

No. 21-10486

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

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◆  
DARCY CORBITT, et al.,  
*Plaintiffs-Appellees,*

v.

HON. HAL TAYLOR, in his official capacity as Secretary of the  
Alabama Law Enforcement Agency, *et al.*,  
*Defendants-Appellants.*

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◆  
On Appeal from the United States District Court  
for the Middle District of Alabama  
Case No. 2:18-cv-00091-MHT-SMD

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**APPENDIX VOLUME II**

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June 2, 2021

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# Exhibit 3

Deposition of Jane Doe

**FILED UNDER SEAL**

DOC. 48-5



# Exhibit 5

## Deposition of Deena Pregno

**In The Matter Of:**

*Darcy Corbitt, Destiny Clark, and Jane Doe v.  
Hal Taylor, etc., et al.*

---

*Deena Pregno  
November 14, 2018*

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*Baker Realtime Worldwide Court Reporting & Video  
250 Commerce Street  
Third Floor, Suite One  
Montgomery, Alabama 36104  
[www.BakerRealtime.com](http://www.BakerRealtime.com)*

Page 1

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE MIDDLE DISTRICT OF ALABAMA  
3 NORTHERN DIVISION  
4  
5 CIVIL ACTION NO.: 2:18-CV-00091-MHT-GMB  
6  
7 DARCY CORBITT, DESTINY CLARK, and JANE DOE,  
8 Plaintiffs,  
9 v.  
10 HAL TAYLOR, in his official capacity as  
11 Secretary of the Alabama Law Enforcement  
12 Agency, et al.  
13 Defendants.  
14  
15 DEPOSITION OF DEENA PREGNO  
16 November 14, 2018  
17  
18 Taken before Elaine Scott, CCR,  
19 Commissioner for the State of Alabama at  
20 Large, in the Law Offices of the Alabama  
21 Attorney General, 501 Washington Avenue,  
22 Montgomery, Alabama, on Thursday, November 14,  
23 2018, commencing at approximately 9:00 a.m.

Page 3

1 A P P E A R A N C E S (continued)  
2  
3 ALSO PRESENT:  
4 Meredith Barnes  
5  
6 COURT REPORTER:  
7 BAKER REALTIME WORLDWIDE REPORTING & VIDEO  
8 Elaine Scott  
9 250 Commerce Street  
10 Third Floor, Suite One  
11 Montgomery, Alabama 36104  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

Page 2

1 A P P E A R A N C E S  
2  
3 FOR THE PLAINTIFFS:  
4 AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
5 Gabriel Arkles  
6 125 Broad Street  
7 18th Floor  
8 New York, New York 10004  
9  
10 ALABAMA CIVIL LIBERTIES UNION FOUNDATION  
11 Brock Boone  
12 Randall C. Marshall  
13 P.O. Box 6179  
14 Montgomery, Alabama 36106  
15  
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17 OFFICE OF THE ATTORNEY GENERAL, STATE OF  
18 ALABAMA  
19 Brad A. Chynoweth  
20 501 Washington Avenue  
21 Montgomery, Alabama 36130  
22  
23

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23

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1           S T I P U L A T I O N S  
2           It is hereby stipulated and agreed by  
3 and between counsel representing the parties  
4 that the deposition of DEENA PREGNO is taken  
5 pursuant to stipulation and agreement; that  
6 all formalities with respect to procedural  
7 requirements are waived; that said deposition  
8 may be taken before Elaine Scott, Certified  
9 Court Reporter and Commissioner for the State  
10 of Alabama at Large, without the formality of  
11 a commission; that objections to questions  
12 other than objections as to the form of the  
13 questions need not be made at this time but  
14 may be reserved for a ruling at such time as  
15 the deposition may be offered in evidence or  
16 used for any other purpose as provided for by  
17 the Alabama Rules of Civil Procedure.  
18           It is further stipulated and agreed  
19 by and between counsel representing the  
20 parties that the filing of the deposition may  
21 be introduced at the trial of this case or  
22 used in any manner by either party hereto  
23 provided for by the Statute.

Page 7

1 please state your full name and title for the  
2 record?  
3           A. Deena Lee Pregno, ALEA chief,  
4 driver's license division.  
5           Q. Could you just spell out ALEA for  
6 the first time?  
7           A. A-L-E-A, Alabama Law Enforcement  
8 Agency.  
9           Q. Thank you. Have you been deposed  
10 before?  
11           A. Yes.  
12           Q. Around how many times have you been  
13 deposed?  
14           A. Five maybe.  
15           Q. And could you tell me just a little  
16 bit about what those cases were about?  
17           A. Criminal cases, DUIs, and then the  
18 motor voter case. Those were the -- that was  
19 the big one, motor voter.  
20           Q. No cases about transgender  
21 issues --  
22           A. No.  
23           Q. -- right?

Page 6

1           It is further stipulated and agreed  
2 by and between the parties hereto and the  
3 witness that the signature of the witness to  
4 this deposition is hereby waived.  
5  
6           DEENA PREGNO,  
7           The witness, having first been duly  
8 sworn or affirmed to speak the truth, the  
9 whole truth and nothing but the truth,  
10 testified as follows:  
11  
12           THE COURT REPORTER: Usual  
13 stipulations?  
14           (Affirmed by counsel.)  
15  
16           EXAMINATION  
17 BY MR. ARKLES:  
18           Q. Good morning.  
19           A. Good morning.  
20           Q. I'm Gabriel Arkles. I'm one of the  
21 attorneys for the plaintiffs in the lawsuit  
22 Corbitt v. Taylor, which is a lawsuit in which  
23 you are one of the defendants. Could you

Page 8

1           A. No.  
2           Q. Okay. So you probably already know  
3 some of how this goes, but I'm going to give  
4 you a few instructions at the beginning just  
5 so we're clear. So, first of all, just to  
6 make sure that everything is clear on the  
7 transcript, please answer everything verbally  
8 rather than nodding or shaking your head or  
9 saying uh-huh or huh-uh. Is that okay?  
10           A. Okay.  
11           Q. And please let me know if you don't  
12 understand anything about my questions.  
13           A. Okay.  
14           Q. You can always ask for a break. I  
15 just ask that if I have asked you a question  
16 you answer the question first before we take a  
17 break.  
18           A. Okay.  
19           Q. And please wait until I finish  
20 asking a question before you answer, even if  
21 you think you know what I'm about to say, just  
22 again so it's clear for the record.  
23           A. Okay.

Page 9

1 Q. And feel free to let me know at any  
2 time if you need to supplement or clarify an  
3 earlier answer.  
4 A. Okay.  
5 Q. Is there any reason why you would  
6 not be able to answer questions fully and  
7 accurately today?  
8 A. No.  
9 Q. Is it your understanding that  
10 you're testifying on behalf of the Alabama Law  
11 Enforcement Agency today?  
12 A. Yes.  
13 Q. Are you prepared to testify  
14 regarding ALEA's interest in policy order 63?  
15 A. Yes.  
16 Q. Are you prepared to testify  
17 regarding the process of creating policy order  
18 63 today?  
19 A. Yes.  
20 Q. Are you prepared to testify  
21 regarding the government interest in policy  
22 order 63?  
23 A. Yes.

Page 10

1 Q. Are you prepared to testify  
2 regarding the responses to interrogatories  
3 produced by defendants in this case?  
4 A. Yes.  
5 Q. And are you prepared to testify  
6 about responses to requests for production  
7 made in this case?  
8 A. Yes.  
9 Q. What did you do to prepare for the  
10 deposition today?  
11 A. I met with counsel. I met with  
12 Jeannie Eastman and talked with a group --  
13 some individuals in our information technology  
14 group to produce the documents requested. And  
15 I've talked with some other -- some of my  
16 coworkers, other law enforcement officers.  
17 Q. And what did you talk to your  
18 colleagues about?  
19 A. Just to ask them how they felt  
20 about interactions with subjects on the  
21 roadway and how important they felt like the  
22 sex designation should or should not be on the  
23 license.

Page 11

1 Q. Okay. And was there anything else  
2 that you talked about with them?  
3 A. No.  
4 Q. Did you review any documents or  
5 records in preparation for today?  
6 A. The policy and statute and emails  
7 that were provided by counsel.  
8 Q. Do you know if those emails were  
9 emails that were produced in response to the  
10 request for production?  
11 A. Yes, they were.  
12 Q. Okay. Were there any documents  
13 that you reviewed that have not already been  
14 produced to us, to your knowledge?  
15 A. No.  
16 Q. Okay. And when you say you  
17 reviewed the statute, could you tell me which  
18 statute you mean?  
19 A. Alabama statute which talks about  
20 what we require, excuse me, on a driver's  
21 license.  
22 Q. Okay. And so the Alabama statute  
23 about the information that is required to be

Page 12

1 shown on a driver's license?  
2 A. Correct.  
3 Q. Okay. And so one last  
4 instruction. Unless I say otherwise, when I  
5 ask you a question I'm asking for your  
6 testimony on behalf of ALEA. So I'll tell you  
7 if I want your testimony as yourself  
8 personally, but if you're ever not sure, then  
9 please just let me know.  
10 A. Okay.  
11 Q. So now I'm going to ask you a few  
12 questions about your background and these are  
13 questions about you personally.  
14 A. Okay.  
15 Q. Could you tell me about your  
16 educational background after high school?  
17 A. I have a bachelor's degree in  
18 business administration and a minor in  
19 computer information technology.  
20 Q. And where did you receive that?  
21 A. Troy University. I'm sorry. I'm  
22 fighting a cold. Pass me a bottle of water.  
23 Thank you.

Page 13

1 Q. No worries. And is that the  
2 highest degree you've received?  
3 A. Yes. I started graduate, but I  
4 didn't finish.  
5 Q. What were your graduate studies in?  
6 A. MBA.  
7 Q. And do you have any certifications?  
8 A. What kind of certifications would  
9 you be --  
10 Q. Any sort of professional  
11 certifications.  
12 A. I used to hold a manicurist  
13 license, but it has expired since.  
14 Q. Thank you. And what was your first  
15 job after high school?  
16 A. After high school, I was a waitress  
17 at Country's Barbecue. I was a day care  
18 worker. I painted buildings. And then I  
19 started my state career at the Department of  
20 Forensic Sciences in 1987, I believe.  
21 Q. Okay. So you began your state  
22 career in 1987 in the Department of Forensic  
23 Sciences. Did I hear that right?

Page 14

1 A. That's correct.  
2 Q. And what was your position at that  
3 time?  
4 A. I was administrative personnel. I  
5 would receive and log physical evidence for  
6 criminal cases.  
7 Q. And how long were you in that  
8 position?  
9 A. Ten years.  
10 Q. Did you receive promotions during  
11 those ten years?  
12 A. I did receive a reclassification  
13 from an administrative assistant to like an  
14 office manager type position.  
15 Q. Do you remember around when that  
16 was?  
17 A. I do not.  
18 Q. Do you think it was maybe -- do you  
19 think it was more than five years into your  
20 time there?  
21 A. Yes.  
22 Q. More than eight years into your  
23 time there roughly?

Page 15

1 A. I couldn't say.  
2 Q. Fair enough.  
3 A. Sorry.  
4 Q. And did your responsibilities  
5 change over the course of those ten years?  
6 A. Yes. I had more responsibility.  
7 Q. What were the additional  
8 responsibilities?  
9 A. I was in charge of payroll,  
10 processing of assistants' pay, ordering of  
11 supplies, and other things needed by the lab.  
12 Q. And could you tell me what the  
13 Department of Forensic Sciences does?  
14 A. They process evidence in criminal  
15 cases.  
16 Q. Thank you. And after those ten  
17 years what was your next position?  
18 A. State trooper training.  
19 Q. So that would have been in 1997  
20 that you started state trooper training?  
21 A. It was November of 1996. I just  
22 had my twenty-two year anniversary.  
23 Q. All right. And how long were you

Page 16

1 in state trooper training?  
2 A. Approximately four months.  
3 Q. What was your position after that?  
4 A. State trooper.  
5 Q. And what were your responsibilities  
6 as a state trooper?  
7 A. Highway patrol, traffic control,  
8 crashes, investigating incident or offenses  
9 and filing reports for those.  
10 Q. And where were you located at that  
11 time?  
12 A. My first assignment was Chilton  
13 County.  
14 Q. How long did that assignment last?  
15 A. Two years, I believe.  
16 Q. And where were you assigned after  
17 Chilton County?  
18 A. Montgomery County.  
19 Q. And how long did you serve as a  
20 state trooper in Montgomery County?  
21 A. I believe it was an additional  
22 year.  
23 Q. And did your responsibilities

Page 17

1 change significantly over those three years?  
 2 A. No.  
 3 Q. And what was your next position  
 4 after --  
 5 A. Corporal. State trooper corporal.  
 6 Q. Okay. Just a reminder to let me  
 7 finish.  
 8 A. I'm sorry.  
 9 Q. So you were a state trooper  
 10 corporal, and was that still in Montgomery  
 11 County?  
 12 A. Yes.  
 13 Q. And that would have been in 1999?  
 14 A. No. I graduated the academy in  
 15 1990 -- I started in '96 and graduated in '97.  
 16 Q. So then you would have become state  
 17 trooper corporal in the year 2000?  
 18 A. That sounds about right.  
 19 Q. And what were your responsibilities  
 20 at that time?  
 21 A. First line supervisor of the  
 22 highway patrol, troopers.  
 23 Q. And so during that time were you

Page 18

1 still carrying out the responsibilities that  
 2 you did as a state trooper in addition to your  
 3 supervisory role?  
 4 A. Not full-time but, yes, we still  
 5 worked traffic and crashes.  
 6 Q. Okay. Great. And how long were  
 7 you a state trooper corporal?  
 8 A. Two to three years.  
 9 Q. And what was your next position  
 10 after that?  
 11 A. I went to the protective services  
 12 division on the lieutenant governor's detail.  
 13 Q. And what was your rank at that  
 14 time?  
 15 A. Corporal.  
 16 Q. And what were your duties as  
 17 corporal in the protective services division?  
 18 A. Provide the personal protection for  
 19 the lieutenant governor and did advanced work  
 20 for events that she would be attending.  
 21 Q. Okay. And how long was that your  
 22 role?  
 23 A. Two years.

