

1 MEETING OF THE ADVISORY COMMITTEE
2 ON CHILD SUPPORT GUIDELINES AND ENFORCEMENT
3 FOR THE STATE OF ALABAMA
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11 The following proceedings were held in
12 the meeting of the Advisory Committee on Child
13 Support Guidelines and Enforcement for the State
14 of Alabama on Thursday, December 1, 2016,
15 commencing at approximately 10:31 a.m. at the
16 Heflin-Torbert Judicial Building, 300 Dexter
17 Avenue, Montgomery, Alabama, and was taken
18 before Haley Tunnell, Court Reporter and
19 Commissioner for the State of Alabama at Large.
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1 APPEARANCES

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

4
5 THE HONORABLE WILLIAM K. BELL
Madison County Circuit Judge (retired)

6 MS. LATHESIA SAULSBERRY
Director of Child Support Enforcement Division,
7 Alabama Department of Human Resources

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

10 PENNY A. DAVIS, Esquire
Adjunct Professor, University of Alabama School
11 of Law, Tuscaloosa, Alabama

12 THE HONORABLE LYN STUART
Acting Chief Justice
13 Alabama Supreme Court

14 THE HONORABLE AUBREY FORD, JR.
District Court Judge, Macon County (retired)

15
16 STEPHEN R. ARNOLD, Esquire
Birmingham, Alabama

17 THE HONORABLE MARY MOORE
Perry County Circuit Clerk

18
19 THE HONORABLE WILLIAM THOMPSON
Presiding Judge, Alabama Court of Civil Appeals

20 MELODY BALDWIN, Esquire
Assistant District Attorney
21 Fifth Judicial Circuit over Child Support
Division

22
23 BRAD MEDARIS, Esquire
Supreme Court Clerk's Office

1 SCOTT HOYEM, Esquire
Administrative Office of Courts

2
3 BOB MADDOX, Esquire
Administrative Office of Courts

4 JIM JEFFRIES, Esquire (via phone)
Mobile, Alabama

5
6 ALSO PRESENT:

7 MARK ROGERS, Rogers Economics, Inc.
Peachtree City, Georgia
8 Consultant

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1 THE HONORABLE PALMER: I call to
2 order the Advisory Committee on Child
3 Support Guidelines and Enforcement
4 meeting. Today is Thursday, December the
5 1st. It is 10:30 a.m. And with that, I'm
6 going to have everybody introduce
7 themselves first. And we're going to
8 start with chief judge over here.

9 THE HONORABLE STUART: I'm Lyn
10 Stuart and I -- for the time being, I'm
11 the acting chief justice of the Alabama
12 Supreme Court.

13 THE HONORABLE THOMPSON: I'm Bill
14 Thompson. I am the presiding judge of the
15 Alabama Court of Civil Appeals. I am new
16 to this Committee.

17 THE HONORABLE BELL: I'm Billy Bell,
18 and I'm retired circuit judge from Madison
19 County.

20 MS. DAVIS: I'm Penny Davis. And I
21 am on the adjunct faculty at the law
22 school and recently retired from Alabama
23 Law Institute.

1 MS. BALDWIN: I'm Melody Baldwin.
2 I'm an assistant D.A. in the Fifth Circuit
3 over the child support division, and I'm
4 new to this Committee.

5 THE HONORABLE MOORE: I'm Mary
6 Moore. Circuit Clerk in Perry County, the
7 Fourth Judicial Circuit.

8 THE HONORABLE FORD: Aubrey Ford.
9 Retired district judge from Macon County,
10 Alabama.

11 MS. SAULSBERRY: Lathesia
12 Saulsberry, child support enforcement
13 division director of the Alabama
14 Department of Human Resources.

15 MS. BUSH: Jennifer Bush. DHR legal
16 counsel.

17 MR. ARNOLD: Steve Arnold.
18 Birmingham, Alabama. And I appear to be
19 the sole practicing lawyer. In private
20 practice is what I mean.

21 Judge, welcome.

22 THE HONORABLE THOMPSON: Thank you.
23 I feel like someone who's come in to the

1 last act of the play, but I'll try to
2 catch up.

3 MR. ARNOLD: Oh, no. Not at all.

4 THE HONORABLE PALMER: Okay. Also
5 in the room we have Mark Rogers, who is a
6 going to be -- who presented us with the
7 guidelines when we were here back in
8 August, and we've all had a chance to
9 review them or hopefully we've had a
10 chance to review them, majority of
11 everybody. So he is going to be here to
12 answer questions.

13 We have a court reporter here.
14 And I'd also like to thank Bob Maddox and
15 Brad Medaris for pulling all this together
16 for me.

17 Ms. Baldwin, where is the Fifth
18 Circuit? I apologize.

19 MS. BALDWIN: Macon, Randolph,
20 Tallapoosa, and Chambers.

21 THE HONORABLE PALMER: Where?
22 Macon?

23 MS. BALDWIN: Macon, Randolph,

1 Tallapoosa, and Chambers Counties.

2 THE HONORABLE FORD: Second largest
3 circuit in the state.

4 THE HONORABLE PALMER: Okay. Thank
5 you, Judge Ford.

6 For the court reporter's sake,
7 we've got our nameplates in front of us,
8 so if anybody has one, maybe turn it so
9 that she can see it. And then if you're
10 going to make any sort of big, long
11 statement, be sure to just introduce
12 yourself to everyone or -- I'm sorry.
13 Identify yourself for the record.

14 Anybody else that we need to --

15 MR. MADDUX: Judge Palmer, I would
16 like to also say we have Nathan Wilson
17 here. He's the new director of the legal
18 division, AOC.

19 THE HONORABLE PALMER: Okay. Well,
20 welcome.

21 MR. MADDUX: And Scott Hoyem.

22 MR. HOYEM: And if I could, Judge,
23 I'd like to make sure that we note on the

1 transcript that I sent out notice of
2 today's meeting to media statewide on
3 November 14th and posted notice on the
4 Administrative Office of Courts' website
5 as well.

6 THE HONORABLE PALMER: Okay. So
7 noted.

8 We have the approval of the
9 transcripts from our last meeting, which
10 was August the 26th of 2016. I know
11 one person has pointed out a correction,
12 and that's Ms. Davis. Ms. Davis, if you
13 want to tell us about that.

14 MS. DAVIS: On page 163, in the
15 first complete paragraph on line 14, the
16 word "deeds" should be "views." So the
17 sentence should read subsidy is not
18 provided based on any personal views that
19 I have, instead of personal deeds that I
20 have.

21 THE HONORABLE PALMER: Okay. And
22 there is a copy of the transcripts.
23 You've got -- everybody should have a

1 packet in front of them. We don't have a
2 binder because we were all asked to bring
3 our binders from when we were here last
4 time, but everybody should have that in
5 front of them marked as Tab A.

6 Anybody have any other
7 corrections? Do the minutes stand in --
8 approved except as corrected?

9 MS. DAVIS: So moved.

10 THE HONORABLE BELL: Second.

11 THE HONORABLE FORD: Second.

12 THE HONORABLE PALMER: Okay. All in
13 the favor.

14 (Committee members who approved so
15 indicated)

16 THE HONORABLE PALMER: Opposed?

17 (No response.)

18 THE HONORABLE PALMER: Okay. I'm
19 going to put my --

20 MS. DAVIS: Julie, you want this
21 copy of this?

22 THE HONORABLE PALMER: Please.

23 Excuse me. I'm in a court mode. I guess

1 we'll mark that as Committee Exhibit 1 and
2 give that to the court reporter.

3 If you'll mark that Committee
4 Exhibit 1, Mr. Maddox, and then we'll give
5 that to the court reporter.

6 (Committee's Exhibit No. 1 was
7 marked.)

8 THE HONORABLE PALMER: Okay. Now,
9 you have an agenda in front of you. Green
10 piece of the paper. As it's been
11 explained to me, which is true, we are not
12 married to this agenda. The main reason
13 we're taking so many breaks is so the
14 court reporter can give herself a break.

15 But we've got Jim Jeffers --
16 Jeffries -- I apologize -- who is going to
17 be here tomorrow at 9:45, but he's going
18 to call in today to go over his section of
19 that just to save him a trip from
20 Montgomery -- from Mobile. He wasn't
21 going to be able to be here today. So
22 rather than drive up for a ten-minute
23 presentation, to save the State some money

1 and Jim some time, we're just going to
2 take his report via conference call.

3 It is my goal, just to let
4 everybody know, to try to get this all
5 done today, which means we might go past
6 5:30. We might stay until 6:00, 6:30.
7 Probably, if we're here after about 6:15,
8 we'll need to come back. But if we can
9 possibly get all of this done today, then
10 I would highly recommend that we do that.

11 I mean, you know, we've all got
12 busy lives. It's the holiday season. And
13 we just need to get this done.

14 Also, with Mr. Rogers here, we
15 are going to have plenty of time to go
16 over the different charts, to ask him
17 questions. That's the main reason he is
18 here. Because we had a DR judges retreat,
19 oh, gosh, not even three weeks ago; and
20 there were quite a few good questions from
21 those judges that came up. And we sent
22 Mr. Rogers a text, and he texted back with
23 the answers. So we appreciate your time

1 on that.

2 Okay. Anything -- any other
3 housekeeping we need to take care of right
4 now?

5 (No response.)

6 THE HONORABLE PALMER: So then let's
7 go over to the guidelines. That's number
8 B. Looks like it says, "Economic Report
9 on Alternative Child Support Cost Schedule
10 and Related Issues."

11 And does anybody in the -- that's
12 here from the public, would any of y'all
13 like a copy of what we're about to go
14 over?

15 And your name ma'am?

16 MS. FRAZER: Cynthia Frazer.

17 THE HONORABLE PALMER: Cynthia
18 Frazer. And then -- okay.

19 Do you have an extra copy,
20 Mr. Maddox?

21 Okay. These schedules were
22 broken down to four different schedules.
23 The first schedule is one household,

1 intact, not contemplating divorce, not
2 thinking about a divorce, nothing like
3 that.

4 And if everybody brought their
5 notebooks from the last time we were here
6 --

7 What page is that, Mr. Rogers?
8 Do you know?

9 MR. ROGERS: It's in the -- the
10 schedule or the discussion?

11 THE HONORABLE PALMER: The schedule.

12 MR. ROGERS: Well, it will be one of
13 the appendices.

14 THE HONORABLE PALMER: Okay.
15 Everybody look --

16 MS. DAVIS: It's behind B of the old
17 notebook in the very back.

18 THE HONORABLE PALMER: I had some
19 cheat sheets and I broke -- I've got mine
20 broken down in two different categories
21 here. But what we're looking at, you go
22 to page 103 from when we were here in
23 August, if you brought your notebook, and

1 then you turn one more page. And that's
2 called Attachment A. So this is the part
3 right now that we're going to spend some
4 time on, this section forward.

5 And then you have -- the second
6 one is one household, intact, but with a
7 cost of living. And that is -- this
8 section says page 126.

9 MR. MADDUX: Excuse me, Judge. Does
10 everyone have a copy of the Attachments A
11 and B? Because a lot of you probably
12 didn't bring the notebook. If you didn't
13 bring the notebook, I do have extra
14 copies.

15 THE HONORABLE PALMER: Okay. I'm
16 sorry. The next section is one household
17 with a cost of living is page 20. If
18 everybody would go ahead -- my mother is a
19 librarian, and I was told never to dog
20 ear, but we're going to go ahead and dog
21 ear that page. Page 20. We're going to
22 mark that schedule number two, one house,
23 COLA.

1 Then you're going to turn over to
2 page 35.

3 THE HONORABLE THOMPSON: I think it
4 starts on page 19, Judge.

5 THE HONORABLE PALMER: Pardon?

6 THE HONORABLE THOMPSON: I think it
7 starts on page 19 with the COLA.

8 THE HONORABLE PALMER: It does. I
9 apologize. Page 19.

10 And then you're going to look at
11 page 35. And that is two households. Two
12 households. So dog ear that page. Two
13 households.

14 And then you're going to go to
15 page 51, and that is two households with a
16 COLA.

17 So with that, Mr. Rogers, if you
18 would -- since we do have -- I know two
19 people who are brand new to the Committee,
20 if you can just give a very short how one,
21 two, three, and four were developed and
22 the years that the data was gathered from.

23 MR. ROGERS: Okay. Short version.

1 There is a lengthier version in the text.

2 Basically, the first table is

3 what I would call the starting point.

4 It's the standard methodology that is

5 generally used by so-called income shared

6 states. It's based on the study by David

7 Betson of Notre Dame University, a 2010

8 study. His numbers I updated to March

9 2016 based on shifts in the spending

10 patterns caused by drift and inflation.

11 That's a separate issue from cost of

12 living.

13 Anyway, the first table is the

14 completely standard methodology with

15 income taxes based on Alabama, federal

16 law, civil courts. The only difference is

17 at the very high income level, the nature

18 of the data is that there's very few

19 observations and the higher one or two

20 brackets are extremely wide. So when you

21 have midpoints -- midpoints are calculated

22 by Dr. Betson. So when you have wide gaps

23 and you have midpoints, it flatlines the

1 data, which means instead of the standard
2 tapering pattern, all of a sudden you're
3 just continuing into the stratosphere.

4 So there two economic options.
5 One, stop the data where you know the data
6 is still really good but you have a low
7 figure, like around \$17,000 or so per
8 month, or do what is called a logarithmic
9 extrapolation, were you have a curved
10 extrapolation to higher income. I chose
11 to do that. Continues the same pattern.
12 Otherwise, all the data in the first table
13 are exactly the same procedure, but if you
14 compare cost tables with some other
15 states, you're going to see those other
16 states having straight lines just
17 continuing on and on and on at high
18 income, which is not natural. It's not
19 appropriate.

20 All right. So that's essentially
21 the standard procedure. You know, there's
22 nothing Mark Rogers about it except the
23 high income curving extrapolation.

1 The second -- you know, we can
2 simplify faster. The second table takes
3 the national data. The first table is
4 based just on national data. You know,
5 there's, you know, pieces of data from
6 different states but it's averaging over
7 the nation. The second table takes cost
8 of living data for the state of Alabama
9 metro areas. That's what's available.
10 That's what we have to do. We have to
11 work with what's available.

12 And those cost data show that the
13 cost of living in Alabama is about
14 11 percent lower than the national
15 average. Any given year, it will vary
16 some, but the most recent data that I had
17 at the point said about 11 percent lower.
18 So the cost tables lowered 11 percent.

19 That is the closest methodology
20 to what you're using for the current Rule
21 32, which is based on a concept called
22 income realignment. It's not -- it's
23 neither proven nor disproven but it's a

1 good methodology, but it takes into
2 account Alabama has fewer people in the
3 national high income bracket and more
4 households in the more moderate income
5 brackets. It's neither proven or
6 disproven. To me, it's more rational to
7 take a direct cost of living measure
8 instead of shifting income patterns.

9 Third methodology goes back to
10 the starting point of the first national
11 cost table, which is based on intact
12 families, two adults in the same house.

13 Now, put on your thinking cap and
14 pretend you're regular people, which is
15 not hard because we are. If you're
16 married and you're living in the same
17 household -- and, you know, sometimes
18 there are two income earners; sometimes
19 there's only one. But you're sharing the
20 same mortgage. You're sharing the same
21 rent. You're sharing the same basic
22 utilities. You know, you're heating the
23 living room, you're heating the kitchen

1 and a set of number bedrooms. You've got
2 the same size yard, and, you know, got
3 yard work and watering and so on. So
4 there's one set of what I call adult --
5 adult overhead.

6 When you're divorced, you're
7 never married, you're not in -- by
8 definition you're not in the same house.
9 So instead of two adults covering the cost
10 of one house, you've got two adults each
11 supporting their own household expenses.
12 Suppose we set aside what we call adult
13 overhead, mortgage, rent, utilities
14 essentially. You've still got the same
15 combined income. The differences is the
16 combined income in intact households is
17 under one roof. When you're not married,
18 you've got the same combined income
19 covering two sets of adult overhead.

20 Now, remembering we're normal,
21 everyday people, how much -- suppose the
22 adult overhead is what you pay first.
23 You've got to pay the mortgage, you've got

1 to pay utilities. Then you got everything
2 else left over, including for spending on
3 children. After adult overhead is paid
4 for, which circumstance has more money
5 available for spending on children or
6 everything else, anything else? When
7 you're under one roof.

8 When you're under two roofs, you
9 have less money available for everything
10 else. So the intact family situation
11 overstates the ability to pay child cost
12 and anything else for adults that live
13 under two households, have two roofs
14 instead of one.

15 So the second household
16 adjustment table takes combined income
17 minus the cost of the second adult
18 overhead expenses and treats that as what
19 is available. Think about it. You're
20 married. Together you pay the rent or
21 mortgage. You pay the utilities together.
22 And then you've got the money left over.

23 Now, if you're separated, you've

1 got the mother in one house, the father in
2 another house or apartment, whichever, and
3 the combined adult overhead is more than
4 if you're just under one roof. So -- and
5 the child cost calculations are based on
6 available income. So the available income
7 in intact households is higher than the
8 available income after adult overhead if
9 you're paying for two sets of housing.

10 So I take the standard
11 methodology to treat net income combined
12 minus the extra housing expense as what's
13 the available net income. So it reduces
14 to what actually exists, approximately.
15 There's no such thing as data doing
16 exactly what you want it to do, but it's a
17 reasonable approximation of what's
18 available.

19 And then the final calculation is
20 the second household adjusted data, which
21 is national data except the housing
22 component is Alabama. So then we take the
23 third table and adjust it for the overall

1 cost of living in Alabama.

2 So you've got two basic
3 calculations: intact national data, two
4 households national data, then each of
5 these two adjusted for the cost of living
6 in Alabama. So I'd hope to say that
7 quicker, but that's the basics.

8 THE HONORABLE PALMER: All right.
9 We're going to get to some questions in a
10 minute, but I forgot to mention when we
11 first started is that we are federally
12 mandated to review these Guidelines once
13 every four years. So that's what we are
14 attempting to do. And we make a decision,
15 and then we send it to the Alabama Supreme
16 Court. We pick a new guideline one, two,
17 three or four, or we don't do anything.
18 We leave the current Guidelines that are
19 out there out there. So that's the
20 purpose of this. Now -- yes, sir?

21 MR. ROGERS: There is another
22 option. Some states have blended tables.
23 Like, you know, makes sense, this appears

1 to be appropriate from very modest incomes
2 to middle incomes; then from middle to
3 high, a different one looks better; or we
4 like one child cost here, two through six
5 from the other. So you can blend.

6 THE HONORABLE PALMER: Okay. All
7 right. Well, we are currently in -- and
8 let me know if I'm wrong, but we are
9 currently using a one household income; is
10 that correct?

11 MR. ROGERS: Intact family data,
12 yes.

13 THE HONORABLE PALMER: And it's also
14 my understanding and I've learned very
15 recently that that's what we've always
16 used in Alabama is one household since
17 approximately 1984.

18 And, Mr. Arnold, I know you were
19 one of the original people to the
20 committee. Is that your understanding, or
21 do you remember?

22 MR. ARNOLD: That is my
23 understanding. That was many, many years

1 ago when we made a presentation to the
2 Supreme Court. That was one of the
3 concerns we had, that it was taking an
4 intact family income and transferring that
5 over to what was going to be a divided
6 family.

7 THE HONORABLE PALMER: And was that
8 in --

9 MR. ARNOLD: Frankly, we were not
10 equipped at that time to really sift
11 through that.

12 THE HONORABLE PALMER: And that was
13 in approximately 1984? Do you remember?

14 MR. ARNOLD: I think that's correct,
15 yes.

16 THE HONORABLE PALMER: Judge Ford,
17 what about you? You might have been a
18 part of the original Committee as well.

19 THE HONORABLE FORD: I was on the
20 original Committee too. '84 sounds about
21 right.

22 MR. ROGERS: The original study by
23 Espenshade was in 1984. The federal

1 mandate was to have presumptive guidelines
2 by '89. So odds are you were looking at
3 what to do between.

4 THE HONORABLE PALMER: Okay. And
5 then at the time, the thinking was that it
6 was one household was much like alimony.
7 You were trying to -- you have one
8 household and now you're trying to
9 preserve the current status quo type of
10 thing.

11 Do you remember anything about
12 that, Mr. Arnold?

13 MR. ARNOLD: No, ma'am, not
14 specifically.

15 THE HONORABLE STUART: What I
16 remember about it as it was being
17 developed and the original one that was
18 presented -- I was not a member of the
19 Committee then, but I was a trial court
20 judge at the time that it was originally
21 adopted -- was that the intent was to keep
22 what was being provided for the children
23 the same as if there were an intact

1 household. The focus was on the children
2 and their support.

3 MR. ARNOLD: That was the underlying
4 philosophy. Whether that was actually
5 accomplished or not, I don't know.

6 MS. BALDWIN: When I first started
7 doing child support about four years ago,
8 not familiar with a lot about Title IV-D
9 and I pulled it up and started reading it,
10 that's what the premise behind the Title
11 IV-D policy stated is that it was to
12 support the child as if the child were in
13 an intact family, so that that child had
14 the same opportunities as the child would
15 have, you know.

16 THE HONORABLE PALMER: And the
17 Honorable Billy Bell, do you have any
18 comments? Weren't you part of that
19 original Committee?

20 THE HONORABLE BELL: No, ma'am, I
21 was not. I didn't come on until 2008.

22 THE HONORABLE PALMER: All right.
23 Judge Ford, do you have any other

1 recollections?

2 THE HONORABLE FORD: It's about the
3 same as what was said here, that the focus
4 was on the children to see whether or not
5 the income of both parents would be given
6 to that child as if that child was living
7 with both parents, nuclear family. That
8 is correct.

9 THE HONORABLE PALMER: All right.
10 Any other discussion on that topic?

11 (No response.)

12 THE HONORABLE PALMER: All right.
13 Well, part of what we received back in
14 August was a comparison as to what the
15 Guidelines are now versus adopting either
16 one, two, three, four, and how it would
17 change. So the same section you were
18 looking at, if you would go to page 67.
19 You might even want to take that section
20 out. Page 67. It's the current Alabama
21 Rule 32 or Alabama current Rule 32.

22 THE HONORABLE BELL: I'm kind of
23 confused. I put the new stuff in my

1 binder. Are we in the new stuff?

2 THE HONORABLE PALMER: Well, I think
3 it's still in the new stuff, yes. It
4 should be under the report that says
5 "Economic Report on Alternative Child
6 Support Cost Schedule."

7 MS. DAVIS: September 15?

8 THE HONORABLE PALMER: Well, I'm
9 looking at one that was in my book and it
10 says July 15th.

11 MR. ARNOLD: We have the
12 September 1. That's different.

13 THE HONORABLE PALMER: Well, I
14 followed directions and brought my book
15 like they told me to do.

16 MR. ARNOLD: I brought mine too.

17 THE HONORABLE PALMER: The current
18 Guidelines. That's what we need are the
19 current Guidelines.

20 THE HONORABLE STUART: That's 67 in
21 the book.

22 THE HONORABLE PALMER: Chief Justice
23 Stuart says it's 67 in the book.

1 All right. Everybody find that
2 now?

3 Now you're going to go and find
4 economic report. Make sure I've got the
5 correct one. It should be B.

6 I'm sorry. I call myself being
7 organized over here. B of the new
8 material. And it's the one that says
9 Attachment B, "Alternative Child Support
10 Tables Differences from Current Rule 32
11 Schedule." That's what we need.

12 MR. MADDUX: Should be behind Tab B
13 if you brought the notebook.

14 THE HONORABLE PALMER: And if you
15 didn't, it should still be part of that
16 one that says final.

17 MR. MADDUX: I have some extra
18 copies to pass around. I have six copies
19 if could pass it over.

20 THE HONORABLE PALMER: So does
21 anybody need copies of Attachment B?

22 (No response)

23 THE HONORABLE PALMER: We've got

1 extra copies if anybody needs any.

2 So I'm asking that you get the
3 current schedule in front of you. You
4 have to take it out of your notebook and
5 set it off to the side. Please do that.

6 And we're going to go to page 2
7 of that Attachment B, Alternative Child
8 Cost Table Difference from Current Rule
9 32.

10 MS. BALDWIN: I may need Attachment
11 B. Do you have a copy?

12 MR. MADDOX: It should be in there.

13 MS. DAVIS: In the hierarchy of
14 events, if we have -- we need to talk
15 about some issues that are not one, two,
16 three, and four, choices between those.
17 We want to talk about some internal
18 changes?

19 THE HONORABLE PALMER: Yes. But
20 let's do this first.

21 MS. DAVIS: Okay.

22 THE HONORABLE PALMER: Just make a
23 note and we'll definitely do that.

1 (Brief Pause)

2 THE HONORABLE PALMER: All right.

3 Let's go ahead and look at this. The
4 current schedule, the grey shaded area is
5 what's known as self-support reserve. So
6 combined incomes of the two parties are
7 let's say \$800. I'm looking at the
8 current one. For one child, it will be 50
9 and goes all the way across at 50. That
10 has to do with the poverty guidelines so
11 that no child support would be paid.

12 MR. ROGERS: Ten years old.

13 THE HONORABLE PALMER: Pardon?

14 MR. ROGERS: This is ten years old.

15 THE HONORABLE PALMER: Yes. That's
16 ten years old. The data is.

17 So now we're going to look at the
18 ones on page 2 of intact household,
19 period, no cost of living, which is what
20 our current Guidelines are. Intact house,
21 no cost of living. Is that correct,
22 Mr. Rogers?

23 MR. ROGERS: Well, your current

1 Guidelines are national data realigned to
2 the income distribution in Alabama, which
3 is semi cost of living. It's more the
4 middle to upper and almost no impact at
5 low income. So very -- it's an indirect
6 way of getting to the cost of living
7 issue, but I actually have no clue how the
8 idea of income realignment was developed.
9 It is a very strange concept to me
10 economically.

11 THE HONORABLE PALMER: Well, I guess
12 my question, though, is if we wanted true
13 apples to apples, is schedule number one
14 the better or schedule number two with the
15 cost of living, one household?

16 MR. ROGERS: They are the closest.

17 THE HONORABLE PALMER: One or two?

18 MR. ROGERS: The current rule with
19 Table 2.

20 THE HONORABLE PALMER: Okay. So
21 let's go to Table 2, then.

22 MR. ROGERS: Let me just point out a
23 common -- a common theme with the data.

1 The Betson study -- the numbers are based
2 on whatever the numbers are. We were
3 coming off of a recession and so on. The
4 one-child numbers generally, in terms of
5 percentages, were significantly lower than
6 his earlier studies. For three and more
7 children, the percentages were notably
8 higher percentages. So we'll see that
9 regular pattern throughout these numbers
10 where there's more of a difference, you
11 know, in the one child relative to the
12 other because basically he said, well, the
13 new numbers say I overstated the one-child
14 cost.

15 THE HONORABLE PALMER: Okay. But if
16 we look at the proposed number two --

17 MR. ROGERS: That's the closet.

18 THE HONORABLE PALMER: -- versus the
19 current Child Support Guidelines.

20 MR. ROGERS: That's the closest
21 match of methodology.

22 THE HONORABLE PALMER: Okay. All
23 right. So let's do that. That would be

1 page 15. Page 15 of the -- to the current
2 Guidelines.

3 THE HONORABLE MOORE: That's
4 Attachment B?

5 THE HONORABLE PALMER: Attachment B,
6 yes.

7 MR. MADDUX: Appendix B, page 15.

8 THE HONORABLE PALMER: And y'all
9 thought this would be boring and just be
10 about numbers. No. We got to figure out
11 what page we're on and everything.

12 MS. DAVIS: For some reason, mine
13 stops at 14. Can I have one that goes
14 past page 14? I'm just going to discard
15 this one.

16 THE HONORABLE PALMER: So if you'll
17 look, the real change starts at -- going
18 with the old numbers most everything goes
19 down. The real -- it levelizes again.

20 MS. DAVIS: Can I ask a basic
21 question to make a point?

22 THE HONORABLE PALMER: Yes, ma'am.

23 MS. DAVIS: I was at the DR retreat

1 with Julie, and Julie presented the
2 guidelines. And we got a lot of questions
3 because the numbers were so low. And so I
4 did some research later, but I think one
5 of the points that we discussed -- and I
6 think Mark kind of looked at this earlier
7 -- the basic numbers that we're using are
8 from like 2006 to -- 2004 to 2009. The
9 underlying figure, is that correct?

10 MR. ROGERS: The federal consumer
11 expenditure data from those years, but
12 they've been updated using CPI to March
13 2016.

14 MS. DAVIS: But they were based on
15 numbers that were -- that were during the
16 great -- great recession; is that correct?

17 MR. ROGERS: Well, it was mixed. It
18 was mixed. And, you know, I'm not saying
19 anything surprising. Life has changed.
20 Even though we're supposedly more normal,
21 how we think and spend our money is very
22 different today than ten years ago.

23 THE HONORABLE PALMER: Well, and --

1 MS. DAVIS: And on page 6 of your
2 report, it says that new measurements of
3 expenditures, applying the Rothbard method
4 was from a nationally vested samples of
5 families surveyed in 2004 to 2009.

6 MR. ROGERS: Correct.

7 MS. DAVIS: So that's the basic
8 numbers, and then they've been
9 extrapolated up from that; is that
10 correct?

11 MR. ROGERS: Well, we've --
12 basically, I took those numbers. And some
13 were pre-recession.

14 MS. DAVIS: Right. The earlier ones
15 were pre-recession.

16 MR. ROGERS: Those were -- we
17 believed they were good years just before
18 the recession. And, see, it's really the
19 spending pattern. Most of the
20 calculations are based on percentages by
21 various categories. And the percentages
22 vary according to what your income level
23 is. Actually, this is little -- it's very

1 subtle. Basically, the spending patterns
2 shift over time to reflect the real value
3 of the dollars. And that's why there's
4 this drift upward in child cost tables.
5 Over time, inflation changes how we feel
6 about any given dollar amount and that it
7 takes more dollars, but that for each
8 category, it's separate and it's different
9 from general inflation. So the patterns
10 shift over time, but we also have general
11 inflation.

12 So updating to 2016 takes into
13 account general inflation but not the
14 relative cost of Alabama. You can have
15 inflation in Alabama and inflation in the
16 U.S. but with different base lines. The
17 base line in Alabama is lower than the
18 U.S. So there are multiple pricing
19 factors taken place.

20 THE HONORABLE PALMER: Well,
21 couldn't we also have deflation? Because
22 I know considering what the numbers are
23 now, price of gasoline I think is probably

1 less expansive than it was since the last
2 guidelines interest rates are much lower.
3 So if you wanted to go buy a car, you
4 wanted to buy a house, the interest rates
5 are also lower. So some of these numbers
6 are a lot lower now than they were. And
7 the last numbers -- the last numbers I
8 believe were from 2006.

9 MR. ROGERS: Let me -- there are
10 some general patterns to the numbers. The
11 very low end is lower because the poverty
12 threshold has risen significantly over the
13 last ten years. The one child numbers
14 have extra downward pressure because
15 Betson said, you know, after crunching his
16 numbers, he indicated that the earlier
17 numbers were too high, and so the
18 one-child patterns are lower.

19 The numbers jump out more at
20 four, five and six children mainly because
21 the numbers are big in the first place. I
22 mean, there are some big child cost
23 numbers for four, five, and six. So when

1 we make these various adjustments,
2 including the cost of living, it's going
3 to stand out more for four, five, and six
4 than for one, two, and three. And then we
5 do see at the middle and higher incomes
6 level for three, four, and five children
7 and somewhat for two, it's higher at the
8 higher income level.

9 So there's several shifts taking
10 place. The notable -- the change in the
11 economy threshold, the one-child numbers
12 being significantly lower throughout but
13 the middle and upper, two and higher
14 children are higher. So there's several
15 pattern going up.

16 THE HONORABLE PALMER: Okay.
17 Anybody else have any more questions for
18 him? Let's just actually look at this.
19 We got page 15, which is schedule number
20 two, the cost of living. So on page 15 in
21 the current schedule. The ones that is on
22 page 15, that's how much the numbers --
23 the numbers would go down. The child

1 support would go down is how I'm reading
2 this.

