 the courts. I spoke to Senator
18 Arthur Orr. He was a sponsor of
19 these comments on this piece of
20 legislation, and that is
21 Senator's interpretation as
22 well.
23 So, I think that is pretty

1 much where we are in that
2 regard. We have provided you
3 prior to today's date, as well
4 as today, with a great deal of
5 data. And once the Supreme
6 Court adopted the Weighted
7 Caseload Study -- it adopted it
8 on June 21st of 2007, we then
9 applied it to the data that we
10 had available for the fiscal
11 years 2014, 2015 and 2016.

12 Then after the data was
13 available, as far as case
14 filings and other appropriate
15 information for fiscal year
16 2017, the formula was worked
17 again. And so, we also have
18 case numbers for fiscal year
19 2017.

20 For purposes of the meeting
21 today, I think 2014, 2015 and
22 2016 are just sort of a
23 historical basis. If we were

1 making a reallocation, they
2 might be relevant. But since
3 we're not allowed to make a
4 reallocation, it appears to me
5 that the only real year of
6 relevance are the 2017 numbers
7 because that's what we would be
8 submitting to the Governor and
9 to the Legislature.

10 Let me go back, however,
11 before we move forward to see if
12 any member of the Commission has
13 any questions about the Weighted
14 Caseload Study itself or the
15 formula. And the formula is
16 quite complicated.

17 So, I'm not going to try to
18 answer that. I have someone
19 here who can.

20 JUDGE WALKER: My question, Chief,
21 would be: Is this the data that
22 came from the study that was
23 done -- I think February of --

1 about seven or eight years ago
2 now -- in which all of the
3 judges were sent a sheet to keep
4 up with their hours and then
5 that was turned in --

6 CHIEF JUSTICE STUART: I will have to
7 ask Michael.

8 This is Michael Gregory
9 with the Administrative Office.

10 MR. GREGORY: Judge Walker, it is
11 partially what we did with the
12 '14, '15 and '16 numbers. We
13 reapplied them. The National
14 Center for State Courts came
15 back in, and we adjusted the
16 caseload priorities and
17 reapplied the '14, '15 and '16
18 numbers to that -- what we call
19 the 2016 Caseload Study.

20 So, it does go back -- and
21 everything that you filled out,
22 all of those forms that you
23 answered questions about how

1 long it takes to do different
2 things and different types of
3 cases, yes, sir. That does
4 involve that. But in 2016, we
5 had a meeting -- let's see. It
6 was over almost a year.
7 National Center for State Courts
8 came in and we redid that study.

9 JUDGE WALKER: And one more question.
10 If we recommission that study,
11 does that somehow get
12 interpreted as a division of
13 data and delay the reallocation
14 of judges? I mean, that was
15 sort of the little phrase in
16 that statute.

17 JUDGE BOOHAKER: I think there was a
18 study done when Justice Cobb was
19 the Chief Justice.

20 JUDGE WALKER: Yeah. That's what I'm
21 talking about.

22 JUDGE BOOHAKER: And I think that she
23 determined that that was not a

1 good study.

2 So, in 2016, I think there
3 was a new study that was done by
4 the National Center for State
5 Courts. And we had judges from
6 all of the different types of
7 circuits to rule from single
8 county, multi-county and so
9 forth. And they came up with
10 the study for 2016, and I
11 believe it's from that 2016
12 study that they had gotten the
13 formula that was used to do the
14 --

15 MR. GREGORY: That's correct.

16 CHIEF JUSTICE STUART: Okay. So,
17 that's correct.

18 MR. GREGORY: That's correct, Judge
19 Boohaker. That 2016 formula is
20 what we used to apply to those
21 numbers that you did back in
22 2009. We went back and did it
23 between '14 and '15.

1 JUDGE NEWELL: It was right after we
2 came on the bench.

3 JUDGE BOOHAKER: They used a whole
4 different methodology in 2016.
5 Because Judge Floyd I think --
6 from Baldwin County at the time
7 -- he participated. And the
8 question was: How long does it
9 take you to do a certain task?
10 And one of them was how long
11 does it take you to hear and
12 write a court-ordered summary
13 judgment? And I said, well, it
14 takes me about four hours. And
15 I think Lang said, well, it may
16 take you four hours, but it
17 takes me 30 minutes, because I
18 have a criminal docket to take
19 care of too.

20 So, it was tough to come up
21 with the numbers, but the
22 formula is what the formula is.

23 MR. GREGORY: To make -- I'm sorry.

1 One thing to add to what Judge
2 Boohaker said, to make the --
3 the committees were put together
4 similar to this task force. We
5 had the first group of people
6 from different jurisdictions and
7 populations, rural/urban
8 settings to come up with a good
9 group of people to get those
10 numbers.

11 MR. REID: Question, Michael?

12 MR. GREGORY: Yes.

13 MR. REID: The study that was done in
14 2009, if I remember correctly --
15 and I did -- I participated in
16 the study. And I was
17 disappointed that when we
18 finally finished with it, there
19 was only, like, 30 percent of
20 judges that participated in the
21 study. That was their choice.
22 They could have participated and
23 they didn't. But if I remember

1 correctly, at the end of every
2 day, we had to sit down and fill
3 out a time sheet for eight hours
4 and what we had done that eight
5 hours. I don't remember how
6 long the study lasted.

7 JUDGE WALKER: A month, I think.

8 JUDGE NEWELL: The month of February, I
9 think.

10 MR. REID: Okay. Yeah. Is that the
11 way the '16 study was done?

12 MR. GREGORY: No, sir. It was done
13 differently. It was called a
14 Delphi study. And I think the
15 original way it was done in
16 2009 -- I guess any time you are
17 going to do research, that that
18 would be the way to do it to get
19 the actual input from the judges
20 the way that you-all did it by
21 answering the questions and
22 filling out the data sheets. If
23 everybody were to participate,

1 that would be perfect. We could
2 get a very accurate picture.

3 But the Delphi study goes in and
4 grabs that, you know, mixed
5 group of population -- based by
6 population and demographic
7 information and uses them to,
8 you know, like Judge Boohaker
9 said it may take -- they have
10 different things up there in
11 Jefferson County that they don't
12 have other places. One of the
13 big things is the contract type
14 stuff, equity type cases that
15 they have up there. That was
16 something that we had to, you
17 know, had to integrate into the
18 other circuits.

19 But the Delphi study just
20 mixes all of those groups
21 together and comes up with a
22 conclusion on behalf of the
23 others.

1 JUDGE NEWELL: One of the issues that
2 we had with the study in '07 --
3 I was looking yesterday in my
4 office, and I looked at the
5 class that Michelle and a bunch
6 of us were in. It was one of
7 the largest incoming classes of
8 judges. There was close to 40
9 of us that came in right in '07.

10 What Chief Justice Cobb
11 told us at the time was: Look,
12 if you are trying to dig out --
13 if you have a bunch of work to
14 do, don't worry about this
15 study. So, there are a bunch of
16 us that actually didn't get to
17 participate because we were just
18 trying to A, figure out how to
19 be judges; and B, to get our
20 work done.

21 So, that was one of the
22 flaws -- and that's always been
23 one of the complaints about the

1 original '07 study. So, it's
2 good to hear about the data from
3 '16.

4 JUDGE THOMASON: And I participated in
5 that -- in both studies, but the
6 most recent one, I thought it
7 was pretty well done.

8 Judge, what they do is they
9 pull judges from different
10 demographics, and we did the
11 same thing. We figured out how
12 we spend our day, but what we
13 did was we all kind talked it
14 out and compared notes because
15 we had a questionnaire to answer
16 ourselves and then come up with
17 kind of a general consensus at
18 that time and -- and answer it
19 that way. And then those
20 factors were applied to -- you
21 know, out of the study.

22 So, I mean, some areas were
23 very different; but in the end,

1 we were able to kind of -- you
2 know, and they ask a lot of
3 really good questions, things we
4 wouldn't necessarily think of
5 during those meetings to arrive
6 at those numbers.

7 The question that I had --
8 just going back to what we were
9 talking about on page seven, is
10 that study what they're
11 referring to as far as reviving
12 the factors occurred in the
13 Judicial Caseload Study?

14 CHIEF JUSTICE STUART: Yes.

15 JUDGE THOMASON: So, the Supreme Court
16 then adopted that study.

17 So, when it says no later
18 that January 1 -- even though
19 that was done after this was
20 drafted, that is still
21 sufficient or still occurred --

22 CHIEF JUSTICE STUART: No. We adopted
23 it on June -- let's see.

1 June 21st of 2017.

2 JUDGE THOMASON: Oh, okay.

3 CHIEF JUSTICE STUART: After the
4 enactment of the statute.

5 MR. GREGORY: The formula.

6 JUDGE THOMASON: All right. So, where
7 it says that no judgeship shall
8 be reallocated until three years
9 of data is available after the
10 revision of factors, that's what
11 triggered that adoption by the
12 Supreme Court in June of 2017?

13 CHIEF JUSTICE STUART: That's correct.

14 JUDGE THOMASON: And then three years
15 of data after that will be our
16 three-year mark?

17 CHIEF JUSTICE STUART: Uh-huh (positive
18 response).

19 JUDGE THOMASON: Got it. I just wanted
20 to make that that study -- the
21 2016 study is what that was
22 referring to and what that date
23 was for the adopting.

1 CHIEF JUSTICE STUART: Well, I think
2 with a three-year measure, you
3 would be looking at -- when you
4 get to that point in time, which
5 is three years out in the
6 future, you will be looking at
7 data from 2017, 2018, and 2019.
8 And who knows? I mean, we just
9 sort of have a pattern with what
10 is happening in our courts but
11 things may change.