Page 19

1 Q. What was your next position after  
 2 that?  
 3 A. Sergeant, protective services  
 4 division.  
 5 Q. And would that have been around  
 6 2005?  
 7 A. I believe so. I'm sorry. It's  
 8 hard for me to keep up with it.  
 9 Q. It's all right for you to give an  
 10 estimate. So you think around 2005 you became  
 11 a sergeant in the protective services  
 12 division?  
 13 A. Yes.  
 14 Q. And how did your responsibilities  
 15 change, if at all?  
 16 A. I was the unit commander over the  
 17 protective services.  
 18 Q. And what was your next assignment  
 19 or rank after that?  
 20 A. It would have been lieutenant as a  
 21 special projects coordinator.  
 22 Q. What does special projects  
 23 coordinator mean?

Page 20

1 A. I was charged with building our new  
 2 academy in Selma, the training facility. We  
 3 built a new training facility.  
 4 Q. And were you in charge of  
 5 overseeing the -- I'll retract that. What  
 6 aspects of building a new facility did you  
 7 have responsibility for?  
 8 A. Working with the contractors,  
 9 making sure the bids were submitted, working  
 10 with the Alabama Building Commission to make  
 11 sure we were meeting all their standards, and  
 12 just overseeing the project itself.  
 13 Q. And do you remember around what  
 14 year you became lieutenant in the special  
 15 projects?  
 16 A. '09 maybe, 2009. I'm not  
 17 completely sure. Sorry.  
 18 Q. Around 2009. And then what was  
 19 your next assignment?  
 20 A. Captain.  
 21 Q. And were you still --  
 22 A. Actually -- go ahead. I'm sorry.  
 23 Q. Were you still in special projects

Page 21

1 when you became a captain?  
 2 A. No. I was transferred from special  
 3 projects back to Montgomery Highway Patrol,  
 4 and I was there maybe a year. Then I made  
 5 captain in 2010 I believe.  
 6 Q. So you were transferred from  
 7 special projects back to Montgomery Highway  
 8 Patrol when you were still a lieutenant; is  
 9 that right?  
 10 A. Correct, uh-huh.  
 11 Q. Okay. And then you made captain in  
 12 around 2010 when you were at Montgomery  
 13 Highway Patrol?  
 14 A. I was promoted in the services  
 15 division.  
 16 Q. And can you tell me what the  
 17 services division is?  
 18 A. I refer it to planes, trains, and  
 19 automobiles. It's over aviation, inventory,  
 20 fleet maintenance, the academy and training,  
 21 supplies, uniforms, things like that.  
 22 Q. So what were your responsibilities  
 23 with regard to all of those things?

Page 23

1 A. Two.  
 2 Q. And who are those people?  
 3 A. An ASA and Captain John Archer.  
 4 Q. And what does ASA stand for?  
 5 A. Oh, I'm sorry. Administrative  
 6 assistant.  
 7 Q. And what's the name of the ASA  
 8 who's assigned to you?  
 9 A. Mona Lisa Hall.  
 10 Q. And who held that position of chief  
 11 of the driver's license division before you  
 12 did?  
 13 A. Major Terry Chapman.  
 14 Q. And do you know how long Major  
 15 Chapman was in that role?  
 16 A. I couldn't say.  
 17 Q. Do you know who was in the role  
 18 before Major Chapman?  
 19 A. Not definitively I can't say. It  
 20 could have been Major Roscoe Howell. I'm  
 21 not -- not completely sure who it was.  
 22 Q. Okay. Thank you. And in your  
 23 position now as chief, do you have the

Page 22

1 A. Overseeing the operations of the  
 2 subdivision itself.  
 3 Q. Okay. And what was the next step  
 4 in your career after that?  
 5 A. It would have been ALEA chief.  
 6 Q. Okay. And when did you become the  
 7 ALEA chief?  
 8 A. January of 2015.  
 9 Q. And what subdivision of ALEA are  
 10 you over?  
 11 A. Driver's license division.  
 12 Q. And you stayed in -- and is your  
 13 current role chief of the driver's license  
 14 division in ALEA?  
 15 A. Yes.  
 16 Q. And what are your responsibilities  
 17 in that role?  
 18 A. Oversee the operations of the  
 19 driver's license division.  
 20 Q. And who do you report to?  
 21 A. Colonel Charles Ward.  
 22 Q. How many people report directly to  
 23 you?

Page 24

1 authority to make policy?  
 2 A. Yes. As long as it's vetted  
 3 through legal, but --  
 4 Q. So you have the authority to make  
 5 policy, but any policy that you make would be  
 6 vetted by the legal department --  
 7 A. Yes.  
 8 Q. -- before it goes into effect?  
 9 A. Yes.  
 10 Q. Okay. I'm going to show you the  
 11 document marked Plaintiff's Exhibit 7. This  
 12 is D1 and 2. And do you recognize what's on  
 13 the first page of this?  
 14 A. Yes.  
 15 Q. Could you tell us what it is?  
 16 A. It's Department of Public Safety  
 17 policy order number 63.  
 18 Q. And what's the issue date on that  
 19 policy?  
 20 A. 9 --- it says revised date 9-1 of  
 21 2012.  
 22 Q. Okay. And so this policy would  
 23 have been revised before you came on as chief,



Page 25

1 correct?

2 A. Yes.

3 Q. Okay. So I'm now going to shift to

4 asking you questions in your capacity as

5 ALEA. So let's look at the second page now.

6 This is D2. Do you recognize this document?

7 A. Yes.

8 Q. Can you tell us what this is?

9 A. It is the same policy, revised and

10 changed. This is policy 63.

11 Q. Is this the policy that's currently

12 in effect?

13 A. Yes.

14 Q. And on what date was this policy

15 issued?

16 A. I'm not completely sure.

17 Q. Do you have an approximate date

18 when you think that it was most recently

19 revised?

20 A. Late 2015, 2016.

21 Q. Okay. I'm just going to ask that

22 again because I think we talked over each

23 other a little bit. Do you have an

Page 27

1 Q. Okay. And was the policy at D1

2 with revised date 2012 the most recent version

3 of the policy before Plaintiff's Exhibit 4?

4 A. Yes.

5 Q. Okay. And did the policy with

6 revised date July 1st, 2015, Plaintiff's

7 Exhibit 4, did that -- I'm sorry. Was this

8 policy issued under your authority?

9 A. Yes.

10 Q. Did you personally review it before

11 it went into effect?

12 A. Yes.

13 Q. What was the policy for changing

14 the sex designation on a driver's license

15 prior to September 1st, 2012?

16 A. There was no policy per se. There

17 was an unwritten procedure that was basically

18 the same as this policy. But prior to that we

19 did not have a lot of requests, so when we

20 started receiving more requests then that was

21 how the policy came into being.

22 Q. So on D1 in Plaintiff's Exhibit 7,

23 when it says revised date, is it referring to

Page 26

1 approximate date of when you think this policy

2 was most recently reviewed?

3 A. Late 2015 or early 2016.

4 Q. Okay. Are there any other written

5 or unwritten policies currently in effect

6 regarding sex designations on Alabama driver's

7 licenses?

8 A. No.

9 Q. And was this policy, the most

10 recent policy, issued under your authority?

11 A. Yes.

12 Q. Did you personally approve this

13 policy before it went into effect?

14 A. Yes.

15 Q. I'm now going to show you what's

16 marked as Plaintiff's Exhibit 4. Can you tell

17 us what this policy is?

18 A. It's policy order 63, revised date

19 July 1, 2015.

20 Q. So is this the policy that was in

21 effect most recently before the one that you

22 just reviewed that was D2?

23 A. Yes.

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1 revising the unwritten procedure?

2 A. I'm not sure if it's the revised

3 date or the actual date it was established.

4 Q. So it says revised date, right?

5 A. Correct.

6 Q. But you think that it might have

7 actually meant the effective date?

8 A. Yes.

9 Q. Could you describe what the

10 unwritten procedure was prior to the 2012

11 policy?

12 A. Basically anyone seeking to change

13 their sex on their driver's license would have

14 to show either an amended birth certificate

15 and a proof of gender reassignment surgery

16 from the doctor who performed the surgery

17 saying it had been completed on their

18 letterhead.

19 Q. And when was that unwritten

20 procedure first developed?

21 A. I can't say.

22 Q. Was there any written or unwritten

23 policy or procedure prior to the unwritten

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1 procedure you just described to me?  
 2 A. Not to my knowledge.  
 3 Q. In the unwritten procedure that you  
 4 just described was an amended birth  
 5 certificate and a letter from a doctor who  
 6 performed gender reassignment surgery  
 7 required?  
 8 A. Correct.  
 9 Q. So under the unwritten procedure  
 10 one could not change the sex designation on  
 11 one's driver's license with only a letter from  
 12 a physician stating that one had gender  
 13 reassignment surgery; is that right?  
 14 A. According to policy. I've been  
 15 told that they did make concessions, if they  
 16 were unable to get an amended birth  
 17 certificate, that they would go ahead and  
 18 change the designation if they provided proof  
 19 of surgery. That's how the new policy came  
 20 into being was to allow more latitude.  
 21 Q. So prior to policy order 63,  
 22 generally people had to produce both an  
 23 amended birth certificate and a letter from a

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1 you describe this document?  
 2 A. It's a letter from our legal unit.  
 3 Q. Have you ever seen this letter  
 4 before?  
 5 A. No, I have not.  
 6 Q. Could you please read the date on  
 7 this document?  
 8 A. September 9, 2004.  
 9 Q. Could you read this letter starting  
 10 from our policy is as follows at the end of  
 11 the first paragraph out loud, please?  
 12 A. Names on drivers' licenses can be  
 13 changed upon receipt of court-ordered name  
 14 change affidavits. However, the sex on a  
 15 driver's license is not changed prior to the  
 16 completion of a successful surgery and then  
 17 the attending physician or a physician who has  
 18 knowledge of your medical condition and has  
 19 examined you must submit acceptable  
 20 documentation attesting to the success of the  
 21 surgery, medical advisory board opinion. In  
 22 essence the sex on the driver's license will  
 23 only be changed upon successful completion of

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1 physician, but sometimes exceptions were made;  
 2 is that fair?  
 3 A. That's fair.  
 4 Q. And one change in the creation of  
 5 policy order 63 was to make it possible for  
 6 people to change the sex designation on their  
 7 license with either of those documents and not  
 8 both; is that right?  
 9 A. Correct.  
 10 Q. Were there any other changes  
 11 between the unwritten policy or -- I'm sorry.  
 12 Were there any other changes between the  
 13 unwritten procedure and the first version of  
 14 policy order 63?  
 15 A. No.  
 16 Q. I am going to show you a document  
 17 that is marked Plaintiff's Exhibit 37.  
 18 (Plaintiff's Exhibit Number 37 was  
 19 marked for identification. A copy  
 20 is attached.)  
 21 Q. This is a letter to Lisa Mottet,  
 22 last name spelled M-O-T-T-E-T, from Michael W.  
 23 Robinson, spelled R-O-B-I-N-S-O-N. And could

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1 surgery and with corresponding documentation  
 2 from the attending physician who has knowledge  
 3 of the success of the surgery.  
 4 Q. Thank you. Is that, in fact, a  
 5 policy that was in effect in 2004?  
 6 A. Yes.  
 7 Q. Who created that policy?  
 8 A. I'm not aware.  
 9 Q. Could you tell me what the medical  
 10 advisory board is?  
 11 A. It's a medical advisory board  
 12 established through statute.  
 13 Q. And what is a medical advisory  
 14 board opinion?  
 15 A. They get opinions based on  
 16 conditions we follow, such as people who  
 17 suffer seizures or unconsciousness to say  
 18 whether or not they are able to drive or how  
 19 long they should be under the physician's care  
 20 before they are given the responsibility to  
 21 drive.  
 22 Q. Is the medical advisory board  
 23 opinion policy?