3 MR. ROGERS: And it goes up when you
4 get to higher income levels.

5 THE HONORABLE PALMER: Yes. And so
6 then if you flip over, when you get to
7 page -- I believe it's all the way to
8 page 24 on the schedule. On the second
9 one, number two, is for one child, we
10 catch back up.

11 MS. DAVIS: That's 15,000 a month
12 before it starts going up.

13 THE HONORABLE PALMER: It does.

14 MR. ROGERS: Well, for one child.
15 For two and more, it's much earlier.

16 THE HONORABLE PALMER: And then for
17 two children, you flip over to page 17.
18 And that's \$4,450 combined gross income.
19 That's where it stops as far as
20 decreasing, and then it starts to increase
21 again.

22 MR. ROGERS: For the states that are
23 updating their tables, you are seeing them

1 regularly recognize that the one child
2 numbers have lower patterns than before.
3 That's generally being recognized.

4 THE HONORABLE PALMER: And then
5 again just -- I guess we would want to put
6 this in there so there would not be a
7 flood of litigation. But when we adopted
8 -- well, when we made the recommendations
9 to the Alabama Supreme Court in 2008 that
10 were adopted in January 1st of 2009, it
11 was that part of the rule was that the
12 mere passing of the new Guidelines did not
13 create a material change in circumstances
14 so that you could just go in and start
15 having your child support modified. So I
16 would suggest that we put that language in
17 this as well.

18 Okay. So now, Mr. Arnold, I know
19 you love numbers. What do you have to say
20 about any of this?

21 MR. ARNOLD: You know, I appreciate
22 that compliment. I'm not sure I really do
23 love numbers.

1 THE HONORABLE PALMER: I know you
2 got a finance background and your dad was
3 a very well known CPA, and I've had you in
4 my courtroom, and I know you love your
5 numbers.

6 MR. ARNOLD: I'm not sure I know how
7 to take all this.

8 THE HONORABLE PALMER: It's all very
9 much a compliment.

10 MR. ROGERS: I think it's very
11 instructive to look at the comparison
12 tables by states. And if you look at
13 states which I think are kind of similar
14 to the Alabama, South Carolina comes to
15 mind. You're going to find some states
16 that are not terribly different from the
17 second set of numbers. And in contrast,
18 you go to a place like Colorado, which
19 pretty much went with the national
20 numbers, they're massively higher. And
21 I'm reluctant to offer suggestions other
22 than explaining data. However, I do
23 believe the national numbers have a very

1 strong upward bias due to methodology.

2 And that's a debate going on among
3 economists who do these numbers.

4 And the thing is, normally, you
5 compare -- these are estimates. They're
6 estimates of child cost. Well, are the
7 estimates good? Well, we'd have to have
8 actual numbers to compare estimates to.
9 Guess what? If we had actual numbers,
10 we'd use actual numbers. So all we are
11 left with are estimates and a belief based
12 on what are believed to be biases up or
13 down whether the estimates are about right
14 or somewhat high, somewhat low.

15 This bottom line is going to boil
16 down to how you believe any given set or
17 blending of sets reflect reality in
18 Alabama.

19 MR. ARNOLD: That was my coming
20 question. What -- what set? What model
21 reflects reality in our --

22 MR. ROGERS: That's a good question.

23 MR. ARNOLD: -- in our state? In

1 our region? Comparable states? Because
2 we're not -- we're not going to do
3 Greenwich, Connecticut.

4 MS. DAVIS: Madam Chair?

5 THE HONORABLE PALMER: Yes, ma'am.

6 MS. DAVIS: On the link that I sent
7 is expenditures on children by families
8 for 2013. That's the most recent I can
9 find.

10 THE HONORABLE PALMER: Where did you
11 find that?

12 MS. DAVIS: It's the link that I
13 sent out. It's the United States
14 Department of Agriculture. And then they
15 break them down into regions and age
16 groups.

17 I don't know if you have the
18 ability to pull the link up and put it up
19 on that.

20 THE HONORABLE PALMER: If you would.

21 MR. MADDOX: I just did the
22 Wikipedia version of the one you wanted
23 copies of. Do you want me to try to get

1 the link up?

2 MS. DAVIS: Well, that might be
3 easier. I don't know how you're going to
4 do it.

5 MR. MADDUX: I have to get into my
6 e-mail probably to do it. I guess I can
7 try it.

8 MS. DAVIS: Well, nobody else may be
9 interested in it, but it broke it down.
10 It has tables and charts and it broke it
11 down like, for example, by regions. It's
12 got the south, which is substantially --
13 like Mark said, substantially lower than
14 the United States or Northeast.

15 Most of the charts are intact
16 family, which is what we use, but they
17 also have on the last page the estimated
18 annual expenditures on a child by single
19 parent families. This one is just for the
20 whole United States. And the numbers I
21 think are fairly comparable, and I also --
22 the other link was to the food cost for --
23 that are by age group that I sent, and

1 it's based on -- it has four different
2 food plans, effective low cost, moderate
3 cost. And it's divided up into the child.
4 Like if the child is one years old, the
5 monthly cost to feed the child ranges from
6 \$95 to 176. So that's presuming that all
7 food is prepared at home. I would think a
8 more -- either the low cost or moderate
9 plan, because most kids eat out some with
10 schools and so forth and with the parents.

11 And so a moderate cost plan for a
12 one-year-old child is \$143 for a
13 one-year-old child. If they're six to
14 eight years old, it's \$232. Well, if you
15 took the lowest number, that would be
16 \$139. So somewhere in between is probably
17 what the South would have.

18 THE HONORABLE PALMER: Well, and --

19 MS. DAVIS: But this other one
20 breaks it down by the housing cost, the
21 food cost, the transportation, the
22 clothing, health care for the child, and
23 education care and miscellaneous. So it

1 breaks down to a lot of categories and by
2 the age of the child, too.

3 THE HONORABLE PALMER: Well,
4 Mr. Rogers, the information that Ms.
5 Davis is just speaking of, that was taken
6 into consideration when you were
7 collecting your data to put these numbers
8 together; is that correct?

9 MR. ROGERS: No, it's not. The
10 methodologies are very different. And
11 many of the numbers -- not all -- quite a
12 few of the numbers in the USDA estimates
13 are based on what are called per capita
14 estimates. For example, transportation.
15 That includes the cost of purchasing,
16 operating the vehicle.

17 So if there's a husband and wife
18 and say two children, each child's cost is
19 one-fourth of the total, including the
20 cost of the purchase. So that raises a
21 question, is it appropriate? Adults have
22 to have transportation with or without
23 children. So is the purchase part of the

1 child's cost or is the cost of
2 transportation taking the child to school,
3 taking the child to soccer practice?

4 THE HONORABLE PALMER: To the
5 doctor.

6 MR. ROGERS: To the doctor. You
7 know, the marginal cost of the gasoline, a
8 little wear and tear, but the adults on
9 their own incurred the purchase price.
10 The USDA numbers ignore all that.

11 Miscellaneous category it's per
12 capita, which includes haircuts. So
13 you've got two adults, two children. I
14 know the answer to this, but just for a
15 partially entertainment, which costs more?
16 A woman going to get her hair done or a
17 boy's haircut? Which costs more?

18 THE HONORABLE PALMER: Oh, you're
19 actually asking us that?

20 I would -- from experience, I
21 would say a woman's hair.

22 MR. ROGERS: That's right. But if
23 you treat it on a per capita basis, you're

1 mixing the woman's -- obviously, my hair
2 doesn't cost much. I think my beard costs
3 more than my hair. It's per capita. It's
4 mixing the adult hairstyling cost with
5 children's. So it's a different
6 methodology, which, you know, kind of --
7 there's information, but is it what we
8 want for the cost of the child?

9 THE HONORABLE PALMER: And so you're
10 saying that possibly this study --

11 MS. DAVIS: Right there, that
12 explains the categories. On page 2, it
13 talks about the categories and how they
14 reach those categories. So like, for
15 example, clothing expenses consists of
16 children's apparel, such as diapers,
17 shirts, pants, dresses, suits, footwear,
18 and clothing services, such as dry
19 cleaning, alterations, and repairs. So
20 clothing is related to children -- the
21 children's cost for that.

22 The miscellaneous expenses were
23 the personal care items, haircuts,

1 toothbrush, entertainment, and reading
2 material. It goes through and it tells
3 you exactly what is considered with these
4 categories.

5 Now, I'm not saying this is
6 better or worse. I'm just saying that
7 after the comments from the judges -- we
8 asked them to give us their comments, and
9 I felt like we ought to follow up, so
10 that's what I tried to do and look at
11 other methodologies and things that
12 they're doing. And if you -- and page 2
13 is the explanation.

14 Transportation cost consists of
15 the monthly payments of vehicle loans,
16 down payments, gasoline, and motor oil,
17 maintenance repairs, insurance, and public
18 transportation, including airline fare.
19 So it's the monthly cost of that.

20 The last page, which is page 32,
21 is the one that's expenditures if you have
22 a single parent over all the United
23 States. And I think Mark said you need to

1 reduce that by 11 percent or something.

2 MR. ROGERS: Well, going from U.S.
3 to Alabama.

4 MS. DAVIS: To Alabama, you would
5 take those figures and reduce them down if
6 you wanted to look at single parents. But
7 it also divides it down into estimated
8 annual expenditures of a child in the
9 rural areas and also in the urban South.
10 So you can take those numbers, which are
11 lower than the intact families in the
12 Northeast, which, you know, is another
13 way.

14 As an example -- and this is what
15 I was talking to Mark and some others
16 beforehand. If you look at the medical
17 cost, the healthcare cost, we have had 250
18 for -- I don't know if it's the original
19 figure that was put in.

20 THE HONORABLE PALMER: 200 was the
21 original, and then we upped it to 250.

22 MS. DAVIS: 250. But if you look
23 at, for example, the single parents

1 families, the healthcare costs, which are
2 defined as healthcare expenses consisting
3 of medical and dental services not covered
4 by insurance, prescription drugs and
5 medical supplies not covered by insurance,
6 and health insurance premiums not paid by
7 the employer or other organization. Then
8 that's the incidentals that we have.
9 Those figures for a -- in the rural South
10 -- in the rural areas for a child zero to
11 two are 660. For a child that's nine to
12 11, it's 750. For a 15-year old child,
13 it's over \$1,000.

14 So if we're going to update
15 figures, we need to look at everything, I
16 think. 250 is probably not realistic. In
17 the urban South, they range from 630 to
18 little over \$1,000.

19 THE HONORABLE PALMER: But then
20 you've got Jefferson County, which is
21 almost all metropolitan for the most
22 part --

23 MS. DAVIS: That would be --

1 THE HONORABLE PALMER: -- versus
2 Coosa, Randolph, some of the other places
3 that are had rural.

4 MS. DAVIS: That would be the urban
5 South. Wouldn't you think Birmingham
6 would be the urban --

7 THE HONORABLE PALMER: Should we
8 have two different categories then, if you
9 live in a county that has this kind of
10 population.

11 MS. DAVIS: The difference between
12 urban South and the rural areas for
13 healthcare was 630 to 660, so not a whole
14 lot of difference.

15 MR. ROGERS: Let me make one quick
16 comment, that many ideas are extremely
17 rational but, even though they're
18 rational, can conflict with federal
19 requirements. One of the key federal
20 requirements for child support guidelines
21 is that they be uniform statewide in all
22 child support determinations. So uniform
23 means uniform.

1 MS. DAVIS: So I guess in theory, if
2 you wanted to do it, you could take 630
3 and 660 and divide it.

4 MR. ROGERS: You can always deviate.
5 You can always deviate. But the
6 presumption has to be uniform.

7 THE HONORABLE PALMER: Well, in that
8 section there -- and, again, Mr. Arnold
9 and Judge Ford, the 200 and then the 250,
10 those are just some arbitrary numbers that
11 the Committee came up with. I don't think
12 they're anything that is from the actual
13 Child Support Guidelines. That's just
14 something that the Committee has come up
15 with in the past to say that this, in our
16 opinion, is a reasonable amount, and then
17 the Alabama Supreme Court has adopted that
18 number. So that 250, that can be changed
19 within the group versus actually adopting
20 new guidelines.

21 MR. ROGERS: Right.

22 THE HONORABLE PALMER: Let's say we
23 don't adopt new guidelines but then that's

1 something that can be changed.

2 MS. DAVIS: Well, 250 is calculated
3 in the Guidelines; is that not correct?

4 MR. ROGERS: Let me do -- I think I
5 can say this quickly. When these
6 calculations -- when I did my calculations
7 and current Rule 32 was -- basically ended
8 up initially with total costs, including
9 medical. So then, because there's so much
10 variation medical was taken out of the
11 total in its entirety, but then with the
12 idea that you would end up with most of it
13 being prorated in some portion between the
14 parents.

15 But to simplify day-to-day kinds
16 of things and reduce arguments over, well,
17 you didn't reimburse me for the band-aids
18 or, you know, there's that one appointment
19 back in February for \$50 you didn't pay,
20 the first 250 per child is built back in,
21 and it is arbitrary, just to reduce
22 conflict over miscellaneous. You know,
23 just deal with it. And after you hit a

1 decent size number, then we'll worry the
2 court, or not, whether you've paid your
3 fair share.

4 But it's actually a benefit to
5 the court to have this built in amount of
6 incidentals. You know, you've got 250 per
7 child built in. Don't bother the court
8 until you hit that amount. So I think it
9 simplifies life for everyone. It's
10 arbitrary. It can be bumped up. But the
11 point is it should be recognized that this
12 is the amount that's built in and don't
13 require prorating until after that is
14 expensed.

15 MS. DAVIS: I guess my suggestion
16 would be that if we're going to update, we
17 ought to be realistic, and 250 is probably
18 not.

19 MR. ROGERS: You can do that. You
20 just need to --

21 MS. DAVIS: My suggestion was going
22 to be to the Committee that we put 750 in
23 as somewhere in between. If you look at

1 -- you know, unless you want to do -- or
2 500 or 600 or something much more
3 realistic, because none of these figures
4 are anywhere close to 250. I don't know
5 who is going to go to the Supreme Court
6 like I had to go last time and face them
7 and explain why we did it. I got sued for
8 the privilege of doing that in federal
9 court, so I would like to pass that along
10 to somebody else.

11 MR. ROGERS: Well, the point --

12 MS. DAVIS: But, anyway, that was
13 going to be my suggestion, that we need to
14 upgrade that.

15 MR. ROGERS: You can. You can
16 update it, but a key point is to make it
17 clear that that is what is built in as an
18 assumption. And another point is 250
19 means a lot more to a modest income
20 situation than to a high income situation.

21 THE HONORABLE THOMPSON: And
22 especially if you're looking at averages.
23 If you're basing that on an average of

1 medical costs per child, you may have more
2 routine medical care to higher income
3 families than you do to lower income
4 families.

5 MS. DAVIS: Yeah. Expenditures
6 reflect just exactly what you say. The
7 higher the income -- because of the way
8 these brackets are broken down, the first
9 bracket is for before-tax income less than
10 61,000 with average being 27,000.

11 The next bracket is the higher,
12 and they do spend zero to two for
13 healthcare with over \$1,000 in the United
14 States, whereas, the other was 550. So
15 you're right. I mean the figures reflect
16 exactly what you're saying.

17 THE HONORABLE PALMER: And then
18 you've got your lower income that the
19 majority oftentimes are on All Kids, which
20 there is no out of pockets or, if there
21 is, it's like \$1 for prescription and I
22 think \$2 for dental. And then you've got
23 Medicaid that has no out of pockets.

1 So again, I have to agree that
2 the 250 is sometimes more important than
3 750, because you're not going to spend
4 that all year long per child per year.

5 MR. ROGERS: You still have the
6 prorating of anything that exceeds it.

7 THE HONORABLE BELL: Can I ask
8 Mr. Rogers a question? Billy Bell.

9 And I want to understand the
10 methodology. On the current Rule 32, did
11 you say that it was based upon an intact
12 family?

13 MR. ROGERS: Yes.

14 THE HONORABLE BELL: Did it apply
15 the Alabama COLA?

16 MR. ROGERS: It used what was called
17 an income realignment, which is a quasi
18 cost of living adjustment, but it --
19 basically, it's a compressing of national
20 patterns into a narrower band of income.
21 And this compression of patterns, you've
22 got higher spending and lower percentages
23 but higher dollars and high incomes. So

1 you're compressing this pattern, and it
2 lowers the percentage more at the high
3 end, but you can't compress on the low end
4 because you can't go below zero. So
5 you're not really lowering the cost at low
6 incomes much, if any, though you would
7 realign it. You're lowering it at
8 moderate and higher. The cost of living
9 is a fixed percentage across the board.
10 So that's why I prefer the COLA instead of
11 income realignment.

12 THE HONORABLE BELL: Thank you, sir.

13 And then the chart on page 15 of
14 Appendix B, that is using the intact
15 family again based on current data --

16 MR. ROGERS: Which page?

17 THE HONORABLE BELL: 15 of Appendix
18 B. The second chart.

19 MR. ROGERS: It's got the cost of
20 living adjustment.

21 THE HONORABLE BELL: Right. But
22 it's based upon -- it's got Alabama COLA,
23 but again it's intact family.

1 THE HONORABLE THOMPSON: And that's
2 the starting point of any Rothbard part
3 methodology, right, is that's with an
4 intact family?

5 MR. ROGERS: Right. Basically, one
6 of the primary reasons statistically is
7 you got more intact family data than one
8 parent household data. That's really the
9 original reason why based on intact, and
10 then the argument was made about
11 maintaining an intact family's standard of
12 living. Of course, the competing
13 philosophy is what are the underlying
14 facts of the case and does the presumption
15 match the facts? So those are competing
16 arguments.

17 THE HONORABLE THOMPSON: But every
18 one of these charts you're starting with
19 that methodology of an intact family and
20 then you're making adjustments at the end
21 --

22 MR. ROGERS: Yes.

23 THE HONORABLE THOMPSON: -- for a

1 two household?

2 MR. ROGERS: Yes.

3 THE HONORABLE PALMER: Okay.

4 Well --

5 MR. MADDUX: Going back to the \$250,
6 isn't that unreimbursed medical expenses?
7 I thought that was what the assumption was
8 based on.

9 MS. DAVIS: Yes. That's what I'm
10 saying. These statistics show that the
11 unreimbursed are actually substantially
12 higher than that.

13 THE HONORABLE THOMPSON: Well, I
14 think we can all see from our own
15 insurance that, you know, the co-pays go
16 up every year and the out of pocket for
17 prescription drugs and everything else is
18 higher, but I understand the 250 being a
19 level where you don't bother the court
20 until after that has been reached.

21 MR. ROGERS: I think it's a great
22 benefit for the court to say, look, you
23 know, I don't want to hear from you until

1 you've expensed that amount. But I think
2 a key issue is remember we're building it
3 into the cost table. How is it going to
4 feel to a very low income situation versus
5 how does it feel to a high income
6 situation?

7 THE HONORABLE THOMPSON: Right.
8 There's no refund of that \$250. It's a
9 negative cash --

10 MR. ROGERS: No. And is it -- is
11 250 a reasonable expectation for combined
12 income of \$3,000 a month or something like
13 that?

14 MS. BUSH: I have a comment.
15 Jennifer Bush.

16 My memory and my understanding
17 was the 250 was not necessarily tied to
18 insurance or premiums or your deductible
19 or whatever you pay. It was to cover
20 things that are just routine normally
21 uninsured, such as cough syrup, band-aids,
22 asprin, that -- you know, whether you went
23 to the doctor and came home with a

1 band-aid. It wouldn't be deductibles or
2 insurance premiums. It was just the
3 run-of-the-mill things that children may
4 have that are not going to be submitted to
5 insurance and not be reimbursed.

6 MR. ROGERS: It's a combination of
7 just truly ordinary -- I wasn't even
8 thinking about it -- you know, band-aids
9 or ointment or, you know, something like
10 that, but it does also include
11 unreimbursed co-pays up to that amount.

12 They're -- all of the items are
13 unreimbursed, whether it's band-aid, cough
14 syrup, or some co-pay, up to that amount.

15 MS. BUSH: I guess my understanding
16 is that's why it was so low as opposed to
17 so high. I'm not saying it shouldn't be
18 higher.

19 MR. ROGERS: I think for two reasons
20 it was low: One, because it was related
21 mostly to these truly incidental things
22 and maybe one or two co-pays or whatever;
23 but also it's built into the cost table.

1 And if it's not spent, the noncustodial
2 parent doesn't get a refund.

3 So do you want to build in a big
4 number for a low income situation? I
5 mean, medical is difficult nowadays. It
6 truly is.

7 MS. BUSH: Or if you build in a high
8 amount and it's not -- high income or low
9 income, if you build in a high amount,
10 then are you going to have people -- or do
11 you want to have a mechanism for people to
12 come back and get that reimbursed, which
13 will then get into accounting for your
14 band-aids, and your cough syrup and your
15 asprin.

16 MR. ROGERS: I know what the answer
17 would be if judges got to vote on that.

18 THE HONORABLE PALMER: Well, and we
19 are going to take a break from this for a
20 second. We have -- Jim Jeffries is on the
21 phone.

22 MR. MADDOX: Can you hear us, Jim?

23 MR. JEFFRIES: Yeah. I can hear

1 you.

2 THE HONORABLE PALMER: Okay. We can
3 barely hear him, though. At least, I
4 can't.

5 Are you still there, Jim?

6 MR. JEFFRIES: Yes. I'm here.

7 THE HONORABLE PALMER: Can you speak
8 a little louder, please?

9 MR. JEFFRIES: Yeah. I'm speaking
10 into the handset that's on my ears. I'm
11 talking as loud as I can.

12 THE HONORABLE PALMER: Okay. Well,
13 it's hard for us to hear.

14 Jim -- if everybody will look at
15 your schedule. And then as soon as we
16 finish with Jim, we'll go ahead and take a
17 break. Take about a 15, 20-minute break
18 for lunch.

19 Jim is scheduled to speak to us
20 tomorrow on shared joint custody
21 decisions. So if everybody will look at
22 your exhibits that were -- or your
23 handout.

1 And how are you, Jim?

2 MR. JEFFRIES: I'm sorry?

3 THE HONORABLE PALMER: Just asking
4 how you are.

5 MR. JEFFRIES: I didn't fully
6 understand the question.

7 THE HONORABLE PALMER: We had
8 something e-mailed yesterday. Did that
9 get printed off, Mr. Maddox?

10 MR. MADDUX: Sorry. I was trying to
11 make a call to get this speaker fixed.

12 THE HONORABLE PALMER: Okay. And it
13 may be that Jim might need to call back in
14 or something.

15 MR. MADDUX: She's coming.

16 (Brief pause)

17 MR. MADDUX: Those of you who have
18 notebooks, go to Tab C if you want to keep
19 up. Tab C is the shared custody tab.

20 THE HONORABLE PALMER: Jim, can you
21 hear us?

22 MR. JEFFRIES: Yes. I can hear
23 that.

1 THE HONORABLE PALMER: Okay. That's
2 a little better. The lady just walked in
3 to make sure we can hear. She worked
4 wonders. She's going to walk out and we
5 probably can't hear you anymore.

6 All right. You submitted
7 something yesterday -- well, first let the
8 record reflect that we have a conference
9 call with Jim Jeffries, and he was on the
10 Committee. I think he's not as of October
11 the 1st, but he still agreed to help us
12 with the true joint legal and physical
13 custody and to talk about how that can be
14 calculated.

15 Right now Rule 32, I believe
16 there's just one paragraph that says that
17 if it's true joint legal and physical
18 custody, it's at the judge's discretion.
19 And I know more judges throughout the
20 state are awarding that. And "that" being
21 the true joint legal and physical custody.
22 And we're trying to figure out a way to
23 give the judges throughout the state some

1 guidelines or some guidance as to how to
2 do that.

3 So Jim, if you want to go and
4 tell us about what you sent in.

5 MR. MEDARIS: Judge, can I
6 interrupt?

7 THE HONORABLE PALMER: Yes.

8 MR. MEDARIS: Just to be correct,
9 Mr. Jeffries was reappointed to the
10 Committee.

11 THE HONORABLE PALMER: Oh, was he?
12 Okay. Thank you. I was not aware of
13 that.

14 So, Jim, can you hear us?

15 MR. JEFFRIES: I couldn't hear -- I
16 heard you and then I heard somebody say --
17 ask if they could interrupt, and I didn't
18 hear it.

19 THE HONORABLE PALMER: Okay. Well,
20 he was just telling me that you have been
21 reappointed to the Committee, and I was
22 not aware of that.

23 MR. JEFFRIES: Okay. Yes. Yes.

1 THE HONORABLE PALMER: Okay. So
2 now, if you would just report on what you
3 e-mailed everybody.

4 MR. JEFFRIES: Yeah. Thank you,
5 Julie.

6 What -- we had discussed at the
7 last meeting about the proposal to use or
8 to come up with a guideline type of
9 addition to Rule 32 to address the issue
10 of child support when there is true joint
11 custody. We got the -- Penny and the
12 Alabama Law Institute did our memo and we
13 heard from our expert. And I don't know
14 -- I'm sorry I missed the first part of
15 the meeting, and I don't know if y'all
16 have discussed this with him up to this
17 point.

18 But Bob asked me to put together
19 some sort of comment or some language --
20 sample language for a comment. And I
21 started thinking about it, and I ended up
22 going back to the memo that Penny had put
23 together earlier this year to help me find

1 other states who had an actual guideline
2 for joint physical custody, to see how
3 they addressed it. In my notes, I had the
4 Arizona -- the Arizona statutes were
5 substantially similar or seemed to be
6 substantially similar to the way Alabama
7 handled child support, which, in effect,
8 means that they are an income share model
9 like Alabama and they have a guide --
10 child support guideline. Their guidelines
11 are set up by their Supreme Court just
12 like ours.

13 And I went and found their -- the
14 Supreme Court guidelines that talk about
15 how to do child support in joint physical
16 custody situations. And they have a --
17 Bob, you printed that for everybody to
18 have, right.

19 MR. MADDUX: Yes, sir.

20 MR. JEFFRIES: Okay. The comment --
21 the language that Bob has distributed is
22 the explanation in the Arizona Supreme
23 Court rules that explains how to do the

1 calculation when you have joint physical
2 custody. I thought the language was
3 fairly straightforward except that, in my
4 mind, you really have to look at the
5 example that they provided to know exactly
6 what the language means in the first
7 paragraph. I'm not sure -- I guess by
8 that, I mean I'm not sure that by reading
9 that language in the first paragraph that
10 I would understand that you actually do
11 the calculation like they said.

12 But they basically -- this
13 calculation -- the reason I went back to
14 it is because -- from Billy Bell and his
15 explanation. Julie, I believe you have
16 used this exact calculation when you do
17 child support for joint physical custody
18 as well.

19 This is a fairly simple
20 straightforward sample that had been used,
21 and I thought that it would be a good
22 example of something to look at as far as
23 the standard as far as comments, comment

1 language, if we decided that that's
2 something we want to propose to the
3 Supreme Court. So that's kind of where we
4 are.

5 THE HONORABLE PALMER: If everybody
6 would look, you've got -- in front of you,
7 you should have the Alabama Rules of
8 Judicial Administration Rule 32 Child
9 Support.

10 MR. JEFFRIES: I'm sorry, Julie.
11 Were you talking to me?

12 THE HONORABLE PALMER: No. I'm
13 talking to the whole group right now, Jim.

14 MR. JEFFRIES: Okay. That's what I
15 thought. I'm sorry. Just wanted to make
16 sure.

17 THE HONORABLE PALMER: That's okay.

18 Everybody have this in front of
19 them? Then turn to page 11. The first
20 sentence says, The Alabama child support
21 guidelines do not specifically address the
22 problem of establishing the child support
23 order in legal and joint legal custody

1 situations. Such a situation may be
2 considered by the court as a reason for
3 deviation from the guidelines in
4 appropriate situations, particularly
5 physical custody that's jointly shared by
6 the parents.

7 Okay. Then you're going to go
8 down to about halfway through there. And
9 it says, Because -- everybody see that?
10 Because of the infinite possibilities that
11 exist in terms of time spent with each
12 parent and other considerations associated
13 with such custody, a determination of
14 support is to made on a case-by-case basis
15 and is left to the sound discretion of the
16 court to be based on the findings made at
17 or after the trial or upon a fair written
18 agreement of the parties.

19 That's all that the Guidelines
20 say right now. We've got split custody,
21 one child with me, one child with you, but
22 not a week with me and a week with you.
23 That's the only guidance right now that

1 the judges have is that one section there.
2 So we're just trying to make it a little
3 bit more clear this is how it is done,
4 this is how other judges do it throughout
5 the state, here are some examples. Or do
6 we want it absolute in there, this is how
7 you do it?

8 Mr. Arnold?

9 MR. ARNOLD: Question. Does this
10 paragraph make us run afoul of the federal
11 requirements for uniformity?

12 THE HONORABLE PALMER: I don't think
13 so because it's a case-by-case basis.

14 MR. JEFFRIES: I'm sorry. Does it
15 make us run afoul of what, Steve?

16 MR. ARNOLD: The federal requirement
17 for uniformity.

18 MS. BUSH: This is Jennifer Bush.
19 No. The current Guidelines as they exist
20 have been reviewed by the Federal Office
21 of Child Support Enforcement and have been
22 approved. So this is not a problem.

23 THE HONORABLE STUART: I think he

1 means if we adopted.

2 MS. BUSH: But I can't see that
3 being -- I mean, they would have to look
4 at it to see if it is a problem, but it
5 doesn't look like the kind of thing that
6 would cause a problem to me.

7 THE HONORABLE PALMER: Okay.
8 Anybody else have any comments about that?

9 THE HONORABLE THOMPSON: Yeah. Can
10 I ask Jim if he --

11 THE HONORABLE PALMER: Sure.

12 THE HONORABLE THOMPSON: What other
13 states are doing something similar to what
14 Arizona is doing and what we're
15 considering here, if he knows.

16 MR. JEFFRIES: I'm sorry. What was
17 the question?

18 THE HONORABLE PALMER: Are other
19 states doing what Arizona does?

20 MR. JEFFRIES: Yes. Just like our
21 GG84 Guidelines, they are -- they're all a
22 little bit different, but if you go -- if
23 you refer back to -- back to the Alabama

1 Law Institute memo from April 5th of 2016
2 that we had at the last meeting, my notes
3 indicate that there are several states
4 that do it like that, that do it like the
5 Arizona plan. And my review of those was
6 that most of them -- if they are income
7 share states, they usually have a -- what
8 my notes indicate are a too -- an overly
9 complicated calculation, which, by that, I
10 mean it usually includes some sort of
11 schedule that dictates what -- how many
12 days of the year that should be -- the
13 parent that has joint custody has. In
14 other words, you can have joint custody,
15 but there may be -- there may be certain
16 -- a certain schedule of days that they
17 have that gives them X number percentage
18 of the child support. Then if it's
19 another set of days -- if it's, you know,
20 160 to 175, then it's X percentage. And
21 my notes indicate that I thought those
22 were too complicated. I've got "too
23 complicated" written on, you know, six or

1 eight.

2 But they're mostly -- but they
3 are, I would say, relatively similar to
4 this Arizona model. And I note as well
5 that if you go -- I actually went to the
6 Arizona child support guidelines, what's
7 been proposed by the Supreme Court of
8 Arizona. You can go online and look at
9 it. And they actually have a percentage
10 calculation as well. I'm sorry. I didn't
11 send that. I didn't think to send that to
12 everybody.

13 But I did -- there's a parenting
14 time table that goes from 143 to 152 days
15 and 153 days to 162 days. And there are
16 different levels of percentages. But
17 other than that, there are others that do
18 something similar to what we're discussing
19 right now if that answers your question.

20 THE HONORABLE THOMPSON: Thank you.

21 MR. JEFFRIES: It's not exactly --
22 it's not exact. Every state kind of has
23 their own little -- as far as I can tell,

1 seems their own little tweak on it.

2 Does that answer your question?

3 THE HONORABLE PALMER: Anybody else
4 have more questions of Jim about this?
5 It's something that we can discuss later
6 on today but -- maybe when we take our
7 break, it can be something we review.

8 MR. JEFFRIES: Okay.

9 THE HONORABLE PALMER: Jim, if we
10 need you back, are you back in the office
11 or do you have to go back to court?

12 MR. JEFFRIES: I'm sorry?

13 THE HONORABLE PALMER: Are you back
14 in the office for the rest of the day in
15 case we need you any more on this topic?