12 MR. REID: May I ask Michael a
13 question?

14 CHIEF JUSTICE STUART: Uh-huh (positive
15 response).

16 MR. REID: And I may not ask this
17 question exactly right because
18 I'm not an expert in statistics
19 like you are.

20 But in the 2016 and in the
21 2007, '08, or '09, whenever that
22 was done, did you see a
23 significant statistical

1 difference in the outcome of the
2 results of the study?

3 MR. GREGORY: Once we reapplied the new
4 formula to the same number, a
5 significant difference in the
6 outcome --

7 MR. REID: Let me ask that a different
8 way. You -- you have circuits
9 ranked. Did those -- did those
10 rankings change significantly?

11 MR. GREGORY: No, sir, they didn't
12 really. The same -- the top
13 five may have fluctuated one or
14 two, but the top one, two or
15 three was probably going to be
16 the same one each one of those
17 years. One may have moved up
18 but they stayed relatively the
19 same.

20 MR. REID: All right.

21 MR. GREGORY: And as far as filings,
22 the way they go, you know, we
23 saw a lot of decrease in all but

1 nothing in certain jurisdictions
2 that would move one from -- one
3 to -- or rank from highest to
4 the middle of the pack
5 somewhere. They all stayed
6 roughly the same.

7 MR. REID: One of the reasons that I
8 asked that was, when I was
9 actively involved in doing this,
10 I worried about the study that
11 was done in whatever year it was
12 done. It concerned me that all
13 of these figures are -- because
14 only 30 percent of the people
15 participated.

16 MR. GREGORY: Right.

17 MR. REID: Well, I took the population
18 of every circuit in the state,
19 and I compared 2,000 numbers
20 with the 2010 numbers -- and I
21 retired five years ago, and
22 that's the last study, the last
23 census that I had to work with.

1 And I found very little
2 differentiation between case
3 studies and the weighted
4 caseload, which told me that at
5 least the study was pretty
6 accurate.

7 MR. GREGORY: Yes, sir.

8 MR. REID: Not inaccurate.

9 MR. GREGORY: Which is -- you know, we
10 -- we base the focus on those
11 actual problems and not so much
12 on the population. Because we
13 can see population growing in
14 certain areas, things may go up
15 a little bit, but it really
16 doesn't have that much effect on
17 the end result.

18 CHIEF JUSTICE STUART: And one of the
19 primary reasons for a revision
20 of the factors to be considered
21 was great concern over the
22 counting of criminal cases and
23 the fact that some circuits had

1 been setting up files -- a
2 single file for every count.
3 There were other circuits who
4 were being cost effective and
5 efficient, and they were setting
6 up multi-count indictments in
7 one file. But it was making a
8 huge difference in the count.

9 That was one of the
10 specific requirements for the
11 revision to be sure they were
12 all being counted the same. And
13 they are now all being counted
14 the same. And the Supreme Court
15 has also certified that every
16 count counts as a case, whether
17 it's in one file or case number
18 or separate.

19 JUDGE BOOHAKER: And Judge Smitherman
20 made sure this was put in the
21 statute. Dealing with civil
22 cases, I think in our circuit we
23 had mass tort multi-party

1 plaintiffs and so forth, and he
2 wanted that to be counted in a
3 way so that it would equalize
4 throughout the whole state.

5 JUDGE VERIN: My understanding -- that
6 was -- to me, and my
7 recollection, with the first
8 study, that was the major
9 problem. It wasn't so much the
10 low number of judges that
11 participated. I thought it was
12 like 40 percent.

13 MR. REID: It may have been. I can't
14 remember exactly what it was.

15 JUDGE VERIN: I think it was 40
16 percent, but it was apples and
17 oranges being compared. That
18 was the problem. And I think
19 the second study was addressed
20 to try to tweak those so that
21 those concerns were alleviated.
22 That was my recollection.

23 JUDGE BOOHAKER: In the Delphi study,

1 what they asked us to do was as
2 a civil judge, or a criminal
3 judge, or a district judge,
4 family court, or whatever, what
5 tasks do you perform as a judge?
6 And then after we agreed to a
7 list of tasks, how long does it
8 take you to perform that
9 particular task? And then you
10 assign a time value to that, and
11 then you put a day and time and
12 so forth.

13 The lady came from Colorado
14 I think. When she did the first
15 study of the first results, the
16 State was short by about 200
17 judges. Every county was short.

18 Now, guys you-all have got
19 to do a better job. We had to
20 rejuggle the numbers, and did it
21 again. She told us now you're
22 200 judges short. We did it
23 again and finally she got to the

1 number that she got to, but it
2 was a negotiation.

3 JUDGE VERIN: There was some tweaking.
4 There was a lot of tweaking.

5 CHIEF JUSTICE STUART: Well, I am truly
6 glad that some of you who
7 participated in the Weighted
8 Caseload Study are a part of
9 this Commission. I think that
10 background is incredibly helpful
11 going forward.

12 So, that the record will be
13 accurate for anyone who might
14 simply read a transcript of this
15 Commission meeting, I want to
16 point out that Subsection C, on
17 page seven -- and this would be
18 Section Five, Subsection C (as
19 read): "Provides that no
20 judicial circuit shall lose more
21 than one judgeship through
22 allocation in a two-year
23 period."

1 And so, this will be a very
2 slow process.

3 So, it seems to me that our
4 task for today's meeting is to
5 determine the need for
6 increasing or decreasing
7 judgeships, and then to provide
8 the Governor or Legislature a
9 list ranked in both the circuit
10 category and then the district
11 category.

12 So, if there are no further
13 questions about the Weighted
14 Caseload statistics and the
15 formula by which they're
16 calculated, if we could turn
17 over to the numbers for 2017.

18 And these have been
19 provided to you in two different
20 fashions simply for convenience.
21 When I was looking at these the
22 first time, it was helpful to me
23 to have them listed in circuit

1 order or district order, because
2 I knew circuit numbers. I could
3 go look and find Jefferson,
4 Montgomery, whatever. And then
5 the district courts, of course,
6 are in alphabetical order.

7 So, it was easy to find a
8 particular county by looking at
9 it that way. However, we have
10 also provided under tab six the
11 ranks numerically according to
12 what the actual needs are and
13 what actually exists in the
14 various circuits and districts.

15 So, if we could look at
16 page -- I guess it's behind tab
17 six and look at the Circuit
18 Court Judicial Weighted Caseload
19 Implied Need and see if anyone
20 has any questions about that.

21 MR. REID: I have one.

22 When you did your study,
23 did you take into account

1 full-time referees?

2 MR. GREGORY: Yes, we did.

3 CHIEF JUSTICE STUART: They did.

4 MR. REID: You did? And they counted
5 as a judge?

6 MR. GREGORY: They're listed on that
7 actual sheet.

8 MR. REID: I see it. I apologize. I
9 thought I had remembered that
10 but missed it.

11 MR. GREGORY: Yes, sir. They are
12 included.

13 MR. REID: Okay. Good.

14 JUDGE WALKER: I guess, I -- This is
15 Walker. I have a question about
16 how Lee County can be behind
17 Henry and Houston County when we
18 have more population, and they
19 have five circuit judges, and we
20 only have three.

21 So, it would just seem to
22 be logically -- I'm just not
23 sure how -- You know, how that

1 happened. I mean, I don't have
2 any --

3 CHIEF JUSTICE STUART: Is it because of
4 the multiple site? I believe
5 the formula takes that into
6 account.

7 MR. GREGORY: The circuit --
8 single-county circuits could
9 have something to do with it.
10 It could be several things in
11 there, Judge. You know, the
12 number of filings in Lee County
13 should be relatively high I
14 would think, which was the one
15 we were referring to Houston; is
16 that --

17 JUDGE WALKER: Right. Just the one
18 right above.

19 MR. GREGORY: I got you. Okay.
20 Houston and Henry includes both
21 of those. So, there is a little
22 bit of difference in how those
23 are evaluated. But the

1 population itself -- Let's see.

2 JUDGE WALKER: And I know I'm being
3 taken down against my fellow
4 judges in Houston and Henry, but
5 I have been assigned a lawsuit
6 in Henry County before. And so,
7 it seemed a little empty the day
8 that I was there.

9 MR. GREGORY: And, you know, the -- any
10 questions that you-all have like
11 that, I mean, I will be more
12 than happy to go in and -- that
13 might be something that we need
14 to look into a little further if
15 there are specifics on where
16 some money lies on here and why.
17 I can break that down. I don't
18 -- I've actually got the
19 specific county information
20 separate over here, I think. It
21 might be something that -- to
22 save time, that I can get back
23 to you.

1 JUDGE WALKER: Sure. And I have no
2 idea about Lauderdale being at
3 the top, but --
4 MR. GREGORY: Some of them --
5 JUDGE WALKER: Most of them that are
6 ranked at the top I have no
7 qualms about that.
8 JUDGE VERIN: You know, along those
9 lines, you know, just -- I'll
10 note that I would like to get
11 with Michael at some point in
12 the future just to go over the
13 methodology again, you know.
14 And I don't -- we don't have
15 time for that here, of course.
16 And if somebody else wants to
17 speak -- because I know that
18 when I go back to the Alabama
19 Lawyer's Association, they're
20 going to say, how was this done?
21 And I just can't say, well, here
22 are the numbers. I should but
23 --

1 CHIEF JUSTICE STUART: Give them the
2 formula too and the minutes.

3 JUDGE VERIN: So, I just want to be
4 able to get back and go over it
5 again. I participated in the
6 study; and if there are others
7 who have that same need, we
8 could consolidate Mr. Gregory's
9 time and not have multiple
10 presentations. You know, we can
11 just have one afternoon where we
12 just come back and go over the
13 entire thing because this was
14 controversial. And I am going
15 to leave it at that, you know,
16 when we did it.