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1 A. I'm not sure what you mean by the  
2 question.  
3 Q. So once ALEA receives a medical  
4 advisory board opinion, do any further steps  
5 need to be taken before it comes into effect  
6 as a policy?  
7 A. The policy would have to be  
8 created.  
9 Q. So a medical advisory board opinion  
10 in and of itself wouldn't automatically become  
11 the policy of the agency; is that right?  
12 A. Correct.  
13 Q. Okay. How does the policy  
14 described in this letter differ from the  
15 unwritten procedure that you described to me a  
16 moment ago?  
17 A. It allows another doctor to  
18 examine.  
19 Q. Okay. So this means a letter from  
20 a doctor who has examined somebody who has had  
21 surgery could provide a letter that would be  
22 adequate for purposes of changing the sex  
23 designation on their license?

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1 A. That's the way I understand it.  
2 Q. Okay. And is there any mention of  
3 a birth certificate here?  
4 A. No.  
5 Q. Do you know whether this medical  
6 advisory board -- strike that.  
7 And does this policy from the 2004  
8 letter refer to sex reassignment?  
9 A. Yes, in my interpretation it does.  
10 Q. How so?  
11 A. Completion of successful surgery.  
12 Q. Okay. The word sex reassignment  
13 doesn't appear, right?  
14 A. No, it does not.  
15 Q. Okay. But you would interpret a  
16 reference to surgery to mean sex reassignment  
17 surgery?  
18 A. Right, because it will only be  
19 changed upon successful completion of surgery.  
20 Q. Okay. Does it say that the surgery  
21 must be irreversible?  
22 A. No.  
23 Q. Who is Diana Brazzell?

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1 A. I don't know.  
2 Q. Did the policy from 2004 at some  
3 point change into the unwritten procedure that  
4 you described to me?  
5 A. Yes.  
6 Q. When did that change happen?  
7 A. I don't know.  
8 Q. How did that change happen?  
9 A. I don't know.  
10 Q. Why did that change happen?  
11 A. Which change?  
12 Q. The change from the policy in 2004  
13 to the unwritten procedure?  
14 A. I guess to allow more latitude for  
15 people requesting.  
16 Q. In what way does the unwritten  
17 procedure -- sorry. I should say in what way  
18 did the unwritten procedure provide more  
19 latitude than the policy from 2004?  
20 A. Well, I'm not sure what the policy  
21 was in 2004. I'm going off of the 2012  
22 policy.  
23 Q. Was the policy in -- I'm sorry.

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1 Does Plaintiff's Exhibit 37 state the policy  
2 for changing sex designations as it was in  
3 2004?  
4 A. Yes.  
5 Q. And was the policy in 2004 changed  
6 to the unwritten procedure in order to provide  
7 greater latitude?  
8 A. I don't have a copy of the policy  
9 of 2004, so it would be speculation.  
10 Q. Is there a copy of the policy from  
11 2004 other than what is stated in the letter  
12 in Plaintiff's Exhibit 37?  
13 A. Not to my knowledge.  
14 Q. Isn't Plaintiff's Exhibit 37  
15 actually a statement of the policy from 2004?  
16 A. It's a letter from our legal unit.  
17 Q. Why did the policy stated in this  
18 letter from 2004 change to the unwritten  
19 procedure?  
20 A. I can't -- I don't know. I would  
21 have to try to go back and ask some people  
22 that knew about the policy in 2004.  
23 Q. Do you have any reason to doubt

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1 that Plaintiff's Exhibit 37 reflects the  
2 policy as it was in 2004?  
3 A. No.  
4 Q. Who is Michael Robinson?  
5 A. He is an attorney with our agency.  
6 Q. Is he still with the agency?  
7 A. Yes.  
8 THE WITNESS: Can we take a break?  
9 MR. ARKLES: We can take a break if  
10 you would like.  
11 (Break taken.)  
12  
13 Q. What's the first policy or  
14 procedure for changing sex designation on a  
15 license that you are prepared to testify about  
16 today?  
17 A. This policy, DPS policy 63,  
18 September 1, 2012.  
19 MR. ARKLES: Okay. I'd like to  
20 leave open an opportunity to supplement the  
21 30(b)(6) if the state is able to provide a  
22 witness who would be able to testify about the  
23 earlier policy.

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1 MR. CHYNOWETH: We can consult. I  
2 don't think we're going to be able to identify  
3 anybody who has any knowledge earlier. And I  
4 spoke with everyone at the beginning of this  
5 lawsuit, with people that are retired, and I  
6 don't believe we will be able to identify  
7 anyone. This letter obviously as you can tell  
8 was new to us. And I spoke with Michael  
9 Robinson, and he doesn't have any memory of  
10 this. So I don't know that we can produce  
11 anyone with any more knowledge than Chief  
12 Pregno.  
13 MR. ARKLES: All right. Thank you.  
14 Q. So I would like to ask you a series  
15 of questions about creating the policy order  
16 63 dated 2012. And then I'll ask you some of  
17 those questions again about the most recent  
18 revision.  
19 A. Okay.  
20 Q. So when policy order 63 was  
21 initially created, who was responsible for its  
22 creation?  
23 A. The legal unit.

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1 Q. Was anyone involved other than the  
2 legal unit?  
3 A. I would have to say someone from  
4 the medical unit.  
5 Q. And would anyone aside from the  
6 legal unit and someone from the medical unit  
7 have been involved?  
8 A. Probably the driver's license  
9 division chief and at the time director of  
10 public safety.  
11 Q. Under whose authority was it  
12 issued?  
13 A. The director of public safety and  
14 the driver's license division.  
15 Q. Do you know who the director of  
16 public safety was at that time?  
17 A. No.  
18 Q. Who was consulted in the process of  
19 developing this policy?  
20 A. I can't be completely sure because  
21 I was not there, but I would say medical unit  
22 personnel and legal.  
23 Q. And were there particular

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1 individuals or positions within the medical  
2 unit who would have been consulted?  
3 A. Just those people that handled the  
4 request.  
5 Q. Okay. So the people in the medical  
6 unit who responded to individual requests --  
7 A. Correct.  
8 Q. -- to change sex designation --  
9 A. Correct.  
10 Q. -- would have been consulted in the  
11 process?  
12 A. Correct.  
13 Q. Do you know if the medical advisory  
14 board was involved?  
15 A. I do not know.  
16 Q. Do you have any reason to think  
17 that the medical advisory board was involved?  
18 A. I do not.  
19 Q. Who would have had the final say in  
20 what the policy was?  
21 A. I would think the director and the  
22 legal unit would be collaborative.  
23 Q. Okay. So ultimately the director

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1 of public -- of the Department of Public  
2 Safety and the legal department would have to  
3 come to an agreement?  
4 A. Correct.  
5 Q. Okay. What problems did the policy  
6 seek to address?  
7 A. A formal procedure for handling  
8 those requests.  
9 Q. Okay. So one goal of creating the  
10 policy was to have a formal procedure; is that  
11 correct?  
12 A. And consistency.  
13 Q. Okay. So another goal was to  
14 create more consistency in how ALEA responded  
15 to these requests; is that right?  
16 A. Right.  
17 Q. Were there any other goals in  
18 creating this policy?  
19 A. Not to my knowledge.  
20 Q. Were there meetings about  
21 developing the policy?  
22 A. I don't know.  
23 Q. Are you aware of any notes or

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1 records taken from meetings about the  
2 development of the policy?  
3 A. No.  
4 Q. Were any constraints taken into  
5 account in creating the policy?  
6 A. Can you be more specific? What do  
7 you mean by constraints?  
8 Q. When ALEA was developing its  
9 policy, did they consider any limitations on  
10 resources or programmatic needs that would  
11 limit what they could do with the policy?  
12 A. I'm not sure. It was -- the policy  
13 was established based on the state statute for  
14 changing the gender on a birth certificate.  
15 That's what it was modeled after.  
16 Q. Okay. Before settling on modeling  
17 the state statute for birth certificates, did  
18 ALEA consider any other options for the  
19 policy?  
20 A. Not that I'm aware of.  
21 Q. Why not?  
22 A. I don't know.  
23 Q. Why did ALEA choose to model the

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1 policy after the state birth certificate  
2 statute?  
3 A. We wanted to be consistent in how  
4 we operated as a state.  
5 Q. And why was consistency with how  
6 the state operated for birth certificates  
7 important?  
8 A. Because if we were going to require  
9 an amended birth certificate, we wanted to  
10 make sure we were handling it in the right  
11 manner.  
12 Q. What does the right manner mean?  
13 A. We want an amended birth  
14 certificate which follows Alabama statutes, so  
15 we wanted to be in line with what their  
16 requirements were.  
17 Q. Was the understanding of ALEA at  
18 the time that it was bound to follow the  
19 statute regarding birth certificates?  
20 A. No.  
21 Q. Was it the understanding of ALEA at  
22 the time that it would be desirable to follow  
23 the statute as far as birth certificates?

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1 A. Well, basically -- let me clarify.  
2 ALEA is a law enforcement agency. Although we  
3 submit -- we produce a driver's license, it's  
4 also an official identity document. And as  
5 law enforcement we want to ensure the  
6 information that is on the card is correct,  
7 and so we want to make sure the information  
8 we're providing to law enforcement officers,  
9 correctional agencies, emergency responders,  
10 when you question someone -- when a male  
11 officer questions a female subject normally  
12 they have more than themselves in a room so  
13 they can't allege that there's no impropriety  
14 going on. So that's why we wanted to make  
15 sure we were in line on the handling of the  
16 subject as a law enforcement professional. If  
17 you detain someone or arrest them as far as  
18 booking procedures and things like that, it's  
19 upon us to let them know the right procedures.  
20 Q. So at the time that this policy was  
21 created in 2012, did ALEA consider the impact  
22 of this policy on arrest and booking  
23 procedures?

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1 A. I don't -- I'm not sure if they did  
2 or not.  
3 Q. So just sticking again just to the  
4 time before the creation of this policy, in  
5 the course of creating this policy, what  
6 considerations went into ALEA's decision to  
7 adopt this policy as opposed to some other?  
8 A. What the state requires for amended  
9 birth certificates.  
10 Q. Okay. Were there any other  
11 considerations that ALEA took into account at  
12 that time?  
13 A. Not that I'm aware of.  
14 Q. Are you aware of any debate that  
15 concerned -- that concerned the development of  
16 the policy prior to 2012?  
17 A. No.  
18 Q. Were there any conflicting views  
19 that had to be resolved at that time?  
20 A. Not to my knowledge.  
21 Q. When the policy was most recently  
22 revised in 2016, what was that process?  
23 A. We had it vetted through legal.

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1 Q. And you think there may have been  
2 other people who were involved from legal?  
3 A. I don't know who else.  
4 Q. Okay. And what was your goal in  
5 revising policy order 63?  
6 A. Giving them more latitude.  
7 Q. And why was it important to give  
8 more latitude?  
9 A. To be more -- you know, give them  
10 the ability to get what they want.  
11 Q. And were there any reasons why you  
12 wanted to make it easier for people to get  
13 what they wanted?  
14 A. To be reasonable. And as long as  
15 they're following procedure.  
16 Q. And was anyone aside from you,  
17 Jeannie Eastman, and maybe Jessica Sanders or  
18 someone else from the legal unit involved in  
19 the most recent revision?  
20 A. No.  
21 Q. Were there any other goals that you  
22 had in mind in creating this policy?  
23 A. No.

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1 And we changed it to an and/or instead of  
2 requiring both documents.  
3 Q. Just to clarify, so in 2012 did it  
4 require -- did the policy require both  
5 documents?  
6 A. Amended birth certificate along  
7 with documentation on letterhead from the  
8 physician.  
9 Q. And so then in the 2016 version it  
10 says and/or to indicate that either one of  
11 those documents is sufficient?  
12 A. Correct.  
13 Q. Okay. Who was involved in making  
14 that decision?  
15 A. It would be me, the legal unit, and  
16 the medical unit personnel.  
17 Q. Who in the medical unit was  
18 involved?  
19 A. Jeannie Eastman.  
20 Q. Who were the people from the legal  
21 unit?  
22 A. I'm not -- I would -- I think  
23 Jessica Sanders was involved.