16 MR. JEFFRIES: Yes.

17 THE HONORABLE PALMER: You're in the
18 office for the rest of the day?

19 MR. JEFFRIES: I'm sorry. I'm
20 through in court and I'm in my office is
21 what I was trying to say.

22 THE HONORABLE PALMER: Okay. Well,
23 we're going to break for lunch.

1 MR. JEFFRIES: Can I mention
2 something else before we -- before y'all
3 move on real quick?

4 THE HONORABLE PALMER: Yes, sir.

5 MR. JEFFRIES: And, Bob, you may be
6 more -- I thought about you when I read
7 this. In the very beginning of the
8 Arizona child support guidelines statute,
9 whatever they call it, it notes that the
10 Arizona child support guidelines follow
11 the income share model. And then it
12 states the model was developed by the
13 Child Support Guidelines Project of the
14 National Center for State Courts.

15 And I looked up the National
16 Center for State Courts, and it's some
17 sort of the nonprofit group that has a
18 board of directors that's made up of chief
19 justices of several different supreme
20 courts. But it may be another source for
21 us to be able to -- and I hate to -- I
22 hate to say, you know, something else for
23 us to look at, but that may be something

1 we can review, just to throw that out
2 there. I don't know if our expert is
3 familiar with that group or not.

4 Is he in there in the room with
5 y'all?

6 THE HONORABLE PALMER: He is. Yes,
7 sir.

8 Mr. Rogers, are you aware?

9 MR. ROGERS: They do provide some
10 useful information.

11 THE HONORABLE PALMER: Okay. But do
12 they --

13 THE HONORABLE STUART: Jim, they're
14 an organization that we are very familiar
15 with. We've used them for a variety of
16 purposes. We are a member of that
17 organization, and we pay a substantial
18 amount of money every year that is our pro
19 rata share of the cost of that
20 organization.

21 MR. JEFFRIES: Okay. Great.

22 MR. ROGERS: Can I make one point to
23 think about for discussion later? The

1 discussion about reallocating the child
2 support amount and equalizing and so on,
3 all that is about only the basic child
4 costs from the table. It is not inclusive
5 of medical insurance premium or child
6 care. So when there is language such as
7 no child support should the child be paid,
8 that should be as applied to the basic
9 costs. Medical insurance, child care, and
10 are to be considered separately.
11 Something like that.

12 THE HONORABLE PALMER: Okay. All
13 right. Anybody else --

14 MR. JEFFRIES: The only thing that I
15 would say is the way our calculations are
16 set up, as I see it, the health insurance
17 cost and the child care cost would be
18 added to the basic child support
19 obligation that is then subtracted -- the
20 lower subtracted from the higher and
21 divided in two. It does seem like these
22 numbers do get fairly low if that's what
23 you're saying.

1 MR. ROGERS: I guess my point is I
2 always get nervous when I see the word
3 "shall" or "shall not."

4 MR. JEFFRIES: I don't disagree
5 necessarily.

6 THE HONORABLE BELL: Jim, this is
7 Billy Bell. I'm one of those that feels
8 like we do need something in Rule 32 to
9 help laypersons and lawyers and judges
10 calculate the child support in a true
11 joint custody situation. I think the
12 simpler, the better. Arizona, as you
13 commented, is what I did. I think we do
14 need to have a provision in there that
15 allows the court to deviate in the event
16 there is a substantial difference in the
17 amount of time that the parents spend.

18 Child care cost creates a whole
19 new set of issues because the child may
20 stay one place with one parent and stay
21 another place with the other parent. Do
22 you combine those? And, you know, the
23 other issue is we, unfortunately, have a

1 lot of practitioners and especially
2 laypeople who don't really understand what
3 joint custody really is. They will call
4 it joint custody, and then they will
5 designate a primary residential parent and
6 then basically award the other parent
7 standard -- a visitation schedule, which
8 our appellate courts then have to decide
9 whether that's joint custody or not.

10 We can't solve all the problems.
11 There's too many moving parts. But I
12 think we do need something, and it needs
13 to be simple and straightforward that will
14 allow the court the discretion to deviate
15 in the event there are variables that
16 cause that to be the equitable thing to
17 do. My personal opinion.

18 MS. DAVIS: Madam Chairman, would it
19 be possible just to include an example in
20 this -- in this where we're saying there's
21 no standard way that we do it here, but
22 say an example of one way to do it is
23 this. It seems to be two -- from our

1 prior discussions, there seems to be a
2 couple of ways that judges throughout the
3 state have historically done that when
4 they're similar.

5 Could we -- as an alternative,
6 instead of saying, you know, you shall do
7 it this way, we could say two examples of
8 ways could be, and put just examples in
9 and still leave it to the court's
10 discretion basically.

11 Here's the other reason I'm
12 thinking this. We're -- the Law Institute
13 has a standing family law committee.
14 We're about to come forward with a bill
15 that's going to redo joint custody
16 somewhat. And as a component of that, we
17 have a group of child custody experts that
18 are working on some model parenting forms
19 and thinking about the child support as it
20 relates to that. The experts recommend
21 that the younger children have frequent
22 contact with both parents, and so they
23 don't recommend every other week and they

1 -- particularly with a young child,
2 children that are breast-feeding, they're
3 going to be with one parent much -- well,
4 the mother while they're breastfeeding
5 much longer periods of times. And then
6 later on -- there's a number of different
7 model plans, and some of them are not
8 equal time but they're viewed as being
9 still joint physical custody with the idea
10 of allowing a lot of intercontact with the
11 kids based on what's best for the kids at
12 the age level. And that deals with
13 separation anxiety and a lot of other
14 things.

15 But with that in the back of my
16 mind, I'm kind of reluctant for us to tie
17 in and say each judge has to do -- use
18 this formula when joint physical custody
19 is ordered. Now, this one does at least
20 say when they're going to have essentially
21 equal parenting time, but there will be a
22 some proposed model plans that will not be
23 equal parenting time for the younger

1 children.

2 THE HONORABLE PALMER: And it may be
3 that we need to wait on this topic and to
4 see if that parenting plan -- because it's
5 a bill, correct?

6 MS. DAVIS: There's a bill that
7 would require -- part of it changes --
8 gets away from the concept of visitation.
9 You have a primary physical custodial
10 parent, and then you have a secondary
11 residential parent, and no visitation.
12 They're both parents and they both have
13 forms of custody.

14 But the main -- one of the main
15 differences in addition to that is that
16 each parent will have to submit a
17 parenting plan. Now only if you want
18 joint custody, do they have to do so. And
19 so because of that, we're coming up with a
20 group of model plans that judges, lawyers,
21 and parents can use. They're not required
22 to use any of them. But they are from
23 plans that have been submitted by Alabama

1 judges as well as plans across the whole
2 United States.

3 THE HONORABLE PALMER: It may be
4 that -- we're going to take up this
5 subject again. We're going to break for
6 lunch. We're going to take this subject
7 again. We're going to get Mr. Rogers
8 taken care of when we come back from
9 launch, and then we're going to pick this
10 back up. And just be thinking about it.
11 And possibly for now -- and we don't have
12 to do anything. Again, we don't have to
13 do anything. But possibly for now, since
14 we have a quorum today -- we may not have
15 a quorum tomorrow -- since we have a
16 quorum today, is make a vote on just to
17 include in Rule 32, here are some samples
18 on how this is done throughout the state
19 and have more guidance than just the
20 one paragraph that the judge goes by the
21 state case-by-case example.

22 So thank you, Jim. If we need
23 you, we will call you back if that's okay,

1 sir.

2 MR. JEFFRIES: Okay. Great.

3 THE HONORABLE PALMER: And so with
4 that, where is lunch, Mr. Maddox?

5 MR. MADDUX: It's right outside
6 these doors. Please go outside and get a
7 plate. There's some tea out there if you
8 don't want some of these drinks up here.

9 THE HONORABLE PALMER: Is there
10 another room for us to eat, or do we come
11 back in here?

12 MR. MADDUX: I think we have the
13 small classroom available, so you might
14 want to go in there or even the formal
15 conference room if you want to spread out.

16 THE HONORABLE PALMER: So if you
17 want to do that. As you can see, I've got
18 my stuff all spread out.

19 So it is 12:09. We'll come back
20 at 12:30. Thank you very much.

21 (A short lunch break was taken.)

22 THE HONORABLE PALMER: I know we've
23 been jumping around, but let's finish up

1 with the joint custody right now. We need
2 Penny back. I don't think we've got a
3 quorum.

4 Okay. There she is. Penny.

5 Okay. Let's go back to the joint
6 custody for right now. I really think
7 that -- now, Ms. Davis, as far as the bill
8 on the model parenting plan, has that
9 already been prefiled?

10 MS. DAVIS: I'm not sure. It will
11 be the joint -- the standing family law
12 committee will meet in January again prior
13 to the February regular session unless
14 there is some reason -- I'm not aware that
15 there's going to be any changes to the
16 bill that was not introduced last time.
17 So I assume that it will be virtually the
18 same bill that was introduced last time.
19 So if anybody wants to go to it, they can
20 go to the bill last year, or I'll be happy
21 to send it to Bob and Bob can send it out
22 to the Committee. That may be the
23 simplest way to do it. Just with the

1 caveat that the committee will meet again
2 in January, and could make changes to it,
3 but I don't think there will be
4 substantial changes to it.

5 And again, let me emphasize the
6 model -- if you wind up watching the
7 presentation that our student will make,
8 it's the presentation on a web page that
9 we're doing with those. These are model
10 plans, and nobody has to use them. I
11 mean, there could be one person in the
12 whole state that ever uses one single
13 plan, but they just provide -- the idea is
14 if we're going to require each parent to
15 provide a plan to the court, then we want
16 to give them some tools that have some
17 plans that were based upon what experts
18 and judges and lawyers over the years had
19 developed.

20 And we're going to develop a
21 handbook for judges and lawyers and a
22 handbook that will be for parents because
23 of the number of pro se people. And so

1 what you'll see, if you decide to stay in,
2 is a presentation that a student who
3 worked on the web page does. It will show
4 how you point and click and get to the
5 different plans.

6 THE HONORABLE PALMER: And one of --
7 for those of you who aren't practicing
8 attorneys or active judges now, last year
9 Jefferson County, Birmingham Division, we
10 had 3,600 filings between the three
11 judges. We disposed of 3,700 cases, had
12 about 2,700 cases pending at the end of
13 2015. Out of those 3,600 cases,
14 approximately 25 percent of those were
15 self-represented on one side, if not
16 self-represented versus self-represented.

17 So to have these model plans, to
18 have something for people to go by, would
19 be very helpful to the courts as far as,
20 you know, them just standing in front of
21 you saying, well, we don't know what to
22 do, and then the judge can't act as their
23 attorney, and you can -- but now we at

1 least will have something for them to go
2 to or a website.

3 MS. DAVIS: There will be a model
4 petition and a model answer, and it has
5 the parenting schedule, but it also has
6 some issues at least sort of a
7 check-the-box plan or something, like
8 who's going to provide the transportation
9 and things like that.

10 THE HONORABLE PALMER: Okay. So
11 with that, what I would like to do is get
12 a vote. As for today -- and we may not
13 want to do this at all, but as for today,
14 we've got the form that Jim sent us that
15 has about the Arizona plan, to merely use
16 this as an example to add to the
17 Guidelines as far as where it says,
18 Because of the infinite possibilities that
19 exist in the terms of time spent with the
20 parties and other considerations
21 associated with such custody, a
22 determination of the court is to be made
23 by a case-by-case basis and is left to the

1 sound discretion of the trial court to be
2 based on findings made at or after a trial
3 or upon a fair written agreement of the
4 parties.

5 And then just add in the
6 footnotes, Here are two examples as to how
7 this can be achieved. And one of them
8 would be example one that was Jim
9 Jeffries'.

10 THE HONORABLE THOMPSON: Just the
11 example part, not the --

12 THE HONORABLE PALMER: Just the
13 example part.

14 MR. ARNOLD: And that would be a
15 footnote, not a comment?

16 THE HONORABLE PALMER: Footnote, not
17 a comment. And then -- because the way I
18 do this is I subtract a thousand from 500
19 and then I give the parent whose income is
20 less the 500, I don't then divide it by
21 two is how I do this.

22 THE HONORABLE BELL: I divide the --

23 THE HONORABLE PALMER: Judge Bell.

1 THE HONORABLE BELL: Billy Bell. I
2 divided it in two because each parent is
3 going to have sole support of the child
4 for half the time. If you don't divide it
5 in two, then you're basically paying the
6 difference for the full months. I also
7 calculate Rule 32 in a normal way.

8 THE HONORABLE PALMER: Yes.

9 THE HONORABLE BELL: And it's kind
10 of like what Mr. Rogers was talking about.
11 I included child care cost, I included
12 insurance, calculated Rule 32 the way it
13 ought to be done. And then, if it was a
14 true joint custody, I had the parent who
15 owed the most pay half of the difference
16 to the other parent.

17 THE HONORABLE PALMER: So when you
18 say half of the difference --

19 THE HONORABLE STUART: The true
20 Arizona plan.

21 THE HONORABLE BELL: Yes. It would
22 be 250 in this particular scenario, not
23 500.

1 THE HONORABLE PALMER: Okay. Judge
2 Ford, did you do anything different?

3 THE HONORABLE FORD: No. I was just
4 listening. That's all.

5 THE HONORABLE PALMER: Okay. But
6 when you were on the bench, did you do
7 anything different?

8 THE HONORABLE FORD: No. I dealt
9 with IV-D clients.

10 THE HONORABLE PALMER: Okay. All
11 right.

12 THE HONORABLE BELL: Now, are we
13 talking about just putting a comment or a
14 footnote?

15 THE HONORABLE PALMER: A footnote as
16 an example.

17 THE HONORABLE BELL: And not putting
18 a provision in there saying in the event
19 of true joint custody with essentially
20 equal time, this is the calculation, like
21 they do for split custody?

22 THE HONORABLE PALMER: Not as of
23 right now with the legislation that's

1 pending that Ms. Davis just talked about,
2 because I think we'd just be back here
3 again trying to recalculate. Maybe we
4 just don't do anything. Maybe we just
5 leave it like it is, at the sound
6 discretion of the court. And just leave
7 it like that for now.

8 Judge Ford?

9 THE HONORABLE FORD: Do you think
10 because you have pending litigation -- I'm
11 sorry -- legislation, that it may be good
12 to just leave it like you have it and see
13 how that legislation is going to go. And
14 if it passes. The way it's been
15 represented, it's going to have a direct
16 impact on what we're doing, then come back
17 to see what we have.

18 THE HONORABLE PALMER: Okay. Is
19 that a motion?

20 THE HONORABLE FORD: I'm a emeritus
21 member, so I can't move.

22 THE HONORABLE PALMER: Oh, okay.

23 Well, Ms. Davis, do you have any -- would

1 you like to move to --

2 MS. DAVIS: Yes. I would like to
3 move to whatever -- I move that -- when
4 will the Committee meet again?

5 THE HONORABLE PALMER: Well, right
6 now we don't have -- we're trying to get
7 everything done, get it voted, send it to
8 the Alabama Supreme Court. So we may not
9 meet again anytime soon. That's the goal
10 of having this for two days.

11 MS. DAVIS: Like several years?

12 THE HONORABLE PALMER: Well, I don't
13 know about several years. It's mandatory
14 that we meet every four years; but if some
15 legislation gets passed where this needs
16 to be addressed more fully, I guess we can
17 come back at that time.

18 MS. DAVIS: All right. For purpose
19 of discussion -- and I'm going to make a
20 motion that we add as a footnote the two
21 examples that are currently being most
22 prominently used in the state, which is I
23 think what Billy uses, which is the

1 Arizona plan, and then the other one that
2 was discussed a little back that may be
3 the one that you use.

4 THE HONORABLE PALMER: That's the
5 one that I use, yes.

6 MS. DAVIS: As examples.

7 THE HONORABLE PALMER: So do you
8 think we'll need that now versus waiting
9 until -- to see if the legislation that
10 you're talking about passes?

11 MS. DAVIS: I just -- I would be
12 uncomfortable mandating a particular thou
13 shall do it this way --

14 THE HONORABLE PALMER: Yes.

15 MS. DAVIS: -- without the
16 experience of the judges looking at these
17 plans and deciding is that really fair.
18 Because what we -- what we attempted to do
19 as a Committee was always put the child
20 first.

21 The legislative pressure is a
22 movement towards having more joint custody
23 and to get away from the standard every

1 other weekend only or maybe every other
2 weekend and one day during the week; but
3 in keeping the child first, particularly
4 with the younger age children because of
5 this -- the needs of the children to
6 attach to both parents, but also the
7 biological needs and children don't need
8 -- typically young children need a regular
9 home environment, not every other day
10 going from place to place and all that, so
11 that you don't really have a true 50/50
12 percent for the younger children in most
13 cases.

14 Now, the parents can choose to do
15 that. And if the judges thinks that it's
16 better for a six-month old child, it's in
17 that child's best interest to be with one
18 parent one night and the next parent a
19 night and that type, they can do that.
20 That's just not our experts felt.

21 So -- but we also recognize that
22 if you don't get joint custody, then you
23 wind up having a McLendon issue. So we

1 felt like we wanted to do some plans that
2 kept the focus on what's best for the
3 child but will allow parents who really
4 want to have joint interaction with the
5 child to have that freedom with young
6 children.

7 THE HONORABLE PALMER: Well, and
8 some of that, when we go out to the Reno
9 to the Judges College, one of the things
10 that they show us is like the Arizona
11 Parenting Plan that shows a newborn,
12 especially, needs to see the noncustodial
13 parent like every three days. If not,
14 they forget. They've got to have that
15 bonding, that imprinting type of thing,
16 which is what Ms. Davis is talking about
17 as far as it may not be -- you're going to
18 call it joint legal physical custody, but
19 it may be that you just see them three
20 hours or six hours every three days.

21 MS. DAVIS: And as we all know,
22 those of us who have children at home,
23 they sleep a lot anyway. So they could be

1 sleeping in one household, which is good
2 for the parent and the child, but they see
3 the other parent. And a lot of the plans
4 are they would see them two or three,
5 maybe four times a week as long as it's
6 not a high conflict family. That does not
7 work for high conflict families,
8 obviously.

9 So if you look at the total
10 waking hours of the child, it's more equal
11 time for that child to bond for both
12 parents, but the child is still sleeping
13 and the sleep pattern is not disrupted as
14 much. Because, you know, you say somebody
15 comes to get the child from 3:00 to 6:00
16 in the afternoon, the child may be half --
17 may be sleeping during that time. So you
18 have to -- anyway, I don't want to take up
19 our time doing all that.

20 THE HONORABLE PALMER: Well, it's
21 going to be my suggestion, then, that we
22 just table this physical joint custody
23 child support matter until we see what

1 this legislation -- happens with it. Now,
2 that's my suggestion. We don't even put
3 any examples in there. But if anybody
4 else has anything else, please say that
5 because we're about to take a vote. So --

6 THE HONORABLE BELL: I do.

7 THE HONORABLE PALMER: Okay.

8 THE HONORABLE BELL: There's
9 something inherently unfair to me for a
10 child support award in a true joint
11 custody, equal time in one county to be
12 different from another county. And I
13 don't have any numbers to back me up, but
14 I would guess that the numbers of true
15 joint custody awards, which we all know is
16 trending up, is so much higher
17 proportionally than a split custody award,
18 and there's a split custody award in
19 Rule 32. It doesn't make any sense to me
20 why we don't now, rather than waiting four
21 years, do the basic equal true joint
22 custody, do a formula for doing it and
23 saying -- word it the way we want it, as

1 part of the same provision that deals with
2 split custody.

3 I see very few split custody
4 situations -- or I have. I see a lot more
5 joint custody situations now, or at least
6 than I used to. And I think we need to
7 take care of those folks and take care of
8 those children and cover the basic equal
9 time -- essentially equal time situation,
10 include the basic rule -- the complete
11 Rule 32, not basic -- the full Rule 32
12 calculations and then do a calculation as
13 to what the child support would be.

14 That just seems like, to me, the
15 right thing to do now rather than wait
16 four years when we've got all these people
17 who are going to be awarded true joint
18 custody or agree to it who are being
19 treated not the same, inconsistently.

20 THE HONORABLE PALMER: Well, I know
21 there was one case -- and Mary?

22 THE HONORABLE MOORE: I have a
23 question. In reference to this proposed

1 legislation, does it define what true
2 joint custody is? Does it define what
3 split custody or shared joint custody?
4 Does it define --

5 MS. DAVIS: It keeps the same
6 language that -- some of the same language
7 is in there, the definitions, but the -- I
8 don't remember the exact sentence that
9 says that joint custody does not have to
10 be exactly equal, whatever the language is
11 that says that. That's retained in there.

12 THE HONORABLE MOORE: In other
13 words, is it simple enough for a person
14 without a -- you know, for the person that
15 walks in my office -- let's suppose, say,
16 a litigant comes in -- to know whether
17 this information, these spousal
18 agreements, custodies --

19 MS. DAVIS: Yes.

20 THE HONORABLE MOORE: Is it clear
21 enough that the judge will be able to --

22 MS. DAVIS: I'm confident the judge
23 will not see that as a problem. As a

1 matter of fact, we -- you know, the term
2 "primary physical custodian" is not used
3 now in a statute, but that's what a lot
4 judges refer to it. So we are picking up
5 that concept, doing away with the concept
6 of visitation, and the other person is
7 called the nonresidential custodial
8 parent. And then we have a third
9 category, which is a restricted parent,
10 which is the one where if they have like
11 drugs and thing likes that, where the
12 court can restrict it.

13 THE HONORABLE MOORE: A history of
14 --

15 THE HONORABLE PALMER: Yeah. And
16 the form is pretty -- the ones that I have
17 seen and the one that Ms. Davis presented
18 to us at the DHR judges retreat was you
19 just mark off Mother's Day and you put
20 Mary Brown; Father's Day, Joe Brown; Labor
21 Day; Fourth of July. You mark off all
22 that. Spring break, even years; spring
23 break, odd years; fall break, even years,

1 fall break -- and it's just a
2 fill-in-the-blank. And both parties sign
3 it or initial it, and then you attach that
4 to any --

5 THE HONORABLE MOORE: See, I would
6 consider that as true joint custody.

7 MS. DAVIS: Well, here's the
8 definition for joint --

9 THE HONORABLE MOORE: I would
10 consider that a visitation order.

11 What were you saying on that true
12 definition?

13 MS. DAVIS: Joint physical custody
14 is when physical care and custody is
15 shared by the parents in a way that
16 assures that the child has regular parent
17 contact with each parent. Joint physical
18 custody does not necessarily mean physical
19 custody of equal duration of time.

20 THE HONORABLE PALMER: Which is what
21 the statute says now.

22 MS. DAVIS: Yeah. We kept that.

23 THE HONORABLE THOMPSON: But in

1 reality, we see judges awarding joint
2 physical custody and really awarding a
3 parent only standard visitation rights.

4 THE HONORABLE BELL: Right.

5 MS. DAVIS: And what we'll hope to
6 do is get away from the, quote, standard
7 visitation and having multiple choices.
8 And what you'll see is when somebody
9 clicks on the presentation -- if the
10 parent wants joint physical custody, then
11 they'll click and there will be a category
12 of maybe eight or nine different model
13 plans they can choose from. And so they
14 will -- if that's what they choose, they
15 will click to the model plans. If they
16 click to there being a primary physical
17 custodian, they will click a different set
18 of plans.

19 MS. BUSH: I just want to state that
20 we don't have to wait four years before we
21 meet again. It's just a minimum. We have
22 to meet a minimum of every four years. So
23 if you don't decide it today or do

1 anything today, you can certainly meet
2 again before four years is up.

3 THE HONORABLE BELL: We could.

4 MS. DAVIS: I mean, this is --

5 THE HONORABLE BELL: Will we?

6 This is an earlier draft.

7 MS. DAVIS: This will give you
8 examples of the number of plans that we
9 have. And we've gone -- the experts have
10 gone through and have listed the
11 advantages and disadvantages of the
12 different plans. And I think Arizona is
13 one of the states we looked at. If you
14 look at what Florida has, they have sort
15 of the split kind of thing that we were
16 talking about. I mean, anybody is welcome
17 to look at this if they want to.

18 Also, in the attachment in the
19 handbook, it explains just what Julie was
20 talking about in terms of the attachment
21 and what ages they can recognize people
22 and forget parents if they don't see them.
23 Like the, quote, standard plan is awful

1 for infants. Every other week, the child
2 has forgotten the parent at a younger age
3 like that.

4 MR. ROGERS: I'd like to point out
5 there are a lot of states that do meet on
6 an ongoing basis, and I mean like every
7 six months or so, just to touch base and
8 cleaning up operations where, oh, gee, you
9 know, that language wasn't as clear as we
10 thought it was, let's touch it up kind of
11 thing, as opposed to every-four-year
12 controversial cost table review. A lot of
13 states touch base every six months or so.

14 MR. ARNOLD: Well, historically, we
15 have met consistently far more than once
16 every four years. I think the longest
17 we've gone without meeting is like 14
18 months or something.

19 THE HONORABLE PALMER: I think 2015,
20 that's when Gordon passed away -- or maybe
21 December or November of '14. And so '15
22 was, I think, the longest length that I've
23 been since 2005 that we didn't meet. But

1 it's been at least once a year, I think.

2 MR. ARNOLD: I think that's pretty
3 accurate.

4 MR. ROGERS: I'd like to make one
5 quick comment on the equal custody plan.
6 I confess I am a numbers person and, for
7 some reason, attorneys have kind of turned
8 me into a procedural person and so there's
9 also a possibility that I may be over
10 thinking it. However, for this equal
11 custody thing, I'm thinking of, you know,
12 what do you do procedurally for making
13 sure an order meets whatever standards are
14 required. You're going to write down each
15 parents' -- have a finding on each parents
16 income. You have to have a finding of the
17 presumptive award, dollar amount, and if
18 there's any deviation.

19 So the question in my mind is how
20 does this language for the equal custody
21 fit into here is parent A's income, here's
22 parent B's income, here's the presumptive
23 calculation? It just seems like there is

1 wording here that says if these general
2 circumstances are met, boom, the
3 presumptive award is zero. How does that
4 tie in with the procedure, you know,
5 leading up to not quite being there? You
6 got to have these finding of facts that
7 are numbers. Then what do you have for
8 the final presumptive award?

9 I don't know. I may be over
10 thinking it; but if you're doing a
11 standard procedure for each finding,
12 income and so on, how does that fit in
13 with this language?

14 THE HONORABLE PALMER: Well, I've
15 got -- it's not in our paperwork in front
16 of us, I don't think; but I've got the
17 2016 Alabama Rules of Court. And under
18 split custody -- and there is very much a
19 pattern here. It used to show a little
20 map. It's kind of like a CS-42 on there.
21 That part is gone. It's not on there.

22 THE HONORABLE BELL: It defines
23 this. It defines joint custody, split

1 custody, shows how you could calculate it.

2 THE HONORABLE PALMER: It says in
3 those situations where a parent has
4 primary physical custody of one or more of
5 the children, child support shall be
6 computed in the following manner: Compute
7 the child support the father would owe to
8 the mother for the children in her custody
9 as if they were the only children of the
10 two parties, compute the child support the
11 mother would pay the father for the
12 children in his custody as if they were
13 the only children of the parties, then
14 subtract the lesser child support
15 obligation from the greater. The parent
16 who owes the greater obligation should be
17 ordered to pay the difference in child
18 support to the other parent unless the
19 court determines, pursuant to other
20 provisions of this rule, that it should
21 deviate from the Guidelines.

22 That's all there is to that.

23 THE HONORABLE BELL: And I think you

1 could do something similar for a true
2 joint custody. You're going to have a
3 problem in the calculation because let's
4 say one parent, which generally is the
5 case, carries the insurance. So you plug
6 into the -- before you get to the total,
7 you plug in insurance premium and so --
8 and then you come down this parent's
9 proportionate share and this parent's
10 proportionate share, even in a true joint
11 custody.

12 THE HONORABLE PALMER: And for those
13 who do have this in front of them, it's
14 the Alabama Rules of Civil procedure
15 again. Go to page 30.

16 THE HONORABLE BELL: Right.

17 THE HONORABLE PALMER: Rule 32.

18 THE HONORABLE BELL: Can I suggest
19 this?

20 THE HONORABLE PALMER: Yes, sir.

21 THE HONORABLE BELL: If we want to
22 table it, will you allow me to pick some
23 folks to form a subcommittee to come up

1 with some proposed language for including
2 the joint custody provision as number 10
3 in Rule 32?

4 THE HONORABLE PALMER: I would love
5 that.

6 THE HONORABLE BELL: Just for
7 consideration.

8 THE HONORABLE PALMER: I personally
9 would love that.

10 THE HONORABLE BELL: Just for
11 consideration. And we'll need a comment
12 too, but I'd like to see us consider
13 something. It's not going to be zero like
14 Mr. Rogers -- like we've been talking
15 about. Because you might have a skewed
16 number because one parent pays the
17 insurance premium; an other parent may be
18 paying all the child care cost. So
19 there's got to be a balance there. The
20 end result needs to be that in a true
21 joint custody, equal time, equal --
22 essentially equal income, they ought to
23 equally bear the cost of supporting that

1 child.

2 MR. ROGERS: And there may be
3 deviations.

4 THE HONORABLE BELL: And you can
5 deviate, and we'll put a provision in to
6 say the court still has the authority to
7 deviate in the event, due to, you know.
8 But we can cover all the bases but at
9 least have a basic provision for joint
10 custody that folks would know how to
11 calculate it rather than Jim Jeffries
12 having a Mobile judge award one amount and
13 a Madison County or Jefferson County judge
14 award another amount or maybe three
15 different amounts, from top to bottom.

16 THE HONORABLE PALMER: Any
17 objections to Mr. Bell doing this? Judge
18 Bell?

19 (No response)

20 THE HONORABLE PALMER: Okay. Then
21 so be it.

22 THE HONORABLE BELL: I'll take care
23 of it.

1 THE HONORABLE PALMER: All right.

2 You're going to do it, so again --

3 MR. MADDUX: Do we want to designate
4 who's on the subcommittee on the record?

5 THE HONORABLE BELL: Yes. Steve
6 Arnold, Jim --

7 MR. ARNOLD: What did I do to you?

8 THE HONORABLE BELL: -- Jim
9 Jeffries, since he started this mess, and
10 Penny Davis, my ex-wife.

11 THE HONORABLE PALMER: Well, and I
12 think that definitely we'll get the
13 language in the proposed bill as far as
14 the Committee goes so we can possibly be
15 one step ahead for one day if indeed it
16 does pass.

17 THE HONORABLE BELL: We'll report
18 back.

19 THE HONORABLE PALMER: Okay.

20 MR. MADDUX: Do you want a deadline
21 for that report back?

22 THE HONORABLE BELL: No. No, we
23 didn't.

1 THE HONORABLE PALMER: We'll
2 probably meet again in about six months as
3 was suggested. So maybe on our way to
4 Divorce On the Beach, we'll stop by here
5 as we're traveling down.

6 Okay. So joint child support --
7 yes, sir?

8 THE HONORABLE THOMPSON: Madam
9 Chairman, if I could ask Billy, are you
10 planning something similar to what you
11 have here in Arizona, which is more of a,
12 you shall do this? Are you planning
13 something that is more along the lines of
14 a presumption in favor of this?

15 THE HONORABLE BELL: What I'm
16 thinking about is there being a
17 paragraph 10 right after split custody and
18 how you calculate. Just do a joint
19 custody, and then you say boom, boom,
20 boom. It will be basically the same
21 except the last subparagraph will how do
22 you balance, how do you adjust the
23 differences between parents. That's what

1 I'm planning.

2 THE HONORABLE THOMPSON: Right.

3 THE HONORABLE PALMER: And it looks
4 like --

5 THE HONORABLE THOMPSON: I was just
6 wondering if the judges will see this as,
7 you have to do it this way.

8 THE HONORABLE BELL: Madam
9 Chairperson, may I amend my subcommittee?

10 THE HONORABLE PALMER: Yes.

11 THE HONORABLE BELL: Judge Bill
12 Thompson would be a wonderful participant.

13 THE HONORABLE THOMPSON: Is that my
14 punishment for asking you?

15 THE HONORABLE PALMER: He's had lots
16 of questions today.

17 So, Mr. Maddox, if you would add
18 Judge Thompson on there, please.

19 THE HONORABLE THOMPSON: Thank you
20 very much.

21 MR. ARNOLD: You're on a learning
22 curve now.

23 THE HONORABLE PALMER: It looks like

1 on the split custody, you calculate it.
2 You include the daycare expenses. You
3 include the insurance. You just do
4 everything as you would, and then you just
5 -- rather than divide one from the other,
6 then you divide by two.