17 JUDGE BOOHAKER: I would like to go on
18 record too with a matter. I
19 know I have raised with you and
20 probably Mr. Gregory too as well
21 with Jefferson County because we
22 are a specialized division.
23 And, of course, we are at the

1 top of the list of having
2 surplus judges. I think at this
3 time we have six circuits, and I
4 don't know how many district
5 judges.

6 But the statute does
7 require that when doing this --
8 and it's under subpart -- I
9 think it's 6(c)(3) I think. (As
10 read): "Judicial duties in the
11 district or circuit" -- it's on
12 page three -- "including
13 consideration of those circuits
14 which have specialized
15 divisions."

16 And we have specialized
17 divisions. And on page five of
18 the Act, it says if you take a
19 district judge or a circuit
20 judge, but they cannot render
21 that circuit court or that
22 district court to be within the
23 ten circuits or districts and in

1 most need of a judge or a
2 division thereof. It says, "or
3 a division thereof."

4 So, Jefferson County has,
5 of course, the Bessemer division
6 and the Birmingham division.
7 And we have 12 district judges,
8 but there are three that are
9 assigned to Bessemer, and four
10 circuit judges assigned to
11 Bessemer.

12 And then in the Birmingham
13 division, there is the civil
14 division, the criminal division,
15 the domestic relations division,
16 and the district judges
17 providing district civil as
18 well. Family court has one
19 statutory besides a circuit
20 judge and two district judges.

21 Now, currently if the Act
22 was -- if we were -- if we were
23 reallocating a judge, I have one

1 judge in my district
2 court/family court who is
3 retiring with disability, Judge
4 Carnella Greene Norman is
5 retired in 90 days. There are
6 only two district judges in that
7 particular court.

8 The study says we're over
9 by -- we have a surplus of six
10 district judges, which means
11 that judgeship could be
12 allocated away. If it was, then
13 I only have one district judge
14 in Jefferson County Family
15 Court, which is a high-volume
16 court. That would require me to
17 pull a district judge from
18 another specialized court and
19 put into that one.

20 So -- Now, what I would
21 like -- I've mentioned it to you
22 as well as to Randy -- is for
23 Jefferson County to rank us not

1 as one whole with 20 -- 12
2 circuit judges and 12 district
3 judges but division by division.
4 Some divisions are overloaded.

5 My domestic relations court
6 -- my presiding judge over there
7 says she needs another judge
8 because they're swamped. But
9 maybe in the criminal division
10 -- and I keep -- we have records
11 that we get as to what their
12 caseloads are. I may need
13 judges over there, and maybe
14 they could afford to lose one.
15 But they can't afford to lose
16 one in domestic relations.

17 And so, if we could -- I
18 don't know if it's necessary to
19 do it, because the rule does
20 require you to look at what the
21 reallocation of a judge from a
22 specialized division would do to
23 the circuit. But if we could

1 look at that in Jefferson County
2 where we do have specialized
3 divisions created by statute.
4 And all of the cases are kept up
5 with, division by division. If
6 we could do that for our circuit
7 so that we could know if we're
8 losing a judge from retirement
9 for a particular division, that
10 we could afford to lose that
11 judge to reallocation.

12 JUDGE VERIN: You know, it's also more
13 complicated with that because,
14 with the circuit judges, we
15 don't divide up the Bessemer
16 division and the Birmingham
17 division like we do with the
18 district judges.

19 JUDGE BOOHAKER: Yes.

20 JUDGE VERIN: So, I just don't know
21 what to say.

22 CHIEF JUSTICE STUART: I do believe
23 that that has to be considered

1 pursuant to the statute. When
2 we reach a point where we're
3 doing reallocation, I think it
4 clearly does. I think that's
5 what the statute provides.

6 But at this point in time,
7 there is really not a way to do
8 that beyond what's already been
9 done, and that is in those
10 minutes. They are based on
11 activities and obviously
12 activities in criminal and
13 domestic relations.

14 And so, to a certain
15 extent, it has been considered
16 in that regard. But I think it
17 clearly would have to be
18 reconsidered again if we were
19 actually doing reallocation to
20 determine which division might
21 be able to lose one.

22 JUDGE BOOHAKER: Back in 2000, we were
23 under -- we were being sued by

1 the federal government for
2 overcrowding the jail.

3 And so, we got a new
4 judgeship, that was placed.
5 Judge Vinson serves in that seat
6 now on the criminal division.
7 We had to send Judge Brown over
8 to criminal division to try a
9 case over there and assign a
10 special district judge to serve
11 as special serving judges to
12 hear municipal appeals. We had
13 to get the municipal appeals off
14 of the trial judges so that they
15 could empty the jail.

16 And since then, Judge
17 Brown's seat has been moved back
18 to the civil division. Judge
19 Vinson's seat is still there.
20 Judge Lichtenstein is the
21 special circuit judge is really
22 district judge and has been
23 doing that work since 200. And

1 because he's retiring this year,
2 he was asked: Do you want that
3 seat to go back to civil
4 division or to put Brown on the
5 district. He said: Not really
6 because, if he's not doing that
7 work, the municipal appeals will
8 get to the back burner and those
9 cases will pile up and we will
10 have a big backlog.

11 CHIEF JUSTICE STUART: Mr. Boohaker,
12 let me ask you this: My
13 understanding in Jefferson
14 County is there are a certain
15 number of places that you are
16 elected to a particular
17 division, and then there are
18 others where you, as the
19 presiding judge, make the
20 assignment. How many of each?

21 JUDGE BOOHAKER: Well, the family court
22 circuit judge is, by statute,
23 Judge Summers in the family

1 court. The district judge is by
2 statute. Judge Vinson in the
3 criminal division is by statute.
4 I think there was one that was
5 created in the domestic
6 relations -- We used to just
7 have two domestic relations
8 judges, and then we got a third
9 one by statute.

10 The rest of them I think
11 are moved around by the
12 presiding judge.

13 CHIEF JUSTICE STUART: Okay.

14 JUDGE BOOHAKER: And it's, of course,
15 by statute.

16 So, I can't move a Bessemer
17 judge into Birmingham or a
18 Birmingham judge into the
19 Bessemer division.

20 And Judge Verin knows why,
21 because he was presiding out
22 there. Those judges are swamped
23 out there. They have heavy duty

1 dockets.

2 CHIEF JUSTICE STUART: And I think --
3 you know, Jefferson with the
4 Bessemer division is unique in
5 many, many ways, and I think
6 they would have to be looked at
7 separately. They clearly can't
8 be combined for that purpose.

9 Are there any other
10 questions or comments about the
11 2017 numbers and/or the 2017
12 rank orders? And I guess we're
13 still on circuit. I suppose we
14 should move in a second to
15 district. But let's start with
16 circuit.

17 Any other questions about
18 circuit?

19 JUDGE BOOHAKER: Chief, I only have one
20 comment. Judge Petro is in my
21 criminal division. About a
22 month or so ago, she said that
23 she had gotten her statistics on

1 what was happening in her court.
2 She said it was not right. It
3 was under reported as to what
4 she had been doing. I think she
5 said it showed she only had two
6 or three jury trials, and she
7 said she knew she had more than
8 that.

9 So, I wrote that anecdotal
10 on the study. If we're going to
11 base all of this on data, be
12 sure that the data is correct.

13 CHIEF JUSTICE STUART: Michael and
14 Randy, do you want to check on
15 that, Judge Petro's numbers to
16 be sure they're right?

17 MR. GREGORY: Yes, ma'am. Absolutely.

18 CHIEF JUSTICE STUART: Let's look at
19 the district court caseload.

20 MR. STEPHENS: Could I comment briefly
21 before we leave that?

22 CHIEF JUSTICE STUART: Sure.

23 MR. STEPHENS: I know we all have our

1 own stories to tell. But I am
2 Harold Stephens. I tell people
3 I was born and raised in East
4 LA, and they say you don't sound
5 like you're from California.
6 And I tell them that's because I
7 grew up in Enterprise, Alabama.

8 I started my law practice
9 as assistant U.S. attorney, and
10 I have been in private practice
11 since 1982. I appreciate Judge
12 Reid's comments, and I
13 understand that statistically
14 population growth is not
15 necessarily always translated to
16 caseload.

17 But I will just sort of
18 give you-all a quick picture of
19 Madison County. And the perfect
20 example is the city of Madison.
21 The 1980 census for the city of
22 Madison was 4,000 people. It
23 had maybe one traffic light

1 there. The 1990 census for
2 Madison was 10,000 people. The
3 2000 census for Madison was
4 20,000 people. The 2010 census
5 for Madison was over 40,000
6 people.

7 The Madison Circuit Court,
8 we had six circuit judges when I
9 came there in 1982. We had six
10 circuit judges going back to
11 1977. For those of us who are
12 Alabama fans, you might put it
13 in some perspective. We --
14 Georgia, you know, had won a
15 national championship in the
16 same time period that we got an
17 additional circuit judge, which
18 we got our seventh circuit judge
19 -- We went from 1977 to 2000' and
20 -- I forget exactly -- it's
21 either 2012 or 2014. We went 30
22 or 35 years with no additional
23 circuit judges.

1 So, I mean, obviously, each
2 of us, I guess, you know, views
3 the world from our own
4 geographic perspective to some
5 extent.

6 But, you know, I think if
7 you just look at what has gone
8 on in the Circuit Court of
9 Madison County, it is sort of
10 understandable for where our
11 circuit is.