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1 Q. Did you consider other options  
2 aside from the current policy before  
3 implementing it?  
4 A. No.  
5 Q. Did you consider any other states'  
6 procedures for changing the sex designation on  
7 a license before revising the policy?  
8 A. No.  
9 Q. Why not?  
10 A. We wanted to stay consistent with  
11 Alabama -- the State of Alabama's birth  
12 certificate procedure.  
13 Q. Did you consider federal government  
14 policy for changing designations on passports  
15 when you were creating this policy?  
16 A. No.  
17 Q. Why not?  
18 A. We just didn't.  
19 Q. I'm going to show you a document  
20 that is labeled Plaintiff's Exhibit 8. This  
21 is Bates number D338 through -- it's actually  
22 D at 337 through D at 380. And could you --  
23 first, could you read the cover email?

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1 A. Linda sent this resource guide.  
 2 Q. And who is the email from?  
 3 A. Nona Short.  
 4 Q. And who is it to?  
 5 A. Chief, me.  
 6 Q. And what was the date?  
 7 A. September 26th of 2016.  
 8 Q. Was that email sent before or after  
 9 the most recent revision of the policy?  
 10 A. After.  
 11 Q. Oh, right. And could you turn to  
 12 the next page and tell me what the title of  
 13 that document is?  
 14 A. Resource guide on gender  
 15 designation on drivers' licenses and  
 16 identification cards.  
 17 Q. All right. And this is from the  
 18 American Association of Motor Vehicle  
 19 Administrators; is that right?  
 20 A. Yes.  
 21 Q. Are you familiar with this resource  
 22 guide?  
 23 A. Yes.

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1 from a provider. The form approach  
 2 streamlines the process for both applicants  
 3 and state driver's license agency staff saving  
 4 time, money, and reduces the jurisdiction's  
 5 liability in holding customer's private  
 6 medical information.  
 7 Q. Were you aware of the information  
 8 that you just read at the time that you made  
 9 the decision to revise policy order 63?  
 10 A. No.  
 11 Q. Did you consider having a  
 12 simplified form at the time?  
 13 A. No, not at the time.  
 14 Q. Since the time that you revised  
 15 policy order 63, have you considered revising  
 16 it again?  
 17 A. No.  
 18 Q. Why not?  
 19 A. Well, we still want to be  
 20 consistent with state law. And we are Real ID  
 21 compliant, which requires us to place that  
 22 designation on the license.  
 23 Q. Is it your understanding that the

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1 Q. Were you --  
 2 A. Not this -- I'm familiar that they  
 3 have several different types of resource  
 4 guides.  
 5 Q. Have you ever seen the resource  
 6 guide on gender designation on driver's  
 7 licenses before?  
 8 A. If she sent it to me, I've seen it,  
 9 but I haven't read it page-for-page if that's  
 10 what you're asking.  
 11 Q. Okay. Do you remember seeing it?  
 12 A. No, I don't.  
 13 Q. All right. And could you please  
 14 read page 3 of the guide?  
 15 A. The general trend in recent years  
 16 in jurisdictions replacing requirements to  
 17 submit proof of surgical treatment with  
 18 standards that focus on gender in which  
 19 individuals live in their daily lives as  
 20 affirmed by medical provider, mental health  
 21 provider, or social worker. A second  
 22 modernization trend in simplified form,  
 23 applicants must complete in lieu of a letter

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1 Real ID Act -- strike that.  
 2 Is it your understanding that  
 3 compliance with the Real ID Act requires you  
 4 to use any particular policy or procedure to  
 5 determine the sex designation placed on the  
 6 license?  
 7 A. I'm not aware if there is.  
 8 Q. Okay. So one of the reasons why  
 9 you're keeping the policy the way it is is to  
 10 continue to have a sex designation on the  
 11 driver's license to comply with the Real ID  
 12 Act; is that right?  
 13 A. True.  
 14 Q. Okay. Have you received any  
 15 feedback or comments about policy order 63?  
 16 A. No.  
 17 Q. Would you agree that not everyone  
 18 here in Alabama has an Alabama driver's  
 19 license?  
 20 A. Yes.  
 21 Q. And would you agree that not  
 22 everyone who is in Alabama has any ID at all?  
 23 A. It's possible.

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1 Q. Would you agree that some people  
2 carry a Fake ID?  
3 A. Yes.  
4 Q. Would you agree that not every  
5 person who is in Alabama was born in Alabama?  
6 A. Yes.  
7 Q. And would you agree that not every  
8 person who is in Alabama was not born in the  
9 United States?  
10 A. Yes.  
11 Q. Under the current policy, if  
12 somebody had changed the sex designation on  
13 their birth certificate in another state  
14 without having had sex reassignment surgery,  
15 could they then change the sex designation on  
16 their driver's license in Alabama?  
17 A. Yes.  
18 Q. So just in general, not specific to  
19 the sex designation, what is the purpose of a  
20 driver's license?  
21 A. To obtain physical characteristics  
22 of the person because it is an identification  
23 document. It proves that you are who you say

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1 circumstances that you can think of where a  
2 legitimate Alabama license could prove that  
3 you are who you say you are and a legitimate  
4 U.S. passport could not?  
5 A. Correct.  
6 Q. Okay. And do driver's licenses for  
7 other states serve for identification as well?  
8 A. Yes.  
9 Q. Could you please list for me the  
10 interest that it is ALEA's position that  
11 policy order 63 serves?  
12 A. As I stated earlier, we are a law  
13 enforcement agency, and we are preparing and  
14 issuing an identification document. This  
15 document is used by law enforcement officers  
16 to identify the subject that they're dealing  
17 with. It also identifies possible criminal  
18 activity or the identification of a possible  
19 criminal activity. It gives them a  
20 description so they can confirm the person  
21 that they -- the person in the license is  
22 actually the person that they are dealing  
23 with. It gives them the information they need

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1 you are.  
2 Q. Any other primary purposes of the  
3 driver's license in general?  
4 A. By statute it says that you're only  
5 required to provide an Alabama driver's  
6 license if you are -- have interaction with a  
7 law enforcement officer or with a court  
8 official.  
9 Q. Okay. So one purpose of a driver's  
10 license is to produce it upon request of a law  
11 enforcement official --  
12 A. Correct.  
13 Q. -- or a court official?  
14 A. Yes.  
15 Q. Okay. Does a U.S. passport also  
16 serve to prove that you are who you say you  
17 are?  
18 A. It can, yes.  
19 Q. Are there circumstances where it  
20 wouldn't prove that you are who you say you  
21 are?  
22 A. If it's a fraudulent document.  
23 Q. Okay. But there are no

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1 to make decisions on how to handle this person  
2 for arrest procedures, medical, emergency  
3 procedures, booking and retaining procedures,  
4 interviewing and questioning procedures, and  
5 as well as maintaining the actual physical  
6 identifiers of that person.  
7 Q. Okay. I'm going to try to say that  
8 back to you to make sure I didn't miss  
9 anything. You let me know whatever it is I'm  
10 missing. So I heard that the government's  
11 interest in policy order 63 are to assist  
12 officers in identifying the people who they're  
13 dealing with, to identify possible criminal  
14 activity, to provide information to make  
15 decisions for arrests and booking procedures,  
16 for interviewing and questioning procedures,  
17 for emergency medical procedures, and that the  
18 government also has an interest from policy 63  
19 in maintaining physical identifiers of license  
20 holders. Is that all accurate?  
21 A. Yes.  
22 Q. And what did I miss?  
23 A. I'm not sure. Hopefully nothing.



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1 Q. Okay. I'm going to show you what's  
2 been marked as Plaintiff's Exhibit 23. These  
3 are the defendant's answers to plaintiff's  
4 interrogatories. Could you please turn to  
5 interrogatory number 6, which begins on the  
6 bottom of page 4? And could you read the  
7 sentence immediately after the numeral 6?  
8 A. Defendant's object to this  
9 interrogatory --  
10 Q. Okay. I'm sorry. Where it says  
11 describe any and all government interests.  
12 A. Oh, okay. Describe any and all  
13 government interests defendants attest policy  
14 order 63 serves as well as known government  
15 interests as furthered by policy order 63.  
16 Q. Okay. And then if you could turn  
17 the page, I'm directing your attention to the  
18 first full paragraph on the top of page five.  
19 And so this states that an interest -- a  
20 government interest in policy order 63 is  
21 providing an accurate description of the  
22 bearer of an Alabama driver's license; is that  
23 right?

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1 A. Correct.  
2 Q. And you would agree with that?  
3 A. Yes.  
4 Q. And -- I'm trying to make sure I  
5 have a thorough list. So would this be the  
6 same as the assisting officers in identifying  
7 the subjects they're dealing with and  
8 maintaining physical identifiers?  
9 A. Yes, sir.  
10 Q. Okay. It also says that an Alabama  
11 driver's license provides identification for  
12 law enforcement and administrative purposes,  
13 including but not limited to purposes related  
14 to arrests, detention, identification of  
15 missing persons or crime suspects, and the  
16 provision of medical treatment; is that right?  
17 A. Yes.  
18 Q. And you would agree with those  
19 interests?  
20 A. Yes.  
21 Q. It says here including but not  
22 limited to. Are there any other law  
23 enforcement or administrative purposes you can

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1 think of that policy order 63 serves?  
2 A. I don't know if it -- I guess it  
3 would fall in there, but as far as identity  
4 fraud or identity theft as far as tracking  
5 someone that comes in and has -- comes in with  
6 an identity as say male and then they go  
7 through the process and they change their name  
8 and then they change their sex and basically  
9 have a whole new identity. It's a way for us  
10 to link those identities. We actually had a  
11 call from the district attorney's office a  
12 couple of weeks -- a couple of week's ago and  
13 they inquired -- as far as the subject's  
14 identity, they kept running the subject and  
15 said it came back as a Charles, and the  
16 subject was Jasmine and was female, and the  
17 autopsy report said a fully genital --  
18 genitals of a female. And so they were  
19 questioning the processes, how they were  
20 getting this information, and if it was  
21 correct. We went back to the original record  
22 and the subject did come in as a male, changed  
23 their name to a different name, and then not

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1 too much longer after that, I think it was a  
2 year or so, changed their sex. And so we were  
3 able to confirm with the DA's office that this  
4 was the person that they had who was  
5 previously this name but now died under this  
6 name.  
7 Q. When you say that they ran the  
8 person, what does that mean?  
9 A. When you say the -- are you  
10 referencing the district attorney's office  
11 or --  
12 Q. Yes. When you say the district  
13 attorney's office was running this person and  
14 the person came back as Charles, what would  
15 running the person mean?  
16 A. I can't testify what they did. I'm  
17 assuming they ran them through a criminal  
18 database.  
19 Q. I see. So the criminal database  
20 had the person's previous name --  
21 A. Just had them as a -- yes, had them  
22 as Charles.  
23 Q. Had the previous name as male sex.

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1 And your records had her current name and the  
 2 sex designation as female?  
 3 A. Correct. And we had the  
 4 documentation of where they came in and made  
 5 the changes, so we could link those two  
 6 identities together.  
 7 Q. Okay. So you could explain that  
 8 for the DA?  
 9 A. Yes.  
 10 Q. Okay. So that seems related to  
 11 identifying people and -- or identifying human  
 12 remains in this context; is that right?  
 13 A. Yes.  
 14 Q. And you also mentioned purposes  
 15 detecting identity theft; is that right?  
 16 A. Yes.  
 17 Q. Okay.  
 18 A. And fraud. Not necessarily where  
 19 they take somebody else. They could create a  
 20 whole new identity.  
 21 Q. Okay. So policy order 63 assists  
 22 with detecting fraud and identity theft,  
 23 right?

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1 A. Yes.  
 2 Q. And then it also says here, looking  
 3 at the same paragraph in interrogatory 6, that  
 4 policy order 63 serves the state's interest in  
 5 maintaining consistency between the  
 6 information contained on the driver's license  
 7 and that contained on a birth certificate; is  
 8 that right?  
 9 A. Correct.  
 10 Q. Okay. And do you agree with that?  
 11 A. Yes.  
 12 Q. And aside from what is listed here  
 13 and what you've just described to me, are  
 14 there any additional interests that the  
 15 government has in policy order 63?  
 16 A. No.  
 17 Q. Okay. So I'm going to ask you some  
 18 questions about each of those interests to  
 19 make sure I understand them. So one purpose  
 20 of policy order 63 is to help officers  
 21 identify a person who they're interacting  
 22 with, right?  
 23 A. Yes.