7 THE HONORABLE BELL: My envision
8 would be the last subparagraph would be
9 the only thing that would change in the
10 new joint custody calculation, and then
11 you'd have a provision allowing for a
12 deviation by the trial court in certain
13 circumstances.

14 MS. DAVIS: And I don't want jump
15 too far ahead, but what we may need to do
16 -- they can determine how these joint
17 custody plans might come into being. We
18 may want to have at least that there be a
19 minimum. A lot of states have minimum
20 days on which it is categorized, for
21 purposes of child support, as being joint.
22 And so to avoid what I think Steve was
23 talking earlier when sometimes -- or maybe

1 you told -- some people, particularly pro
2 se people, may come in and categorize it
3 joint custody, one being represented and
4 one not, and it really not being a true
5 joint custody in that the person who is
6 represented then winds up not paying child
7 support or couldn't get the calculation.
8 We may want to just categorize it as
9 saying for child support purposes, joint
10 custody would have to be a minimum of X
11 number of days. You're nodding. Some
12 states do that.

13 MR. ROGERS: The phrase "for child
14 support purposes" is very useful.

15 MS. DAVIS: Yeah.

16 THE HONORABLE BELL: I'd like to
17 amend my subcommittee to name Penny the
18 co-chairman.

19 MS. DAVIS: No. I thought you were
20 going to take me off.

21 THE HONORABLE BELL: No, I'm not
22 going to take you off.

23 THE HONORABLE PALMER: Anything

1 else?

2 Yeah, Mr. Rogers?

3 MR. ROGERS: Final comment maybe. I
4 was just looking at our favorite Code of
5 Federal Regulations 5 CFR 302.56, which is
6 related to the guidelines. And it's --
7 this is kind of the bottom line. The
8 guidelines blah, blah, blah, must be based
9 on specific descriptive and numeric
10 criteria and result in a computation of
11 the child support obligation. Plain
12 English, you have a number as the final
13 result.

14 THE HONORABLE BELL: Which is what
15 -- yeah. Which it would. Just like split
16 custody is right now.

17 THE HONORABLE PALMER: But the
18 number could be zero, though, couldn't it?

19 THE HONORABLE BELL: It could be.

20 THE HONORABLE STUART: If they had
21 equal amount of parenting time and
22 absolutely equal employment.

23 THE HONORABLE BELL: And equal

1 payment of child care and insurance, which
2 is not likely. There will have to be some
3 adjustments.

4 MR. MADDUX: And the regulations to
5 which he is referring is under Tab F, if
6 you want to refer to that regulation.

7 THE HONORABLE PALMER: Okay. Thank
8 you. All right. That's been tabled.
9 Let's go back to comparing apples to
10 oranges now. We compared apples to
11 apples. Now let's look at apples to
12 oranges here.

13 Let's go to what we marked
14 earlier as 1 and the Attachment B -- that
15 is the one household, no cost of living
16 adjustments -- and compare that to the
17 current Guidelines and see where the
18 differences are.

19 MR. ROGERS: May I suggest kind of a
20 shorthand way of looking at this is with
21 the charts comparison of state costs. I
22 think that is highly, highly useful. It's
23 page 53 through 55 in my report.

1 THE HONORABLE STUART: Of the final
2 report?

3 MR. ROGERS: Yes. And emphasis is
4 given on the current level, the overall
5 national base number, and the COLA
6 adjusted number.

7 THE HONORABLE PALMER: Now, did you
8 say 55 -- 53 through 55?

9 MR. ROGERS: Yes.

10 THE HONORABLE PALMER: 53 through
11 55.

12 MR. ROGERS: Yeah. It's going to
13 show some places, especially for one
14 child, where at the more modest incomes,
15 it's lower. And that includes the
16 self-support reserve section. But it does
17 show, after you get past the modest income
18 levels especially for two or more
19 children, even with the COLA adjusted, the
20 figures are mostly somewhat higher than
21 the current because of the long-term --
22 the ten-year shift in spending patterns as
23 real income has risen. So I think these

1 tables -- these charts most quickly
2 portray what's going on.

3 THE HONORABLE PALMER: Everybody
4 have that in front of them?

5 MR. ARNOLD: Are we also looking at
6 Exhibit -- is it the same as Exhibit 26,
7 27, 28, 29, or am I looking at the wrong
8 one?

9 THE HONORABLE PALMER: It's Exhibits
10 24, 25.

11 MR. ARNOLD: Okay.

12 MR. ROGERS: Through 29.

13 THE HONORABLE PALMER: Through 29.

14 MR. ARNOLD: Okay. Got it.

15 THE HONORABLE PALMER: Well, I'm a
16 more visual person, and that's why I was
17 looking at the actual subtracted numbers
18 for me, but we'll start with this.

19 And all of these -- all four of
20 these charts, the numbers go down in the
21 lower income. And in some of them, if you
22 do the two household with the cost of
23 living, it goes down in every category,

1 whether you make \$1,000 a month or you
2 make a combined of \$20,000 a month.

3 So I guess my question is do we
4 need to throw away two and three -- excuse
5 me -- three and four, which is the two
6 households, one with no cost of living and
7 the other one with the cost of living, and
8 not even consider three and four because
9 of how the numbers just drop and the fact
10 that this Committee historically has not
11 considered two separate households but
12 only one household, one intact household?

13 MR. ROGERS: Quick comment. Three
14 and four are very similar in the dollar
15 amounts. Wait a minute. I said that
16 wrong. Two and three. Two is the COLA
17 adjusted national. Three is the national
18 with the second household adjustment. So
19 two and three are very, very similar. And
20 four would be a sharp divergence from what
21 you've been doing. One would be a sharp
22 divergence from what you've been doing.

23 MS. DAVIS: I thought two and three

1 were the second households?

2 MR. ROGERS: Second one is national
3 with the Alabama COLA. Three is national
4 with the second household adjustment.

5 MS. DAVIS: And four is national.
6 That's what I'm saying. Charts three and
7 four have second household.

8 MR. ROGERS: Yes.

9 MS. DAVIS: Charts one and two do
10 not have second household? That's what
11 you were saying.

12 THE HONORABLE PALMER: That's what I
13 was saying.

14 MS. DAVIS: That we start with the
15 decision whether to switch from one
16 household to two?

17 THE HONORABLE PALMER: Well, yeah,
18 just to get rid of the two household since
19 traditionally it's not been used, since I
20 believe Mr. Maddox handed me something
21 earlier that said that the -- if I can
22 find it here -- the history of this
23 Committee, I believe the first Guidelines

1 were adopted in 1984.

2 MR. MADDOX: '87.

3 THE HONORABLE PALMER: '87. I
4 apologize. Rule 32 Child Support
5 Guidelines.

6 MR. ROGERS: Those were advisory
7 Guidelines.

8 THE HONORABLE PALMER: October the
9 1st of 1987.

10 MR. MADDOX: Advisory. They were
11 mandatory in '89.

12 THE HONORABLE PALMER: In
13 October 9th of 1989.

14 THE HONORABLE BELL: You know, I was
15 practicing law back then and so was Steve,
16 and Aubrey probably was too.

17 THE HONORABLE FORD: I was on the
18 bench.

19 THE HONORABLE BELL: On the bench.
20 I've got kind of mixed views on this. I
21 don't know that we need to worry about
22 what we did before and think about what
23 should we do right now that's fair and

1 matches reality and deals with the actual
2 numbers and reality of the situation and
3 not worry about whether it goes up or
4 down. Because, listen, when I practiced
5 law back when these things came out, there
6 was an uproar like you ain't never seen on
7 both sides. And so whatever we do is
8 going to cause a ripple.

9 MR. ROGERS: As an aside, you can
10 split the difference. You can take two
11 sets of numbers, average them, weigh them
12 one-fourth, three-fourths.

13 THE HONORABLE PALMER: But we don't
14 know what those numbers would be if we
15 decided to average it, do we?

16 MR. ROGERS: It's not hard.

17 THE HONORABLE PALMER: Well, for you
18 possibly. All right. Well, let's look at
19 this, and then we're going to go -- and
20 we've got -- let's go to number four.

21 THE HONORABLE BELL: Which is on
22 page what?

23 THE HONORABLE PALMER: Which is on

1 page 41 of Exhibit B. If you look at
2 that, that's two households with the cost
3 of living.

4 MR. MADDOX: Is that national or
5 Alabama?

6 THE HONORABLE PALMER: It's -- I'm
7 just reading what it says. It's 2016
8 income shares Rothbard with two household
9 adjusted and COLA, schedule for basic
10 child support obligations new estimated
11 minus the current chart.

12 So this is how much things will
13 go down right now. So if you'll look on
14 page 41 and 42 and 43, 44. The only time
15 that they go up some is when you get to
16 let's say \$9,000 and three children.
17 That's when it begins to go up.

18 MR. ROGERS: This is set four.

19 MR. HOYEM: 66 -- 600 --

20 MR. ROGERS: This is everything
21 combined. I thought we were ruling out
22 number four.

23 THE HONORABLE PALMER: Well, no.

1 Judge Bell just said we need to consider
2 all this. And if they go down, they go
3 down; if they go up, we'll go up or just
4 keep them like they are. We need to look
5 at everything.

6 THE HONORABLE BELL: Well, no. What
7 I said was adopt a methodology that's fair
8 now, not worry about what we did back in
9 '84, what's fair right now, for everybody
10 and the children.

11 THE HONORABLE PALMER: Well, and
12 that's what I had said earlier. Since in
13 the past we've never had the two separate
14 households, let's only deal with the one
15 intact household. And that's when you
16 said we need to really not consider what
17 we did in the past but look at all the
18 numbers and go forward.

19 THE HONORABLE BELL: Right.

20 THE HONORABLE PALMER: So that's
21 what we're looking at for the event called
22 number four, two households with the cost
23 of living. So all of that, in just about

1 every category, would reduce in
2 everything, like I said, until you get to
3 about to \$9,000 for three children. And
4 then after you get up to \$11,000, then it
5 begins reducing again.

6 MR. ARNOLD: And this is keeping the
7 model we have presently regarding how
8 childcare is factored in, not talking
9 about amount but how it's factored in, and
10 how health insurance is factored in.
11 We're keeping that part. That's
12 consistent.

13 THE HONORABLE PALMER: As far as --
14 as far as I know, that part has not
15 changed.

16 MR. ARNOLD: I think it is. I'm
17 just trying to make sure when we're
18 looking at this because we're talking
19 about going down. And this is the fourth
20 choice, right? Then we keep in mind also
21 that healthcare costs are rising and
22 childcare costs are rising as well, so
23 it's doing that.

1 THE HONORABLE BELL: This is just
2 the basic child support obligation that
3 goes in --

4 MR. ARNOLD: That's right. I'm just
5 adding a couple of factors to keep in mind
6 as we look at the new differential. I'm
7 not advocating a thing.

8 THE HONORABLE BELL: Right. I
9 agree.

10 MS. DAVIS: Can I ask some of these
11 Alabama folks that deal with child support
12 on a regular basis -- I'm not talking
13 about only IV-D, so y'all can help me.
14 What would be the average household income
15 in Alabama?

16 THE HONORABLE PALMER: Isn't it
17 \$43,000, approximately, or \$27,000?

18 MS. DAVIS: Does anybody know?

19 THE HONORABLE PALMER: Somebody
20 Google that.

21 MR. ARNOLD: I'm about to.

22 (Committee members speaking
23 simultaneously.)

1 MS. DAVIS: -- in real numbers based
2 on --

3 MR. MADDUX: 41,657 according to
4 Google.

5 THE HONORABLE PALMER: How much?

6 MR. MADDUX: 41,657.

7 MS. DAVIS: So divide that by 12 and
8 let's see, what's the end result.

9 MR. ROGERS: That's median -- that's
10 median household income?

11 MR. ARNOLD: Median or average?

12 MR. ROGERS: Or average?

13 MR. MADDUX: Median.

14 MS. DAVIS: That's median?

15 MR. MADDUX: Yes. Median family
16 income is 41,657. That's in 2000, I
17 guess, based on the last census. That's
18 the first thing that came up.

19 THE HONORABLE PALMER: Well, it
20 should be 2010.

21 MR. MADDUX: That's the first thing
22 that came up.

23 THE HONORABLE PALMER: Okay.

1 There's got to be something more current
2 than that.

3 MR. ARNOLD: And do we want to look
4 at median or look at average or both?

5 MS. DAVIS: Well, I guess median
6 will be the middle, the -- I don't know --
7 average. What do y'all think?

8 MR. ROGERS: Median means half are
9 above and half below.

10 THE HONORABLE STUART: Which is --
11 which is fairer to look at?

12 MR. ROGERS: Averages can be skewed,
13 so it would be median.

14 MS. DAVIS: All right. So what's
15 the median?

16 MR. MEDARIS: According to the
17 latest census, the median is 43,511.

18 MS. DAVIS: Okay. Divide that by
19 12.

20 THE HONORABLE PALMER: 43,511.

21 And is that a household? Is that
22 per person? And that's a household of how
23 many people?

1 MR. MEDARIS: It just says median
2 household income.

3 MS. DAVIS: 43 what?

4 MR. MEDARIS: 43,511.

5 MS. DAVIS: All right. Divide that
6 by 12.

7 MR MADDOX: 3,625.92.

8 THE HONORABLE PALMER: 3,000?

9 MR. MADDOX: 625.92.

10 THE HONORABLE PALMER: So we'll just
11 -- 92. So \$3,625.92. But we don't know
12 what that family consists of?

13 THE HONORABLE STUART: Well, we
14 don't have to. All we really need to know
15 is that figure, and then we look across at
16 one, two, three, four, five, six children.

17 THE HONORABLE PALMER: Okay.

18 THE HONORABLE STUART: So let's just
19 use, for simplicity, 3,600.

20 MS. DAVIS: All right.

21 THE HONORABLE PALMER: And you're
22 looking at chart number four, Judge?

23 THE HONORABLE STUART: Uh-huh.

1 THE HONORABLE PALMER: Okay. 3,600
2 is on page 42.

3 THE HONORABLE STUART: And those do
4 look huge to me.

5 MR. ARNOLD: That's a substantial
6 drop.

7 THE HONORABLE PALMER: That is.

8 THE HONORABLE BELL: Well, Steve's
9 got a good point. Insurance premiums have
10 gone up dramatically and childcare costs
11 have gone up dramatically too. So it's
12 also kind of a balancing.

13 THE HONORABLE PALMER: Well, the
14 childcare costs per the Department of
15 Human Resources has only gone up \$7 since
16 2009.

17 MS. DAVIS: They're not getting
18 money. The cost is going up; they're just
19 not getting money. The custodial parent,
20 they're the one that --

21 THE HONORABLE BELL: That's the cap
22 you're talking about.

23 MS. DAVIS: Yeah. They're paying

1 more, so that's even more of a --

2 MR. ARNOLD: More of a drop.

3 MS. DAVIS: More of a drop. More of
4 a hit for the custodial parent.

5 THE HONORABLE STUART: The only
6 comment I would make about the insurance,
7 that at least theoretically under our
8 Child Support Guidelines, the parents
9 should be paying proportionately for
10 whatever it is based on their income.

11 MR. ROGERS: And let me suggest --

12 MR. ARNOLD: No. No, we don't. We
13 don't anymore because we take the number
14 of people covered and divide it.

15 MS. DAVIS: Oh. That's right. But
16 it's still --

17 MR. ARNOLD: So it does fall
18 proportionally higher on one than the
19 other.

20 MS. DAVIS: But it's really not
21 because it's -- all that did was say if
22 there's eight people covered and there's
23 only one child, then one-eighth of that is

1 really associated with the cost of that
2 child. So then it's also based on who's
3 paying and who gets credit for it.

4 MR. ARNOLD: That's true. But that
5 payer also has -- under your example, has
6 seven other people to pay for.

7 MS. DAVIS: But that's okay. That's
8 not the child that's benefitting from
9 those other seven people.

10 THE HONORABLE PALMER: Because that
11 might be the new family. Those seven
12 people might be the new family versus the
13 child that is subject to this child
14 support.

15 MR. ROGERS: Let me suggest the
16 comparison table on page 46. What we were
17 looking at is the difference of the dollar
18 levels. Page 46 gives --

19 MR. MADDOX: Of your report?

20 MR. ROGERS: Of the report. Page
21 46, Exhibit 20, shows the comparison award
22 amounts. So I think it's going to -- it
23 will show the difference if you compare

1 current to whichever other of the four,
2 but this does give the dollar amounts for
3 the awards.

4 THE HONORABLE PALMER: Okay. So
5 help us with this, Mr. Rogers.

6 MR. ROGERS: So Exhibit 20. I mean,
7 I've got three situations. Exhibit 19 --
8 this is for two children. Exhibit 19.

9 THE HONORABLE PALMER: Okay. So
10 you're not on page 47?

11 MR. ROGERS: No.

12 THE HONORABLE PALMER: He's on
13 page 45.

14 MR. ROGERS: 45.

15 THE HONORABLE PALMER: Exhibit 19.

16 MR. ROGERS: Actually, we could
17 start on page 44. It's the custodial
18 parent income is half that of the
19 noncustodial.

20 MS. DAVIS: Let me --let me get a
21 basic. Where it says NCP monthly gross
22 income that's only one parent's gross
23 income?

1 MR. ROGERS: Yeah. Yeah.

2 THE HONORABLE PALMER: That's the
3 noncustodial parent?

4 MR. ROGERS: Right.

5 MS. DAVIS: But that's not what we
6 do here. We do the combined of both of
7 them.

8 MR. ROGERS: That's right. And the
9 chart and the award amounts are based on
10 the combined income. So, basically, you
11 take whatever is in the left-hand column
12 and then add 150 percent of the other
13 parent's income.

14 MS. DAVIS: But to be apples to
15 apples, shouldn't that be the total
16 combined income of both? Isn't that
17 figure, the 701 is the childcare cost for
18 both parents?

19 MR. ROGERS: Well, what I'm doing --

20 MS. DAVIS: Because they'll do a
21 percentage, right?

22 MR. ROGERS: Well, there are
23 different ways of presenting the numbers;

1 but if you look at Exhibits 18, 19, and
2 20, and keeping the left-hand column the
3 same and changing how much income the
4 custodial parent has relative to the
5 noncustodial.

6 MS. DAVIS: But our charts are based
7 on the --

8 MR. ROGERS: The award is based --
9 if you look at the second, third, fourth,
10 and fifth, sixth columns, that is based on
11 combined income.

12 MS. DAVIS: Okay. So let me
13 understand. On page 44, the first one is
14 \$3,000.

15 MR. ROGERS: But the award that you
16 see is based on 3,000 plus 4,500 because
17 --

18 MS. DAVIS: That's -- this is very
19 misleading.

20 THE HONORABLE STUART: That's
21 confusing to me.

22 THE HONORABLE THOMPSON: That's
23 after the calculations have been done,

1 right?

2 MR. ROGERS: Yeah.

3 THE HONORABLE FORD: Oh, okay.

4 MS. BALDWIN: Did anybody use your
5 Excel spreadsheet? You did an Excel.

6 MR. ROGERS: Yeah. I gave some --

7 MS. BALDWIN: Did anybody use those?

8 MS. DAVIS: Yeah.

9 MR. ROGERS: I gave you a play toy.

10 MS. BALDWIN: Okay. Well, I used
11 your play toy. And since I do all IV-D
12 for the most part -- I mean, I do domestic
13 relations too. But I just plugged in
14 minimum pay rate because that's imputing
15 minimum a lot --

16 MR. ROGERS: Sure.

17 MS. BALDWIN: -- IV-D with young
18 people. And it went from 246 current to
19 121 all the way across the board for the
20 NCP's part. So it would go from him
21 paying 246 -- him or her -- 246 to 121,
22 which is pretty much across the board in
23 any of your -- now, I just --

1 MS. DAVIS: So it reduced it 50
2 percent?

3 MS. BALDWIN: Yes. Now, I also did
4 the --

5 MR. ROGERS: There are two things
6 going on here. We've got a boost in the
7 self-support reserve and Betson's study
8 reevaluated one child cost and found them
9 sharply lower than in the past.

10 MS. BALDWIN: And so total -- total
11 for the year for childcare cost, the rest
12 is self-reserved for both. Both parents'
13 total income would have been \$30,168. The
14 total support then -- and the rest is
15 self-support for the adult -- is \$2,904,
16 total support for the child on that.

17 MR. ROGERS: Okay. Well.

18 MS. BALDWIN: I mean, I just think
19 that's ridiculous if I can say that.

20 MS. DAVIS: Which is not consistent
21 with what the actual expenses are that
22 we're seeing here. Just the monthly food
23 cost for a one-year-old child -- now, this

1 is U.S. average for 2014 -- under the
2 moderate plan is \$143 a month. And what
3 was the total they were going to pay a
4 month?

5 MS. BALDWIN: Yeah. It was 121.

6 MS. DAVIS: 126. That won't even
7 pay the food.

8 MS. BALDWIN: And that's in every
9 category. That's not -- that's in one,
10 two, three, or four.

11 MR. ROGERS: That's --

12 THE HONORABLE PALMER: Four was
13 actually 122. It went up.

14 MR. ROGERS: I believe that's --
15 that, I believe, is falling in the
16 self-support, the purple shaded area,
17 which the bottom line, yes, low income is
18 tough. I admit it's tough. And this is
19 just a pure calculation, what does the
20 noncustodial parent have left over. This
21 is how the calculation is made. What is
22 basic self-support, take that out, what's
23 left over. What's left over is not much.

1 I mean, that --

2 MS. BALDWIN: Yeah. And that's the
3 argument that every noncustodial parent
4 makes: I, I, I, I have this. I have
5 that. I have that. I have this. And
6 then what's left, they want to pay, if
7 there's any left.

8 MR. ROGERS: I -- I completely --

9 MS. BALDWIN: Excuse me. I'm sorry.
10 I'm a prosecutor.

11 MR. ROGERS: No --

12 THE HONORABLE PALMER: Really? Are
13 you?

14 MR. ROGERS: Bottom line is if
15 you're -- if you're really poor, you
16 shouldn't have kids, but that's not how it
17 works.

18 THE HONORABLE BELL: Well, let me
19 ask this if I can. It seems to me like
20 what we're talking about is figuring out
21 what the answer needs to be and then
22 working backwards from that. It looks to
23 me like that we ought to be figuring out

1 what methodology we think is fair.

2 MR. ARNOLD: Right.

3 THE HONORABLE BELL: To everybody.

4 And then whatever the answer is, the
5 answer is. But we're going to have a hard
6 time if we're looking at, hey, what should
7 the number be and how do we get there.
8 We're going to be taking a route like
9 this.

10 THE HONORABLE STUART: That may be
11 true, but I think part of what we do have
12 to do is look at what the bottom line
13 number is going to be and decide whether
14 that is fair.

15 MS. BALDWIN: And I want to bring
16 this up too about this. That's without
17 giving any pre-existing child award. So
18 it's 121 on the first one. If you take
19 that out with the second one -- I mean,
20 you're eventually -- probably at child
21 three, you're going to get to zero. And I
22 have multiple defendants -- excuse me --
23 noncustodial parents who have three, four,

1 five children, all from different parents.

2 MR. ROGERS: I completely agree that
3 low income situations are incredibly
4 difficult. They are.

5 MS. DAVIS: My suggestion --

6 MR. FORD: That's what the system is
7 based on.

8 MS. DAVIS: This goes back to the --
9 this, for me, is too confusing. I want to
10 go back to the chart.

11 MR. ROGERS: You may have a good
12 point. If we start looking at the numbers
13 around 3 or 4,000 combined and then look
14 at the low end after we look at the --

15 MR. ARNOLD: That's a good model.
16 If we look at.

17 MS. DAVIS: Justice Stuart was
18 suggesting look at 3,600.

19 THE HONORABLE STUART: 3,600.
20 That's the average.

21 THE HONORABLE PALMER: That's the
22 average. All right. So we --

23 MR. ARNOLD: Let's look at 3,600 for

1 each of the four choices.

2 THE HONORABLE PALMER: So right now
3 --

4 MR. ARNOLD: Then let's look at a
5 lower number and let's look at a higher
6 number for all four choices.

7 THE HONORABLE PALMER: Okay. So
8 we've got 3,600 --

9 MR. ARNOLD: Does that make sense?

10 MR. ROGERS: Well, that's what these
11 tables do.

12 THE HONORABLE PALMER: Yeah. 3,600.
13 We've done that for number four, so now
14 we're going to turn over to number three.

15 THE HONORABLE BELL: And that is on
16 what page?

17 THE HONORABLE PALMER: At 3,600, and
18 it is on page 29. And this is the second
19 household adjustment, no cost of living,
20 no COLA. And then that reduces across the
21 board by approximately \$130, \$135. 171,
22 162, but it goes down all the way across
23 the board.

1 Does everybody see that?

2 THE HONORABLE STUART: Let me also
3 make another suggestion. I think since
4 the vast majority of families that we're
5 dealing with have either one child or two
6 children that we ought to focus on one
7 child, two child, and then just sort of
8 consider the others as outliers, and those
9 numbers just fall where they fall.

10 THE HONORABLE PALMER: But the
11 average is, what, 2.5 children? So we're
12 going to look at just two children. So
13 two children --

14 THE HONORABLE STUART: No. You need
15 to look at one and two because it makes a
16 huge difference from one and two, in my
17 experience handling a child support
18 matter.

19 THE HONORABLE PALMER: Okay. So one
20 and two in this case, it's only a dollar
21 difference, but I know in the other one,
22 it was -- in number four, it was \$31
23 difference between one and two children.

1 And number three, it's a dollar difference
2 as far as how much it would go down.
3 That's page 29.

4 THE HONORABLE BELL: That's three is
5 what it states going down, but that's from
6 --

7 THE HONORABLE STUART: But, again,
8 the overall decrease is huge.

9 THE HONORABLE BELL: Yeah. But
10 that's under Rule 32 as it now is written.

11 THE HONORABLE PALMER: Yes. As it
12 now is. And then now let's flip over --

13 MS. DAVIS: Page 16, I think.

14 THE HONORABLE PALMER: -- to page 16
15 with one house -- one -- an intact home
16 with the COLA, cost of living, 3,600, page
17 16 under Exhibit B. It goes down by \$98
18 for one child, \$66 for two children. So
19 approximately \$32 difference in those.

20 MS. DAVIS: Page 3 is the --

21 THE HONORABLE PALMER: Then page 3
22 is the one household, no cost of living.
23 For one child, it goes down by \$29; for

1 two children, it goes up by \$42.

2 Now, again comparing to what we
3 currently have, according to Mr. Rogers,
4 the number two is the more apples to
5 apples to apples.

6 MR. ROGERS: Correct.

7 THE HONORABLE PALMER: Which is a
8 difference of \$98 for one child goes down;
9 \$62 for one child goes down.

10 THE HONORABLE STUART: Does that
11 mean that the over -- I don't know the
12 economic terms -- that the overall incomes
13 have gone down that much or the other
14 circumstances have gone down that much to
15 result in that large of a decrease?

16 MR. ROGERS: For which?

17 THE HONORABLE STUART: For two.

18 THE HONORABLE PALMER: The one
19 household, intact cost of living.

20 MR. ROGERS: Okay. What page are we
21 on, again?

22 THE HONORABLE PALMER: That one
23 would be --

1 THE HONORABLE BELL: 15. It starts
2 on 15.

3 MS. DAVIS: 16 is where the -- for
4 one child, it's basically \$100 less per
5 month.

6 MR. ROGERS: What jumps out
7 primarily is one child is lower. That's
8 due to primarily Betson's latest study
9 essentially saying he got it too high in
10 his earlier studies. That's what he's
11 saying.

12 MS. DAVIS: But isn't that also
13 because part of it was the first part of
14 the study was the normal economic times,
15 the last part was the during the great
16 recession, economics? Would that have not
17 impacted that? This would be the be the
18 only area it wouldn't impact, right?

19 MR. ROGERS: To be honest -- to be
20 honest, we are not entirely sure. I think
21 there's some impact because we've changed
22 how we view spending, period, everybody.
23 But for the latest study, it included a

1 lot of boom years. It included 2004
2 through 2000 -- parts of '7. You know, it
3 included all of '7. So easily part of
4 2000 -- the early 2007 was still good. So
5 there's several boom years, actually
6 bubble years. So it wasn't just --

7 MS. DAVIS: It wasn't just that.
8 The first part was other.

9 MR. ROGERS: There were some boom
10 years and some recession.

11 MS. DAVIS: 2004 through 2009.

12 MR. ROGERS: So late '7, '8, were
13 recession. '9 was stagnation. So -- but
14 prior to -- you know, prior to the mid
15 '07, those were boom years. So it was
16 mixed. But generically speaking, Betson
17 essentially said one child costs were
18 overestimated in the earlier studies.
19 That's what he says.

20 MR. ARNOLD: And from practical,
21 that was true. At that time, the chart
22 worked out where it was indeed imposing a
23 significant burden on the payer. In

1 reality, I think that gentleman is right.

2 MR. ROGERS: That's what --

3 MR. ARNOLD: In the earlier years.

4 THE HONORABLE BELL: I agree.

5 MR. ROGERS: That's what this table
6 corroborates, that today's numbers for one
7 child should be relatively lower, at least
8 on the -- clearly on the low end and some
9 in the middle incomes.

10 THE HONORABLE PALMER: Well, and if
11 you go -- let's all turn to page 27 on the
12 one household, cost of living. If you
13 look even --

14 MS. DAVIS: What's that page?

15 THE HONORABLE PALMER: Page 27. On
16 the one household with the cost of living.
17 Even at \$20,000 a month combined gross
18 income, it only goes up for one child by
19 \$41; but if you look at two, it goes up by
20 \$256.

21 MR. ROGERS: Again, it's the same
22 story.

23 THE HONORABLE PALMER: That's what

1 I'm saying. There's another way of
2 looking at it. Even with combined gross
3 incomes of \$20,000, it only goes up \$41.

4 THE HONORABLE BELL: What's wrong
5 with that if your methodology is fair and
6 it's based on correct numbers?

7 THE HONORABLE PALMER: Well, and
8 that's what I'm saying. That's just
9 another comparison as to why does one
10 child go down so much versus two children
11 not going down? I guess whomever got it
12 wrong the first time.

13 THE HONORABLE BELL: When I was
14 talking to Mr. Rogers at the break, he
15 made a good point, you know. If your
16 result is based upon the wrong
17 presumptions, then your result is wrong.
18 And is that due process? I don't know.
19 Probably not.

20 MR. ROGERS: Well, just to restate
21 it, when attorneys have pounded things
22 into my hand, which I've allowed to stay;
23 some of them. One of them is regarding --

1 you know, when I testify in court, I have
2 to have economics that fits the legal
3 principles. And one of those is
4 presumption. And one of the principles is
5 the presumptive facts should fit case
6 facts; otherwise, the case facts rebut the
7 presumptive facts. The presumption goes
8 away, disappears.

9 A presumptive fact has been that
10 the two parents lived under the same roof
11 and share one set of costs. Do those
12 presumptive facts exist in case facts?
13 No. It's just no.

14 THE HONORABLE THOMPSON: But I guess
15 the approach is who's to bear that burden?
16 Is it the child or is it the parents?

17 MR. ROGERS: Well, is there a
18 difference? Is there a difference between
19 a legal presumption versus a policy? A
20 policy, as an example, could be how much
21 does the State pay for unemployment
22 insurance. Nobody goes to jail over how
23 much is paid for unemployment insurance.

1 Presumption regarding child support. Is
2 there a possibility of loss of liberty if
3 presumptive facts are applied and bad
4 things happen? Yeah.