12 JUDGE BOOHAKER: Look at Limestone
13 County and what's about to
14 happen to it.

15 MR. STEPHENS: Right.

16 CHIEF JUSTICE STUART: It will take
17 off, that's for sure.

18 MR. STEPHENS: Yes.

19 CHIEF JUSTICE STUART: Are you-all
20 ready now to move to the
21 district list? Are there any
22 questions about it?

23 JUDGE WALKER: I guess my only question

1 would be -- and it gets back
2 into the collection of data. I
3 want to also say, well, you're
4 going to be collecting more data
5 so you never can do anything
6 because it hasn't been three
7 years. But I think a lot of the
8 district judges would say that
9 their caseload has been down
10 after the recession due to the
11 layoffs in state troopers.

12 And so, how does this
13 Commission account for assuming
14 that a budget comes back and
15 that the State begins adding
16 state troopers and all of a
17 sudden traffic dockets that have
18 been down for a number of years
19 go back to where they were in
20 2005 and 2004, which, of course,
21 then creates those caseloads to
22 go up.

23 So, do we have a formula

1 that accounts for that, and we
2 can still move forward with the
3 collection of that data, the
4 caseload data?

5 MR. GREGORY: Well, Judge, I think the
6 best way to answer that is that
7 we use what's actually in it.
8 And those traffic citations is
9 the main thing that goes up in
10 the district court. The drop in
11 that -- in the recession is
12 obvious, and the number of files
13 of traffic cases is based on the
14 number of state troopers out
15 there writing citations.

16 I think they just graduated
17 30, which, you know, new
18 troopers and probably seeing
19 more on the road actually, not
20 just sitting in the median but
21 having people pulled over,
22 things like that. We are
23 expecting to see that starting

1 -- it is already starting around
2 us, but we expect to see that
3 number grow some more.

4 But we are relying actually
5 on the filings to do the study.
6 So, that's -- I don't know that
7 we could add another formula to
8 it, but we can look at that.

9 JUDGE WALKER: I just want to make sure
10 that we can collect that data
11 and use that data to move judges
12 around. And then if somebody
13 loses a judgeship, I don't want
14 somebody coming back and filing
15 a lawsuit that says, well, you
16 have to wait three years for
17 revision of data to move a
18 judgeship.

19 And then all of a sudden,
20 we're -- we're kind of --
21 Because of that phrase "revision
22 of data," we're just sort of --
23 kind of caught on that hook to

1 where we can't do anything.

2 JUDGE NEWELL: And I want to mirror
3 what Judge Walker is saying
4 also. If the economy does
5 improve -- one of the things
6 that I think in district court
7 that I've seen -- and I do
8 family court issues as well --
9 when the court costs went up,
10 that coupled with the economy
11 being in a down period, we
12 noticed our filings going down.
13 And we're starting to see things
14 come back. And it's not just
15 traffic court. I think it's
16 going to be across the board,
17 both circuit and district.

18 MR. GREGORY: It is.

19 JUDGE NEWELL: That's another issue to
20 consider.

21 MR. GREGORY: Filings overall have
22 increased. They're going up.
23 They're going back up.

1 JUDGE THOMASON: I have a question. In
2 looking at the district court
3 numbers, it just kind of -- I'm
4 curious -- And, Michael, you may
5 be able to answer this. But it
6 seemed like in an older study,
7 it took into account -- when we
8 looked at the actual caseload
9 study, it took into account the
10 judges that were not performing
11 under their title. District
12 judges are assigned circuit
13 court work, and I see on this
14 study that it's not. I mean, it
15 shows, for instance, in Baldwin
16 County, two full-time district
17 judges and five full-time
18 circuit judges.

19 And it -- when I was
20 president of the District Judges
21 Association and asked the
22 question generally in our
23 meetings, the majority -- large

1 majority of district judges in
2 this state are assigned circuit
3 court work.

4 So, does it -- and this
5 does not take that into account
6 clearly. But I'm trying to
7 think statistically whether or
8 not it matters that it was not.
9 Because I guess this is just
10 saying this is what you need
11 based on the judge types that
12 you have. And if you have
13 exactly what you need, then you
14 shouldn't have to reassign those
15 judges around.

16 But, for instance, in our
17 county -- using us as an example
18 -- it shows two full-time
19 district judges and that we need
20 almost two more. Well, as a
21 district judge, 75 percent of my
22 work is assigned to circuit
23 court and only 25 to district.

1 So, really, looking at
2 this, that would tell the
3 presiding judge that that
4 district judge doesn't need to
5 be assigned any circuit cases or
6 the circuit judge needs to be
7 assigned to district court
8 cases. Do you see what I'm
9 saying? But that's not a
10 reality.

11 And we have chosen how to
12 make it work, but I wonder -- I
13 don't know. I wonder if that
14 factors in to what -- and how we
15 look at whether -- whether or
16 not we really need that, you
17 know, when we're looking at
18 where we really feel like a need
19 is.

20 I mean, I have heard Mobile
21 judges say several times "we
22 don't need anymore judges,
23 period." And they're at the top

1 of the circuit list. We don't
2 want anymore. We're happy the
3 way it is.

4 So, you know, once you kind
5 of figure out your system -- but
6 -- but it just really struck me
7 that that was not -- You know,
8 that that is not accounted for
9 in that column. So, what do you
10 think about that statistically
11 as we're looking at that?

12 MR. GREGORY: Well, I think it is
13 accountable statistically in
14 that column. I know we do
15 account for that. This is a
16 substantially smaller report
17 than we actually produce.

18 JUDGE BOOHAKER: Yeah. It was much
19 longer.

20 MR. GREGORY: It's rather large.

21 CHIEF JUSTICE STUART: You-all may want
22 to look at the whole thing.

23 MR. GREGORY: Right. And we can make

1 that available.

2 CHIEF JUSTICE STUART: We just didn't
3 provide everybody with the
4 entire case study.

5 JUDGE VERIN: I think you were smart to
6 do that.

7 JUDGE BOOHAKER: In Jefferson County,
8 on the circuit court side, it
9 has district court judges FTE on
10 the circuit court. And it's got
11 2.4. I think that means there
12 are 2.4 district judges that are
13 doing circuit work.

14 JUDGE THOMASON: Is that what that
15 means?

16 JUDGE BOOHAKER: I don't know. I'm
17 asking.

18 MR. HELMS: Yes, Judge Thomason.

19 JUDGE BOOHAKER: Then on the district
20 court side -- district court
21 judges assigned to circuit at
22 Jefferson County is 1.4 there.

23 So, why is it 1.4 on the

1 district court side but 2.4 on
2 the circuit court side?

3 MR. HELMS: That was based on -- could
4 I go back and address Judge
5 Thomason?

6 CHIEF JUSTICE STUART: Sure.

7 MR. HELMS: If you will look on your
8 district, Judge, it starts off
9 with a need of 2.82 when you
10 plug in the caseloads. And the
11 next column shows that you're
12 losing .8 percent of a judge
13 because that -- that --

14 JUDGE THOMASON: Start over. It isn't
15 the right column. Are you on
16 circuit or district judge?

17 MR. HELMS: I'm on district.

18 JUDGE THOMASON: Okay.

19 MR. HELMS: You start off with the need
20 of -- I'm on seven. You start
21 off with a need in district of
22 2.82 judges. The next column
23 shows that you're losing

1 .8 percent of a judge to circuit
2 court work. So, that moves your
3 district court need up to 3.62.

4 JUDGE THOMASON: I see it.

5 MR. HELMS: So, that's where it's
6 accounted for.

7 JUDGE THOMASON: I was looking at the
8 1.25 before. That makes sense.

9 So, that's what that's
10 saying is --

11 MR. HELMS: Your need goes up because
12 that district work is being sent
13 to circuit.

14 JUDGE THOMASON: Right. And if that
15 judge was reassigned back to
16 district court, then that need
17 would drop to 2.82.

18 MR. GREGORY: That's right.

19 MR. HELMS: That's correct.

20 JUDGE THOMASON: Okay. It's good to
21 know how to read the chart.

22 CHIEF JUSTICE STUART: This is an idea
23 and something to think about

1 because we're not allowed to
2 reallocate right now. But it
3 has occurred to me in looking at
4 these numbers that we have a
5 fairly large number of circuits
6 that have multiple district
7 judges. And it's occurred to me
8 that we perhaps, in some of
9 those circuits, do not need that
10 many district judges and instead
11 need to either reallocate or
12 recommend to the legislature
13 that they change those positions
14 to circuit positions.

15 And that's just something
16 that I would like for each of
17 you to keep in mind as we go
18 forward and as you look at the
19 numbers to see -- and it will
20 only be in certain circuits.
21 It's not every one in the state,
22 but it does appear to be that
23 there are some where that might

1 be an appropriate remedy for
2 carrying their caseloads.

3 JUDGE THOMASON: And I really
4 appreciate those comments. And
5 I will say that, again, working
6 with a district judge, that was
7 a comment that continued to come
8 up.

9 We have been -- I think you
10 mentioned a moment ago -- a
11 judge for 18 years doing nothing
12 but circuit work, who is only
13 recognized as a district judge,
14 whose retirement is based only
15 on being a district judge. And
16 the salary is obviously not much
17 different. But rather than, you
18 know, moving those judges around
19 the state, those judgeships,
20 reallocating within those
21 jurisdictions I think makes so
22 much more sense.

23 And I think the district

1 judges would be completely on
2 board with that and very
3 appreciative of them recognizing
4 the work that they are doing.

5 JUDGE BOOHAKER: I think about Judge
6 Wiggins. And I think he's in
7 the 8th Circuit in five
8 counties. I think there are
9 three circuit judges that works
10 all five counties.

11 But each county gets a
12 district judge. That was done
13 -- As I recall the history of
14 it, Heflin did that to get it
15 through the Legislature. It
16 wasn't based on need. It was
17 based on politics.