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1 Q. Could you explain to me why  
 2 that's -- why that interest is important to  
 3 the government? Why is it important for  
 4 officers to be able to identify who they are  
 5 interacting with?  
 6 A. To confirm that they are -- the  
 7 person is who they are either looking for or  
 8 who -- to confirm the information is correct  
 9 and it's not fraudulent.  
 10 Q. I know this may seem obvious to  
 11 you, but I just want to make sure we have  
 12 everything explained explicitly. So why is it  
 13 important for them to be able to confirm who  
 14 the person is?  
 15 A. Because you don't want to detain or  
 16 arrest someone that's not the real person.  
 17 Q. Okay. So part of the purpose is to  
 18 avoid mistakenly arresting somebody who you  
 19 don't intend to arrest, correct?  
 20 A. Yes.  
 21 Q. Okay. And are there any other  
 22 reasons why it's important for officers to be  
 23 able to confirm that the person they're

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1 interacting with is who they think they are?  
 2 A. Can you rephrase what you're  
 3 asking?  
 4 Q. In addition to what you just told  
 5 me about detecting fraud and making sure that  
 6 you're not mistakenly arresting the wrong  
 7 person, are there any other reasons why it's  
 8 important for officers to be able to confirm  
 9 that the person they're interacting with is  
 10 who they think they are?  
 11 A. Well, if they're male or female  
 12 it's going to have a bearing on how they  
 13 handle them. If there's a search involved,  
 14 males search females differently because of  
 15 complaints.  
 16 Q. Okay. So leaving searches aside  
 17 from a moment, we'll get to that, how does  
 18 policy order 63 help officers confirm that the  
 19 person who they're interacting with is the  
 20 person who they think they are?  
 21 A. It has their physical identifiers.  
 22 Q. And speaking specifically about  
 23 policy order 63, how does that policy help

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1 them know who they're talking with?  
 2 A. It gives them their physical  
 3 description.  
 4 Q. Would it be possible to provide a  
 5 physical description without requiring a  
 6 letter from a surgeon who had performed sex  
 7 reassignment surgery or an amended birth  
 8 certificate to change the sex designation?  
 9 A. For the State of Alabama's policy?  
 10 Q. For the purposes of -- okay. Yes.  
 11 Would it be possible to describe someone's  
 12 physical appearance in the context of an  
 13 officer interacting with someone without  
 14 requiring that people produce a letter from a  
 15 surgeon confirming sex reassignment surgery or  
 16 an amended birth certificate?  
 17 A. You're asking me -- I need you to  
 18 rephrase or maybe shorten the question.  
 19 Q. Okay. So an Alabama driver's  
 20 license provides information about a person's  
 21 physical description, right?  
 22 A. Correct.  
 23 Q. And one of the ways it does that is

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1 through having a photograph of the person,  
 2 right?  
 3 A. Correct.  
 4 Q. And another way that it does that  
 5 is to listing the person's height, correct?  
 6 A. Correct.  
 7 Q. And the person's weight, right?  
 8 A. Correct.  
 9 Q. And the person's hair color,  
 10 correct?  
 11 A. Yes.  
 12 Q. And the person's eye color,  
 13 correct?  
 14 A. Yes.  
 15 Q. And by listing a person's sex,  
 16 correct?  
 17 A. Yes.  
 18 Q. And in policy order 63 one can  
 19 change the sex designation only if one  
 20 provides a copy of a letter from a surgeon who  
 21 has performed sex reassignment surgery or an  
 22 amended birth certificate, correct?  
 23 A. Correct.

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1 Q. How does that policy for what one  
 2 must do to change the sex designation on a  
 3 driver's license assist in providing a  
 4 physical description?  
 5 A. It ensures that the physical  
 6 features of that person are what's displayed  
 7 on the license.  
 8 Q. And what physical features do you  
 9 mean by that?  
 10 A. Well, if they are a male, they'll  
 11 have male genitalia. And if they're a female,  
 12 they'll have female genitalia.  
 13 Q. When an officer is seeking to  
 14 confirm that they are arresting the right  
 15 person, do they typically look at that  
 16 person's genitalia?  
 17 A. No. But it will tell them and the  
 18 booking personnel how they should separate  
 19 them in the population.  
 20 Q. But at the moment of seeking to  
 21 confirm the person's identity, typically a  
 22 police officer wouldn't see the person's  
 23 genitals, right?

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1 A. No.  
 2 Q. If someone -- if an officer  
 3 perceived somebody as male because that person  
 4 had male pattern baldness and a beard and was  
 5 wearing masculine clothing, would that person  
 6 having a female sex designation on their  
 7 license assist the officer in confirming a  
 8 person's identity?  
 9 A. I don't know if it would assist,  
 10 but if they were to be arrested it would  
 11 definitely need to be known.  
 12 Q. So it might assist with the  
 13 procedures after the arrest, but it wouldn't  
 14 necessarily assist with confirming the  
 15 identity at the time of the arrest?  
 16 A. The photo would.  
 17 Q. The photo would, but the female sex  
 18 designation might not?  
 19 A. It should if it's -- could you ask  
 20 the question one more time?  
 21 Q. So if there were a transgender man  
 22 who has not gotten a male sex designation on  
 23 his license but has transitioned from female

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1 to male and that he wears masculine clothing  
 2 and has masculine physical characteristics,  
 3 such as male pattern baldness and a beard and  
 4 is typically perceived by others as male, then  
 5 would it help an officer to confirm that  
 6 person's identity that his sex designation on  
 7 his license would still be female?  
 8 A. It may not help in that situation,  
 9 but that is still the physical characteristics  
 10 of that person.  
 11 Q. In fact, wouldn't a female sex  
 12 designation on the ID of somebody who the  
 13 officer perceived as male raise suspicion in  
 14 the officer that the person might not be who  
 15 he thought he was?  
 16 A. That's speculation. It's possible.  
 17 Q. Do Alabama law enforcement officers  
 18 receive training on policy order 63?  
 19 A. No.  
 20 Q. Do Alabama law enforcement officers  
 21 receive training on interacting with  
 22 transgender members of the public?  
 23 A. I would have to speak to someone in

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1 highway patrol. When you say -- can you drill  
 2 down Alabama law enforcement agency? Are you  
 3 talking about law enforcement personnel or are  
 4 you talking about civilian personnel?  
 5 Q. I mean law enforcement personnel.  
 6 A. Okay. No, they don't receive  
 7 training on the policy.  
 8 Q. And are you aware of any training  
 9 that they receive -- that law enforcement  
 10 personnel receive regarding interacting with  
 11 transgender people?  
 12 A. I'm not aware.  
 13 Q. Are you aware of any reasons why  
 14 Alabama's interest in officers being able to  
 15 confirm the identity of somebody they're  
 16 interacting with are different than other  
 17 states' interests?  
 18 A. I need you to rephrase it, please.  
 19 Q. Would you expect most states have  
 20 an interest in their law enforcement officers  
 21 being able to identify the people who they're  
 22 interacting with?  
 23 A. I would expect so, yes.

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1 Q. Do you have reason to think that  
 2 Alabama's interest in law enforcement officers  
 3 being able to identify people they're  
 4 interacting with is different from the  
 5 interests in those other states?  
 6 A. I'm not -- I don't know what other  
 7 states require.  
 8 Q. Do you have any reason to think  
 9 that Alabama has different needs than other  
 10 states do in identifying people?  
 11 A. No.  
 12 Q. And Alabama doesn't consistently  
 13 measure or require medical documentation of  
 14 height before listing that attribute on a  
 15 license, correct?  
 16 A. Correct.  
 17 Q. And it doesn't consistently measure  
 18 or require medical documentation of weight  
 19 before listing that attribute, right?  
 20 A. Correct.  
 21 Q. Does Alabama law require  
 22 individuals to update the photos on their  
 23 license when their appearance changes?

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1 A. No. They're required to update  
 2 their photo every eight years.  
 3 Q. Does Alabama require people to  
 4 update their height, weight, or hair color on  
 5 their license if it changes?  
 6 A. No.  
 7 Q. And does Alabama require  
 8 individuals to update the sex designation on  
 9 their license if their genitals change?  
 10 A. If they wish to.  
 11 Q. Okay. So it's permitted but it's  
 12 not required?  
 13 A. Well, we don't know. Once you come  
 14 in and you're issued a license, we don't know  
 15 unless you tell us.  
 16 Q. Right. And people aren't required  
 17 to tell you, correct?  
 18 A. No.  
 19 Q. And there's no way to indicate on  
 20 an Alabama driver's license if somebody has  
 21 genitals that aren't typical for male or  
 22 female, right?  
 23 A. No, we do not have that.

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1 Q. Okay. So let's turn to arrest  
2 procedures. In what way is policy order 63  
3 relevant to arrest procedures?  
4 A. It lets the arresting officer know  
5 in particular if it's a female subject that  
6 they -- they can -- they have to search or  
7 have -- normal procedure is you call another  
8 female officer or they -- different agencies  
9 have different policies. They search with the  
10 back of their hands. Interview and  
11 interrogation normally they pull another  
12 witness in with them.  
13 Q. Okay. So arrest procedures in some  
14 ways are different based on the sex of the  
15 arrestee, right?  
16 A. Yes.  
17 Q. And those ways include the sex of  
18 the officer who performs the search?  
19 A. (Witness nods.)  
20 Q. The manner in which the search --  
21 well, let me start over. So the ways in which  
22 arrest procedures vary by the sex of the  
23 arrestee include the sex of the officer who

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1 conducts a search, the manner --  
2 MR. CHYNOWETH: Make sure to say  
3 yes or no.  
4 THE WITNESS: I was waiting for him  
5 to finish his question.  
6 Q. I probably should do one at a  
7 time. So one of the ways in which arrest  
8 procedure vary by sex is the sex of the  
9 officer who will conduct a search, correct?  
10 A. Yes.  
11 Q. And it also varies in the manner in  
12 which the search is conducted, correct?  
13 A. Yes.  
14 Q. And it also varies in who would be  
15 present during an interrogation, correct?  
16 A. Yes.  
17 Q. Are there any other ways in which  
18 arrest procedures vary by the sex of the  
19 arrestee?  
20 A. Not that I can think of right this  
21 minute. There may be, but those are the main  
22 ones.  
23 Q. And can you tell me why it's

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1 important -- well, actually let me back up.  
2 Do male officers ever do a pat down search of  
3 a female suspect or arrestee?  
4 A. Yes, I'm sure they do.  
5 Q. Do male officers ever conduct a  
6 strip search of a female arrestee?  
7 A. A strip search?  
8 Q. Yeah.  
9 A. I don't know.  
10 Q. Do female officers ever conduct pat  
11 down searches of male suspects or arrestees?  
12 A. Yes.  
13 Q. Do female officers ever conduct  
14 strip searches of male arrestees?  
15 A. Strip searches, I don't know. This  
16 would -- some of this would, I would say,  
17 extend to the correctional officers, so I  
18 don't know what they do. I can't speak -- I  
19 can't speak to what the detention facilities  
20 do.  
21 Q. Do Alabama law enforcement officers  
22 ever conduct strip searches, to your  
23 knowledge?

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1 A. Not to my knowledge.  
2 Q. Are there any types of searches  
3 other than pat down searches that Alabama law  
4 enforcement officers conduct of the person?  
5 A. No.  
6 Q. Okay. What are the policies or  
7 procedures regarding the sex of officers who  
8 conduct pat down searches?  
9 A. I don't -- I don't have a set  
10 policy. I just know when I worked the road as  
11 a road trooper if a male officer had another  
12 female they would call me and I would go  
13 assist. And if they were going to take them  
14 to jail, I would search them. Each officer is  
15 different as far as if they, you know, try to  
16 pull somebody in. Circumstances are so vast  
17 it's hard to say what each one would do on  
18 their -- in their circumstances. But I would  
19 assist others with searches if they knew they  
20 had a female that they needed to be searched  
21 and I was available. I would go search.  
22 Q. So is it fair to say that the  
23 practice among at least some officers,

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1 circumstances permitting, would be to have  
2 female officers search male suspect or  
3 arrestees?  
4 A. Female officers?  
5 Q. Sorry. I said that wrong. Would  
6 it be fair to say that the practice of at  
7 least some officers, circumstances permitting,  
8 would be to have female officers search female  
9 suspects or arrestees?  
10 A. Yes.  
11 Q. And, to your knowledge, there's no  
12 requirement that female officers always search  
13 female arrestees, right?  
14 A. Correct.  
15 Q. And why is that a practice?  
16 A. To avoid complaints of impropriety  
17 or someone making accusations that they did  
18 something inappropriate.  
19 Q. And I think you mentioned earlier  
20 that if the suspect or arrestee is female the  
21 officers might search using the back of their  
22 hands rather than the front of their hands; is  
23 that correct?