5 So one of the issues clearly can
6 be are we dealing with a legal
7 presumption, due process, or is it merely
8 a policy? And to me, a policy is how much
9 does the State pay for unemployment
10 insurance. It is what it is. It's a
11 choice. Presumption. Do presumptive
12 facts fit case facts? If not, the
13 presumption goes way. That's due process.

14 MS. BALDWIN: Did I read in the
15 minutes from the last meeting -- or the
16 transcript -- that only two other states
17 have adopted the two household cost
18 schedules?

19 MR. ROGERS: I believe -- I'm aware
20 of one.

21 MS. BALDWIN: Maybe we were second.

22 THE HONORABLE BELL: What I think we
23 need to remember too is that the new

1 schedule is not going to be a reason or
2 create the rebuttable presumption for a
3 modification of child support. You still
4 have to have a material change in
5 circumstance. The new chart can't create
6 the 10 percent difference in the amount of
7 the child support in old and new. And
8 we're only talking about -- we're talking
9 about new cases and those cases that come
10 for modification that can prove a material
11 change in circumstance, and even then a
12 court does not have to modify the child
13 support.

14 THE HONORABLE PALMER: Well, right
15 now I think we need to narrow these charts
16 down. Do we need to kick one of these
17 out? Do we need to kick two of them out,
18 then compare? According to Mr. Rogers,
19 who prepared these, in his opinion, two
20 and three are the most current for Alabama
21 or more like what we have now.

22 MR. ROGERS: Well, two is the close
23 -- the methodology is the closest. Of

1 course, the numbers are more up to date
2 and differ for different -- you know,
3 there's a new study and there's a new
4 self-support, and so on, but the
5 methodology for number two is close to
6 current Rule 32.

7 And again, you can blend. If
8 there's a desire to go toward, in part,
9 taking into account two households and --
10 you know, a first step, let's go halfway.
11 Just a thought.

12 THE HONORABLE PALMER: Well, explain
13 halfway because I don't understand the
14 blending. You said it's simple but I
15 don't understand it.

16 MR. ROGERS: Basically, it is --
17 it's not much different in the simple --
18 simplified formula. Average the two
19 tables. Average the two tables and that's
20 your table. Georgia did that ten years
21 ago, going from percent of obligor to
22 income shares. That's a truly long story;
23 but they averaged two methodologies, one

1 that was very bad and one that was okay.
2 But they did average and that was
3 literally what they did.

4 THE HONORABLE BELL: So what two
5 tables are you talking about? Table
6 number two.

7 MR. ROGERS: Well, it could be --

8 THE HONORABLE BELL: Any table?

9 MR. ROGERS: Whatever you choose to
10 average, or it could be weighted
11 one-fourth, three-fourths.

12 MS. DAVIS: In the interest of time,
13 I'd like to make a motion, Madam Chairman.

14 THE HONORABLE PALMER: Okay.

15 MS. DAVIS: Justice -- Judge
16 Thompson -- Thomas's comment reminded me
17 that premise -- the initial premise was
18 that the earlier Committee took the
19 position that as a matter of methodology,
20 children should come first, and they
21 wanted to maintain -- the child to
22 maintain the same -- the best they could,
23 the same lifestyle as it would an intact

1 family. I guess that's historically why
2 it was done that way.

3 As you pointed out, maybe one
4 other state has gone the second household
5 route. It's substantially a departure
6 from what we currently do. So in light of
7 that, my motion is that we exclude from
8 consideration charts number three and four
9 that take into consideration second
10 household expense. That's my motion.

11 THE HONORABLE PALMER: Open for
12 discussion.

13 MS. BALDWIN: I second that.

14 THE HONORABLE PALMER: Okay. Well,
15 let's do open for discussion first. Okay.

16 Open for discussion.

17 Ms. Bush.

18 MS. BUSH: I want to make sure I
19 understand. You're saying --

20 MS. DAVIS: Delete -- take off the
21 two house, chart number three and four.

22 MS. BUSH: That have the second
23 household adjustment.

1 MS. DAVIS: That have second
2 household.

3 MS. BUSH: So we would not have any
4 second household adjustment?

5 MS. DAVIS: We will not be
6 considering that for the remainder of the
7 meeting. It could only be brought up in
8 some future --

9 THE HONORABLE THOMPSON: Unless we
10 decide on some type of blend and then we
11 might put something like that in there.

12 MS. DAVIS: But just to get us
13 moving.

14 THE HONORABLE THOMPSON: But not
15 just these as they are set up right now.

16 MS. DAVIS: So our focus will be on
17 charts one and two.

18 MR. ROGERS: All right. Just as an
19 aside, barring that I don't have an
20 overnight deadline for something else, I
21 could do a blending overnight.

22 THE HONORABLE PALMER: Well, I don't
23 know that we're going to have a quorum

1 tomorrow just because -- but it doesn't
2 mean that we won't meet to look at that
3 blending but then would also need time to
4 look at that blending.

5 MS. BUSH: I don't know -- why don't
6 we narrow it down and pick the best one
7 among the ones we have, and then if we
8 think we need a blend at that point -- I
9 mean we got four charts here.

10 THE HONORABLE PALMER: Well, and the
11 motion right now is to get rid of three
12 and four, throw them out.

13 MS. BUSH: I agree.

14 THE HONORABLE PALMER: Mr. Arnold?

15 MR. ARNOLD: And I just did a quick
16 study to help us visualize where we're
17 going. On one side, the top side had
18 choices one, two, three, and four. On the
19 other side of the chart, I made the
20 assumption that we were at \$1,500 combined
21 income, \$3,000 of combined income, and
22 \$7,000. Then I looked at the chart as to
23 how that affect -- how it was affected --

1 what the effect is on the up or down of
2 each of the choices.

3 The least amount of down impact
4 occurs with choice number one. In fact,
5 it also has the greatest amount of up
6 impact.

7 Three and four are very
8 consistent, three a little bit less than
9 four on significant downward impact. So
10 if we chose three or four, then pretty
11 much across the board, the chart says less
12 child support. One and two have a bit of
13 a mix. One has the least impact as
14 compared to two.

15 I can share the numbers, but
16 that's my conclusion from looking at those
17 samples.

18 Justice Stuart, I took into
19 consideration your presumption that
20 predominance is one or two children. It
21 doesn't go into the low, low incomes. I
22 didn't do that. But \$1,500 combined
23 income is still relatively low.

1 THE HONORABLE STUART: I think
2 that's about minimum wage for both.

3 MR. ARNOLD: If that helps as to the
4 discussion, then it's an okay exercise.

5 THE HONORABLE THOMPSON: Madam
6 Chairman, can I ask a question? And this
7 is from somebody who just read all this
8 stuff cold. But is the presumption that
9 we're proceeding under that the lower
10 levels -- the lower income, child support
11 is too high, higher incomes is probably
12 too low? Is that kind of where we're
13 coming from initially? What are we trying
14 to correct?

15 THE HONORABLE PALMER: And we're not
16 necessarily trying to correct anything.
17 We have an obligation to meet once every
18 four years and review these charts and at
19 that time -- and get new information. We
20 sent out 30 requests for people to provide
21 what Mr. Rogers has provided. He was the
22 only one who responded, and so we have his
23 charts.

1 THE HONORABLE THOMPSON: I'm sorry.
2 But isn't the effect of most of these
3 options that we have is to reduce it at
4 the lower levels and raise it at the
5 higher levels?

6 THE HONORABLE PALMER: From
7 everything that he's provided us, that
8 shows that that is what needs to be done,
9 or according to his numbers.

10 THE HONORABLE STUART: Well,
11 actually, that is the effect of changing
12 the Guidelines. I don't think you go as
13 far as to say that's what should be done,
14 because that's a policy decision that this
15 group has to make and then the Alabama
16 Supreme Court has to make.

17 THE HONORABLE BELL: I think where
18 we started was that we didn't -- we wanted
19 to make sure the chart was adjusted
20 appropriately based upon the change in
21 economic circumstances from when it was
22 last formulated until now. That's where
23 we got Mr. Rogers involved.

1 MR. ARNOLD: And there's a fifth
2 alternative. We make no recommendation of
3 any change at all.

4 THE HONORABLE THOMPSON: And would
5 that be a -- I guess a statement that the
6 current Rule 32 is fine --

7 MR. ARNOLD: I don't --

8 THE HONORABLE THOMPSON: -- or is
9 that just that we couldn't make a
10 decision?

11 MR. ARNOLD: I don't think we go
12 that far. I think we're just saying this
13 is what we recommend be implemented. It
14 fall where it falls. We are going about
15 it taking into consideration what do we
16 think is fair and equitable to our
17 population, I think.

18 THE HONORABLE STUART: One of the
19 real issues that I think underlies all
20 this is that the economy has changed so
21 much, I'm going to say, in the last 20
22 years. In my opinion, we've been on a
23 roller coaster. We have these sort of

1 boom times and then we these real bust
2 times. And it seems to me every time we
3 come together, we are on the cusp of a
4 change one way or the other. It makes me
5 very uncomfortable.

6 MR. ARNOLD: I would agree with that
7 on a macro level; but if you'll look at
8 income and wages historically over
9 particularly the last ten as apposed to
10 the last 20, we have that thing called
11 wage stagnation, which I think is a very
12 real occurrence. So if wage stagnation
13 exists, I could argue that that would
14 support it staying the same or pick one of
15 the alternatives that -- the dropped sum
16 because the value of the dollar has
17 decreased in comparison to the wage. I
18 can make that argument. Whether it's
19 correct or not --

20 THE HONORABLE STUART: I think Penny
21 has an argument.

22 MS. DAVIS: Yes. I think most
23 people's income has probably stayed very

1 stagnant, the average person in Alabama.

2 I don't know about across the United

3 States, but it's probably true too.

4 MR. ARNOLD: That's accurate.

5 MS. DAVIS: But the costs have been
6 rising.

7 MR. ARNOLD: That what I'm saying.

8 MS. DAVIS: And so when we're
9 talking about how much it actually costs
10 to raise a child, even though a person's
11 income -- if he makes \$100 and I make \$100
12 ten years ago and he still makes \$100 and
13 I still make \$100, but before it cost \$20
14 in the actual dollars that we pulled out
15 of our pocket for the child, and if ten
16 years later we're pulling out \$30, even
17 though our income is the same, then that's
18 what I -- what it seems to me has
19 happened.

20 MR. ARNOLD: And that's a perfectly
21 valid argument as all around the world,
22 but at the same time to the payer, if it
23 becomes regressive, you might be creating

1 other problems.

2 MS. DAVIS: Well, that's why I think
3 for the lowest income, while we've all
4 agreed to have this self-sufficient,
5 sustaining amount for the true lowest of
6 the incomes, where the lowest person is
7 paying, what, \$50? Is that what --

8 MS. BALDWIN: It was 121.

9 MS. DAVIS: Whatever --

10 MS. BALDWIN: Noncustodial is 121.

11 MS. DAVIS: Whatever the lowest
12 amount.

13 MS. BALDWIN: Using his Excel
14 spreadsheet, that's correct. And it came
15 to 246 on the old Guidelines amount, which
16 I assume is off the --

17 MS. DAVIS: And there's some that
18 don't pay anything.

19 MS. BALDWIN: Right.

20 MR. ROGERS: Well, the presumptive
21 minimum and -- it's still rebuttable, but
22 the presumptive minimum would be \$50.

23 MS. DAVIS: That's right. That's

1 why we had that.

2 MR. ROGERS: And obviously that
3 doesn't cover what the custodial parent
4 really needs. It doesn't.

5 MS. DAVIS: Sure. And I understand
6 that. That's what I'm saying. As a
7 group, we said, okay, we want a
8 self-sustaining amount for the lowest
9 income person. We recognize the \$50 does
10 not cover the actual cost for our
11 imaginary child, but we took the idea that
12 it should -- it should pay something
13 because, for a lot of different reasons
14 that I was not in favor of, even if it was
15 merely \$50. The custodial parents get
16 some financial aid and child care aid and
17 stuff like that to help offset it.

18 So I think there is -- for the
19 lowest income person, there is built into
20 the statute or the rule that we have
21 consideration of their life cost; but
22 ultimately, the child still has to eat.
23 And the child cost here as an infant, if

1 says it's \$125 a month to feed an infant
2 formula, or whatever it is, that has to
3 come -- that has to be top consideration,
4 to me.

5 THE HONORABLE PALMER: Mary, do you
6 have --

7 THE HONORABLE MOORE: Yes. I have a
8 comment and actually a question as well.
9 On the charts you mentioned -- well, the
10 reason for the reduction you're saying is
11 because the amounts are above what they
12 should have been 20 years ago?

13 THE HONORABLE PALMER: Ten.

14 THE HONORABLE MOORE: Ten years ago.
15 So based on cost of living increase and
16 our dollars now having much less buying
17 power, does that sort of -- does that sort
18 of balance that out somewhere? It seems
19 like that should sort of balance it out
20 since we were on a higher scale than we
21 should have been. The dollar had more of,
22 I would assume, buying power ten years ago
23 then it does now. We could look at

1 something like that. Does it balance it
2 out?

3 MR. ROGERS: It was partially
4 offset. Not fully.

5 THE HONORABLE MOORE: Not enough to
6 balance it. And that's all in
7 consideration to the charts.

8 MR. ROGERS: Yeah. Basically, as in
9 the current rule, we start with the
10 national numbers and then on top of that,
11 we sort of shave it down on the very low
12 end for self-support. We don't take away
13 more money than the noncustodial parent
14 has for the leftover portion of the
15 budget. And then it tapers into the full
16 amount. That's how it worked under
17 current Rule 32 and that's how all of the
18 proposed tables work. And the idea is the
19 custodial parent hopefully has other
20 resources the noncustodial parent does not
21 have.

22 THE HONORABLE PALMER: Judge Ford?

23 THE HONORABLE FORD: I agree with

1 Justice Stuart. I don't think of it as a
2 matter of policy we want to increase child
3 support for our children in the amounts of
4 the proposed. This doesn't work. They
5 still have to eat, and their well being of
6 has to be provided by their parents. And
7 to have a decrease in these amounts that
8 we're talking about today, it's going to
9 adversely affect the children that we
10 claim are our future for tomorrow.

11 THE HONORABLE BELL: Well, we got
12 the other end of the spectrum. We've got
13 -- I'm looking at table number two now.
14 For one child, you don't break even. You
15 don't go to zero, the same as what the old
16 chart is, until you have combined incomes
17 of \$7,400 month. And then for two
18 children you get the break-even point at
19 \$4,500 per month. But then -- and we're
20 talking about how much it would decrease
21 for the ones below those break-even
22 levels, but we haven't talked about how
23 much it's going to go up for those whose

1 combined gross income go up the other way.

2 THE HONORABLE PALMER: Well --

3 THE HONORABLE BELL: Are we going to
4 treat everybody the same?

5 THE HONORABLE PALMER: Yeah.

6 THE HONORABLE BELL: And we should.

7 THE HONORABLE PALMER: And if you
8 look at the current chart -- okay. I'm on
9 the current one for \$3,600. Currently,
10 \$650 for one child, so it will go down
11 \$98. And that is more than a 10 percent
12 change. But if you go to two children
13 it's \$940 and the change is 66, so that's
14 less than a 10 percent change. So really
15 your biggest change is in one child.
16 Everything else is pretty much -- at least
17 up to \$3,600 -- is less than a 10 percent
18 change if you look at the numbers.

19 MS. DAVIS: Are you looking at chart
20 one or chart two?

21 THE HONORABLE PALMER: Chart two
22 versus the current. So it's just really
23 in the one child where it's being -- where

1 it was over-projected ten years ago.

2 MS. BALDWIN: It's going to most
3 adversely affect those who are in the
4 Title IV-D program. It's going to hurt
5 them really bad.

6 MR. ARNOLD: Say that again.

7 THE HONORABLE FORD: It's going to
8 hurt IV-D.

9 MS. DAVIS: I'm going to call that
10 my motion be voted on.

11 THE HONORABLE PALMER: Okay. Pitch
12 your motion again.

13 MS. DAVIS: My motion was that we
14 omit -- that we delete or eliminate charts
15 three and four, which are both the two
16 households, and focus on consideration of
17 charts one and two and any other
18 alternatives that we want to.

19 THE HONORABLE PALMER: And Mary -- I
20 mean, Melody?

21 MS. BALDWIN: I second that motion.

22 THE HONORABLE PALMER: All right.
23 Any objections or discussion on that?

1 (No response)

2 THE HONORABLE PALMER: Okay. Charts
3 three and four are no longer under
4 consideration. So now to charts one and
5 two.

6 MS. DAVIS: We need to vote on that.

7 THE HONORABLE PALMER: Oh, I'm
8 sorry.

9 Everybody in favor say aye.

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

12 THE HONORABLE PALMER: Any opposed?

13 (No response)

14 THE HONORABLE STUART: And I would
15 just note for the record that on official
16 votes like this, it's been my historical
17 practice not to enter a vote. My reason
18 for doing that is I'll have an ultimate
19 vote, and I'm not going to take a double
20 vote.

21 THE HONORABLE PALMER: Okay. So now
22 we're down to one and two.

23 MR. ARNOLD: I want to reiterate my

1 comment, and it actually fits into Penny's
2 argument. Chart number one.

3 THE HONORABLE PALMER: And that's
4 pages?

5 MR. ARNOLD: Alternative number one.

6 THE HONORABLE PALMER: Alternative
7 number one is --

8 MR. ARNOLD: -- has --

9 THE HONORABLE PALMER: -- pages 2
10 through 14. That's chart number one,
11 pages 2 through 14.

12 MR. ARNOLD: That is correct.

13 THE HONORABLE PALMER: Okay.

14 MR. ARNOLD: Alternative one has the
15 highest uptick of any of the other
16 methods, including the ones we've
17 rejected.

18 THE HONORABLE PALMER: Now, when you
19 say uptick, do you mean increase from what
20 is currently being paid?

21 MR. ARNOLD: Yes. It goes up.

22 MS. DAVIS: On a higher income
23 level. Is that what you're saying?

1 MR. ARNOLD: Well, I'm also at 1,500
2 combined income, which could be 750, 750.
3 That's not --

4 THE HONORABLE PALMER: That's not
5 even minimum wage. I would think --

6 MS. DAVIS: I think 2,500 is around
7 --

8 (Participants speaking
9 simultaneously.)

10 MS. DAVIS: \$2,514 is that --

11 MR. ARNOLD: I just -- I just picked
12 them for consistency of an example. If
13 combined income on alternative number one
14 of 1,500 goes down \$31 a month for one
15 child, up 171 for two --

16 MS. DAVIS: No. It's minus.

17 THE HONORABLE BELL: It goes down.

18 MR. ARNOLD: Minus. I'm sorry. I'm
19 having a hard time reading my own writing.

20 Then look at the same chart for
21 3,000 and same chart for 7,000 a month
22 combined income for one and two.

23 MS. DAVIS: It goes down.

1 THE HONORABLE PALMER: One and two
2 goes down.

3 MS. DAVIS: One and two, yeah.

4 THE HONORABLE PALMER: And then what
5 was your other numbers, Steve.

6 MR. ARNOLD: 3,000 and 7,000.

7 THE HONORABLE PALMER: 7,000.

8 MS. DAVIS: Top of page 6.

9 THE HONORABLE PALMER: 7,000 is top
10 of page 6, that's correct. Then it starts
11 going up. It goes up a lot.

12 (Participants speaking
13 simultaneously.)

14 MR. ARNOLD: I was just saying in
15 that spectrum, it has the least amount of
16 downward.

17 THE HONORABLE PALMER: Okay. Y'all,
18 just for the court reporter's sake.

19 MR. ARNOLD: All I'm saying is --
20 I'm not advocating anything. I'm just
21 saying with alternative number, one it has
22 the least amount of downward calculation.
23 Item -- alternative two compared to one

1 has greater downward. So if we're going
2 to be looking now at alternative one and
3 two and start doing -- you can pick any
4 combined adjusted gross income and make
5 your own comparison at the lowest level,
6 mid level, whatever. And just take that
7 into mind in assessing your evaluation of
8 the model we might consider.

9 MS. DAVIS: So on the second one,
10 page 17, the breaking point at which point
11 they go up at all, it would be at 4,500
12 for two children?

13 THE HONORABLE BELL: That's right.
14 For one child, it's 7,500.

15 MR. ARNOLD: That's correct.

16 MS. DAVIS: For one child, Billy,
17 you said it's what?

18 THE HONORABLE BELL: 7,500.

19 MS. DAVIS: It's 7,500 combined
20 income, which is a gross. So it would
21 have to be 93,000 before it went up for
22 the second child.

23 THE HONORABLE PALMER: Well, let's

1 go back to Billy Bell's discussion earlier
2 about what about the other end of the
3 spectrum. We were looking at the lower
4 end of the spectrum. Now let's look at
5 the higher end of the spectrum. I'm going
6 to let you get into that.

7 THE HONORABLE BELL: Yeah. My only
8 point was whatever we do, we need to
9 obviously treat everybody the same not
10 just focus on what the low income would go
11 under -- would go down, but the folks that
12 make more money are going to be paying a
13 lot more. So somewhere we've got to kind
14 of blend the equity for both ends of the
15 spectrum. That was my only point, to
16 treat everybody fairly.

17 THE HONORABLE PALMER: If you look
18 at page 14 -- and this is of the first one
19 -- number one, alternative number one, at
20 20,000, the maximum for one child goes up
21 \$235; and then for six children, it's
22 \$1,061. And again, we're looking at one
23 child or two children, but at two

1 children, it goes up \$553.

2 MS. DAVIS: So let me ask Mark
3 something. If the statement that the
4 figures -- current Rule 32 figures were
5 substantially too high for the --
6 currently for the lower income, then you'd
7 have to also say that the higher income
8 were substantially too low based on
9 Rothbard.

10 MR. ROGERS: That's what Betson's
11 current study is saying, yes.

12 THE HONORABLE PALMER: Now let's
13 look at number two.

14 MR. ROGERS: But do recall the first
15 set, national data and intact family
16 available income.

17 THE HONORABLE PALMER: Okay. Now
18 let's look at alternative number two,
19 page 27, \$20,000. Alternative number one
20 for one child would go up \$235; and then
21 on number, two it would only go up \$41.

22 THE HONORABLE BELL: Right.

23 MS. DAVIS: Page 14.

1 THE HONORABLE PALMER: For two
2 children on number one, it would go \$553.
3 Alternative number two, it would go up
4 \$256.

5 MR. ROGERS: There's one thing we
6 haven't talked about. The new tables go
7 up to 25,000. So we're going to have
8 higher numbers based on tables being
9 extended another 5,000.

10 THE HONORABLE PALMER: Now, the ones
11 in front of us only go up to 20,000.

12 MR. ROGERS: That's because the
13 current rule goes to 20. I can't subtract
14 something from nothing, so it stops at 20
15 because the rule stops at 20.

16 THE HONORABLE PALMER: But you
17 calculated it out to 25?

18 MR. ROGERS: I gave you tables up to
19 25,000 per month to month. So you're
20 going to have, because of the extension, a
21 gradual increase from the \$20,000 point.

22 THE HONORABLE PALMER: Okay.

23 MR. ROGERS: You know, even at

1 \$25,000, that's presumptive. It can be a
2 deviation higher or lower for whatever
3 reason.

4 THE HONORABLE PALMER: All right.
5 Now, you mentioned something earlier about
6 blending. Could you blend one and two?

7 MR. ROGERS: I can blend anything.

8 THE HONORABLE THOMPSON: And to that
9 point -- to that point, if, from a policy
10 standpoint, we were to say reducing child
11 support to lower income -- children from
12 lower income families was not -- would
13 hurt more than reducing child support to
14 higher income families, could you arrive
15 at a median -- median point in the chart
16 where it doesn't kick in until you reach
17 this level of income?

18 MR. ROGERS: Yes. All right. But
19 let me merely keep -- or make sure all of
20 the issues are on the table. Clearly, low
21 incomes, it's always a problem having
22 enough money. It just is. Now, the key
23 question is, you know, we want the

1 children to have everything. What parent
2 doesn't want their children to have what
3 they think is good for their children?
4 But let's look at the flip side. The
5 question is what happens -- this shows up
6 in court. What happens if the presumptive
7 award, well intentioned to provide what is
8 wanted and would be good if it were there,
9 what happens if the presumption is higher
10 than the noncustodial parent can pay?
11 What happens?

12 MR. ARNOLD: That was a comment I
13 made about it being regressive at a point.

14 MR. ROGERS: Well, I mean literally,
15 you go through a court process. You know,
16 sometimes the courts carefully consider,
17 okay, here's what's really going on and
18 I'm going to have to acknowledge it.
19 Other times the courts just assembly line,
20 boom, boom, boom, pretend it's the
21 assembly line version. What happens when
22 the noncustodial parent does not make full
23 payment --

1 MR. ARNOLD: Right.

2 MR. ROGERS: -- for an extended
3 period of time? What happens?

4 MS. BUSH: Then there's interest.

5 THE HONORABLE PALMER: They owe
6 \$10,000 in back child support and \$25,000
7 in interest and they're never going to pay
8 it off.

9 MR. ROGERS: Does that help the
10 child?

11 MR. ARNOLD: That was my point
12 exactly. That's what -- I fully agree
13 with Penny's assessment from that point --
14 from that point of view, but our law also
15 says, needs of the child and ability to
16 pay.

17 MR. ROGERS: That is the traditional
18 standard principle, needs of the child and
19 ability to pay. That was the code
20 essentially in every state prior to
21 numeric guidelines.

22 MS. DAVIS: That is still the law.

23 MR. ROGERS: Most states hidden,

1 somewhere is that language that is --
2 Georgia has it, and I point it out to
3 attorneys all the time. Here's the real
4 guidelines. This other stuff that you
5 quote every day is a formula, but here's
6 the real guidelines, and it's needs and
7 ability to pay.

8 MS. BALDWIN: But, you know, a lot
9 of these people -- you know, I keep going
10 back to IV-D, and I know y'all have gone
11 up to higher incomes. But a lot of these
12 people come into court and they haven't
13 even looked for a job, and child support
14 court is the greatest incentive. It's the
15 best thing for the economy because it
16 forces them to go out and look for a job.
17 If we cut it down to -- and see, it's 121
18 across the board no matter what chart you
19 use. And that's where most custodial
20 parents all are if you come into IV-D. So
21 it doesn't matter what you do as far as
22 one, two, three, four, it's the same
23 impact for the lowest of children, the

1 children in the lowest income bracket.

2 MR. ROGERS: And the issue -- I'm
3 sorry.

4 MS. BALDWIN: Well, I'm just saying,
5 you know, if we let them just pay \$121 a
6 month, that's all they're going to do. I
7 mean, they're like my 14-year old child.
8 You know, he's going to make a C if that's
9 all I require. That's my last thing on
10 that.

11 THE HONORABLE BELL: Well, I
12 understand, and I really do, with the low
13 incomes and problems collecting child
14 support. I handle child support cases.
15 But if we're going to make a determination
16 that we do not want the lower income child
17 support amounts cut, I do not think we
18 need to raise on the upper end either.
19 And if that's our thinking collectively,
20 then maybe we want to do nothing and leave
21 Rule 32 right where it is.

22 MR. ROGERS: One possible option
23 with leaving Rule 32 as-is, it's not hard

1 to statistically extrapolate the curve. I
2 wouldn't do it more than 25,000, but it
3 could be curved out, higher but slower
4 higher.

5 THE HONORABLE PALMER: So you did
6 that already or what's the difference from
7 what you did versus that or --

8 MR. ROGERS: I have not extrapolated
9 current Rule 32 from 20,000 to 25.

10 THE HONORABLE PALMER: Oh, okay.
11 Oh, that's what you're talking about.

12 MR. ROGERS: But it could -- it
13 could be done. It would be a statistical
14 continuation of a curve.

15 THE HONORABLE BELL: But we don't
16 have to do that. We can leave --

17 MR. ROGERS: No, you don't have to.

18 THE HONORABLE BELL: -- Rule 32 just
19 the way it is.

20 MR. ROGERS: No, you don't have to.

21 THE HONORABLE PALMER: Because I
22 mean we do have it where the income --
23 combined gross income is over 20,000, but

1 that's the exception instead of the rule
2 where I come from.

3 THE HONORABLE BELL: Well, if you're
4 over the chart, then you can go with a per
5 child.

6 THE HONORABLE FORD: Well, if it's
7 over the chart, then you just have
8 discretion.

9 THE HONORABLE PALMER: All right.
10 Well, we're going to take a break. I
11 believe the lady that Penny was talking
12 about, the student, has a video coming up.

13 MS. DAVIS: 2:30.

14 THE HONORABLE PALMER: 2:30. So
15 we'll maybe have about five more minutes,
16 then we'll take about a 20-minute break.
17 I believe the video -- Penny, tell us
18 about this, please.

19 MS. DAVIS: Well, what this is --
20 and you're welcome to participate. I had
21 e-mailed Justice Stuart. She's on the
22 Rule 32 -- I mean, the Standing Family Law
23 Committee and was interested in a web page

1 and development of a web page. And so we
2 have a student who's in the University of
3 Alabama's -- I always say this backwards
4 -- Computer-based Honors College Program.
5 And she is working with us to develop a
6 web page.

7 What we want to do is have a way
8 for the court and also the lawyers and pro
9 se people to have access to these forms,
10 and you'll have a standard complaint form,
11 their answer. And most of these parenting
12 plans are based on experts and experience
13 of the judges and the lawyers who had
14 developed a number of plans over the
15 years, both in Alabama and throughout the
16 state.

17 And so she's helped us develop a
18 web page that is similar to what Florida
19 has in the sense that you can take the
20 documents and click and you take -- you
21 make a decision what kind of custody you
22 want for your children. If you choose
23 that you want joint custody, you go to the

1 green plans. If you want one parent
2 having primary physical custody, and the
3 second -- the other parent being the
4 nonresidential custodial parent, you go to
5 the blue plans. And then if you have a
6 situation where a parent is involved in
7 drug court or something like that.

8 THE HONORABLE STUART: Domestic
9 violence.

10 MS. DAVIS: Domestic violence is a
11 good example. Those are restrictions.
12 Those are the red plans. And then they're
13 further divided into birth to age three
14 are the A plans. The preschool are the B
15 plans. The C plans are elementary, middle
16 school, and the D plans are for teenage
17 years. We had more categories, but the
18 feedback we got back from Legislature,
19 that was too much. And so we divided them
20 into those age groups because, again,
21 typically, when you go from the younger
22 child who is only seeing their parent --
23 their noncustodial parent every other

1 week, that was just not an appropriate
2 plan. For teenagers it's different.

3 And then we divided into distance
4 plans versus -- which we used the 60 miles
5 because of that. So we have a different
6 set of plans for the blue plan parents,
7 which are one parent having primary
8 custody; the other parent lives out of the
9 state more than 60 miles away. There are
10 a set of different plans for those, those
11 parents.

12 If they're restrictive, very
13 little access to the parents, only in a
14 setting that the court decides. In the
15 joint custody, that's, I think, the real
16 change that you will see, is that we have
17 a lot of plans that are joint plans that
18 are something other than every other week
19 which the experts felt were not
20 appropriate for the younger age groups.

21 THE HONORABLE PALMER: And you said
22 this is about ten minutes?

23 MS. DAVIS: The presentation is ten

1 minutes. She will be -- she's presenting
2 to her class. It's her class
3 presentation. And it's on live web feed,
4 so I can said if we were to leave, can we
5 do that and look at it. And she said
6 yeah, here's the link. So in theory, at
7 2:30 that link will show us that.

8 THE HONORABLE PALMER: All right.
9 Well, it's 2:23, so let's go ahead and
10 take a break. We'll break for
11 approximately 20 minutes. That will give
12 everybody a chance who wants to watch this
13 to go to the restroom or go get a
14 beverage. And then if people don't want
15 to watch it, get up and walk around.
16 Stretch your legs. Nobody leave because
17 we still have some voting to do. Thank
18 you.

19 (A short break was taken.)

20 THE HONORABLE PALMER: So let's go
21 ahead and see -- since we're going to try
22 to try to finish today. I don't want
23 there to be any down time, and I know some

1 people can't stay past 5:30. So look
2 under Tab --

3 And, Penny, I'm about to call on
4 you.

5 It is Tab E, Third-Party --
6 Credit for Third-Party Payment to Child.
7 Right now the current case law says that a
8 judge may give a person credit for child
9 support paid by a third party. Now, my
10 latest DHR attorney says federal law says
11 no, they don't get a penny credit. And I
12 had a tell Mr. Jack Wallace that, but
13 state law says that they get a
14 dollar-for-dollar credit up to what is
15 owed.