18 And so, we have some rural
19 areas with district judges who
20 are in those counties with low
21 populations. I don't know what
22 their workload is, but it seems
23 like it would make a lot more

1 sense to make one of them a
2 circuit judge and let them ride
3 the circuit with the other
4 circuit judges.

5 MR. REID: Well, I will share this for
6 what it's worth. When this
7 started, it was -- the first
8 promotion was, let's do away
9 with the distinction between
10 circuit judges and district
11 judges. Let's make everybody a
12 circuit judge and let the
13 presiding judge do the docket
14 assignment list.

15 Well, that quickly proved
16 to be a bridge too far. We had
17 to regroup and drop that. But I
18 would love to go back and
19 revisit that at some point. It
20 would be a good idea to do that.

21 JUDGE VERIN: That's what California
22 does and other states too. But,
23 yeah.

1 JUDGE THOMASON: I think what the Chief
2 is suggesting is a good -- at
3 least a partial step down that
4 path in reallocating just in
5 those jurisdictions where one of
6 these pages shows one thing and
7 the other page shows something
8 different. I think that's a
9 good way to at least get closer
10 to that.

11 MR. STEPHENS: Is that going to require
12 an act of the legislature or
13 judicial article?

14 MR. REID: It would require an act of
15 legislature. Possibly it would
16 require a constitutional
17 amendment.

18 CHIEF JUSTICE STUART: If you were
19 going to eliminate a district
20 judgeship in a county, I think
21 it would require a
22 constitutional amendment.

23 MR. GREGORY: I think it will. I think

1 it requires that they be within
2 a certain proximity of the
3 jurisdiction of the county.

4 CHIEF JUSTICE STUART: Which is the
5 reason that I basically
6 suggested it for the circuits
7 that had multiple district
8 judges. I mean, there are some
9 counties -- other than huge,
10 like Jefferson. But some of the
11 moderate size counties that have
12 four district judges. And I'm
13 sorry. Having been a district
14 judge and a circuit judge, I
15 don't believe there is enough
16 district work for it. I just
17 don't.

18 So, again, we can't take
19 any action to reallocate them.
20 I'm not sure that was even the
21 intended purpose of this
22 Commission; and yet, I think it
23 might serve the State well. I

1 wonder if anyone would like to
2 move that we recommend that to
3 the Legislature at least for
4 consideration.

5 MR. REID: Can you restate the motion
6 or proposal, Chief?

7 CHIEF JUSTICE STUART: Sure. I guess a
8 recommendation that the
9 Legislature consider -- in some
10 circuits where there are
11 multiple district judges --
12 changing one or more of those
13 district judgeships into a
14 circuit judgeship.

15 JUDGE THOMASON: I certainly will make
16 that motion.

17 CHIEF JUSTICE STUART: Is there a
18 second?

19 JUDGE BOOHAKER: I second.

20 CHIEF JUSTICE STUART: Judge Boohaker
21 seconded. Is there any further
22 discussion on that motion?

23 MR. REID: I would not interfere with

1 this motion. I would go further
2 to say make them all circuit,
3 but I'm not going to open than
4 can of worms and leave it like
5 it is.

6 JUDGE THOMASON: I wonder if based on
7 what we're -- we have some time
8 with the three-year mark. But
9 won't this have a big impact on
10 how to reallocate when we get to
11 that mark?

12 CHIEF JUSTICE STUART: It certainly
13 would. And this is something
14 that actually -- if the
15 Legislature chose to do so, they
16 could. They can act on it. I
17 mean, they can act on anything
18 if they choose to do so.

19 JUDGE THOMASON: If they acted quickly,
20 that would give us better
21 numbers to work with when we're
22 at that three-year mark.

23 CHIEF JUSTICE STUART: Yeah. We're

1 already in the 2018 election
2 cycle. So, it couldn't happen
3 until 2020. But it would give
4 them plenty of time if they
5 chose to do that, to consider
6 some of those changes.

7 JUDGE BOOHAKER: And basically we're
8 doing it by administrative
9 order.

10 MR. GREGORY: Right.

11 JUDGE BOOHAKER: And now almost on an
12 ad hoc basis to make district
13 judges circuit judges. Why not
14 formalize it by statute?

15 MR. REID: And Jim Hill -- you've seen
16 the newest legislation?

17 CHIEF JUSTICE STUART: I did.

18 MR. REID: He is getting the presiding
19 judge much more teeth to do
20 that, to transfer people around.

21 CHIEF JUSTICE STUART: Let's get a vote
22 on the motion then. All in
23 favor say, aye.

1 (All members vote in favor of
2 the pending motion.)

3 CHIEF JUSTICE STUART: Any opposed, no?

4 (No response.)

5 CHIEF JUSTICE STUART: All right. That
6 motion carries then. That will
7 be a recommendation to the
8 Legislature.

9 Is there any further
10 discussion on the ranking of the
11 counties by need?

12 Let's do circuit first.

13 Any other questions about
14 circuit need?

15 JUDGE BOOHAKER: Only in our circuit --
16 my domestic relations judge says
17 she needs another judge. So, I
18 went to the civil division
19 judges and asked for volunteers
20 and they said, oh, no, they're
21 not going to. So, it's a mix in
22 our circuit.

23 CHIEF JUSTICE STUART: It is. I

1 think, though, that Judge
2 Hill's -- and it's been dropped.
3 That bill has been dropped. I
4 talked to him yesterday. It is
5 officially before the
6 Legislature, and he anticipates
7 that, in all likelihood, it will
8 be passed.

9 It won't simply be an
10 option that a presiding circuit
11 judge has. It will really be a
12 directive of the circuit judge
13 to reassign judges, whether
14 they're district or circuit, to
15 the appropriate types of cases
16 or caseloads.

17 JUDGE THOMASON: Whether they want to
18 or not.

19 CHIEF JUSTICE STUART: Yeah, whether
20 they want to or not. I guess
21 that helps a little bit. It
22 just won't be optional anymore
23 on the part of the presiding

1 circuit judges or on the part of
2 the judges being reassigned.

3 JUDGE WALKER: Chief Justice, I know
4 it's a little off topic, but we
5 had that same problem with the
6 family court having too much.
7 And so, now all of the both
8 district judges and other two
9 circuit judges simply take
10 15 percent of the contested
11 divorces and also pull back all
12 of the uncontested divorces and
13 they were assigned to the
14 district court.

15 Now, you know, they all --
16 we all came along and did it,
17 and I was presiding when it was
18 done. It's extremely unpopular,
19 but those are the types of
20 things that --

21 JUDGE BOOHAKER: You have to do it.

22 JUDGE WALKER: -- you have to do. And
23 just removing the uncontested

1 divorces, you know, that frees
2 up a lot of time just right
3 there.

4 JUDGE BOOHAKER: Sure.

5 JUDGE THOMASON: And, Jacob, I think
6 that that is probably the reason
7 that most of the district judges
8 are doing circuit work. That's
9 what they're doing, family
10 court. Throughout the state, I
11 think that's what we're seeing
12 consistently.

13 JUDGE BOOHAKER: In Bessemer, we're
14 doing that. One of the district
15 judges had so much on the
16 domestic relations docket,
17 that's what they did.

18 JUDGE WALKER: So, you may just have to
19 go back to them again.

20 CHIEF JUSTICE STUART: If there are no
21 questions about the ranking for
22 circuit court implied need, the
23 Chair would entertain a motion

1 to adopt this ranking and submit
2 it to the Governor and to the
3 Legislature.

4 MR. STEPHENS: So moved.

5 CHIEF JUSTICE STUART: Is there a
6 second?

7 JUDGE CARTER: Second.

8 CHIEF JUSTICE STUART: Any further
9 discussion?

10 (No response.)

11 CHIEF JUSTICE STUART: All those in
12 favor, say aye?

13 (All members vote in favor of
14 the pending motion.)

15 CHIEF JUSTICE STUART: Any opposed, no?

16 (No response.)

17 CHIEF JUSTICE STUART: All right. That
18 motion carries then.

19 We will move now to the
20 District Court Judicial Weighted
21 Caseload and the ranking
22 thereof. Are there any other
23 questions as to it?

1 (No response.)

2 CHIEF JUSTICE STUART: And the Chair
3 would entertain a motion to
4 adopt the rankings for District
5 Court Judicial Weighted Caseload
6 Rankings.

7 JUDGE WALKER: So moved.

8 CHIEF JUSTICE STUART: Is there a
9 second?

10 MR. REID: I will second.

11 CHIEF JUSTICE STUART: All right. Any
12 further discussion?

13 (No response.)

14 CHIEF JUSTICE STUART: All those in
15 favor, say aye.

16 (All members vote in favor of
17 the pending motion.)

18 CHIEF JUSTICE STUART: Any opposed, no?

19 (No response.)

20 CHIEF JUSTICE STUART: The motion
21 carries.

22 We now have accomplished
23 our mandated responsibilities

1 that can be accomplished today
2 pursuant to the statute. But I
3 do think that we need to perhaps
4 think outside of the box, and
5 there has been a lot of
6 discussion that has really been
7 outside of the box today.

8 But is there any one
9 item -- one or more items that
10 anyone would like to suggest as
11 a recommendation to make to the
12 Governor and Legislature.

13 MR. REID: Well, I would like to just
14 follow up with what I said
15 earlier. I would like to see
16 the Governor and the Legislature
17 consider making all judges
18 circuit judges and allow the
19 presiding judge to make docket
20 assignments based on the needs
21 of the circuits. And I would
22 make that recommendation.

23 CHIEF JUSTICE STUART: The

1 recommendation is to make
2 everybody a circuit judge. Is
3 that the motion?

4 MR. REID: Yeah.

5 CHIEF JUSTICE STUART: Is there a
6 second to that motion?

7 MR. TAYLOR: So that I understand the
8 recommendation, are we talking
9 about eliminating the statutory
10 jurisdictional limits and doing
11 away with district court?