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1 MR. CHYNOWETH: I just want to  
2 object here to seek a little clarification  
3 when you are asking about the officers and law  
4 enforcement officers. Can you clarify what  
5 agency, for instance, you might be referring  
6 to because I think there's maybe a little bit  
7 of a confusion here.  
8 MR. ARKLES: Okay.  
9 MR. CHYNOWETH: What do you mean by  
10 law enforcement officers?  
11 Q. So when you said that one of the  
12 interests of policy order 63 is to assist law  
13 enforcement in arrest procedures, what type of  
14 law enforcement officers were you referring to  
15 then?  
16 A. The officers that encounter the  
17 individual on the road in traffic violations  
18 and things like that.  
19 Q. Okay. Are there other types of  
20 Alabama law enforcement officers for whom this  
21 interest would not -- this interest would not  
22 be relevant?  
23 A. No. It would be all county, city,

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1 municipal arresting officers.  
2 Q. Okay. And do the arrest -- I'm  
3 sorry. Do the search procedures vary based on  
4 whether it's a state, county, or city law  
5 enforcement officer?  
6 A. Yes. It varies from agency to  
7 agency.  
8 Q. And could you name -- which  
9 agency's search procedures or practices are  
10 you able to testify about today?  
11 A. None.  
12 Q. How do you know that policy order  
13 63 is, in fact, serving search procedures?  
14 A. Well, it just -- it does.  
15 Q. Explain to me how it does.  
16 A. I mean, it tells you physically  
17 what -- who that person is and how that  
18 officer should handle them, if they have  
19 procedures in place to handle female subjects  
20 differently than male. It also identifies  
21 that person for different detention  
22 facilities. When they are booked into a  
23 facility as an officer you want to know that

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1 the information that you're giving to them is  
2 correct.  
3 Q. Is it your understanding that when  
4 agencies have policies that differ for  
5 searches based on whether the arrestee is  
6 female or male those policies refer  
7 exclusively to the person's genitals?  
8 A. Yes.  
9 Q. And what is the basis for that  
10 knowledge?  
11 A. For the officer?  
12 Q. How do you know that all of these  
13 different policies when they refer to female  
14 or male are referring to genitals?  
15 A. I'm going off the information that  
16 we use based on the identifiers on the  
17 license.  
18 Q. And I'm trying to figure out why  
19 it's important that the identifier on the  
20 license relates to genitals. So how do you  
21 know that people's genitals are what matter  
22 for purposes of search procedures?  
23 A. I'm not sure I understand your

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1 question. When you refer -- go ahead.  
 2 Q. No, please.  
 3 A. It just -- I don't know any other  
 4 way to say -- if you're a female the search  
 5 procedure is normally different than from a  
 6 male.  
 7 Q. Do you think -- do you think that a  
 8 person who is assigned male at birth and who  
 9 identifies as a woman and who does not have  
 10 genitals that are typical for female might  
 11 complain about impropriety if a male officer  
 12 searched them?  
 13 A. I don't know if they would or not.  
 14 MR. ARKLES: Let's take a short  
 15 break.  
 16 (Break taken.)  
 17  
 18 Q. So if a law enforcement officer had  
 19 to search a suspect who had long hair, gave a  
 20 feminine name, had breasts, wore a dress, and  
 21 a sex designation on her license read male,  
 22 would that officer apply the policy for men?  
 23 MR. CHYNOWETH: Object to the form.

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1 A. Well, it would be based on whatever  
 2 their policy is. We provide the information.  
 3 It's up to each individual agency how they  
 4 create or enforce policy.  
 5 Q. How would policy order 63 assist an  
 6 officer in deciding whether to treat an  
 7 arrestee in that situation as a man or a  
 8 woman?  
 9 A. It just gives them the correct  
 10 identifying information for them to act on  
 11 their policy.  
 12 Q. When you worked in highway patrol,  
 13 if you were confronted with somebody who had  
 14 long hair and breasts and wore a dress and had  
 15 a feminine name and a male designation on  
 16 their driver's license, would you have applied  
 17 the practices for dealing with male arrestees?  
 18 A. I would -- being a female, I  
 19 searched everybody pretty much the same.  
 20 Q. So nothing would vary in how you  
 21 conducted a search regardless of the sex of  
 22 the arrestee?  
 23 A. Correct.

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1 Q. Would anything about the arrest  
 2 procedures that you applied vary based on the  
 3 sex of the arrestee?  
 4 A. In what manner?  
 5 Q. In any manner other than searches.  
 6 A. No. Typically it's the same with  
 7 me being female.  
 8 Q. Did you ever have to place  
 9 arrestees in holding cells?  
 10 A. No. That was the detention  
 11 facility personnel.  
 12 Q. Okay. So the police precincts  
 13 wouldn't detain people for any period of time  
 14 under the authority of ALEA?  
 15 A. We would -- when we placed somebody  
 16 under arrest, we put them in the patrol  
 17 vehicle or the vehicle and then transport them  
 18 to the facility to be booked.  
 19 Q. Would you during the booking  
 20 procedure have to record the sex of the person  
 21 who was arrested?  
 22 A. That would be up to the procedures  
 23 of the facility how they enter that

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1 information.  
 2 Q. If you were a male and working  
 3 highway patrol, would you call over a female  
 4 officer if you had an arrestee who had breasts  
 5 and wore a dress and had a feminine name and  
 6 had a male sex designation on the license?  
 7 A. If after questioning I wasn't sure,  
 8 yes.  
 9 Q. What type of questions do you think  
 10 you would ask?  
 11 A. You know, just depending on the  
 12 investigation what -- how they answered the  
 13 questions.  
 14 Q. So you also testified that policy  
 15 order 63 serves interest in the context of  
 16 detention, right?  
 17 A. Yes.  
 18 Q. How does policy order 63 serve the  
 19 state's interest in detention?  
 20 A. We provide them with accurate  
 21 information, and what they do with it is up to  
 22 them.  
 23 Q. Do you have any reason to believe

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1 that genitals are the most useful piece of  
2 information about sex for purposes of  
3 detention?  
4 A. It is for our purposes for the  
5 driver's license. I need you to define  
6 genitals to make sure my definition matches  
7 yours.  
8 Q. So you testified that one interest  
9 the policy order 63 serves is to provide  
10 information to detention agencies, right?  
11 A. Correct.  
12 Q. What information is it that you  
13 intend to provide through policy order 63?  
14 A. The physical characteristics of  
15 their sex.  
16 Q. And which physical characteristics  
17 do you mean?  
18 A. If they're a male, they have a  
19 penis. And if they're a female, they have a  
20 vagina.  
21 Q. And do you know of any reason why  
22 detention agencies would be more interested in  
23 whether someone has a penis or a vagina than

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1 that comply -- that -- withdrawn.  
2 Do you know if any Alabama agencies  
3 that detain people seek to comply with the  
4 Prison Rape Elimination Act?  
5 A. I don't know.  
6 Q. Not everyone who would be detained  
7 in Alabama would have an Alabama driver's  
8 license, right?  
9 A. Correct.  
10 Q. Would your consider breasts to be  
11 physical characteristics?  
12 A. Yes.  
13 Q. Would you consider facial hair to  
14 be a physical characteristic?  
15 A. Not necessarily.  
16 Q. Would you consider hormones to be a  
17 physical characteristic?  
18 A. (Witness shakes head.)  
19 Q. Outward.  
20 A. No. I'm sorry.  
21 Q. Would you consider facial structure  
22 to be a physical characteristic?  
23 A. No. Like what are you referring

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1 any other sort of information related to sex?  
2 A. I don't know if they would be more  
3 interested, but I would say if they're putting  
4 them into a holding cell that they would want  
5 to know that information is accurate.  
6 Q. So is it your understanding that  
7 detention agencies will place people into a  
8 holding cell based on whether they have a  
9 penis or a vagina?  
10 A. No. I'm saying I provide that  
11 information so they can make that decision on  
12 whether or not they want to put that  
13 individual in a different holding cell.  
14 Q. Is there any reason that you know  
15 why it is more helpful to provide information  
16 about whether somebody has a penis or a vagina  
17 rather than any other type of information  
18 about their sex?  
19 A. That's who they are physically.  
20 It's -- I mean, if that's who they are, then  
21 that's their physical characteristic, that  
22 they have those physical attributes.  
23 Q. Do you know if any Alabama agencies

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1 to?  
2 Q. So you earlier mentioned providing  
3 information about people's physical  
4 characteristics. I'm just trying to  
5 understand what some physical characteristics  
6 might be.  
7 A. Height, weight, eye color, hair  
8 color, and whether you're male or female.  
9 Q. So let's consider somebody who is  
10 87 pounds, is arrested wearing makeup and a  
11 dress, has long hair and breasts, has a  
12 typically feminine voice and a typically  
13 feminine name and who has a penis. Do you  
14 have any reason to think that the  
15 characteristic of having a penis would be more  
16 important for purposes of detention than those  
17 other features?  
18 A. I don't know for detention  
19 purposes, but for our purposes of issuing an  
20 identification document we would classify them  
21 as a male.  
22 Q. There's no reason you know of for  
23 purposes of detention though, right?



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1 A. No.  
2 Q. In interrogatory number 6, which is  
3 still in front of you, one of the interests  
4 expressed was identifying missing persons; is  
5 that right?  
6 A. Yes.  
7 Q. In what context would information  
8 from driver's licenses be used to identify a  
9 missing person?  
10 A. To confirm that that is the person.  
11 Q. When you say to confirm that that  
12 is the person, do you mean in a circumstance  
13 where a dead body has been discovered?  
14 A. We have juveniles that come into  
15 our office for a learner's permit or a license  
16 who are missing and we identify them.  
17 Q. So identification of a missing  
18 person -- withdrawn.  
19 So could you give me an example of  
20 how the information on a driver's license  
21 would identify somebody as a missing person  
22 when they came into the driver's license  
23 office for a learner's permit?

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1 A. Well, it's matching the physical  
2 characteristics to the person who has been  
3 entered as missing.  
4 Q. When someone is reported as a  
5 missing person, what information is collected?  
6 A. Height, weight, clothing, eye  
7 color, hair color, male, female, race.  
8 Q. Anything else?  
9 A. Where they were last seen, who they  
10 were with.  
11 Q. Is information about tattoos also  
12 recorded?  
13 A. If they have them and depending on  
14 if the family reported it, provided it.  
15 Q. And where does that information get  
16 recorded?  
17 A. The -- which information?  
18 Q. The information about the  
19 description of a missing person.  
20 A. The officer would put it on the  
21 report.  
22 Q. Does the information from the  
23 report go into a searchable database of some

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1 kind?  
2 A. Normally it's entered into NCIC.  
3 Q. Could you spell out NCIC, please?  
4 A. I'm sorry?  
5 Q. Could you just spell out NCIC,  
6 please?  
7 A. National Crime Information Center.  
8 Q. Is that a federal database?  
9 A. Yes.  
10 Q. When someone comes in to apply for  
11 a learner's permit, what information about  
12 them is gathered?  
13 A. Their name, full name, date of  
14 birth, Social Security number, eye color, hair  
15 color, sex, height, weight. Did I say race?  
16 Q. I don't think so.  
17 A. Okay.  
18 Q. Race is also recorded?  
19 A. Uh-huh.  
20 Q. At that point is there automatic  
21 matching between the information in the NCIS  
22 database and -- oh, NCIC database and the  
23 information collected by the DMV?

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1 A. It depends on if they're in there.  
2 Q. How would someone discover whether  
3 they were in there?  
4 A. Oh, if it's a missing person, yes.  
5 Is that what you're asking? I'm not sure  
6 about the question.  
7 Q. So if somebody arrives at a  
8 driver's license office to apply for a  
9 driver's license for the first time and  
10 there's no special reason to know that that  
11 person is a missing person, would it be  
12 possible for ALEA to identify that person as a  
13 missing person?  
14 A. Yes.  
15 Q. How would that happen?  
16 A. Through the information they  
17 provide.  
18 Q. So is the information that everyone  
19 provides at that time compared with  
20 information in NCIC?  
21 A. Yes.  
22 Q. Okay. And when information about  
23 missing persons is collected, who does that

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1 information usually come from? So when you  
2 take down a description of a missing person,  
3 is the person who is giving you that  
4 description whoever reported the person  
5 missing?  
6 A. Correct.  
7 Q. Typically would that person be a  
8 friend or family member?  
9 A. I guess. Probably.  
10 Q. And would the officer collecting  
11 the information ask specifically about  
12 genitals at that time?  
13 A. They would ask the sex of the  
14 individual.  
15 Q. So likely they would ask the sex of  
16 the individual without any additional  
17 explanation of what they mean by sex, right?  
18 A. Yes.  
19 Q. Okay. In what other circumstances  
20 does information from driver's license assist  
21 with the identification of missing persons?  
22 A. It just provides the information to  
23 the officer so they can -- the basic

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1 identification -- identifying information so  
2 the officer can make a decision if that is the  
3 person that they are looking for.  
4 Q. When missing persons are found,  
5 sometimes they can identify themselves, right?  
6 A. Uh-huh.  
7 Q. Say that out loud.  
8 A. Yes.  
9 Q. And do officers when they --  
10 withdrawn.  
11 During a traffic stop when an  
12 officer views the driver's license of the  
13 person who is stopped, would the officer then  
14 routinely compare the information from that  
15 license with information in NCIC?  
16 A. It depends on if they -- if they  
17 ran them through NCIC or not. If they have  
18 the capability to, they probably would, yes.  
19 Q. Okay. Is that another way that  
20 missing persons are sometimes identified?  
21 A. Yes.  
22 Q. If there were a mismatch between  
23 the sex designation on the driver's license

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1 and the sex designation in NCIC, would that  
2 result not be reported?  
3 A. Are you asking if the sex  
4 designation on the license and the reported  
5 sex is different?  
6 Q. Uh-huh.  
7 A. I'm not exactly sure, but it'll --  
8 it'll -- based on the information provided,  
9 it'll give you a list of possible identity,  
10 and so, no, it should be in there but then all  
11 the information is not matching. It shows you  
12 all the information that you can compare that  
13 may or may not match that individual.  
14 Q. So when the information from  
15 driver's license records and information from  
16 NCIC is compared, there will usually be a list  
17 of various possibilities, none of whom are an  
18 exact match?  
19 A. Some could be an exact match, yes.  
20 Q. Okay. So the list will sometimes  
21 contain some people who are exact matches and  
22 some people who are not exact matches?  
23 A. Correct.