16 But I think the current state law
17 says that the judge has the ability to do
18 it versus shall give them a
19 dollar-for-dollar credit in accordance to
20 the current case law.

21 So, Penny, if you would, under
22 Tab E, Credit for Third-Party Payment to
23 Child.

1 MS. DAVIS: As y'all recall and for
2 those like Judge Thompson that was not
3 here before, we had a subcommittee that
4 worked on getting -- looking at what other
5 states did in regards to credit for
6 third-party payments like veterans
7 benefits, Social Security, and --

8 THE HONORABLE PALMER: VA, railroad.

9 MS. DAVIS: -- railroad, basically
10 anything that the child was receiving
11 based on their parents' employment
12 history. And we chose a model that was
13 based on Michigan's because we felt like
14 it was the simplest version, so I brought
15 that forward. And then in the last
16 meeting, we made some changes.

17 And so what you were e-mailed out
18 was a -- what did I say? -- a marked-up
19 version that showed -- if something is
20 lined through, that means it's been
21 deleted from the original draft.

22 Underlined means that it was added from
23 the original draft. And then they sent

1 out a clean version. And, again, the
2 draft was a Michigan version. This will
3 all be new language for Alabama.

4 So the clean version is, I guess,
5 sort of a starting point unless anybody --
6 I guess for the purposes of the Committee,
7 we may -- you may want to look first at
8 the marked-up version to see if their
9 memory is consistent with what I recall.
10 And I got Bob to send me the transcript
11 and went over the transcript. So the
12 changes that are shaded or highlighted in
13 yellow were the changes that were added at
14 the last meeting. And at the end, you'll
15 see an Alabama comment, which would --
16 which explains where this act came from.

17 Now, the idea is that this would
18 be added to the, as a new subsection, Rule
19 32(a)(1)(g), and then make the current "g"
20 a new "h" because the new "h" -- the
21 current "g" is the all-inclusive one at
22 the end. And so this will be a new law
23 which gives the courts discretion to

1 deviate from the Guidelines in these
2 instances that are enumerated here.

3 Do you want me to go over it
4 line-by-line, or what do you want me to
5 do?

6 THE HONORABLE PALMER: Do we need to
7 do that? Has everybody had a chance to
8 read it? Because right now I believe it
9 says at the discretion of the court versus
10 shall.

11 MS. DAVIS: Right. The reason it
12 was taken -- "at the discretion of the
13 court" was taken out, once you put it into
14 the reasons for deviating, that's all at
15 the discretion of the court. And so while
16 it's taken out of the statutory -- I mean
17 the rule language itself by virtue of the
18 placement, it still is the court
19 discretion. And as you can tell from the
20 Committee Comments, it's -- most of what
21 we did is basically consistent with the
22 current -- with the current law. And I
23 give case cites for the different

1 subsections.

2 MS. BALDWIN: I just have some
3 questions.

4 THE HONORABLE PALMER: But the
5 latest one being Self v. Self from 2012.
6 No, I'm sorry. Self v. Self is from '96
7 and Adams v. Adams from 2012.

8 MS. BALDWIN: I just have some
9 questions.

10 THE HONORABLE PALMER: Yes, ma'am.

11 MS. BALDWIN: Yes, ma'am. The case
12 law indicates that you would include like
13 the Social Security, retirement, and the
14 Social Security disability insurance
15 benefit in the income at the beginning and
16 then take it out as a credit at the end.
17 And -- but we can't do that with veteran's
18 benefits, and you've included veteran's
19 benefits in here too. So...

20 THE HONORABLE PALMER: Well, does
21 the child not get paid money for veteran's
22 --

23 MS. BALDWIN: They can if the

1 veteran includes it, and most of the time
2 it goes to the veteran, not the child.
3 And the custodial parent doesn't get it
4 unless the -- well, some veteran's
5 benefits do it when they're older and in
6 college and that sort of thing.

7 But my question was basically are
8 we going to be expected to add -- because
9 we won't be able to add any veteran's
10 benefits at the beginning and take it out
11 at the end. That's one of my questions.

12 THE HONORABLE PALMER: Well, if
13 it's -- if it's disability, it can take be
14 included for the purposes of calculating
15 child support, VA disability, but it can't
16 be included for purposes of alimony.

17 MS. BALDWIN: Well, you know, I
18 would think that, too, But I've been
19 told -- and he's not an attorney -- but
20 it's DHR policy that they don't include --
21 because of the United States Code, that
22 they don't include it as income.

23 THE HONORABLE PALMER: Well --

1 MS. BALDWIN: I've pushed to do
2 that. My question is do we do it.

3 THE HONORABLE PALMER: Well,
4 Goldstein, September 2013 or '14, the
5 Alabama Court of Civil Appeals made it
6 very clear to me exactly how they
7 calculated it, and I appreciated it. It's
8 black and white. It's very simple. If
9 it's for the purposes of calculating child
10 support, VA disability --

11 MS. BALDWIN: Is included.

12 THE HONORABLE PALMER: It's a
13 hundred percent. If it's for the purposes
14 of doing periodic alimony, you cannot
15 include it. Even if it's \$10,000, you
16 can't.

17 MS. BALDWIN: Okay.

18 THE HONORABLE PALMER: I know.

19 MS. BALDWIN: And it's Goldstein?

20 THE HONORABLE PALMER: I want to say
21 it's Goldstein. It's Gold something or
22 other. It's either September -- I think
23 it's 2014.

1 That one was a burn. You know
2 how -- Bill, you used to talk about how
3 that one burned a little bit? You've got
4 to shake it off, just rub it off? I'm
5 still rubbing it, still rubbing it.

6 MS. DAVIS: Do you think maybe that
7 would be a cite that we need to add in
8 here if it would be instructive to the --

9 THE HONORABLE PALMER: Yes.

10 MS. DAVIS: Okay. So if --

11 MS. BALDWIN: I did get that
12 straight from DHR policy, and they quoted
13 me a federal statute that says that we
14 can't -- well, and I read the federal
15 statute. I had Jennifer send it to me
16 before this meeting, and I didn't read it
17 the way -- the way it's been interpreted.

18 THE HONORABLE PALMER: Well, and
19 that's the same with my DHR attorney that
20 was in front of me arguing that Social
21 Security disability could not -- this
22 person could not get one penny of credit
23 for it, even though the woman was

1 receiving \$731 and he only owed her \$500.

2 MS. BALDWIN: Right. I know that we
3 can get the credit, you know, and the case
4 law supports that. That's fine. My
5 concern with the VA benefits on the front
6 end, counting it as income, and then
7 giving them credit. Because I don't want
8 them to basically have the opportunity to
9 have the credit twice by not counting it
10 as income and then taking it out at the
11 end.

12 And my other question was -- and
13 this wouldn't have anything to do with
14 this, and it's not -- and it would be a
15 novel situation if we do it, and I might
16 get to make some case law. But is -- but
17 there may already be an answer just as
18 there was to this. If there is -- and if
19 I say this correctly. If there is a --
20 and I've got a case like this.

21 We have somebody who has a child
22 who is getting Social Security disability
23 benefit from the father. That father

1 happened to have a child that was born
2 prior to this child, and so he's wanting a
3 pre-existing -- he's asking for a credit
4 for that child that's in his home, even
5 though there's no child support order for
6 that child that's in his home.

7 Do y'all want me to not do this
8 today?

9 THE HONORABLE STUART: I don't think
10 we can answer it.

11 THE HONORABLE THOMPSON: Oh, I can.

12 MS. BALDWIN: Well, I'm -- well, you
13 probably can. I'll save it. How's that?

14 THE HONORABLE PALMER: But I will
15 get that exact case cite and everything
16 beforehand. So as far as --

17 MR. MADDOX: How do you spell it?
18 Goldstein, S-t-e-i-n?

19 THE HONORABLE PALMER: I don't know.
20 I know the first name is -- the first part
21 is Gold. I don't know if it's -- so I'm
22 going to call somebody in just a second.

23 MS. BALDWIN: But, Judge Palmer, I

1 will ask you that question later.

2 THE HONORABLE PALMER: Okay.

3 MS. BALDWIN: Okay.

4 THE HONORABLE PALMER: But if we get
5 that case in there, then I'm fine with it
6 as it reads.

7 THE HONORABLE BELL: Well, she
8 did bring up a good point. We want to
9 make sure that it's clear that if it's
10 received by the custodial parent --

11 THE HONORABLE PALMER: Yes.

12 THE HONORABLE BELL: -- we should
13 try to --

14 MS. BALDWIN: And most of the time
15 they don't go straight to the custodial
16 parent.

17 THE HONORABLE PALMER: And the VA is
18 the worst that I've experienced.

19 MS. BALDWIN: They won't tell you.
20 You can't find out. The custodial parent
21 cannot find out. DHR cannot find out.
22 The only person that knows is that
23 veteran. And we had a veteran to hold his

1 money, this child's money, his money. It
2 all got put into his account. He spent
3 it. And we didn't know about it until it
4 was gone. So he got put in jail
5 afterwards. But...

6 THE HONORABLE PALMER: So it's
7 actually received by the child, for the
8 use and benefit of the child?

9 MS. BALDWIN: So he will have to
10 prove that he's provided it the child.

11 MS. DAVIS: Well, if you look at
12 this -- and again, this is Michigan --
13 Michigan's language, so we can certainly
14 improve on it.

15 THE HONORABLE PALMER: Now, are you
16 looking at the unmarked-up one or the
17 marked-up one?

18 MS. DAVIS: Well, it doesn't matter.
19 It's the same. Under 2, it says -- this
20 one talks about doing it as follows.
21 Number 2 is determine the monthly benefit
22 amount that is attributable to the payer
23 -- payer, and that the support recipient

1 receives for the children. So we could --

2 THE HONORABLE PALMER: Support
3 recipient?

4 MS. DAVIS: That would be the --
5 that would be the non- --

6 THE HONORABLE THOMPSON: The
7 custodial parent.

8 MS. DAVIS: -- the custodial parent.

9 THE HONORABLE PALMER: Okay.

10 MS. DAVIS: So we could put -- we
11 could say it a second time by putting it
12 up here. Where would, Billy, you want to
13 put it? Paid for the child to the...

14 THE HONORABLE BELL: I mean I prefer
15 it says, paid for the children and
16 received by the -- where -- what do we
17 call it? -- the support recipient.

18 MR. ARNOLD: If you look at the very
19 first paragraph, next-to-last line, where
20 it says support payer and received by the
21 -- then that shall be credited against. I
22 think that fits the bill.

23 THE HONORABLE THOMPSON: That shaded

1 part.

2 THE HONORABLE BELL: That's the
3 clean version right there.

4 THE HONORABLE THOMPSON: It's the
5 last sentence of the first paragraph.
6 "For so long."

7 THE HONORABLE BELL: Oh, for so
8 long.

9 THE HONORABLE PALMER: For so long.

10 THE HONORABLE BELL: -- it's being
11 received." I don't believe in that.

12 MS. DAVIS: Where are you talking
13 about?

14 THE HONORABLE BELL: Up here. "For
15 so long it's being received."

16 MS. DAVIS: We could put it in both
17 places.

18 THE HONORABLE BELL: I think that
19 fits up here.

20 MS. BALDWIN: Is that 487?

21 MR. MADDOX: 197S.3d 487, actually
22 2015 case.

23 THE HONORABLE PALMER: Well, it came

1 back. You're never showed up in a case
2 law --

3 THE HONORABLE BELL: I can't read
4 that. Does it say learned trial judge?

5 THE HONORABLE PALMER: It just says
6 Jefferson County Court. It doesn't have
7 -- oh, it does have my name on it.

8 MS. DAVIS: Which section would you
9 want that case to be cited to or for, the
10 subsection?

11 THE HONORABLE BELL: Number one,
12 right, because you're talking about the
13 veteran benefits?

14 MS. BALDWIN: Does it say veteran
15 benefits in the case or it just says --

16 MR. MADDOX: Yes. Where it says
17 eligibility benefits are to be considered
18 as income.

19 MS. DAVIS: We could put it on
20 paragraph two right after the first
21 sentence, which says subsection
22 (a)(1)(g)1.

23 THE HONORABLE PALMER: Are you under

1 the comments?

2 MS. DAVIS: Under comments. It is
3 consistent with the current Alabama law.
4 We could put that case there. Would that
5 work? It's just sort of generic for the
6 whole thing for folks. Even us old
7 veterans, it's...

8 THE HONORABLE PALMER: Okay. Bob,
9 what was that case number again? I
10 thought I had it tattooed.

11 MR. MADDOX: 197 So.3d 487. It's
12 Court of Civil Appeals 2015.

13 THE HONORABLE THOMPSON: And putting
14 it after Adams?

15 MS. DAVIS: I'm going to put it
16 after -- if you look at the second
17 paragraph, the first sentence, where it
18 says, Subsection (a)(1)(g)1 is consistent
19 with current Alabama case law. Sort of
20 generic for all of them.

21 THE HONORABLE BELL: Is this a
22 deviation from Rule 32, or is it a credit
23 against Rule 32?

1 THE HONORABLE PALMER: It's a credit
2 for the amount owed from the obligor to
3 the obligee.

4 THE HONORABLE BELL: But where we're
5 putting it is as a reason to deviate. And
6 we're not really deviating, are we? We're
7 just giving credit against the Rule 32 or
8 whatever.

9 MS. DAVIS: Correct.

10 MR. ROGERS: If it's part of the
11 formula, it's not a deviation.

12 THE HONORABLE BELL: It's not a
13 deviation, that's right. And so we need
14 to find a place --

15 MS. DAVIS: Place it somewhere else.

16 THE HONORABLE BELL: Yeah.

17 THE HONORABLE PALMER: I gave you
18 the book earlier.

19 (Committee members speaking
20 simultaneously.)

21 MS. BALDWIN: But the child support
22 amount remains the same.

23 THE HONORABLE BELL: Yes. If it's

1 Rule 32 or wherever it is.

2 MS. BALDWIN: You're not really
3 changing a thing. You might not have to
4 pay or you might have to pay.

5 THE HONORABLE BELL: You can put it
6 as number 10.

7 THE HONORABLE THOMPSON: Yeah.

8 THE HONORABLE BELL: At the end. I
9 believe we're going to have to realign the
10 numbers. Then I'll do the proposed joint
11 custody as 11.

12 MS. DAVIS: So this would be -- Bob,
13 can you -- if you'll just say where we
14 want it, can you do the right -- go back
15 and do the right subsections?

16 MR. MADDOX: Yes, ma'am.

17 MS. DAVIS: That would be a lot
18 simpler than us trying to do it here.

19 THE HONORABLE PALMER: Okay. So
20 let's look at this again. Credit for
21 third-party payment to child with the
22 added language of the Goldman v. Goldman
23 to talk about to talk about -- to talk

1 about the ability to use the veteran's
2 disability income for the purposes of
3 calculating child support. Is there any
4 motion to add as a subsection to the
5 Rule 32 -- are y'all still talking?

6 THE HONORABLE BELL: Well, we are,
7 but in looking at Rule 32, we think it
8 ought to go in as 9 because split custody
9 is 9 and we're going to add joint custody
10 right after that.

11 MS. DAVIS: So it will be 11, then,
12 to be joint custody. Is that what you're
13 saying?

14 THE HONORABLE STUART: So we're
15 going to move nine and then move what
16 else?

17 THE HONORABLE BELL: Renumber number
18 9 to 10.

19 THE HONORABLE PALMER: Okay.

20 MS. DAVIS: That will be number 9.

21 THE HONORABLE BELL: And joint
22 custody will still be 11. I mean that's
23 just what we are thinking, but whatever is

1 going to work.

2 THE HONORABLE PALMER: Okay. So do
3 I hear a motion that we adopt the credit
4 for third-party payment to child as
5 corrected -- as amended by adding the
6 Goldman case and make it number 9 in
7 Rule 32 of Judicial Administration?

8 THE HONORABLE BELL: So moved.

9 THE HONORABLE PALMER: Second?

10 MR. ARNOLD: We also add in that
11 language, "and actually received"?

12 THE HONORABLE PALMER: Well, they
13 decided -- I think it's under the very
14 first paragraph, "so long as it is being
15 received by the support payee," that that
16 was already included in that.

17 MR. ARNOLD: Okay. Then I'll
18 second.

19 THE HONORABLE PALMER: Okay. All in
20 favor say aye. Oh, wait a minute.

21 MS. BUSH: I have one discussion.
22 After we -- after you vote on the wording,
23 I would like to take it and look at it and

1 run it by our federal counterparts and
2 maybe even some people at the VA to see if
3 they've got any input as to federal law --
4 any impact federal law would have on it.

5 THE HONORABLE BELL: Well, it's got
6 to be approved by the Supreme Court
7 anyway. How long will it take you to do
8 that? I mean by tomorrow?

9 MS. BUSH: No. No. You can go
10 ahead and vote on it, but I'm just saying
11 I think that that will be a good thing to
12 do.

13 MR. ARNOLD: Really, the motion
14 anticipates we're recommending that to the
15 Supreme Court for their consideration.

16 MS. DAVIS: She can amend a motion
17 to be with the understanding that it would
18 have -- if it gets negative feedback, it
19 would be brought back to the Committee
20 before it's sent to the Court.

21 THE HONORABLE PALMER: Okay. As
22 amended, then.

23 MR. ARNOLD: Second.

1 THE HONORABLE PALMER: Do you want
2 to add that amendment?

3 MS. BUSH: I do. I do want to add
4 the amendment that it can be reviewed the
5 Federal Office of Child Support
6 Enforcement and maybe even somebody from
7 the VA's Office.

8 THE HONORABLE PALMER: And then
9 before it gets sent to the Alabama Supreme
10 Court?

11 MS. BUSH: I think yes.

12 THE HONORABLE STUART: We would
13 prefer that that happened. It's really
14 not helpful at all for us to adopt
15 something and then find out there are
16 problems with it and have to go back and
17 try to correct it.

18 THE HONORABLE BELL: And I would
19 agree to the amendment.

20 THE HONORABLE PALMER: And Judge
21 Bell agrees to the amendment. So
22 everybody in favor as amended? Yes? Aye?

23 (Committee members who favored the

1 motion so indicated.)

2 THE HONORABLE PALMER: Opposed?

3 (No response)

4 THE HONORABLE PALMER: Okay. So.

5 Ms. Bush, when do you think, you know?

6 MS. BUSH: I'll have to get in touch
7 with them and just see as soon -- well, as
8 soon as you give me the language, then I
9 can run it up to the flagpole.

10 THE HONORABLE PALMER: You've got
11 it.

12 MR. MADDOX: I'll have it to you by
13 tomorrow.

14 MS. BUSH: Yeah. I will be getting
15 it to them before tomorrow.

16 THE HONORABLE PALMER: Okay. All
17 right. Great. So now we've got that one
18 taken care of it.

19 Mr. Rogers has -- will you tell
20 us again what you've done?

21 MR. ROGERS: All right. Just as an
22 example, I blended current Rule 32 tables
23 with the new COLA adjusted tables -- fully

1 COLA, the set number two. It's purely an
2 averaging of the two. Now, what we have
3 over here that can be put on the screen I
4 think is very close. If I actually made
5 sure I did everything exactly right, I
6 think these numbers are extremely close.

7 THE HONORABLE PALMER: You said this
8 was just for two children?

9 MR. ROGERS: For two -- well, I
10 actually have tables for one through six.
11 I have a chart for two children.

12 THE HONORABLE PALMER: Okay.

13 MS. ROGERS: But all the numbers
14 have been blended. You know, I might have
15 to do a little round. I always like to
16 round to the dollar, and I haven't had
17 time to round. But other than, you know,
18 little teeny trivial things like that,
19 this is what it looks like. It's based on
20 a 50/50 average of current Rule 32 and the
21 COLA adjusted set two of the new data.

22 And for two children, what it's
23 showing is a slight downward revision at

1 the low end and moderate upward revision
2 at the upper end. Not as sharp as the
3 full move to the new set two. It's an
4 average.

5 THE HONORABLE PALMER: Bob, is there
6 any way you can get this printed off? Can
7 he e-mail it, at least one page of it.

8 MR. ROGERS: It's not pretty, but
9 it's there.

10 THE HONORABLE PALMER: Okay. Well,
11 let's look at it. Let's do that. Let's
12 look at it.

13 MR. MADDUX: Can you pull it back
14 up? I'm sorry. It went back off.

15 MR. ROGERS: Okay. What do we have
16 to do?

17 MR. MADDUX: If you can pull it back
18 up on the laptop.

19 MR. ROGERS: What?

20 MR. MADDUX: Could you pull it back
21 up on the laptop? I'm sorry. I got it
22 back off.

23 MR. ROGERS: You know, I'm eyeing

1 your connection. I'm thinking I can
2 almost do that faster.

3 MR. MADDUX: If you want to save it
4 to the laptop, I can take the drive and
5 make copies.

6 MR. ROGERS: Not any of the above.
7 Why is it not showing? I'm having a hard
8 time making your laptop work.

9 Bob, I apologize. I'm not seeing
10 it show up. I know it's here.

11 THE HONORABLE PALMER: Well, you
12 said something about possibly just
13 disconnecting his and connecting yours.

14 MR. ROGERS: Yeah. Let's try that.

15 THE HONORABLE PALMER: Well, do we
16 have any announcements that we need to
17 make while we're sitting here?

18 MR. MADDUX: Maybe we could go over
19 Penny's proposal on the education or
20 vocation?

21 THE HONORABLE PALMER: Well, let's
22 start with that.

23 MS. DAVIS: Do you want to go back

1 to the medical expenses? At least, it
2 relates to the same subject.

3 THE HONORABLE PALMER: Okay.

4 MS. DAVIS: Whether we want to leave
5 it at 250 or if we want to make it more a
6 realistic number.

7 THE HONORABLE PALMER: All right.
8 Does anybody -- let's open the floor to
9 that. Because Penny came up with I
10 believe a minimum for a small child of
11 \$500 and for a teenager 1,000?

12 MS. DAVIS: If you can go on your --
13 if you got your smart phones, the web page
14 that I sent you has the separate charts,
15 but for example, if you're looking at --
16 it's divided on the annual expenditure of
17 a child in a husband-wife family in the
18 urban South, which would be Birmingham,
19 that the healthcare cost for a child at
20 zero to two is \$630. If you go up to a 15
21 to 17 year old, it's a little over a
22 \$1,000.

23 THE HONORABLE PALMER: I'm wondering

1 if that \$1,000 has something to do with
2 like braces.

3 MS. DAVIS: It could be. It could
4 be. But again, that is the husband and
5 wife intact family. If you look at a
6 single parent family, this one is -- they
7 did divide it into regions. The figures
8 for that is -- it's a little bit less.
9 It's 550 up to 990. So if -- also, you
10 have in the rural areas in the United
11 States, which obviously part of the
12 Alabama would fall in that category, their
13 healthcare costs range from around 660 to
14 a little over 1,000.

15 The higher number seems to be the
16 age groups 12 to 14, so that could be.
17 Still, with the lowest number that you see
18 either in the South or the rural areas or
19 in the single family households for an
20 infant being 550; and then as the children
21 progress in age, the costs get more -- for
22 instance, for single family parents in the
23 United States, for ages three to five,

1 it's 640. For ages to six to eight, it's
2 710. For ages nine to 12, it's 650; 12 to
3 14, it's 990, and then 15 to 17 it's 990.

4 In the urban South, which would
5 be the Birmingham area, the rates are zero
6 to two are 630 all the way up to the 1,010
7 for the 15 to 17 year olds.

8 THE HONORABLE PALMER: Okay. And
9 what she's referring to now, we're in the
10 revised schedule, page 15 of the Alabama
11 Rules of Judicial Administration.

12 MS. DAVIS: No. I'm referring to
13 the actual numbers.

14 THE HONORABLE PALMER: I know. But
15 you're on the exception.

16 MS. DAVIS: Oh, yeah. You're right.
17 I'm sorry.

18 THE HONORABLE PALMER: The revised
19 schedule.

20 THE HONORABLE STUART: And I want to
21 ask a question about that because -- I
22 mean, we say that the revised schedule
23 contemplates this \$250 in unreimbursed.

1 And I assume that everything that we've
2 done here today has been based on that.
3 Don't we have to start up from scratch if
4 we change that?

5 MS. DAVIS: You'd have to put new
6 numbers in. He said that's -- for him,
7 it's easy for him to put a new number in.

8 THE HONORABLE STUART: Yeah. It's
9 easy for him to do it, but we have to take
10 a look at all this all over again.

11 THE HONORABLE BELL: I agree with
12 that. And also, it says \$200 per family
13 of four per year. It's not per child.
14 It's per family of four. It's under
15 "Other assumptions incorporated into the
16 schedule of basic child support
17 obligations include."

18 THE HONORABLE PALMER: What page are
19 you?

20 THE HONORABLE BELL: I'm on page 10
21 of Rule 32 that we got today. So we've
22 been assuming that was per child, but it's
23 not. It's a family of fours. Two of

1 those are parents or a parent.

2 MR. MADDUX: Well, that was the
3 comment to the 1993 amendments to the
4 schedule. The pertinent one is on page 14
5 if you're looking at the big picture.

6 THE HONORABLE BELL: Yeah. But it
7 just changed the amount, didn't it?

8 Well -- no. Wait a minute.

9 THE HONORABLE STUART: No. It
10 contemplates \$250 per child --

11 THE HONORABLE BELL: Per year.

12 THE HONORABLE STUART: -- up to 750
13 for three children per year and then \$75
14 for each additional child thereafter. But
15 again, I think if we change any of this at
16 all, you change everything and I think
17 we're back to square one. And I don't
18 want to go there.

19 MS. DAVIS: But what I'm saying is I
20 think you're right. And if we adopt the
21 actual numbers he had, they will be
22 incorrect. If we're still in the process
23 of blending and all of that, then he could

1 do that.

2 THE HONORABLE BELL: Well, let me
3 ask a question. January 1, 2009, did we
4 change the chart in any way? We did?

5 MR. MADDUX: That was the last
6 revision.

7 MR. ARNOLD: The whole thing.

8 THE HONORABLE PALMER: We went up to
9 20,000, right?

10 THE HONORABLE BELL: But did we
11 change the numbers?

12 THE HONORABLE STUART: That's where
13 we went in and had that black area or
14 whatever color where they don't pay
15 anything.

16 THE HONORABLE PALMER: Self-support
17 reserve.

18 THE HONORABLE STUART: Self-support
19 reserve.

20 MS. BUSH: And, you know, keep in
21 mind that most orders have a provision
22 that the parties will divide either 50/50
23 or in proportion to their income any

1 uninsured medical expenses. So those
2 normally are addressed in the order.

3 THE HONORABLE BELL: But the problem
4 is, Jennifer, isn't that a deviation from
5 Rule 32 if the judge orders that?

6 MS. BUSH: No.

7 THE HONORABLE BELL: Why? It's
8 built into the numbers.

9 MS. BUSH: This is for incidentals
10 such as cough syrup and aspirin and things
11 like that and then any co-pays -- and of
12 course, with any child, you never know
13 whether they're going to be very ill and
14 you have very high uninsured or
15 unreimbursed expenses or you just have low
16 ones, but then parties divide equally
17 anything else. The \$200 or the 250 is
18 calculated into the numbers. And then
19 once you plug those in, you divide it
20 proportionally so that each party shares
21 proportionally that 200 or 250.

22 THE HONORABLE BELL: And that's what
23 I've always done. I probably shouldn't

1 say it in front of these appellate court
2 judges, but that's what I've always done.
3 But in looking at this, if that's built
4 into the numbers, shouldn't judges order
5 all over \$250 per year unreimbursed
6 medical expenses?

7 MR. ARNOLD: Judge Paige used to do
8 that consistently.

9 THE HONORABLE BELL: Well, I mean,
10 it's -- -

11 THE HONORABLE STUART: I think the
12 federal regulations require that -- they
13 don't tell you how to address it, but
14 don't they require that you address the
15 issue of additional medical expenses?

16 MS. BUSH: You have to address
17 medical support, yes. Yes. If insurance
18 is available or if insurance is not
19 available and there's no insurance. So
20 you have to address it.

21 THE HONORABLE THOMPSON: I agree.
22 If you're already paying 250, it seems
23 like you would say anything above \$250.

1 MS. BUSH: Well, it's -- let's say
2 -- let's say it's me and you and it's 250
3 and we earn equal amounts. Once we run
4 the Guidelines, I'm going to pay 50
5 percent, you're going to pay 50 percent of
6 whatever our ultimate child support would
7 be. So, really, I'm only paying 125 of
8 that 250. You're paying 125 of the 250.
9 With my 125, I'm buying cough syrup and
10 band-aids and whatever.

11 I think, to my understanding of
12 it, it was a de minimus amount just to
13 cover those things that are just going to
14 occur day to day that aren't going to be
15 really what one would consider -- I know
16 they're medical expenses, but it's not
17 true medical expenses like emergency room
18 or a broken bone. Just to take -- to
19 factor that in. And then anything else
20 would be an insurance claim or
21 unreimbursed expenses or a co-pay, and
22 then you would divide those equally.

23 THE HONORABLE BELL: Well, why does

1 it say this: "In providing for the
2 payment of deductibles and/or other
3 noncovered medical expenses by the party,
4 it should be assumed that those expenses
5 are in excess of this amount."

6 MS. BUSH: What page are you on?

7 THE HONORABLE BELL: I'm on page 15
8 of the first full paragraph.

9 MS. BUSH: 15. It was on 10.

10 MR. ROGERS: It's actually based on
11 any medical that is unreimbursed, whether
12 it's drugstore or co-pay.

13 THE HONORABLE BELL: Or ER visit or
14 anything.

15 MR. ROGERS: Anything unreimbursed
16 up to that amount.

17 THE HONORABLE BELL: Yeah.

18 MR. ROGERS: And it's assuming that
19 the custodial parent has sole custody.

20 THE HONORABLE BELL: And is paying
21 those initial expenses -- that initial
22 amount.

23 MR. ROGERS: Correct.

1 THE HONORABLE BELL: And then the
2 noncustodial parent kicks in after that
3 threshold has been met.

4 MR. ROGERS: The percentage prorated
5 should kick in after the 250 per child per
6 year is expensed.

7 THE HONORABLE BELL: I don't know of
8 a judge that does that except you said
9 Judge Paige used to.

10 MR. ARNOLD: Judge Paige used to.

11 THE HONORABLE BELL: But have you
12 seen any other judges do that?

13 MR. ARNOLD: No.

14 THE HONORABLE BELL: Well, I think
15 they ought to start getting reversed if
16 they're not doing it.

17 MR. ARNOLD: I think we ought to
18 appeal every one of them.

19 THE HONORABLE BELL: Well, I mean,
20 is this not an inconsistency? I mean, am
21 I reading too much into this?

22 MR. ROGERS: Well, what it means is
23 there's double paying.

1 THE HONORABLE BELL: That's right.

2 And part of it is in the basic child
3 support obligation, and then they're
4 having to pay half of the --

5 MR. ROGERS: The 250 is prepaid.

6 THE HONORABLE BELL: Yeah. Through
7 the child support.

8 MS. BUSH: So if you increase the
9 amount -- I'm not saying you shouldn't or
10 should. I'm just saying if you increase
11 the amount, then you're increasing the
12 amount that is theoretically double paid.
13 So under that theory, you want to keep it
14 low so that when people do come and say
15 here's my \$50 co-pay, you owe me half;
16 here's the emergency room visit of 100,
17 you owe me half --

18 MR. ROGERS: You could make it zero,
19 but what that would mean is, oh, I just
20 bought these band-aids, I want you to pay
21 me for half of it. So the real issue is
22 acknowledging whatever it is.

23 THE HONORABLE PALMER: And what I

1 see the most is like Claritin. It used to
2 be prescription. Now it's
3 over-the-counter, but it's still very
4 expensive. But the child's pediatrician
5 says they need to take a Claritin every
6 day to control their allergies or -- and
7 that sort of thing. And, you know, that
8 \$20 a month just for a box of Claritin.