12 MR. REID: No. If you did that, you
13 would have to do more
14 legislation because the statute
15 provides that some cases have to
16 begin in district court. Judge
17 Walker, as presiding judge, was
18 just assigned a judge to handle
19 that docket.

20 JUDGE WALKER: Judge Hughes now.

21 MR. REID: Well, Judge Hughes. You
22 could still appeal to circuit
23 court, the case. It just makes

1 everybody's title "circuit
2 judge" as opposed to district
3 judge with the presiding judge
4 making the docket assignments.

5 JUDGE BOOHAKER: I have a question on
6 that. In a multi-county circuit
7 where the district judge is only
8 elected in their individual
9 counties, if you were to make
10 that district judge from a
11 particular county be the circuit
12 judge for the circuit, would
13 they have jurisdiction to go
14 outside of their county to
15 adjudicate a case?

16 MR. REID: Yes, you would.

17 MR. GREGORY: It would take an order
18 from the presiding judge, an
19 order.

20 CHIEF JUSTICE STUART: This is actually
21 to change the law and make
22 everybody a circuit judge.

23 So, this would take

1 actually a constitutional
2 amendment.

3 JUDGE BOOHAKER: Constitutional
4 amendment.

5 MR. REID: And obviously someone would
6 have to take all of the statutes
7 and look at them to see how the
8 constitutional amendment would
9 effect each statute. And it
10 might require some tweaking.

11 JUDGE BOOHAKER: It would require
12 district judges in a
13 multi-county circuit to run in
14 all of the counties of the
15 circuit.

16 MR. REID: For instance, let's take
17 Clark, Washington and Choctaw.
18 Washington County may have very
19 few cases compared to Choctaw.
20 So, let the judge from
21 Washington go to Choctaw and try
22 cases. Why just let him be in
23 just Washington County? It's

1 just not efficient.

2 JUDGE VERIN: You know, the reason why
3 I opposed the motion was because
4 when the idea was brought up in
5 court with the Association
6 meeting, there was a serious
7 push back.

8 And to just make a motion
9 just like this to the Governor,
10 you know, directly, I think it's
11 premature. I think it needs to
12 be studied more. There are a
13 lot of ramifications for that.
14 And for something that
15 important, I think that the
16 members of the Association
17 should be notified and get their
18 input as well.

19 JUDGE BOOHAKER: Well, we're about to
20 meet next week. We can put it
21 on the agenda for the
22 Association meeting.

23 JUDGE VERIN: You want me to tell you

1 what I think is going to happen?

2 JUDGE BOOHAKER: Well, you don't know
3 until you ask.

4 MR. REID: I will certainly be happy to
5 withdraw my motion and let
6 you-all report back what your
7 Association is saying. I know
8 it's something sensitive, and
9 there has to be a lot of
10 discussion about it.

11 JUDGE WALKER: I think the Bar also
12 needs input because I think --
13 you know, if you're a civil
14 litigator in Jefferson County,
15 then when it comes to the
16 election of judges, you're
17 really only going to be
18 interested in those who are
19 running for the civil bench.

20 JUDGE BOOHAKER: Right.

21 JUDGE WALKER: And so, I think they
22 like that when it comes to those
23 elections. Now, say, you know,

1 they need to be interested in
2 every election as far as
3 recruitment of candidates and
4 those types of things. It just
5 brings a whole new dynamic which
6 I think the Bar needs to have
7 some input on.

8 JUDGE BOOHAKER: Well, the bench a lot
9 of times reflects the bar. You
10 have a specialized bar in
11 Birmingham, a specialized bench
12 in Birmingham.

13 JUDGE WALKER: So, those doing criminal
14 defense practice, they're just
15 kind of looking over at those
16 judges and not looking at
17 everybody across the gamut.

18 JUDGE BOOHAKER: That's right.

19 CHIEF JUSTICE STUART: So, do you want
20 to withdraw your motion or do
21 you want to vote on it? Or you
22 can table it.

23 MR. REID: We can table it. I just

1 wanted to put it out for
2 discussion. I know what a
3 difficult political issue it is.

4 JUDGE BOOHAKER: Well, I am on the
5 state committee with the Circuit
6 Judges Association. I will
7 certainly raise it there and at
8 the -- for the Association
9 meeting.

10 CHIEF JUSTICE STUART: And if you-all
11 would raise it at the district
12 judges meeting. My
13 understanding is that that's
14 where most of the opposition
15 came from.

16 JUDGE NEWELL: It is. And I would
17 anticipate that it would again
18 because here is the issue that
19 you bring up. I'm a multi-
20 county circuit. I'm up for
21 reelection. I'm only worried
22 about Winston County. Under the
23 judge's proposal, all of a

1 sudden, I have to go start
2 networking in Marion County, a
3 county that I have no connection
4 with, if I want to keep my job
5 and put my girls through school.

6 So, I'm going to be in
7 Marion County. That's going to
8 be the pushback and the expense.

9 JUDGE BOOHAKER: Yeah. It's expensive.

10 MR. REID: Let me just say one more
11 thing.

12 CHIEF JUSTICE STUART: Sure.

13 MR. REID: For the non-judges who don't
14 get into the nitty-gritty of all
15 of this that we're talking
16 about, I was -- I served on the
17 bench for 24 years. I was
18 presiding judge for 17 years. I
19 knew the struggles and
20 weaknesses of every judge in our
21 county. I knew who would be
22 acceptable as a circuit judge to
23 try important medical

1 malpractice cases, and I knew
2 who should be trying traffic
3 cases. So, I felt like as an
4 elected presiding judge, I could
5 make those assignments
6 appropriately.

7 So, that's the reason that
8 I'm proposing to do something
9 like this. You just have to
10 trust the bench to be able to do
11 that, and I think we could.

12 Michelle was one of those
13 people who was elected district
14 judge. She should -- and said
15 that her love was domestic
16 relations. And so, I said
17 great. We will make you a
18 domestic relations judge. You
19 will be a district judge, but
20 you will act as a circuit judge,
21 and she has for the whole time
22 that she's been on the bench.

23 And if you hadn't thought

1 outside of the box, that would
2 have never happened, and you
3 would have lost a lot of
4 efficiencies that we gained by
5 Michelle doing domestic
6 relations.

7 JUDGE THOMASON: And I think, Michael,
8 the way we will have to try to
9 present it -- because you make a
10 valid point. We're going to be
11 looking at judges in your
12 situation who are going to
13 likely oppose it. Judges in,
14 for instance, my type
15 jurisdiction are going to be in
16 favor of it. But in the end,
17 almost all of the judges are
18 doing circuit work and they are
19 complaining.

20 You know, we love doing the
21 work, but give us the same
22 benefits if we're a circuit
23 judge. But then, at the same

1 time, they're like, well, I
2 don't really want to be a
3 circuit judge on that part
4 because I don't want to have to
5 run.

6 So, it's a balance.

7 They're going to have to decide
8 what's more important to them if
9 they want to -- if they want to
10 stay a district judge by title
11 for those political balances,
12 but understanding that they
13 don't get retirement -- they
14 don't get the same retirement,
15 they don't get the income, they
16 don't get the circuit judge
17 status, then -- then if that's
18 the majority rule, that's what
19 we will present back to this
20 Commission.

21 But I think that the
22 district judges really need to
23 weigh that. Those are the two

1 sides of that coin. And it just
2 depends on what they feel like
3 is -- which way that scale tips.

4 So -- but I know politics
5 are -- especially right now I
6 understand how that all works.

7 JUDGE VERIN: That's another point too.
8 2018. It's not a great year to
9 propose stuff.

10 And just to let everybody
11 know, I thought -- and I still
12 think that the idea of all of
13 the judges being on one level is
14 the best way to do it. To me,
15 that solves it -- and then
16 assign them. But -- but, again,
17 there was a lot of pushback to
18 that. So...

19 MR. REID: And I move to table my
20 motion.

21 CHIEF JUSTICE STUART: All right.

22 JUDGE THOMASON: And one thing too -- I
23 know we're only meeting, like,

1 once a year, but this
2 legislation was passed, and what
3 helped it to pass is this
4 three-year transition. And
5 something like that could be the
6 same.

7 So, you're talking about
8 not having contacts in Marion
9 County. But if you knew this
10 was coming down the pipe in
11 three to five years, then that
12 might be more palatable to the
13 district judges to know that
14 they --

15 JUDGE NEWELL: It's possible.

16 JUDGE THOMASON: And decide how they
17 want to run, what position they
18 want to run for if that's the
19 way it was. That's something
20 that may be, you know, a way to
21 present it.

22 CHIEF JUSTICE STUART: One other -- it
23 is simply a comment. You know,

1 the Legislature last year, in
2 their 2017 regular session, saw
3 so many bills being dropped that
4 effected it judicially that they
5 resolved that the Alabama Law
6 Institute establish a committee
7 to study the entire judicial
8 article, Article VI, of the
9 Constitution.

10 I happen to serve on that
11 committee. That committee has
12 been working for, you know,
13 months and months now. I think
14 it's pretty well determined that
15 we won't reach a conclusion or a
16 report until after this regular
17 session with the Legislature.
18 There is just too many issues
19 involved, but that is one of the
20 issues that is being considered.

21 So, there may be a
22 recommendation coming like that.

23 Does anyone have any

1 further comments about Judge Jim
2 Hill's -- and I should have said
3 Representative Jim Hill's
4 proposed legislation?