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1 Q. And does that list ever contain  
2 some people who are listed as male and some  
3 people who are listed as female?  
4 A. I don't know.  
5 Q. In your experience, can you recall  
6 ever seeing a list that had some people who  
7 are male and some people who are female?  
8 A. I don't recall.  
9 Q. Do you think it's possible that if  
10 someone were known to be a woman by her  
11 friends and family and was typically perceived  
12 to be a woman by strangers, that person might  
13 be reported as female if she went missing,  
14 even if she had a male sex designation on her  
15 license?  
16 A. Yes, I guess it could be possible.  
17 Q. Does policy order 63 also serve the  
18 interest of identifying human remains?  
19 A. Yes.  
20 Q. Could you explain how it assists  
21 with that?  
22 A. It provides the basic description  
23 of information, basic information on that

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1 individual.

2 Q. Could you describe the process of

3 what happens when and officer discovers human

4 remains?

5 A. Are you speaking of like a fatality

6 accident?

7 Q. Sure, yes. If there's a fatality

8 accident and the officer does not immediate --

9 does not immediately know who the person who

10 died is, what steps would be taken?

11 A. They would try to make

12 identification on the subject.

13 Q. And how would they go about doing

14 that?

15 A. Search the car for information,

16 search their belongings to see if they had

17 identification on them, run the vehicle

18 information to see if it came back to an

19 individual, and then search -- you know, if it

20 comes back then link the driver's license.

21 They would look at the driver's license.

22 Q. And if the person had a driver's

23 license, then the officer would look at the

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1 in the process of identifying human remains?

2 A. I mean, just as the case with the

3 district attorney's office I spoke of, they

4 were, you know, trying to confirm that who

5 they had identified was the person that they

6 thought they had.

7 Q. So in that situation the DA was

8 able to make a possible identification of the

9 person, and they were able to contact ALEA to

10 confirm the identity based on the driver's

11 license records; is that right?

12 A. Yes, based on the transition.

13 Q. Uh-huh. If human remains were

14 found in a river, how would -- if human

15 remains were found in a river and various

16 identification -- identifying information was

17 collected about the decedent including

18 physical characteristics like sex, height,

19 weight, hair color, and eye color, would that

20 information ever be compared with information

21 in driver's license records?

22 A. It could be, sure. We -- if they

23 request it, we can provide photos and

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1 driver's license and see if the description

2 matched the decedent?

3 A. Correct.

4 Q. And what would happen if no

5 driver's license was found to try to identify

6 the person?

7 A. They would go through the process

8 of looking through the vehicle and either, you

9 know, making contact with family or, you know,

10 the owner of the vehicle to try to obtain

11 information.

12 Q. And then if for some reason that

13 was unsuccessful, would there be other steps

14 that they would take to try to identify the

15 person?

16 A. Fingerprints is one way.

17 Q. Are there any other ways in

18 addition to fingerprints?

19 A. Dental records. There's a lot of

20 different ways you can identify someone, DNA.

21 Q. Other than if a driver's license is

22 found at the scene, when would the information

23 contained in driver's license records assist

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1 identifying information.

2 Q. Would they have to request photos

3 of a specific person or could they give you

4 parameters?

5 A. Oh, no, no. It has to be the

6 person they believed it to be.

7 Q. Okay. They would have to narrow it

8 down first before you could assist in that

9 way?

10 A. (Witness nods head.)

11 Q. Is there ever a time when ALEA gets

12 contacted to share information from driver's

13 license records to identify human remains

14 without first having a possible specific

15 person to it that they think the person might

16 be?

17 A. Not -- not that I can recall.

18 Q. And when reviewing records in

19 response to these requests, you can see if the

20 sex designation on the person's license has

21 been changed at any point, right?

22 A. Yes.

23 Q. Okay. You also mentioned that

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1 provision of emergency medical care was an  
 2 interest that policy order 63 serves, right?  
 3 A. Yes.  
 4 Q. And can you tell me how policy  
 5 order 63 serves that interest?  
 6 A. Emergency personnel, you know, when  
 7 you provide them the driver's license they see  
 8 whether they're dealing with a male or a  
 9 female.  
 10 Q. And how does that assist them with  
 11 providing medical care?  
 12 A. It gives them the information that  
 13 they know who they're dealing with.  
 14 Q. Under what circumstances would  
 15 emergency medical personnel rely on the sex on  
 16 a driver's license rather than physical  
 17 examination?  
 18 A. I'm not sure that they would. It's  
 19 just -- you know, it's a basic identifier for  
 20 those personnel that are responding.  
 21 Q. In what circumstances would the  
 22 health care that the person would receive vary  
 23 based on the sex designation on their license?

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1 A. That would be up to the emergency  
 2 personnel, the responders.  
 3 Q. Are you aware of any circumstances  
 4 where the sex designation on the license would  
 5 change the medical treatment that someone  
 6 might receive?  
 7 A. No.  
 8 Q. You mentioned earlier that it was  
 9 important to have policy order 63 be  
 10 consistent with the state policy for birth  
 11 certificates; is that right?  
 12 A. Yes.  
 13 Q. Could you remind me of why having  
 14 that consistency is important to the  
 15 government?  
 16 A. We want to be consistent in  
 17 providing -- with requiring the same types of  
 18 documents when we're dealing with the same  
 19 type of situation.  
 20 Q. Is consistency with Social Security  
 21 records also important?  
 22 A. I'm not sure what information is in  
 23 Social Security records.

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1 Q. What problems could arise when  
 2 information on an Alabama birth certificate is  
 3 different from information on an Alabama  
 4 driver's license?  
 5 A. What problems?  
 6 Q. Yes.  
 7 A. In what context?  
 8 Q. Are you aware of any problems in  
 9 any context that could arise from having  
 10 different information on a driver's license  
 11 than is on a birth certificate?  
 12 A. Well, you're born -- I was born as  
 13 a female, and so that's my identifying -- what  
 14 we call a breeder document when I go to get a  
 15 license. And so if I come in and my birth  
 16 certificate says I'm female, then that is an  
 17 identifier for me as a person in my identity.  
 18 And so if the birth document doesn't match  
 19 what we have, we need to either find a  
 20 document that links the change or find out why  
 21 there is a discrepancy.  
 22 Q. Okay. So is it fair to say that  
 23 you want to have a paper trail that indicates

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1 a link between a breeder document like a birth  
 2 certificate and any different information on  
 3 the driver's license?  
 4 A. We want to know why it was  
 5 different. I mean, the birth certificate is  
 6 your identity document. And if I'm Deena  
 7 Pregno and I'm -- I have somehow changed my  
 8 sex from female to male, and then I could  
 9 possibly change my name to something else just  
 10 by going to a probate office, I could feasibly  
 11 have a totally different identity.  
 12 Q. If someone changes the name on  
 13 their birth certificate, do they also have to  
 14 change the name on their driver's license?  
 15 A. Yes.  
 16 Q. Are individuals required to change  
 17 the name on their driver's license if they  
 18 have changed it on their birth certificate?  
 19 A. Yes. The name on the license is to  
 20 match the name on the birth certificate. Now  
 21 it can be changed due to marriage or divorce  
 22 as long as they provide those documents. Is  
 23 that --

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1 I'm sorry. Let me clarify. We  
2 start out with the name that's on the birth  
3 certificate. If they're married or divorced  
4 they bring in documentation of the marriage or  
5 the divorce and that's how we change the name  
6 on the license.  
7 Q. Other than when one is applying for  
8 a drivers' license, when would the information  
9 in driver's license records be compared  
10 against information in birth records?  
11 A. There's no other time --  
12 Q. Okay.  
13 A. -- that I'm aware of.  
14 Q. Okay. And when people change their  
15 name on a birth certificate, is there any  
16 coordination among agencies to then inform  
17 ALEA that that name has been changed?  
18 A. No.  
19 Q. If somebody changes their name on a  
20 driver's license, is there any coordination  
21 such that the Department of Vital Statistics  
22 would be informed of the name change?  
23 A. No.

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1 Q. Okay.  
2 A. Well, I don't know. I don't know  
3 what probates do when they make -- I don't  
4 know if they notify the Bureau of Live  
5 Statistics. You would have to talk to them.  
6 I don't know what their process is.  
7 Q. So probate might. You don't know.  
8 But as far as you know, ALEA doesn't inform  
9 them?  
10 A. Correct.  
11 Q. Thank you. Is it fair to say that  
12 ALEA is more concerned about making sure that  
13 it's asking for the same types of documents to  
14 change sex designation as Alabama does for  
15 birth certificates than it is concerned by  
16 doing the same thing as federal agencies?  
17 A. No, I wouldn't say that.  
18 Q. Is policy order 63 serving the  
19 interest of maintaining consistency with  
20 federal identity documents?  
21 A. No.  
22 Q. And policy order 63 does serve the  
23 interest of maintaining consistency with

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1 requirements for Alabama birth certificates,  
2 right?  
3 A. Yes. Maybe I -- did I answer  
4 that -- I may have missed -- did I answer  
5 incorrectly? Yes, we are consistent with the  
6 State of Alabama's requirements to change the  
7 sex designation with our policy.  
8 Q. Okay. And why is it more important  
9 to ALEA to match the requirements for birth  
10 certificates than for say U.S. passports?  
11 A. Well, we want to maintain  
12 consistency, but we want what is displayed on  
13 the document to be true.  
14 Q. So is it ALEA's position that the  
15 information on U.S. passports is less likely  
16 to be true than the information on birth  
17 certificates?  
18 A. I don't know.  
19 Q. Could documentation from a doctor  
20 stating that someone had had clinical, but not  
21 necessarily surgical, treatment to change  
22 their sex provide a paper trail for purposes  
23 of driver's licenses?

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1 MR. CHYNOWETH: Object to the form.  
2 A. I'm not sure of your question.  
3 Q. So you stated earlier that if  
4 there's some information that is different  
5 than the information on the birth certificate  
6 you want some sort of documentation of why  
7 it's different; is that right?  
8 A. Yes.  
9 Q. And that documentation for purposes  
10 of sex designation can come in the form of an  
11 amended birth certificate or a letter stating  
12 that someone has received sex reassignment  
13 surgery, correct?  
14 A. Correct.  
15 Q. Could a letter from a doctor  
16 stating that someone has had clinical  
17 treatment for sex reassignment, not  
18 necessarily surgical treatment, also serve as  
19 documentation for that purpose?  
20 A. For changing the sex designation?  
21 Q. Yes.  
22 A. No.  
23 Q. Okay. And other than simply that

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1 it's the policy, why would that documentation  
 2 not be adequate to show the connection between  
 3 the breeder document and the current  
 4 information?  
 5 A. Because the letter from the doctor  
 6 saying that they performed the sex  
 7 reassignment surgery is stating that they  
 8 performed the procedure, and we're counting on  
 9 the doctors to provide that information.  
 10 Q. So aside from making the same  
 11 requests as the state makes for changing birth  
 12 certificates and for maintaining documentation  
 13 of any differences between birth certificates  
 14 and information on driver's licenses, are  
 15 there any other reasons why it's important to  
 16 have consistency between the policy for birth  
 17 certificates and the policy for driver's  
 18 licenses?  
 19 A. It's just we're keeping  
 20 documentation the same as in changing a name.  
 21 We're tracking changes to that person's  
 22 identifying information. Just as I would come  
 23 in as Deena Pregno, if I changed my name to

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1 something else, I would have to provide  
 2 documentation as to what I changed it to. And  
 3 it's tracking that person's identity  
 4 information.  
 5 Q. And aside from wanting to make the  
 6 same request for birth certificates as for  
 7 driver's licenses, is there any other reason  
 8 why it's important to the government that  
 9 policy order 63 is similar to the Alabama  
 10 state statute for changing sex on birth  
 11 certificates?  
 12 A. It's just to maintain consistency  
 13 with our state policy.  
 14 Q. Thank you.  
 15 MR. ARKLES: I don't have a huge  
 16 number of new questions, but I think we might  
 17 want to break for lunch anyway because I have  
 18 some questions.  
 19 (A discussion was held off the  
 20 record.)  
 21 Q. If someone moves to Alabama from  
 22 out of state and shows a driver's license from  
 23 the other state, their Social Security card,

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1 and a U.S. passport, would that be sufficient  
 2 to get an Alabama driver's license?  
 3 A. Yes.  
 4 Q. And if the sex designation on all  
 5 of those documents were consistent, would that  
 6 be the sex designation that would be reflected  
 7 on the Alabama driver's license?  
 8 A. Yes.  
 9 Q. Would you consider race an  
 10 important characteristic for identifying  
 11 people?  
 12 A. One of them, yes.  
 13 Q. Why isn't race on the driver's  
 14 license?  
 15 A. I don't know.  
 16 Q. So you testified that the  
 17 information that the driver's license provides  
 18 in terms of sex designation is whether  
 19 somebody has a penis or a vagina, right?  
 20 A. Yes.  
 21 Q. And how did ALEA determine that a  
 22 penis and a vagina were the most important  
 23 pieces of information to share about sex?