9 THE HONORABLE BELL: Well, what is
10 the non -- the custodial parent sends the
11 noncustodial parent a bill for half of
12 that Claritin. And that noncustodial
13 parents, looks to me like, would be within
14 their rights to say, you know, when you've
15 used up your deductible, then I'll start
16 paying my part.

17 MR. ROGERS: That's an appropriate
18 way to look at it is the deductible to the
19 pro rata portion.

20 MS. BUSH: But keep in mind if you
21 do that, then what you're going to have to
22 do is you're going to have to figure out
23 in every single case. We've got 250. For

1 me and you, it's 125. For the two of you,
2 it's \$70 for one and whatever. It's going
3 to be different in every case depending on
4 the proportion of the income. So you're
5 going to take that 250, whatever the
6 portion -- you can -- whatever the
7 proportion of the income is. If it's you
8 and I and I owe 30 percent --

9 MR. ROGERS: No. The custodial
10 parent is responsible for 100 percent of
11 the prepaid deductible.

12 MS. BUSH: But the way we do it, we
13 put in that Guidelines form -- we put
14 those numbers that have that 250 built in.

15 THE HONORABLE STUART: Because it's
16 part of the child support.

17 MS. BUSH: And we put in that
18 calculation --

19 THE HONORABLE BELL: And we split
20 them.

21 MS. BUSH: -- and then we proportion
22 it out.

23 MR. ROGERS: All right. But the

1 table is calculated -- designed for the
2 custodial parent to be 100 percent
3 responsible for the 250 per child as
4 essentially a deductible against total
5 medical that eventually is prorated. So
6 the custodial parent is 100 percent
7 responsible for the first 250 per child
8 per year.

9 THE HONORABLE BELL: That's what
10 this says. And if a judge didn't order
11 that the noncustodial parent pay one-half,
12 if all --

13 MR. ROGERS: Starting at zero.

14 THE HONORABLE BELL: Well, yeah,
15 starting at zero.

16 MR. ROGERS: That's double pay.

17 THE HONORABLE BELL: Then that's
18 deviating from Rule 32.

19 MR. ROGERS: It's double payment.

20 MS. BUSH: So if you do that, if you
21 start at zero or you start at 250, and you
22 want to start doing that, then you are
23 going to have people -- if it's the way

1 you say, you're going to have custodial
2 parents who are going to save their
3 receipt for asprin, cough syrup, Claritin,
4 band-aids --

5 THE HONORABLE PALMER: It happens
6 every day.

7 MS. BUSH: -- until I get my 250
8 because I'm not going to be able to get my
9 co-pay, deductible or my emergency room
10 paid for until I've proved I've paid 250
11 in --

12 THE HONORABLE BELL: Jennifer, I'm
13 agreeing with you. I think it will be a
14 nightmare, but --

15 MS. DAVIS: If it's a nightmare, it
16 don't matter what the figure is. It's a
17 nightmare on either one.

18 THE HONORABLE BELL: That's what
19 Rule 32 says. That's what I'm pointing
20 out. Rule 32 says that we're not doing it
21 right.

22 THE HONORABLE THOMPSON: But that's
23 the reason for keeping it low, too.

1 THE HONORABLE BELL: Yes.

2 Absolutely. I got reversed for doing
3 that, remember. That's why we had to
4 change the medical insurance.

5 THE HONORABLE PALMER: All right.
6 Let's look at Mark's new numbers now that
7 he's got the computer up.

8 MR. ROGERS: All right. What I've
9 done -- and I can e-mail this Excel file.
10 It's actually not heavily notated. I have
11 one set of columns where it's from the set
12 number two, national data with a COLA
13 adjustment, no second household
14 adjustment. You've got all those numbers
15 here. Then the current Rule 32.

16 Then the difference -- oh, I have
17 an average. Real complicated formula. I
18 take column one from -- the first set
19 column one from the second set and average
20 them, add and divide by two. So that is
21 what this, an average with the COLA
22 version, Rule 32 with the COLA version
23 divided by two for one through five

1 children.

2 And this has the difference
3 between the average and current Rule 32.
4 And then I have a chart I put up of
5 Rule 32, the average, and then the new set
6 two, which is here. We have the red lined
7 current Rule 32. If you look at the --
8 and then black is the average. The blue
9 is the new set two with COLA.

10 So if you look at the low income
11 area, this area here, Rule 32 is generally
12 higher. And we notice that the new set
13 two is noticeably lower, not hugely, but
14 you do notice that in the black is in the
15 middle. The black is always in the middle
16 because it's an average.

17 Higher incomes, Rule 32 is lower.
18 The new COLA adjusted is notably higher,
19 and then black is the average.

20 So the average is always between
21 the current Rule 32 and the new set two.
22 This could be done with any combination,
23 or you can split it. As I was discussing

1 earlier, sometimes you might want to use
2 one set of numbers up to say 3,000,
3 another set of numbers, say the new study,
4 for 6,000 and higher and then just connect
5 the dots for the gap. Indiana has done
6 that in the past.

7 But here, this is a simple
8 average of Rule 32 with the COLA adjusted
9 set two. And I can e-mail this to
10 whoever. And it does have the blending
11 and the difference for one through six
12 children. I just only charted for two
13 children. And it only goes to 20,000.
14 Now, I could extrapolate Rule 32 so it
15 goes to 2,500 and then average that.

16 So there are plenty of options.
17 You saw how long it took me to do this.

18 THE HONORABLE PALMER: Well, what's
19 the bottom line on this average? Doing
20 what you do, what is the difference, if
21 any?

22 MR. ROGERS: There's a difference.
23 These columns, I've included that.

1 Sometimes I forget my laptop is actually
2 fancy. It's touch screen. I don't do it
3 much.

4 This is the difference. It's --

5 THE HONORABLE PALMER: Let's go to
6 the 3,600. We've been using that, since
7 that's the average income.

8 MR. ROGERS: All right. We'll use
9 that. All right. We've got 3,600 one,
10 two, three, four, five, and six children.
11 So the averaging, of course, shrinks down
12 how much it changes because it's an
13 average. So we don't see the decline as
14 much at the low end.

15 MS. DAVIS: All right. The 3,600
16 for one child is?

17 MR. ROGERS: \$49 lower based on the
18 average compared to the current Rule 32.

19 THE HONORABLE PALMER: And the
20 current now is \$650.

21 MS. DAVIS: So minus --

22 THE HONORABLE PALMER: \$49.

23 MS. DAVIS: This one -- this must

1 be --

2 MR. ROGERS: This part -- well,
3 that's not the average.

4 THE HONORABLE PALMER: This is brand
5 new.

6 MS. DAVIS: You're just doing the
7 average now?

8 MR. ROGERS: Yeah. This is brand
9 new. This was done with magic ten minutes
10 ago.

11 MS. DAVIS: Okay. So under the
12 original chart one, one child was minus --
13 at 36 was minus 29.

14 MR. ROGERS: I honestly don't
15 remember. It's whatever it is.

16 THE HONORABLE BELL: Well, you're
17 using chart two to compare the original
18 Rule 32.

19 THE HONORABLE PALMER: Yeah. He's
20 using -- he's blended chart two and the
21 current rule. So he's blended those.

22 MS. DAVIS: Okay. So 98 was the
23 first one.

1 THE HONORABLE BELL: It was \$98
2 under route number two.

3 MR. ROGERS: Yeah. With the
4 average, it's \$49 per one child lower.

5 MS. DAVIS: So you took basically
6 the minus \$98 and the minus \$29, and
7 that's --

8 MR. ROGERS: Well, I took the levels
9 and then did the subtraction. And you end
10 in the same place.

11 THE HONORABLE BELL: Well, it ought
12 to pretty much cut the deficit in half or
13 the increase in half.

14 MR. ROGERS: It cuts every -- every
15 change in half.

16 THE HONORABLE BELL: Right. Okay.

17 THE HONORABLE PALMER: So the
18 current amount for 3,600 would be \$650
19 less \$49, so that would still be less than
20 a 10 percent change.

21 MR. ROGERS: All right. Here's the
22 bottom line. Whatever the change was
23 going from Rule 32 to the new set two the

1 change is half. Wherever it's lower, it's
2 now half lower. If it were higher, it's
3 half as high.

4 THE HONORABLE THOMPSON: This is
5 about like making a 50 percent COLA
6 adjustment, basically. I mean, since
7 you...

8 MR. ROGERS: Yeah. That's --

9 THE HONORABLE THOMPSON: Well,
10 except for the adjustments they made
11 originally.

12 MR. ROGERS: I have to think about
13 it to be absolutely sure, but I think
14 that's correct.

15 THE HONORABLE THOMPSON: Except for
16 they made some different types of
17 adjustments to the original Rule 32.

18 MR. ROGERS: Well, even the COLA
19 adjusted full version still takes into
20 account the new data that Betson used, but
21 basically, yes, we're taking half of the
22 COLA. That's actually one way to put it.
23 Well, one-half of the COLA plus the

1 changes in the pattern.

2 MR. ARNOLD: Exactly.

3 MS. DAVIS: Yeah.

4 MS. BUSH: Chart two resulted in the
5 highest -- or excuse me -- resulted in the
6 most reduction in child support. It would
7 lower child support.

8 MR. ROGERS: Well, no. Chart four
9 did.

10 MS. BUSH: But -- no. Between one
11 and two, because we've knocked those out.
12 We're now on one and two.

13 MR. ROGERS: Well, chart -- the set
14 number one generally was higher, and I am
15 reluctant to offer opinions, but set one I
16 think is beyond what is within the reason.

17 MS. BUSH: So two resulted in child
18 support being generally lower than chart
19 one.

20 MR. ARNOLD: Uh-huh.

21 MR. ROGERS: For low incomes. At
22 the higher income, it's still higher at
23 the high end.

1 MS. BUSH: Higher than our current.

2 MR. ROGERS: Yes.

3 MR. ARNOLD: Yes, significantly.

4 MR. ROGERS: Yeah. I mean, if you
5 look at -- let's see. I have to find
6 where the charts is high.

7 MR. ARNOLD: That's what I've been
8 saying.

9 MR. ROGERS: All right. Here the
10 blue line shows the full COLA. It's
11 significantly higher with the blue line.
12 But even with the average, the black line
13 -- the average is always in the middle.
14 I'm in teaching mode. Sorry. Even with
15 the average from moderately high incomes
16 and above, it's notably higher; but at low
17 incomes, it's a little lower. It's a
18 little lower at the low income.

19 MS. BUSH: Would it be fair to say
20 that -- and I know we knocked out chart
21 number four, which just has the second
22 household and the Alabama cost of living.
23 But would it be fair to say that -- if you

1 can say this -- that number two is sort of
2 a midpoint between number four, which has
3 been knocked out, and our current?

4 MR. ROGERS: That's seen in the
5 table, in my comparison tables, yes. That
6 seen's in the charts.

7 MS. BUSH: That number four is the
8 most extreme change.

9 MR. ROGERS: And number one is the
10 most extreme in the other direction. One
11 and four are the extremes.

12 MS. BUSH: And so two would reduce
13 it more than --

14 MR. ROGERS: Well, number two and
15 number three are in between. It's the
16 safest, cleanest way -- most clinical way
17 to put it. It's in between.

18 THE HONORABLE PALMER: Okay. Any
19 other discussion on this?

20 MR. ROGERS: Now, I can e-mail -- I
21 guess I will e-mail it to Bob.

22 THE HONORABLE THOMPSON: I think Bob
23 is going to print it right now. I think

1 he took the flash drive.

2 MR. ROGERS: Yeah. But he didn't
3 have the best version.

4 THE HONORABLE PALMER: Well, it's
5 bob.maddox@alacourt.gov.

6 MR. ROGERS: I've got it.

7 THE HONORABLE PALMER: Okay.

8 MS. DAVIS: We can look at it during
9 a break. It looks like zero from 800 to
10 1,400 is the same amount for children one
11 and two -- the one child and two children
12 through the numbers 1,400, is that
13 correct, when I compared the two? Under
14 the chart one and chart two. So that
15 should be -- the average should be the
16 same.

17 MR. ROGERS: Well, here's the
18 difference.

19 MS. DAVIS: They should be the same.

20 MR. ROGERS: They're not. I don't
21 think they're the same. Which are you
22 asking about?

23 MS. DAVIS: The chart one, Rule 32,

1 looks like --

2 MR. ROGERS: The set number one?

3 MS. DAVIS: Yeah. And the set two
4 up through the number 1,400 are the same.

5 MR. ROGERS: No. Because the
6 self-support reserve is different.

7 MR. HOYEM: The numbers are the
8 same.

9 MS. DAVIS: Well, the numbers are
10 the same.

11 MR. ROGERS: I don't think you're
12 looking in the right place. See, here --
13 all right.

14 THE HONORABLE THOMPSON: I think
15 you're looking at two different things. I
16 think she's looking at chart number one,
17 and you're looking at our current Rule 32.

18 MS. DAVIS: No. Yeah, I'm looking
19 at the 216, Rule 32 chart, and the COLA
20 chart.

21 MR. ROGERS: Oh. Yeah. Those are
22 the same because of the -- oh. Set one
23 and set two are the same because of the

1 self-support restriction. The
2 self-support is putting them in the same
3 place.

4 MS. DAVIS: So how is that impacted
5 by the average.

6 MR. ROGERS: Well, the average --
7 the average that I just did is not between
8 number one and number two. It's between
9 Rule 32 and number two.

10 MS. DAVIS: Right. His statement
11 was it would basically take this number
12 and cut it in half. So is that true of
13 the lower numbers, too?

14 MR. ROGERS: Yeah. It lowers the --
15 the reduction is less.

16 MS. DAVIS: So, for example, for
17 \$1,000, would your average -- in here, it
18 says, let's see, minus 105. So it would
19 be minus 52, something like that?

20 MR. ROGERS: 53. Well, you know, it
21 depends on how you round it.

22 MS. DAVIS: Right. I just didn't
23 know how the self-support impacted on that

1 and how you started doing that.

2 MR. ROGERS: Well, if you're using
3 the same self-support level, it's going to
4 have the same constraint regardless of
5 which version you use until you hit 100
6 percent of the self-support. So there's
7 really no new news with the self-support
8 area.

9 MS. DAVIS: Okay.

10 MR. ROGERS: But this chart -- and,
11 you know, you can copy and paste and move
12 it around, so you've got a chart for one
13 child, two, three, and four. Actually, I
14 can do it in 30 minutes. And look at the
15 same comparison. And the bottom line is
16 two children, one of the more -- like you
17 were discussing earlier. You want to look
18 at one child and two children most
19 heavily. That's going to be, what, 80, 85
20 percent of your cases? Something like
21 that.

22 MS. BALDWIN: Mr. Rogers, can you
23 look at 2,500 for one child, please?

1 MR. ROGERS: For the average?

2 MS. BALDWIN: Yes.

3 MR. ROGERS: Well, let's do the
4 difference first. How about that? Here's
5 the difference. Actually, let's see if I
6 can get lucky. I didn't bring that over.
7 I probably could do it in about 30
8 minutes, but it would take 30 minutes, but
9 I do have the numbers.

10 All right. Here's the difference
11 for one child. All right. We've got
12 notably lower in this range because of the
13 lower percentages from the new study for
14 one child plus the self-support reserve
15 being higher. The higher means that it
16 takes away from what can be paid. So
17 those numbers are negative, but they're
18 not as negative with the blend. This is
19 not as negative. Then, see, it's starting
20 to be fairly modest differences.

21 MS. BALDWIN: I just want to look at
22 2,500. You keep going up.

23 THE HONORABLE PALMER: Yeah. Just

1 2,500.

2 MR. ROGERS: Okay. Sorry.

3 THE HONORABLE PALMER: Because
4 that's minimum wage.

5 MR. ROGERS: So it's \$42 less for
6 one child, which is not as low as the pure
7 set two.

8 THE HONORABLE PALMER: And \$43 less
9 for two.

10 MR. ROGERS: Sorry?

11 THE HONORABLE PALMER: I'm just
12 going down the line.

13 MR. ROGERS: Yes. For two children,
14 right. So yes.

15 THE HONORABLE BELL: Your average is
16 for us to consider whether we do nothing
17 or we temper the change --

18 MR. ROGERS: Yeah. And again --

19 THE HONORABLE BELL: -- plus or
20 minus across the board.

21 MR. ROGERS: Again, I did this a
22 50/50 average. You can weight it
23 one-fourth, three-fourth; three-fourths,

1 one-fourth.

2 THE HONORABLE THOMPSON: And this
3 kind of takes the whatever -- I don't know
4 what you call them, but adjustments they
5 made originally in Rule 32, and it also
6 kind of tailors it to Alabama in taking
7 into consideration the cost of living in
8 this state, somewhat.

9 MS. DAVIS: That doesn't quite do
10 that, I don't think.

11 MR. ROGERS: No. Because it's going
12 to --

13 MS. DAVIS: The starting numbers are
14 the new -- our new numbers. They're not
15 the current Rule 32 numbers.

16 MR. ROGERS: All right. There is
17 one I say it's --

18 THE HONORABLE THOMPSON: Put these
19 in Rule 32 and in the same chart two --

20 THE HONORABLE BELL: Chart two does
21 have the Alabama Code, but it's got the
22 new financial numbers.

23 MR. ROGERS: There is one minor --

1 there is one minor complication going back
2 to the 250 per child. I basically blended
3 both sets of data without paying close
4 attention to how the 250 was blended in
5 the first version and the second version.
6 To be exactly correct, I'd have to go do
7 the blending before I do the 250
8 adjustment. It's not a huge deal, but
9 it's not instant.

10 You know, there are stages in the
11 calculation. I'd have to go back to an
12 earlier stage, blend there, and then do
13 the 250 adjustment to the blend. It's not
14 a big -- it's not a huge difference, but
15 if we want to be exactly correct and say
16 exactly what it is, then I need to go a
17 little further upstream. The numbers
18 aren't going to look a lot different, but
19 I am picky about numbers. I want to be
20 able to say exactly it's blended and then
21 250 is taken into account.

22 MS. DAVIS: Okay. Let me see if I
23 understand. Chart -- for your -- for

1 purposes of averaging, you're taking the
2 current Rule 32.

3 MR. ROGERS: First of all, yes, but
4 this is an example.

5 MS. DAVIS: Okay. Let me just --
6 let make sure I understand before you help
7 me clarify if I don't. The first set of
8 numbers you took are the existing Rule 32
9 numbers. The second set that you took are
10 the upgraded numbers from the 2006 to 2009
11 Betson numbers with the COLA.

12 MR. ROGERS: Yeah. They were
13 adjusted to March 2016.

14 MR. ARNOLD: Except number two.

15 MS. DAVIS: But they're based not on
16 Rule 32 numbers. It's not like you took
17 the COLA --

18 MR. ROGERS: It's the new set.

19 MS. DAVIS: It's the new set. And
20 then you took those two and you averaged
21 them.

22 MR. ROGERS: Yes.

23 MS. DAVIS: But what I don't

1 understand in my mind is if you average
2 the two different numbers, how it always
3 turns out to be 50 percent of the second
4 chart when the Rule 32 numbers are --

5 MR. ROGERS: No, it's not 50 percent
6 of the second chart. The difference is 50
7 percent.

8 MS. DAVIS: The difference.

9 MR. ARNOLD: On your example here --
10 I'm going to call it set or choice 2.01,
11 just for my sake.

12 MR. ROGERS: I like that.

13 MR. ARNOLD: At what point does it
14 break for one child from going down to
15 going up? And then I want the same for
16 two children.

17 MR. ROGERS: All right. When you
18 get this, it's going to be -- the
19 difference table is column Y through AE.
20 So these are going to show the differences
21 using the average from the current.

22 MR. ARNOLD: But at what income
23 level does the chart go from --

1 MR. ROGERS: For one child --

2 MR. ARNOLD: -- from adjusting
3 downwards to adjusting upwards?

4 MR. ROGERS: For one child, the
5 break-even point, shall we call it --

6 MR. ARNOLD: That's good.

7 MR. ROGERS: -- is \$7,400 for one
8 child.

9 MR. ARNOLD: Really.

10 THE HONORABLE BELL: That's where it
11 was before. That's where it is on chart
12 two right now. I guess half of zero is
13 zero.

14 MR. ROGERS: Yeah.

15 THE HONORABLE BELL: Thank you.

16 MR. ARNOLD: On set number two, I've
17 got for two children -- unless I'm reading
18 it wrong, on set number two, I've got for
19 two children it's -- it goes from a minus
20 number to a plus number at 4,550 combined
21 income.

22 THE HONORABLE BELL: Well, it's zero
23 at 4,500.

1 MS. DAVIS: It's 4,500. Yeah. At
2 4,500, it's zero.

3 MR. ARNOLD: Yeah. But I'm talking
4 about a positive \$50. Okay.

5 MR. ROGERS: All right. But -- all
6 right. But for the averaging, the
7 break-even point is \$7,400.

8 THE HONORABLE PALMER: For one
9 child.

10 MR. ROGERS: For one child. For two
11 children, the break-even income is 4,500.

12 MR. ARNOLD: That's consistent.

13 MR. ROGERS: For three children,
14 it's 3,850.

15 MR. ARNOLD: All right. So
16 analyzing that, if you look at your choice
17 number one, families with combined income
18 of 4,100 a month and one child will get a
19 reduction. Choice number two, the break
20 point, if I'm reading the chart right, is
21 3,250. So families with combined income
22 of 3,250 get a reduction. Those above
23 3,250, the obligor is going to have an

1 increase.

2 MR. ROGERS: Is that with the
3 original set two or the blended?

4 MR. ARNOLD: That's the original set
5 two.

6 MR. ROGERS: Okay.

7 MR. ARNOLD: We've got three
8 choices. And then on choice 2.01, your
9 breaking point is 7,400. So people --
10 families with combined income of \$7,400
11 per month and only one child, their
12 obligor's payment will go down.

13 MR. ROGERS: I believe that's
14 correct.

15 MR. ARNOLD: So choice 2.01 has the
16 largest absolute number of reduction in
17 the obligor's payment, has the highest.
18 In other words, people from zero combined
19 income to 7,400 combined income, the
20 obligor in those families is going to get
21 a reduction.

22 MS. DAVIS: Basically, everybody
23 that makes combined income of less than

1 90,000 will get a reduction.

2 MR. ARNOLD: Correct.

3 MR. ROGERS: For one child.

4 MS. DAVIS: For one child.

5 MR. ARNOLD: For one child.

6 MS. DAVIS: Yes.

7 MR. ARNOLD: Two children, it will
8 be 4,500 person --

9 MR. ROGERS: But it will not --

10 MR. ARNOLD: -- per month.

11 MR. ROGERS: -- be as much of a
12 reduction as with the full COLA version.

13 THE HONORABLE BELL: We're just
14 tempering it.

15 MR. ARNOLD: Yeah. I'm just trying
16 to look at the impact. If we said we're
17 going to implement this 2.01 blended chart
18 as compared to being the blended Rule 32
19 to two.

20 MR. ROGERS: But here's what might
21 make it --

22 MR. ARNOLD: It's going to have a
23 huge negative impact on child support.

1 MR. ROGERS: What might make sense
2 would be for me to take the blended
3 numbers and then do comparison award
4 tables where -- what I think -- there are
5 two things that we're looking at. We're
6 looking at how much does it change, but we
7 also need to look at what is the actual
8 dollar amount, does the actual dollar
9 amount feel right.

10 So I can do some comparative
11 tables showing the awards in those three
12 different scenarios for the CP to have 50
13 percent of the NCP income -- equal income
14 or 150 percent of the NCP income. So we
15 can actually get a feel for the dollar
16 awards, not simply how much does it change
17 in the overall table.

18 MR. ARNOLD: I'm sorry. But I think
19 that would confuse things.

20 MR. ROGERS: Well, okay. I mean...

21 MS. BUSH: You stated originally
22 that Rule 32 as it is now is overinflated
23 for the one child. So even though --

1 MR. ROGERS: That's what the Betson
2 study says.

3 MS. BUSH: So when we see these
4 lower numbers -- -

5 MR. ROGERS: That's what --

6 MS. BUSH: -- that is a correction.
7 Especially like on number two with the
8 full COLA, that's a correction for that
9 overinflation based on cost of living in
10 Alabama.

11 MR. ROGERS: It's a correction for
12 the earlier overstatement.

13 MS. BUSH: Based on cost of living
14 in Alabama.

15 MR. ROGERS: Yes.

16 MS. BUSH: Because number one would
17 be a correction of the overinflated
18 numbers with no cost of living.

19 MR. ROGERS: Yes. It would be based
20 on national numbers. But then there's
21 also the question -- this is kind of --
22 it's academic, but it's real life because
23 it could be what's the chosen for the cost

1 table. The academic issue is does the
2 methodology tend to overestimate child
3 cost. And that's the Rothbard
4 methodology. And it's a technical
5 discussion. And I did discuss it a little
6 bit last time in August that the
7 methodology doesn't look at actual numbers
8 by category. It's an indirect estimate
9 based on restoring the parents sense of
10 well-being for spending on adult goods.

11 MS. BUSH: But all we have in front
12 of us today is Rothbard. So I understand
13 what you're saying. We can use another
14 methodology, but --

15 MR. ROGERS: I chose the starting
16 point, the standard methodology. Whether
17 I agree with it or not, I started with the
18 standard.

19 MS. BUSH: And so that's what we
20 have to choose from.

21 MR. ROGERS: That is what has been
22 presented.

23 THE HONORABLE PALMER: Now, I have a

1 note here from when we were here in August
2 that for low income, one child, it went
3 from basically 26 percent of the income to
4 22 percent of the income.

5 MR. ROGERS: It's whatever the table
6 says.

7 THE HONORABLE PALMER: Well, could
8 we as an option here just adjust one child
9 and leave everything else as it is by that
10 4 percent that you say that the difference
11 was from what the current chart is to what
12 these charts show. Can we just adjust one
13 child and leave two, three, four, five,
14 and six alone?

15 THE HONORABLE BELL: How are we
16 justified in doing that? I mean if we're
17 going to be consistent across the board
18 about the methodology and go. You know,
19 to be honest with you, it pretty much
20 sounds to me like our two choices are
21 leave it the way is, which I'm glad to do
22 because I don't think the increase for the
23 upper limit income people justifies the

1 decrease for the lower income people. I
2 think we're probably doing a disservice to
3 the lower income people on really -- on
4 both ends. Or do we blend and average it
5 to temper the effect? The consequence of
6 going -- or doing the average between
7 Rule 32 and Table 2. Does that make any
8 sense?

9 MR. ROGERS: I think it does, but I
10 think one thing you keep coming to without
11 always being blunt is what's going on in
12 the courts related to awarding the one
13 child awards as they have been? Are they
14 working well? Are there problems using
15 those numbers? The courts know the impact
16 better than anyone.

17 THE HONORABLE PALMER: Well, the
18 reason I'm saying one child is last time
19 he was here in August, that was mentioned
20 it went from 26 percent to 22 percent.
21 And about all his numbers show that -- not
22 two children so much; but that one child,
23 that was overestimated back ten years ago

1 when we got the numbers.

2 But, you know, see, that would be
3 the only way that I think we can justify
4 adjusting one child and not adjusting
5 everything else; but I'm with you as of
6 right now, Billy Bell, in that maybe the
7 best thing for us to do is nothing.

8 THE HONORABLE STUART: I'm not sure
9 -- I'm not sure that the public could ever
10 understand our just adjusting for one
11 child. I mean, I don't know how you
12 justify.

13 MS. DAVIS: I'm not suggesting this
14 at all. Since we're number people, I'm
15 going to throw out this number. It says,
16 on the average, households in the lowest
17 income bracket spend 25 percent of their
18 before-tax income on a child, those in the
19 middle income spend 16 percent, and those
20 in the highest spend 12. And there's also
21 statistics in here where you spend more
22 when you have one child. You spend a
23 certain percentage on one child. When you

1 have two children, let's say you spend 20
2 percent on one child. When you have a
3 second child, you don't spend 40 percent.
4 You spend less than that, which I assume
5 -- is that in your calculation? That's
6 why it's over --

7 MR. ROGERS: That's the study.
8 Costs go up less than proportional. You
9 know, there are economies of scale, so to
10 speak.

11 MS. DAVIS: But does the -- do the
12 numbers take into consideration that the
13 lower income group spends a higher
14 percentage of their taxes on that? Not
15 taxes.

16 MR. ROGERS: The new -- all the
17 Betson studies take that into account.
18 It's a lower dollar level but a higher
19 percentage. But with Betson's latest
20 study, he found that the higher percentage
21 is not as high as it used to believe.

22 THE HONORABLE BELL: Madam Chairman
23 -- person, I would like to make a motion.

1 THE HONORABLE PALMER: Okay. That's
2 Billy Bell.

3 THE HONORABLE BELL: That our
4 Committee recommend to the Supreme Court
5 that there be no change in the basic
6 obligation chart under the current
7 Rule 32.

8 MR. MEDARIS: Without Justice Stuart
9 here, I don't think we have a quorum
10 anymore.

11 THE HONORABLE PALMER: Well, but
12 there's ten of us, and she doesn't vote --

13 MR. MEDARIS: Only nine voting
14 members.

15 THE HONORABLE PALMER: Well, she
16 says she doesn't vote anyway.

17 MR. MEDARIS: She's a party member,
18 so her position is committee --

19 THE HONORABLE PALMER: Somebody go
20 grab her. There's ten of us but Judge
21 Ford apparently is not a voting member.
22 Is that correct, Judge Ford?

23 THE HONORABLE FORD: That's correct.

1 I'm an emeritus member.

2 MS. BUSH: Just by way of
3 discussion, though --

4 MS. DAVIS: We need you to stay to
5 be a quorum, but you don't have to vote.

6 THE HONORABLE STUART: Okay. I'll
7 stay.

8 THE HONORABLE BELL: And I've made a
9 motion that the Committee recommend to the
10 Supreme Court that we do not change the
11 basic support obligation chart under the
12 current Rule 32.

13 THE HONORABLE PALMER: After a
14 thorough discussion.

15 THE HONORABLE BELL: Very thorough.

16 THE HONORABLE PALMER: Do I have a
17 second on that?

18 MS. BALDWIN: Second.

19 THE HONORABLE BELL: Jen, did you
20 have a question?

21 MS. BUSH: Well, I can oppose it. I
22 just believe we've hired an economist,
23 who's gone out and done his work; he's

1 made a presentation. He's explained that
2 the Guidelines, especially for the one
3 child, are overstated. We've had some
4 people say that yes, they've experienced
5 that and they believe that to be true. I
6 do not understand it results in a
7 reduction in child support, but you also
8 have to understand that if you're dealing
9 with people who have little money, there's
10 just not that much money to go around.

11 I would vote that we adopt one of
12 these guidelines as opposed to leaving it
13 the same if we believe it's overinflated.

14 THE HONORABLE PALMER: So that's
15 your opposition.

16 THE HONORABLE BELL: But I see the
17 DHR prosecutor saying we can't handle that
18 kind of reduction.

19 But, anyway, that's my motion.

20 THE HONORABLE PALMER: Okay. That's
21 the motion. And we hear an opposition to
22 that?

23 All in favor of reporting to the

1 Alabama Supreme Court that we do nothing
2 and just keep the charts, after thorough
3 vetting of this, and keep it like it is
4 say aye.

5 (Committee members who favored the
6 motion so indicated.)

7 THE HONORABLE PALMER: Opposed?

8 MS. BUSH: Aye.

9 THE HONORABLE PALMER: One opposed.

10 JUDGE THOMPSON: Aye.

11 THE HONORABLE PALMER: Two opposed.

12 We have a majority that says do
13 nothing; is that correct?

14 (No verbal response.)

15 THE HONORABLE PALMER: Majority
16 rules. We're not going to do anything.

17 MR. ARNOLD: I would very much like
18 to hear Judge Thompson's logic and
19 reasoning.

20 THE HONORABLE THOMPSON: I think --
21 from what I've read, I think that there is
22 an adjustment that probably needs to be
23 made with regard to our cost of living in

1 this state. And, you know, I think it
2 could be something less dramatic than what
3 we've seen. But I think that we probably
4 have -- the lower end is probably paying
5 too much in child support, and the higher
6 end may not be paying enough. But I think
7 there's probably a place where we could
8 meet in the middle and find something
9 that's not overwhelmingly, you know,
10 throwing out the entire Rule 32 but
11 something that would for an adjustment on
12 that basis.