5 We had a few comments
6 earlier, but I wanted to know if
7 anyone else wanted to comment.

8 JUDGE VERIN: Just that I was favorable
9 to it. But that's not really
10 just codifying -- the circuit --
11 I mean, the presiding judge's
12 authority anyway. Don't they
13 have the authority pursuant to
14 the Administrative Rule to go
15 ahead and assign cases the way
16 that they see fit?

17 JUDGE BOOHAKER: The Administrative
18 Procedure Rule is very broad as
19 to presiding judges.

20 JUDGE VERIN: Yeah. That's what I
21 mean.

22 CHIEF JUSTICE STUART: I believe
23 Representative Hill's intent is

1 to essentially make this a
2 directive, that the presiding
3 circuit judge shall do this.
4 And it also would make clear
5 that whatever judge, circuit/
6 district, or whatever, would
7 accept whatever assignment and
8 just do it regardless if they
9 were a district judge being
10 asked to do circuit work or the
11 reversed, a circuit judge asked
12 to do small claims.

13 JUDGE BOOHAKER: I think what it does
14 is impowers the presiding judge
15 to try to resolve the workload
16 issues within the circuit or
17 district before they come out
18 and come see you or the AOC to
19 find another judge.

20 JUDGE NEWELL: But isn't there a
21 provision in here too that a
22 judge can be assigned to another
23 circuit?

1 CHIEF JUSTICE STUART: They actually
2 would allow me to assign them to
3 another circuit.

4 JUDGE NEWELL: Right. And, Chief, one
5 of my concerns is: Let's say
6 you have a need in another
7 circuit. It's a legitimate
8 need. It's a real need, and
9 it's a long-term need. And you
10 assign a judge that you feel is
11 qualified to go and handle that
12 need, but yet their
13 constituency, wherever they are
14 elected from, starts to get
15 frustrated because we can't ever
16 find you because you're over
17 wherever you're at. And how
18 would we address that? Because
19 that's a real concern because we
20 can't do any good if we're not
21 in office.

22 JUDGE BOOHAKER: Judge Cobb believed in
23 sending us around the state and

1 filling in where there were
2 shortages. So, a lot of
3 Jefferson County judges went to
4 Madison County for a while. And
5 we did it so much that the
6 Madison County lawyers started
7 to resent the fact that we were
8 coming to their courthouse and
9 deciding their cases.

10 JUDGE VERIN: They weren't the only
11 ones.

12 MR. STEPHENS: Well, the flip -- and I
13 will speak for Madison County
14 citizens. The flip to your
15 point too, though, Judge, is --
16 and nothing personal. All of us
17 candidly did appreciate the
18 help.

19 But the flip side is too,
20 if you're the citizens of
21 Madison County, now cases are
22 being decided -- important cases
23 that may affect your business,

1 your family, your children, your
2 schools -- by judges that you
3 didn't get to elect but
4 everybody else in the state gets
5 to elect.

6 JUDGE BOOHAKER: I mean, I --

7 MR. STEPHENS: It never got to that
8 point. But in my mind, I mean,
9 I think there is sort of equal
10 protection --

11 JUDGE BOOHAKER: It just never got to
12 that.

13 MR. STEPHENS: Well, and really, I
14 mean, it was a tremendous help,
15 Judge, in all candor.

16 JUDGE BOOHAKER: Glad to come. But
17 like you say, at some point if
18 you keep doing it, it will get
19 to that point where that judge
20 is not one of ours. We didn't
21 elect him.

22 MR. STEPHENS: That is true.

23 CHIEF JUSTICE STUART: That's actually

1 a point that Justice Patti Smith
2 brought to me a number of years
3 ago when she was actually
4 serving on the Supreme Court.

5 And she just said: Well,
6 it's not an absolute right. She
7 thought it was appropriate that
8 the people in the particular
9 county or circuit have judges
10 that they elected and who
11 resided in that circuit or
12 district deciding their cases.

13 JUDGE BOOHAKER: That's a statutory
14 requirement that you have to
15 live in the district where
16 you're elected.

17 CHIEF JUSTICE STUART: There is
18 validity to that point.

19 JUDGE NEWELL: Right.

20 CHIEF JUSTICE STUART: So, that's
21 definitely a consideration.

22 We also provided you with
23 -- This is under tab nine. This

1 is just a synopsis look at the
2 state-wide filings and where
3 they're going. You know, we had
4 some pretty steep drop-offs over
5 the years and then sort of a
6 leveling out. It does look like
7 at least in some of the
8 categories we have got them up
9 in the number of filings.

10 I also thought antidotally
11 on the civil side that it was
12 about the economy. So, maybe
13 now that the economy is turning
14 back up, that's changing things.

15 JUDGE BOOHAKER: It sure dropped in
16 2013, didn't it? The total
17 filings and everything dropped
18 over a million down on 897, then
19 741, 805.

20 CHIEF JUSTICE STUART: And where we
21 have, you know, calculated
22 those, as traditionally done
23 over a five-year period, there

1 were years where the percentages
2 just were shocking. Now that
3 some of these older years have
4 dropped off, it doesn't look
5 quite as drastic. But to get a
6 big picture, you have to look at
7 the length of time because there
8 has been such a curve as far as
9 that.

10 JUDGE BOOHAKER: We had about a 500
11 piece pick up in circuit/civil
12 this year.

13 CHIEF JUSTICE STUART: Which is
14 substantial.

15 MR. REID: Well, it is comforting to
16 know that circuit/criminal has
17 gotten back up to its historical
18 mark.

19 JUDGE THOMASON: Is Representative Hill
20 expecting any comments or
21 recommendations from this
22 Commission on his new bill?

23 CHIEF JUSTICE STUART: I asked his

1 permission to send it to y'all
2 in advance of this meeting and
3 to make it a part of our packet
4 here. I am sure he would love
5 to have some comments. They
6 don't have to be official
7 comments.

8 You know, I'm sure that he
9 -- I know that he will read a
10 copy of this transcript. So, he
11 will know what's been said. And
12 if there is anything you want to
13 say so that he can read it,
14 please feel free to do so.

15 But if you also want to
16 speak to him -- I'm not sure
17 he's going to be at the
18 circuit/district judge's meeting
19 next week. He's had back
20 surgery. But he will be happy
21 to take a telephone call from
22 you at any time if you have a
23 question or a comment. I know

1 that he will be happy to do
2 that.

3 JUDGE THOMASON: It's just wonderful
4 having him there. And he has
5 been so accessible to us. He
6 really considers our needs. We
7 need more coming from the
8 judicial side.

9 JUDGE VERIN: We do need more retired
10 judges to do that. But not me
11 though.

12 CHIEF JUSTICE STUART: Since you said
13 that, I will make this comment.
14 If we didn't have our retired
15 judges hearing cases in all of
16 our circuit and district courts
17 across the state, we couldn't do
18 it.

19 There is a need, I think,
20 from the judge's perspective for
21 more judges to go to the
22 legislature so that we'll have a
23 little more input.

1 JUDGE NEWELL: Chief, could we maybe
2 put forth a proposal or a
3 recommendation to the
4 Governor -- I think Judge Carter
5 and I -- and we were just
6 talking on the way down. But if
7 there was like a stop-in to
8 encourage retired judges who
9 would still like to hear cases
10 but for whatever reason really
11 see no incentive presently to
12 draw -- Because there is a
13 wealth of talent out there. And
14 there's a bunch of people that
15 would probably like to serve,
16 but they're just not because
17 they're finally enjoying
18 retirement.

19 Could we send or maybe
20 discuss a little bit about if
21 that is something we even want
22 to do, if we want to talk about
23 it?

1 CHIEF JUSTICE STUART: Yeah. I think
2 that's an excellent suggestion.
3 Do you want to make that in the
4 form of a recommendation? Can
5 you state --

6 JUDGE NEWELL: Yes, ma'am. Just to put
7 forth a proposal to look at the
8 possibility of recalling some
9 retired judges or providing some
10 type of incentive for them to
11 come back and start hearing some
12 cases?

13 JUDGE BOOHAKER: I will second that.
14 And I have a little discussion
15 on it too.

16 CHIEF JUSTICE STUART: Yeah.

17 JUDGE BOOHAKER: Judge Stephens had
18 asked Judge Ferguson to come
19 back and serve to help clean up
20 the workload. He said he would
21 be glad to, but he said, "Can
22 you give me some staff? We
23 don't have money for staff."

1 And so, he said, "Well,
2 without staff, a secretary, or
3 somebody, I can't do it."

4 So, I mean, he's willing to
5 come back just with retirement
6 money without being paid
7 anything else, but they would
8 need a JA, a bailiff, or
9 somebody to help them. If the
10 Legislature could do that, it
11 would save the cost of a whole
12 other judge.

13 JUDGE THOMASON: And we -- Judge Reid
14 is just so good about coming
15 back. Judge Parton, Judge
16 Kittrell from Mobile will come
17 over and help us. And the
18 staffing issue is -- you're
19 right. That's difficult. Even
20 if you have judges that will do
21 it without compensation -- you
22 know, an extra court reporter or
23 finding a JA to go into the

1 courtroom with him.

2 JUDGE NEWELL: I know the e-filing is
3 an issue now. A bunch of these
4 judges are going to be
5 unfamiliar with the e-filing
6 system. A JA, who know how to
7 do that, can make your life so
8 much better.

9 JUDGE THOMASON: So, to include a
10 provision for maybe temporary
11 staff or staff during that, you
12 know, that is certainly --

13 MR. TAYLOR: Or you might be able to
14 add a budget line item for the
15 courts to allow the Chief
16 Justice or some designee to
17 decide how to -- not a slush
18 fund but a pot of money to hire
19 temporary staff that would
20 already be in place.

21 CHIEF JUSTICE STUART: That would be
22 great, and we would certainly
23 love to see that line item.

1 MR. TAYLOR: I do not speak for the
2 Governor in that.

3 CHIEF JUSTICE STUART: Oh, I know.

4 MR. TAYLOR: I'm just suggesting that
5 that might be one way to
6 approach it.

7 CHIEF JUSTICE STUART: Any other
8 discussion?

9 MR. REID: And along that same line,
10 maybe just to request some of
11 the expenses. For instance, a
12 judge has to drive from Gulf
13 Shores to Bay Minette to hear a
14 case and then back home, which
15 is probably over 100-miles that
16 he has to pay his own gas. And
17 if you just gave him some gas
18 money, he would probably be --

19 JUDGE VERIN: It helps.

20 MR. REID: If he didn't have to pay
21 money out of his pocket to try
22 cases, he would be glad to hear
23 them. It's just a few little

1 things like that.

2 JUDGE NEWELL: Common sense solutions.

3 CHIEF JUSTICE STUART: Any other
4 discussion?

5 (No response.)

6 CHIEF JUSTICE STUART: All those in
7 favor of this recommendation
8 being made to the Governor and
9 the Legislature, please say
10 "aye."

11 (All members vote in favor of
12 the pending motion.)

13 CHIEF JUSTICE STUART: Any opposed?

14 (No response.)

15 CHIEF JUSTICE STUART: So, that
16 recommendation passes as well.

17 Are there any other issues
18 that we would like to discuss?

19 JUDGE BOOHAKER: Well, there is some,
20 but I don't think it's germane
21 to this committee.

22 CHIEF JUSTICE STUART: The statute
23 provides that we should meet at

1 least once annually. Does
2 anyone see any need at this
3 point in time for us to meet
4 more than once annually?

5 Because, of course, we're in
6 that transitional period where
7 we can't actually make any
8 reallocations.

9 JUDGE BOOHAKER: I'll just ask a
10 logistical question. If, after
11 three years, an issue comes up
12 to reallocate or not, how does
13 that work as far as the timeline
14 of the person retiring and me
15 making the decision to allocate
16 or not to reallocate?

17 That's something that if a
18 judge is retired, and they're
19 not doing work anymore and their
20 docket is piling up, what is the
21 timeline between the time that
22 that judge retired --

23 CHIEF JUSTICE STUART: It says we have

1 30 days. 30 days.

2 JUDGE BOOHAKER: In our circuit, the
3 circuit judge would have to go
4 through the judicial commission
5 and then all of that before you
6 get their name to the Governor,
7 and that takes some time, you
8 know.

9 JUDGE WALKER: Chief, I will suggest --
10 it would be helpful for me at
11 least to have a better
12 understanding of the data. And
13 if we came back a year from now,
14 I think that would kind of have
15 to be a total re-educational
16 process. So, we need to be able
17 to defend our decision and --

18 JUDGE BOOHAKER: Sure.

19 JUDGE WALKER: And in order to defend
20 our decision, we really need to
21 -- I don't know if that means
22 Michael trying to teach us some
23 statistics or what. But that

1 may be what --

2 CHIEF JUSTICE STUART: Would you like
3 for me to schedule another
4 meeting in about six months, and
5 the purpose of that meeting will
6 be to dig deeper into the data
7 on the basis of the numbers and
8 the rankings so that we will
9 know going forward?

10 JUDGE WALKER: Yes.

11 CHIEF JUSTICE STUART: All right.

12 Well, I will try to schedule
13 that. I just wanted to see what
14 your pleasure was in that
15 regard.

16 We can meet as many times
17 throughout the year as we need
18 to. At some point in time, once
19 we move into the reallocation
20 stage, when there are vacancies,
21 we are going to have to meet and
22 decide whether to reallocate or
23 not.

1 MR. REID: And in the meantime, if
2 Michael could send out something
3 for simple people to review that
4 kind of explains how we got to
5 this information. Just send it
6 out by email. That would be
7 very helpful to me to understand
8 where we are.

9 I was part of that earlier
10 study, but I wasn't a part of
11 the second one. So, I'm not
12 conversant with that.

13 JUDGE COLLINS: Chief, I have a
14 question as it relates to the
15 reassignment bill, the --
16 Representative Hill's bill. If
17 that passes, would that somehow
18 affect the data and then, in
19 turn, affect our decision or
20 allocation?

21 CHIEF JUSTICE STUART: It potentially
22 would be picked up whenever it
23 became effective. Let's say it

1 became effective late 2018. It
2 probably wouldn't affect the
3 2018 numbers. It probably would
4 begin to affect the numbers in
5 2019. And, yes, that's the
6 reason we would have to look at
7 those.

8 JUDGE COLLINS: That's something to
9 look at.

10 CHIEF JUSTICE STUART: We definitely
11 would have to somehow figure out
12 how that would play.

13 MR. REID: Can I ask a question,
14 Michael?

15 MR. GREGORY: Yes.

16 MR. REID: Question: For instance, say
17 I'm called to go to Bay Minette
18 and try a case for a sitting
19 circuit judge because he has an
20 overflow docket. Who is that
21 counted for? Is that counted
22 for that sitting judge? Does he
23 get the benefit of that case

1 being tried?

2 MR. GREGORY: Well, actually, Judge,
3 your judge initials go on that
4 case. So, those are allocated
5 to whoever is hearing the case.

6 I mean, if you are hearing
7 the whole docket -- is that what
8 you're saying?

9 MR. REID: Well, it could be a whole
10 docket or one case.

11 MR. GREGORY: Like drug court or
12 something like that?

13 MR. REID: Yeah.

14 MR. GREGORY: Right.

15 MR. REID: Would that affect the
16 numbers?

17 MR. HELMS: No, it won't.

18 MR. GREGORY: It won't affect the
19 numbers.

20 JUDGE WALKER: Chief, I have a
21 question. It goes back to our
22 motion to pass and take a
23 multi-circuit district judge and

1 taking one of them to then be a
2 circuit judge. I guess the
3 question is: Who is the lucky
4 one?

5 And so -- and so, do we
6 have to go back and revisit that
7 to say will that be based upon
8 the county in that circuit with
9 the lowest population or the
10 county in the circuit with the
11 lowest caseload? Who is going
12 to be -- So, looking at the
13 Fifth Circuit, which is north of
14 me, would that be the district
15 judge of Randolph County versus
16 the district judge in Tallapoosa
17 County? So, which one -- so,
18 how --

19 CHIEF JUSTICE STUART: Really I thought
20 what we recommended -- I thought
21 we stayed away from that --
22 where it was going to affect a
23 single district judge in a

1 particular county.

2 Instead the recommendation
3 is to look at those circuits
4 that have multiple district
5 judges. We have a large number
6 that have two, quite a few that
7 have three, and some that have
8 four. And obviously, you know,
9 you have some that have even
10 more than that.

11 But to look at those -- I'm
12 not sure at this point in time
13 whether that's a step that we
14 could take. But if it were, it
15 would be out in the future. It
16 is certainly something that the
17 Legislature could do, and I
18 guess they would decide.

19 One thing, though, that is
20 clear from this particular
21 statute is that you can't cut
22 short anyone's service in the
23 particular office that they've

1 been elected to. So, in all
2 likelihood, you know, it would
3 have to occur at the end of a
4 term.

5 And, you know, most local
6 things like that are negotiated
7 local, and the agreement is
8 reached, and then the
9 Legislature passes whatever that
10 circuit wants to do.

11 JUDGE BOOHAKER: Well, it's always an
12 issue with this about supply and
13 demand. The demand is now for
14 another circuit judge, but one
15 is not available until somebody
16 dies or retires. By the time
17 you get to that point to
18 reallocate, the demand is still
19 there for a judge to be
20 supplied. And I don't know how
21 that works out exactly. You
22 have to revisit the demand.

23 CHIEF JUSTICE STUART: Yeah. We would

1 have to look at it at that point
2 in time with whatever we had at
3 that point in time.

4 JUDGE BOOHAKER: Is that available,
5 that you can look at it at the
6 point of reallocation and see
7 what is the need at that point
8 in time?

9 CHIEF JUSTICE STUART: Yeah. At the
10 point, by our interpretation of
11 the statute, agreed to by
12 Senator Orr, we would have data
13 from '17, '18, and '19. From
14 that point forward -- again, a
15 death in office or someone
16 resigning or retiring or for
17 whatever reason -- we would just
18 have to look at whatever data is
19 available at that point in time.

20 I'm not sure that within a
21 year you could do it. It seems
22 like that would be too few
23 things. I think you would have

1 to look at a year's worth of
2 data at least.

3 JUDGE BOOHAKER: I get data, like,
4 every quarter from our AOC
5 office.

6 CHIEF JUSTICE STUART: But could you
7 look at a part of a year? I
8 mean, I don't know if you could
9 look at a part of a year.

10 MR. STEPHENS: Well, I think what you
11 could do -- I mean, you know,
12 consistence, for example. Some
13 of these things that we have --
14 We will have three years to look
15 at, but if we know that within
16 this group there are things
17 going on, we might weigh from
18 the most recent year to say this
19 has changed or this district
20 judge is now doing circuit judge
21 work, or whatever.

22 CHIEF JUSTICE STUART: The other thing
23 is that this is an open public

1 hearing, and I would assume that
2 anyone that would like for us to
3 do something would come and tell
4 us what they would like for us
5 to do, you know, and give us the
6 reasons and explanations. I
7 would certainly encourage them
8 to do that.

9 Is there anything else that
10 we need to discuss?

11 (No response.)

12 CHIEF JUSTICE STUART: If not, I am
13 going to declare us adjourned.

14 (Meeting concluded at 11:34
15 a.m.)

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13 THURSDAY, JANUARY 11, 2018

14 10:00 a.m.

15 * * * * *

16 On Thursday, January 11, 2018.

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