13 MR. ROGERS: May I comment?

14 All right. First, I do not envy
15 that you have to make the choice. I
16 don't. I'm going to state, you know, to
17 me the obvious. This is an important
18 decision. That is -- clearly, it would be
19 nice to be over with. It would be nice.
20 However, it doesn't have to be decided
21 today.

22 THE HONORABLE PALMER: Well, I don't
23 know that it doesn't. That's why we're

1 here for two days.

2 MS. DAVIS: We've already made that
3 decision, haven't we?

4 THE HONORABLE PALMER: I thought
5 that's why we had a quorum.

6 We have two people saying, no,
7 that they didn't agree with that and eight
8 people saying that -- well, nine people,
9 because we had one not voting, but we had
10 a quorum -- saying that we did agree to do
11 that.

12 Now, does this mean we're not
13 going to do anything ever again and wait
14 another four years? No. It just means
15 out of the things that we have in front of
16 us today, we're not going to pick any of
17 these options. It doesn't mean that we're
18 not going to have Mr. Rogers come back and
19 maybe blend again with the 250 in there
20 and something else. It doesn't mean that
21 we might not go to that National Committee
22 of State Judges.

23 MS. DAVIS: The college. Yeah, the

1 College of Family Court --

2 THE HONORABLE PALMER: The college
3 and see what is out there with them.

4 So it just means as of today,
5 we're going to send a recommendation to
6 the Alabama Supreme Court that we don't
7 change the rules as of today until
8 apparently we get more research on this.
9 And we're going to come back in six months
10 anyhow, right?

11 THE HONORABLE BELL: Uh-huh.

12 THE HONORABLE PALMER: To talk about
13 the joint custody, which may change
14 everything as well. So that's where we
15 are. Okay.

16 All right. So we've got one more
17 thing on the agenda. The child care cost
18 calculation discussion. Did we not do
19 that already?

20 MR. MADDOX: No. We're not going to
21 be able to vote on it, though.

22 THE HONORABLE PALMER: Oh, okay. I
23 was thinking of the daycare chart that did

1 get updated. Think you very much for
2 that.

3 MR. MADDUX: This is the discussion
4 for the civil appeals case. That's fine.

5 THE HONORABLE PALMER: Oh, that one.
6 That one. Okay. So yes. That is -- and
7 I'm not sure. It's called education
8 expenses.

9 THE HONORABLE BELL: It's on page H.

10 THE HONORABLE PALMER: H. And at
11 the DR judges retreat about two weeks ago,
12 Judge Thompson, Judge Terry Moore, and
13 Terri Thomas pointed out a case that I
14 believe y'all have in front of you.

15 MR. MADDUX: C.C. versus E.W.

16 THE HONORABLE PALMER: And it is a
17 final order now.

18 MR. MADDUX: Yes.

19 THE HONORABLE PALMER: It looks like
20 this. I know. They come in one ear and
21 out the other.

22 But it had to do with the Child
23 Support Guidelines under Work --

1 "Work-related child care expense for if
2 you're looking for a job, job searching
3 child care expense." That is four --
4 excuse me. That is number five,
5 "Work-related child care cost," on your
6 CS-42.

7 And a Judge in Marshall County
8 included -- one of the parties was in
9 college full-time and included the cost of
10 child care while that person went to
11 college. And the Court of Civil Appeals
12 reversed and said that the phrase
13 "employment or job search" did not include
14 educational pursuits as that phrase was
15 used in Child Support Guidelines providing
16 that childcare cost incurred on behalf of
17 the children because of employment or job
18 search of either parent shall be added to
19 the basic child support obligation. And
20 this court, in determining unwed father's
21 child support obligation, should not have
22 included monthly child care costs that
23 were incurred by mother while she was

1 attending college. Guidelines do not
2 expressly refer to child care expenses for
3 education-related pursuits.

4 So Judge Moore and Judge Thomas
5 have asked the Committee to really look at
6 that to see if there would be a reason
7 that we could include that because if
8 somebody is going to college, they are
9 looking to better themselves and to make
10 more money.

11 Now, I see a whole bunch of
12 problems with this myself.

13 THE HONORABLE FORD: So many
14 problems with that.

15 THE HONORABLE PALMER: And I can
16 tell by Judge Ford's face he's thinking
17 the same thing.

18 First off, we'd have to probably
19 put some Bayliss language in here in that
20 you'd have to be a full-time student, you
21 would have to maintain a C average, and it
22 would only be for approximately four
23 years. And then the person who has that

1 obligation on them -- because your income
2 might be zero because you're in college,
3 and it may be input minimum wage, but the
4 other person would not -- then you would
5 have to give your school records and give
6 the other person access to your records to
7 make sure you are a full-time student and
8 you did maintain the average grade. I can
9 see that.

10 I can also see -- let's say I'm
11 unwed. Let's say we just had a big old
12 time at an Alabama, Auburn party, and now
13 I'm having a child. That's the only time
14 we've ever seen each other, and now I'm
15 expected to work as the noncustodial
16 parent while you go finish your college
17 career, and you're going to have my butt
18 put in jail if I don't pay you that child
19 support, but you get to go to college
20 full-time.

21 I can also see, I'm going to
22 college, but I'm doing it from home.
23 Because many, many classes are online now.

1 Is it just to get an undergraduate degree?
2 Is to get your master's?

3 Judge Ford?

4 THE HONORABLE FORD: So many college
5 courses and disciplines are so esoteric as
6 to whether or not you can actually get a
7 job once you finish. You may be pursuing
8 art history because that's one of your
9 passions. That doesn't mean you're going
10 be employed.

11 THE HONORABLE BELL: Well, I think
12 this is lot like the medical insurance
13 issue I had in Hein versus Fuller.
14 Rule 32 says. This and a judge, even if
15 you disagree with it, don't think it's
16 fair, we just can't -- it's not an
17 acceptable reason to deviate from Rule 32
18 just because a judge thinks it's not right
19 and fair. I mean, they were very gentle
20 with me. They said, it doesn't matter how
21 you feel, Judge, but Rule 32 says this and
22 we have to follow it.

23 I think what would benefit the

1 trial court and the appellate courts is to
2 put it in as a recognized reason to
3 deviate from Rule 32. And that's one of
4 the options.

5 THE HONORABLE PALMER: So now with
6 that, it should be in your packet of
7 information today called Education
8 Expenses.

9 MS. DAVIS: I drafted these somewhat
10 hurriedly because I was at the same
11 meeting and heard the same comments. As I
12 said earlier, I don't feel like we ought
13 to ask judges to give us their comments
14 and then ignore them. So what I did was I
15 read the case. And what the appellate
16 court did, which was helpful to me, they
17 looked at surrounding states to see. And
18 if you look, most of the surrounding
19 states do allow either job training or
20 education or some variation of that, and
21 they looked at some other states just
22 across the region. So you can read --
23 most of you read the case.

1 So what I did was I came up with
2 what I thought were three alternatives
3 that could be considered if the Committee
4 wants to do something. The Committee may
5 not want to do anything.

6 The first was the simplest, and
7 it followed what Tennessee has. And you
8 see what I did was take the current child
9 care cost, which is number eight, and just
10 input the language where it says "child
11 care cost occurred on behalf of the
12 children because of employment" -- and it
13 says now, or job search for either parent
14 -- it would be employment, education, or
15 vocational training, or a job search for
16 either parent.

17 In other words, if the paying
18 parent, he or she, is going to take some
19 additional training to enhance their job,
20 then they would get -- and just as well as
21 the noncustodial parent. So it cuts both
22 ways.

23 And so the comment that I added

1 was additional language of education or
2 vocational training. And the definition
3 of child care cost is reflective of the
4 policy of encouraging parents to be
5 self-supporting and develop the necessary
6 skill sets to support the children. This
7 follows the Tennessee guidelines.

8 And the only other comment that I
9 would like to make outside of looking at
10 the alternatives, one reason I thought it
11 was fair to do that, to consider these
12 changes, is one of the bills that was
13 introduced last time that's part of the
14 Standing Family Law Committee and may be
15 introduced again next time is a
16 substantial change to the alimony law.
17 And what it will do is will -- and it will
18 be prospective only. But if you have a
19 marriage that's less than 20 years, then
20 the presumption on alimony is that first
21 the courts will look at the ability to pay
22 and the needs, as they do now, but we've
23 structured in the case law elements. But

1 the presumption is the recipient will get
2 rehabilitative alimony for up to five
3 years, and so that's what they get first
4 with the idea they need to rehabilitate
5 themselves so they can take care of
6 themselves.

7 After that time period, if they
8 have not been able to rehabilitate
9 themselves up to, again, the level -- the
10 law now is the lifestyle that they had at
11 the time of the marriage -- then they can
12 get additional alimony, periodic alimony.

13 But if it's a marriage less than
14 20 years, the total amount of alimony they
15 can get is no longer than the length of
16 the marriage. So if you've been married
17 for 11 years, going forward after this
18 passes, then the maximum amount of time
19 frame you can get alimony. The courts can
20 deviate from the rehabilitative time
21 frame, but basically, it's going to be
22 your marriage length is going to limit it.
23 If you've got a 20-plus-year marriage, the

1 time duration and limitation doesn't come
2 into being.

3 Okay. So that concept is we want
4 to encourage people to become
5 self-supporting. But you would hate to
6 have -- to me, it's counterintuitive to
7 also have child support where you say,
8 okay, you can't go to college because, you
9 know, you can't consider that and
10 encourage people to go to college because
11 of child support, who have children, and
12 then but for alimony purposes, we are
13 encouraging you to become self-supporting.

14 MR. ARNOLD: You're also encouraging
15 people to trigger a divorce.

16 MS. DAVIS: You talking about the --

17 MR. ARNOLD: The alimony.

18 THE HONORABLE PALMER: Just like the
19 retirement.

20 MR. ARNOLD: Yes, ma'am. Just like
21 the retirement statute.

22 MS. DAVIS: The retirement statute,
23 actually, we're taking away the ten years.

1 That's another one.

2 THE HONORABLE PALMER: But you're
3 replacing it with -- I mean, I'm not so
4 happy in my marriage, four years and 11
5 months down the road, whoop, I'm gone, and
6 then remarry and I got another four years
7 and 11 months --

8 MS. DAVIS: And again, this is --
9 this is a direction that a lot of states
10 are going in. There is no move in the --
11 there are some people that think we should
12 do away with alimony altogether. And
13 again, this is just a proposal. The
14 legislative --

15 THE HONORABLE PALMER: Okay. But
16 let's get back to the education. I can
17 understand rehabilitative alimony and now
18 I'm going to school, but --

19 MS. DAVIS: If you've got -- what
20 I'm saying is if you're -- if you are in a
21 situation where you've gotten a divorce
22 and you're the custodial parent, you're
23 told under the alimony law, you need to go

1 out and start learning to be
2 self-supporting, but if the child support
3 law does not allow you to have child care
4 for your education while you're pursuing
5 that degree, then a lot of people won't be
6 able to do it or may not be able to do it.
7 It's just a consideration. It's not the
8 law, and it may not be the law.

9 THE HONORABLE PALMER: Well, it's
10 been my experience that most of the time
11 if they've been married 11 years, those
12 kids are usually already in school, for
13 the most part. I'm worried about --
14 because this is for children, of course,
15 born out of wedlock and for the people
16 that meet up at an Auburn-Alabama game and
17 now all of a sudden I'm pregnant and I'm
18 still at school and I expect you to work
19 and pay for my child care while I finish
20 up my college education. I can just see
21 all kinds of problems with this,
22 personally.

23 And again, as written, there's no

1 requirement that this person be a
2 full-time student, have a C average. You
3 know, what if I'm taking online courses at
4 home? Because you can do that now.

5 MS. DAVIS: Right.

6 THE HONORABLE PALMER: And is it for
7 post-education? Is it for me to get
8 master's? Is it for me to go to
9 Birmingham School of Law and get my JD? I
10 mean --

11 MS. DAVIS: Yeah. The second
12 alternative is Georgia, and it does -- and
13 the third one is what Billy was
14 suggesting, which was -- is a reason for
15 deviation, which is in appropriate cases,
16 the court may consider the child care cost
17 associated with training or education of
18 the parent necessary to obtain a job or
19 enhance earning potential, not to exceed a
20 reasonable time as determined by the
21 court, if the parent proves by
22 preponderance of the evidence that the job
23 training or education will benefit the

1 child being supported. That's alternative
2 number three, which puts in some of those
3 safeguards.

4 Yeah. I just was trying to
5 present some alternatives based on the
6 conversation that we had at the judges
7 meeting.

8 THE HONORABLE BELL: I personally
9 think we need to give the judges the
10 discretion to do it, which they do not
11 have now, as I understand that case, and
12 to put it in as an additional reason to
13 deviate. Just gives that judge, if the
14 judge thinks that's fair and the right
15 thing to do, to order it. Otherwise, they
16 can't do it at all. So that's really, to
17 me, the question. Do we want a judge to
18 be able to do it or do we leave it the way
19 it is, where he has none?

20 THE HONORABLE PALMER: Jennifer?

21 MS. BUSH: I think it's totally up
22 to whatever the Committee wants to do.
23 It's not going to impact our federal

1 regulations either way. So --

2 THE HONORABLE PALMER: Well, we
3 don't have a quorum now to vote, by the
4 way.

5 THE HONORABLE FORD: I think the
6 deviation is probably the best way to do
7 it. Judge has the opportunity to review
8 the parties, exactly what kind of
9 education being pursued, whether or not
10 it's going to be something that could
11 maybe lead to some employment as opposed
12 to something that you're just doing
13 because it's something I want to do. So I
14 think that's probably the most reasonable
15 compromise in the situation.

16 MS. DAVIS: I agree.

17 THE HONORABLE BELL: I agree.

18 THE HONORABLE PALMER: Judge
19 Thompson, anything?

20 THE HONORABLE THOMPSON: No. I
21 think what Billy proposed is reasonable.
22 It might need a little more proof on the
23 front end that it will lead to enhanced

1 job opportunities.

2 MS. DAVIS: This is Georgia's law,
3 and they use preponderance of evidence.
4 You can use a higher standard, you know,
5 clear and convincing, something like that.
6 Again, this was not an attempt to be all
7 inclusive of things to do. It's just
8 trying to put it out there because one of
9 the judges -- a couple of judges asked us
10 to consider it.

11 THE HONORABLE PALMER: Well, I just
12 think that -- I just can see this being
13 abused. I just can. But to have the
14 ability -- because what if I am -- I'm one
15 semester short. You know, I need to be
16 able to finish. I will have a teaching
17 degree. I need to be able to add that in.
18 Or, yes, two of my children are in school,
19 but then I've got a third child that is
20 going to need day care and I want to go
21 back and finish my degree. I've been
22 married for 11 years and now I'm not, and
23 I've got to go be self-supporting, so I

1 would like to be able to put one child in
2 school -- in day care while I go finish or
3 get my degree and the other two are in
4 school. I mean, I can see that at some
5 point, there is a need to be able to
6 deviate.

7 But just to basically just
8 education or vocational training and like
9 Judge Ford said, yeah, I'm getting a
10 degree in art history, well, there's
11 probably two jobs in that in the whole
12 state of Alabama.

13 THE HONORABLE FORD: Yeah. And it
14 wouldn't be in Tuskegee.

15 THE HONORABLE PALMER: I don't know.
16 There's one in Birmingham, and that's all
17 that I know of. May be one in Mobile.

18 MS. BUSH: If it was a deviation,
19 then that could be up to the judge to say,
20 you know, you only have two jobs. A
21 teaching degree, you can -- that's going
22 to be a better prospect. And they can use
23 their discretion.

1 It may increase modifications,
2 though. Just be aware. Although, you're
3 not that worried about that, going back to
4 court.

5 THE HONORABLE PALMER: And the
6 language would be that the mere passage of
7 this would not be a material change.

8 MS. BUSH: Well, I'm thinking I'm in
9 school and I've got four years and then at
10 the end of the four years, I come back for
11 -- I have another child and I'm having to
12 come back to modify my child support as my
13 child care changes due to my education as
14 opposed to just my child.

15 THE HONORABLE BELL: Yeah. The only
16 issue is the judge's hands are tied right
17 now. Can't do it, absolutely. Black and
18 white, can't do it. The only question is
19 do we want to give that as a tool and
20 discretion for a learned trial judge to
21 apply in the appropriate circumstances?

22 MR. ARNOLD: I think it's worth
23 considering, but also in the

1 consideration, is that going to be limited
2 to upon initial determination of support
3 at whatever court may be, or it could be
4 part of a subsequent modification.

5 THE HONORABLE BELL: I think it
6 would have to be whenever the child
7 support is being determined by
8 modification or original.

9 MR. ARNOLD: Just a question.

10 MS. DAVIS: And of course, the way
11 we're thinking of is in terms of a person
12 going to college. And that was the case
13 that was before the Court. The way this
14 speaks it's associated with training or
15 education of the parent. So it could be,
16 you know, their -- the parent might have
17 to go -- maybe he's a welder one and wants
18 to be a welder two and is going to need
19 to, you know, go somewhere for welder two
20 training or something for a period of
21 time. So --

22 MR. ARNOLD: Another consideration,
23 do we want to include getting a high

1 school diploma or a GED?

2 THE HONORABLE BELL: And that's the
3 real world right there.

4 MR. ARNOLD: That's the real world.
5 Sure is.

6 THE HONORABLE BELL: You know, the
7 trial judges probably don't want us to
8 mess with it because it's just another
9 issue they're going to have to decide and
10 exercise discretion on. Now it's easy;
11 sorry, we can't do it and that's just the
12 way it is.

13 THE HONORABLE PALMER: Well, do we
14 have the ability to vote today and then
15 get a tenth vote from anybody? We have to
16 have a quorum in the room when we vote.

17 MR. ARNOLD: Got to have a quorum.

18 THE HONORABLE PALMER: All right.
19 Then we will table this until we meet
20 again, but -- and I will take this on with
21 Penny. Penny and I are going to do a
22 subcommittee on this since she's already
23 done the hard work, but I would like to

1 hear these variations. You know, are we
2 going to include a high school diploma,
3 like Steve said, because that's the real
4 world, or I'd like to go get a GED. And
5 now I think you can get that in 30 days.
6 You know, sometimes those classes are at
7 night and you can work all day, but then
8 I've got to pay my mother \$50 to keep the
9 child or something like that.

10 MS. BUSH: How long are the classes
11 for GED?

12 THE HONORABLE PALMER: That's what I
13 was asking. I don't know.

14 THE HONORABLE MOORE: It varies.

15 THE HONORABLE PALMER: Pardon?

16 THE HONORABLE MOORE: It varies.

17 THE HONORABLE PALMER: It does.

18 Sometimes you can take it one day a week.
19 You can take like ten weeks. You can take
20 it for 30 days straight and then pass it.
21 I think you can just take the test in
22 general. You don't even have to take the
23 courses if you think you can go pass the

1 test.

2 THE HONORABLE MOORE: There's an
3 evaluation you have to do. Evaluation,
4 pre-evaluation, and then they'll base that
5 on your score how -- what length of time
6 you can actually take the test prior to
7 even taking the classes.

8 MS. BUSH: I guess what I mean is on
9 one hand, people who need a GED or a high
10 school -- I mean GED -- need this more
11 than ever; but at the same time, it's such
12 a short term you're going to be entering
13 an order. It's -- you know, if you can do
14 it in ten weeks, you're going to enter an
15 order for something that's not going to
16 last that long. I mean, you'll have to go
17 back and modify it.

18 THE HONORABLE MOORE: We offer it
19 for inmates as a condition of their
20 sentence, and we do hold it in a small
21 courtroom. And the maximum length of time
22 that I've known was about 12 months, with
23 the minimum being a couple of months.

1 Depends on the academic level.

2 MS. BUSH: But if it was in the
3 judge's discretion, that means I'm working
4 full-time and I want to take my GED
5 classes but I need child care every
6 Wednesday, I need child care for one hour
7 a week or whatever, then the court could
8 allow that.

9 THE HONORABLE MOORE: Yeah. Because
10 it's not every day.

11 THE HONORABLE PALMER: Well, we will
12 table it for now. We will put it on the
13 agenda next time.

14 But like I said, think of some
15 different scenarios. Talk to your
16 clients. Talk to the people that come in
17 and say -- even a good case study, so this
18 would have been the perfect case.

19 Bob, have I missed anything? I
20 talked about education, child care cost.

21 MR. MADDUX: Yes. The only other
22 thing I wanted to mention in the back of
23 your materials to talk about today, behind

1 Tab H again, I have a copies of the
2 current and former versions of form CS-41,
3 Child Support Obligation Income
4 Statement/Affidavit. At the last meeting
5 of the Committee, I think Judge Palmer had
6 requested each of you to review I guess
7 the current version and former version.
8 That really was sent out prior to the
9 meeting, so I guess I propose to just take
10 these two versions and look at them,
11 particularly on the back. I think in the
12 transcript, Judge Palmer mentioned items
13 three and four on the back of CS-41.

14 MS. DAVIS: What tab are you on?

15 MR. MADDOX: It's classified as Tab
16 H under Miscellaneous. It should be in
17 your materials when you got here. It's
18 probably not in your notebook. It's
19 probably in the separate materials.

20 There should be a separate form
21 that says current version of CS-41,
22 revised 4/15, and CS-41, revised back in
23 January 2009. But basically what I wanted

1 to put on the record is that the back of
2 form CS-41 did not change from 2009 to
3 2015. Only the part about the pro rata
4 insurance, health insurance, on page 1,
5 number 5, was changed per the change in
6 Rule 32. That was the only change on the
7 CS-41 that I know of.

8 So I think the answer to Judge
9 Palmer's question from the last meeting,
10 the back of CS-41 was not changed over
11 those six years. So if you-all want to go
12 and compare the former version with the
13 current version and I guess make any
14 suggested changes I guess by the next
15 meeting, whenever we schedule that, we can
16 do that.

17 THE HONORABLE PALMER: That's
18 page 29 where it says "Child support
19 Alabama Rules of Judicial Administration
20 Rule 32" and it's page 29; is that
21 correct?

22 MR. MADDOX: That's the current
23 version. Then I have the other version,

1 the revised one of 2009.

2 THE HONORABLE PALMER: What page is
3 that?

4 MR. MADDOX: Well, that's not on a
5 page. It's in a separate packet I passed
6 around the room.

7 THE HONORABLE PALMER: Okay.

8 MR. MADDOX: But that's more of an
9 FYI from the last meeting that CS-41 was
10 discussed, and I just wanted to point out
11 that the back of CS-41 has not changed
12 between 2009 and 2015, just that one item
13 on the front.

14 And also, Judge Palmer, I think
15 you wanted to bring up the second job
16 overtime issue that was raised.

17 THE HONORABLE PALMER: Yes. At the
18 DHR judges retreat. Let's see. What did
19 I do with my notes. This was a question
20 that says, can the Guidelines Committee
21 please look if we are to include second
22 job income, where they can prove that the
23 "something" to both. Often we hear he

1 gets 60 hours a week and support is to be
2 based on that, but I don't want to work an
3 extra hours et cetera like he does to make
4 -- to make -- I can't read the person's
5 writing. I apologize.

6 To me, overtime is different than
7 a second job. Overtime -- if you can
8 prove overtime -- and what I've done in
9 the past is I've looked it over the last
10 three, years you've gotten X amount of
11 overtime, then I average that out over a
12 three-year period, because we all know
13 once the divorce gets final, nobody gets
14 any overtime anymore, versus working a
15 second job. Sometimes people work a
16 second job so they can pay their six
17 different orders of child support that is
18 out there.

19 So what do -- Judge Bell, what
20 did you do?

21 THE HONORABLE BELL: Well, if the
22 overtime was regulated and recurrent, then
23 I would consider it. I would do like you

1 and I would average it out on this year's
2 payment stub. If it went through June,
3 I'd take the total amount of overtime
4 divide it by six, and I would include that
5 in income if it was regular and current.

6 Of course, everybody that comes
7 into court says, you know, I used to work
8 a lot of overtime, but they're not going
9 to give us any more overtime.

10 THE HONORABLE PALMER: But did you
11 consider that different from a second job?
12 Let's say seasonal, I'm working at the
13 mall, or it's summertime and I'm putting
14 beach chairs out at the beach, and that's
15 only from May until September. Did you
16 include that if they can prove it?

17 THE HONORABLE BELL: Yeah. I mean,
18 it's additional income. I think it's
19 supposed to be income from all sources. I
20 mean, I would.

21 THE HONORABLE PALMER: And Judge
22 Ford?

23 THE HONORABLE FORD: You say the

1 generally overtime. If it's not
2 consistent, then I would not include it.
3 But if it was something that was
4 consistent and can be proven, as you say,
5 over a period of time, it should be
6 included as income.

7 THE HONORABLE PALMER: Because a lot
8 of people during the holiday season, let's
9 say, are going to get some overtime; but
10 at the end of the year, if their W2 or
11 their 1099 shows X amount, then I just
12 always use the year-end average or, like
13 you said, whatever the pay stub amount
14 says.

15 THE HONORABLE BELL: Bonuses are the
16 same way. I mean, technically, bonuses
17 are included in extra income.

18 THE HONORABLE PALMER: So to answer
19 this person's question, any income from
20 any source whatsoever, like it says, shall
21 include but not be limited to salary,
22 wages, bonuses, commissions, severance
23 pay, worker's compensation, pension

1 income, unemployment, insurance,
2 disability, and social security benefits.
3 So it's income from any other work-related
4 source, reimbursement for expenses,
5 in-kind payments, any significant that
6 would reduce your personal living
7 expenses, such as purchasing an
8 automobile, clothing allowance, or housing
9 allowance. We also -- now people get a
10 phone allowance sometimes. So the general
11 consensus is any money from any source
12 except for means-tested associated sources
13 is not to be included.

14 Everybody in agreement with that?

15 THE HONORABLE MOORE: I wouldn't say
16 -- I wouldn't say reimbursements because
17 they are already -- that's -- salary is
18 already calculated. I wouldn't say
19 reimbursements.

20 THE HONORABLE PALMER: Well, that's
21 what it says right now, I think.

22 THE HONORABLE MOORE: I think that
23 may be at the judge's discretion.

1 THE HONORABLE PALMER: It says other
2 employment-related income. Any expense
3 reimbursement. I'm with you, Mary. If
4 it's a dollar for dollar, I spend \$7.50
5 for a meal and now you're reimbursing me
6 for that meal, possibly. But 54 cents a
7 mile, which I think is the government
8 rate, you know, I don't know. But right
9 now the current rule is reimbursement or
10 anything that would help reduce your
11 personal living expense. I have got to
12 eat lunch anyhow, so then that \$7.50 --

13 Thank you, Jennifer.

14 MR. MADDOX: May I interrupt just a
15 minute. Before Jennifer has to leave, can
16 I get on the record that this completes
17 the four-year review of the Guidelines?
18 Is that a correct statement?

19 MS. BUSH: It is a correct
20 statement. We've reviewed it, and you've
21 made a decision, and so technically --

22 MR. MADDOX: Is that the Committee's
23 review or the Court's? Does it ultimately

1 rest with the Court in that final --

2 THE HONORABLE FORD: It's the
3 Committee.

4 MS. BUSH: I would think it's the
5 Committee. I will go back and confirm.
6 Because if you don't make any
7 recommendation, there's nothing to go
8 before the Court. You know, you're not
9 making any changes to the Rule so you're
10 not putting anything in front of the
11 Court.

12 THE HONORABLE BELL: Well, we are
13 too with the credit and possibly the
14 education assistance.

15 MS. BUSH: Well, the federal
16 regulation requires the Guidelines.

17 MR. MADDUX: The Schedule.

18 MS. BUSH: The Schedule. The income
19 information. And the numbers --

20 MR. ARNOLD: Right. And the
21 numbers --

22 MS. BUSH: -- to be reviewed every
23 four years, and then anything else you do,

1 like the credit or any of that -- I'm not
2 going to say they don't care about it, but
3 that's not -- they're not concerned about
4 that. You don't have a federal regulation
5 tied to that. You can make whatever
6 decision you want to that -- so yes, as of
7 today, we've met the four-year
8 requirement. It's been reviewed. The
9 Committee made a decision.

10 Now, if the Committee wants to
11 make another decision again in six months,
12 that will start the clock again.

13 Okay. I'm sorry. I have someone
14 waiting on the side of the road for me to
15 pick them up.

16 THE HONORABLE PALMER: All right.
17 So that's the reimbursement.

18 THE HONORABLE MOORE: But I
19 understand, because it says now that are
20 significant and reduce personal living.
21 So that makes sense. That makes sense.

22 THE HONORABLE PALMER: And then we
23 were going to have comments from the

1 public, but I think the public left us.

2 Is Mr. Smith going to come back? Did he
3 take his stuff? Does anybody know?

4 THE HONORABLE BELL: Are we not
5 going to meet tomorrow?

6 THE HONORABLE PALMER: No. There's
7 no reason for us to meet tomorrow. If
8 somebody already did --

9 MS. DAVIS: Let me make sure. Since
10 we were sued before, I want to make sure
11 that we -- that there is no problem with
12 us not meeting tomorrow since it was
13 advertised that we were meeting. I just
14 want to ask Bob.

15 THE HONORABLE BELL: Yes. If we
16 meet tomorrow we get a per diem.

17 THE HONORABLE FORD: That's a good
18 point.

19 THE HONORABLE PALMER: Well, if you
20 already have a motel room and you don't
21 want to drive back, then you will be
22 reimbursed for that, correct?

23 MR. MADDOX: Correct.

1 THE HONORABLE PALMER: And so if you
2 already have that, then stay, have fun.

3 THE HONORABLE FORD: Well, Penny
4 makes a good point. We advertised for a
5 two-day meeting and the public is supposed
6 to be here for the second day. We need to
7 have some way to say that we're not going
8 to meet again. Because the last time we
9 were sued was because, I think, of
10 something similar to what we're doing now.
11 We finished early and so we just left.

12 MR. MADDOX: Do you have a comment,
13 Scott?

14 MR. HOYEM: I think the notice that
15 went out said the Committee will continue
16 to meet on Friday, December 2nd, 2016, as
17 needed.

18 THE HONORABLE FORD: I think that's
19 okay.

20 THE HONORABLE PALMER: As needed.

21 MR. ARNOLD: I think that does it.

22 THE HONORABLE PALMER: Thank you,
23 Scott.

1 MS. DAVIS: I was just raising that
2 to make sure. I've been on that federal
3 bench one time -- as a witness one time
4 too many.

5 MR. MADDUX: Scott Hoyem drafted
6 that. Thank you.

7 MR. ARNOLD: Two comments. One,
8 Mark, thank you for everything.

9 THE HONORABLE PALMER: Yes, Mark.
10 Thank you.

11 MR. ARNOLD: It's extremely helpful.
12 Very --

13 THE HONORABLE PALMER: And you
14 actually made it interesting, too.

15 MR. ARNOLD: Very enlightening, very
16 visual. It's helped everybody understand
17 an awful lot.

18 And two, just a general comment.
19 I definitely appreciate the seriousness
20 with which this Committee has conducted
21 this investigation as well as in the past.
22 It's -- I think we've served our public
23 very well.

1 THE HONORABLE PALMER: Thank you,
2 Steve. I think so too.

3 And with that, anybody have
4 anything else?

5 (No response.)

6 THE HONORABLE PALMER: We stand
7 adjourned.

8 (The Committee meeting concluded
9 at 4:40 p.m.)

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REPORTER'S CERTIFICATE

1 STATE OF ALABAMA
2 ELMORE COUNTY

3 I, Haley Tunnell, Court Reporter,
4 Commissioner for the State of Alabama at Large,
5 hereby certify that on Thursday, December 1,
6 2016, I reported the meeting of the Advisory
7 Committee on Child Support Guidelines and
8 Enforcement and that pages 4 through 313 contain
9 a true and accurate transcription of the
10 proceedings set out herein.

11 I further certify that I am neither kin nor
12 counsel to any of the parties to said cause, nor
13 in any manner interested in the results thereof.

14
15 /s/Haley Tunnell
16 HALEY TUNNELL, Court Reporter
17 Commissioner for the
18 State of Alabama at Large
19 MY COMMISSION EXPIRES: 02/25/19
20
21
22
23

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