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1 A. I don't know if it's -- it goes  
 2 back to the birth certificate. You're born  
 3 with a sex designation, and until that has  
 4 changed on the birth certificate that's what  
 5 we go by.  
 6 Q. So ALEA will not recognize  
 7 transgender people unless their genitals have  
 8 been changed from a penis to a vagina or a  
 9 vagina to a penis; is that correct?  
 10 A. Well, no. We have to get a letter  
 11 from the doctor stating he has performed  
 12 sexual reassignment surgery.  
 13 Q. And does the letter from the doctor  
 14 about sexual reassignment surgery serve to  
 15 show what genitals the person has?  
 16 A. No. We rely on the doctor's  
 17 office.  
 18 Q. And so a transgender person who has  
 19 transitioned to a different gender and who  
 20 identifies with that gender and lives as that  
 21 gender cannot have that gender recognized on  
 22 their driver's license without documentation  
 23 of having had sex reassignment surgery or an

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1 amended birth certificate, right?  
 2 A. Correct.  
 3 Q. And if you first get a license at  
 4 the age of sixteen and you show a Social  
 5 Security card, a U.S. passport, and secondary  
 6 identification, not including a birth  
 7 certificate, would that be sufficient to  
 8 obtain an Alabama driver's license?  
 9 A. Yes.  
 10 Q. And if the sex designation on all  
 11 of those documents were consistent, that would  
 12 be the sex designation reflected on the  
 13 driver's license, correct?  
 14 A. Yes.  
 15 Q. To your knowledge, how many  
 16 transgender people work at ALEA?  
 17 A. One to my knowledge.  
 18 Q. How many people work at ALEA  
 19 overall?  
 20 A. Twelve to fourteen hundred maybe.  
 21 Q. Okay. I'm going to ask you some  
 22 questions now that are about you personally  
 23 rather than about ALEA.

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1 Have you ever heard anyone at ALEA  
 2 express their personal opinions about  
 3 transgender people?  
 4 A. No.  
 5 Q. What are your thought about  
 6 transgender people?  
 7 A. Live and let live.  
 8 Q. Have your opinions about  
 9 transgender people changed over time?  
 10 A. Probably.  
 11 Q. Can you say how?  
 12 A. I just didn't understand. I just  
 13 don't understand the process of somebody  
 14 wanting to change.  
 15 Q. And how did you come to understand  
 16 that more?  
 17 A. I have some friends who are  
 18 lesbian. They are not transgender, but I have  
 19 friends.  
 20 Q. And your friends have talked to you  
 21 about transgender issues?  
 22 A. No, not necessarily transgender  
 23 issues but same sex relationships.

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1 Q. Okay. And do you personally  
 2 believe that somebody who was assigned male at  
 3 birth and who identifies as female and who has  
 4 had sex reassignment surgery is a woman?  
 5 MR. CHYNOWETH: Object to form.  
 6 A. Repeat the question, please.  
 7 Q. Do you personally believe that  
 8 somebody who was assigned male at birth, who  
 9 identifies as female, and who has had sex  
 10 reassignment surgery is a woman?  
 11 MR. CHYNOWETH: Object to the form.  
 12 A. Genetically they're a male.  
 13 Physically they're a female.  
 14 Q. Okay. And personally do you  
 15 believe that somebody who was assigned male at  
 16 birth and who identifies as female and who has  
 17 not had sex reassignment surgery is a woman?  
 18 MR. CHYNOWETH: Object to the form.  
 19 A. They are physically a male.  
 20 Q. So you don't believe that somebody  
 21 is a woman in that circumstance?  
 22 A. Correct.  
 23 Q. And why is that?

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1 A. Because they still have the  
 2 physical attributes of a male.  
 3 Q. And why is it that you believe that  
 4 physical attributes determine whether somebody  
 5 is a man or a woman?  
 6 MR. CHYNOWETH: Object to the form.  
 7 A. I guess it goes back to birth.  
 8 Q. What do you mean by that?  
 9 A. It goes back to how -- when you  
 10 were born you were -- you had -- you were  
 11 either a male or a female.  
 12 Q. And do you have any concerns about  
 13 people transitioning gender?  
 14 MR. CHYNOWETH: Object to the form.  
 15 A. What concerns would I have?  
 16 Q. Do you have any concerns about it?  
 17 A. No.  
 18 Q. Do you have any moral or religious  
 19 beliefs about transitioning gender?  
 20 A. No.  
 21 MR. CHYNOWETH: Object to the form.  
 22 A. No.  
 23 Q. If you knew that someone was

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1 assigned male at birth, identified as a woman,  
2 would you feel comfortable referring to that  
3 person as she or ma'am?  
4 MR. CHYNOWETH: Object to the form.  
5 A. Would I feel comfortable? If  
6 that's the way they wanted to be addressed,  
7 no.  
8 Q. So just to be clear, you wouldn't  
9 feel comfortable referring to someone as she  
10 or ma'am if they identified as a woman and  
11 wanted to be referred to as she or ma'am but  
12 was assigned male at birth?  
13 MR. CHYNOWETH: Object to the form.  
14 A. No, I would not be uncomfortable.  
15 Q. Okay. You would not be  
16 uncomfortable doing that?  
17 A. The question is getting a little  
18 confusing.  
19 Q. Somebody who has transitioned from  
20 male to female --  
21 A. Male to female, right.  
22 Q. -- and wants to be referred to as  
23 she --

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1 A. I have no problem with that.  
2 Q. Okay. And do you have any concerns  
3 personally about policy order 63?  
4 MR. CHYNOWETH: Object to the form.  
5 A. No.  
6 Q. And, to your knowledge, has anyone  
7 within ALEA ever been reprimanded for  
8 interacting disrespectfully with a transgender  
9 person?  
10 A. No.  
11 MR. ARKLES: All right. Let's do  
12 one last short break.  
13 (Break taken.)  
14  
15 Q. Are there any government interests  
16 in policy order 63 that we have not already  
17 discussed today?  
18 A. No.  
19 Q. Do you have any reason to believe  
20 that any of the government interests that  
21 you've described today are significantly  
22 different in Alabama than in other states?  
23 A. Not to my knowledge. I haven't

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1 looked at any other states.  
2 MR. ARKLES: Okay. Thank you.  
3 That's all I have. Would you like to ask any  
4 questions?  
5 MR. CHYNOWETH: Yes.  
6  
7 EXAMINATION  
8 BY MR. CHYNOWETH:  
9 Q. I have just a few questions for  
10 you, Chief Pregno. You were asked earlier by  
11 Mr. Arkles if you had any certifications and I  
12 believe -- did you testify that you had had a  
13 cosmetology certification at some point?  
14 A. I did.  
15 Q. Have you had any other  
16 certifications that you can recall at this  
17 time?  
18 A. I currently hold an APOSTC  
19 certification to be an arresting officer as  
20 well as firearms certification, tazer  
21 certification, OC, and other various training  
22 I have received with the agency.  
23 Q. Do law enforcement agencies in this

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1 state consist in part of county sheriff's  
2 departments?  
3 A. Yes.  
4 Q. Do county -- does each county have  
5 a county sheriff?  
6 A. Yes.  
7 Q. Do the county sheriffs provide  
8 patrol officers that provide law enforcement  
9 on a countywide basis?  
10 A. Yes.  
11 Q. Do county sheriff's maintain county  
12 jails?  
13 A. Yes.  
14 Q. Does ALEA formulate arrest  
15 procedures for county sheriffs?  
16 A. No.  
17 Q. Does ALEA formulate jail procedures  
18 for county jails?  
19 A. No.  
20 Q. Are there municipal police  
21 departments in this state?  
22 A. Yes.  
23 Q. And does ALEA formulate arrest or



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1 search procedures for municipal police  
 2 departments?  
 3 A. No.  
 4 Q. Do some municipalities maintain  
 5 municipal or city jails?  
 6 A. Yes.  
 7 Q. Does ALEA formulate policies for  
 8 those municipalities on how to run their  
 9 jails?  
 10 A. No.  
 11 Q. So in your capacity as a 30(b)6  
 12 witness for ALEA, are you able to testify  
 13 about arrests, search, or booking procedures  
 14 that might be used by a county sheriff  
 15 department?  
 16 A. No.  
 17 Q. Are you able to testify as to all  
 18 of the same procedures that might be used by  
 19 every municipal police department?  
 20 A. No.  
 21 Q. Does the information contained on a  
 22 driver's license provide information to county  
 23 sheriff's departments?

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1 another form of government identification?  
 2 A. In the presence of court officials  
 3 or a judge or at the request of an Alabama law  
 4 enforcement officer.  
 5 Q. Is ALEA primarily a law enforcement  
 6 organization?  
 7 A. Yes.  
 8 Q. So in controlling the information  
 9 that goes onto an Alabama driver's license, is  
 10 it fair to say that ALEA has in mind the law  
 11 enforcement officers that a citizen is  
 12 required to display the driver's license to?  
 13 A. Yes.  
 14 Q. To your knowledge, is the sex that  
 15 goes on an Alabama birth certificate based on  
 16 the genitals a baby has at birth?  
 17 A. Yes.  
 18 Q. So if someone were to initially  
 19 obtain an Alabama driver's license with an  
 20 Alabama birth certificate, what sex would go  
 21 onto the driver's license?  
 22 MR. ARKLES: Objection to form.  
 23 A. Whatever is on the birth

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1 A. Yes.  
 2 Q. Does the information contained on a  
 3 driver's license provide information to  
 4 municipal police departments?  
 5 A. Yes.  
 6 Q. Is it part of ALEA's purpose to  
 7 provide information by means of a driver's  
 8 license to these law enforcement agencies?  
 9 A. Yes.  
 10 Q. Does the information contained on a  
 11 driver's license allow these law enforcement  
 12 agencies to develop their own arrest, search,  
 13 and booking procedures?  
 14 A. Yes.  
 15 Q. Does ALEA control what information  
 16 goes onto a driver's license?  
 17 A. Yes.  
 18 Q. Does ALEA control what information  
 19 goes onto a United States passport?  
 20 A. No.  
 21 Q. What are some circumstances in  
 22 which you are required to show an Alabama  
 23 driver's license as opposed to a passport or

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1 certificate.  
 2 Q. If someone were to obtain an  
 3 Alabama driver's license with an Alabama birth  
 4 certificate, what sex designation would go on  
 5 to the Alabama license?  
 6 A. The sex designation that's on the  
 7 birth certificate.  
 8 Q. And then that would be based on the  
 9 genitals that the baby had at birth which  
 10 resulted in the sex designation on the birth  
 11 certificate?  
 12 A. Yes.  
 13 Q. How do you obtain an amended birth  
 14 certificate with a changed sex?  
 15 A. They have to provide documentation  
 16 to the Bureau of Vital Statistics and they  
 17 issue an amended birth certificate.  
 18 Q. Documentation of what?  
 19 A. Of sexual reassignment.  
 20 Q. So the procedure for changing -- so  
 21 the procedure for amending the birth  
 22 certificate to change the sex is to provide  
 23 proof of sex reassignment surgery?

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1 A. Yes.

2 Q. And so the procedure under policy

3 order 63 for changing the sex on a driver's

4 license is one of two things: First, is it --

5 you can provide an amended birth certificate?

6 A. Yes.

7 Q. With respect to Alabama birth

8 certificates, an amended birth certificate to

9 change your sex requires proof of sex

10 reassignment surgery, correct?

11 A. Correct.

12 Q. The second means is -- for changing

13 the sex on an Alabama license is to provide a

14 doctor's note from the doctor who performed

15 the procedure stating that sexual reassignment

16 surgery had been completed, correct?

17 A. Correct.

18 Q. Do you know whether race is

19 contained on birth certificates?

20 A. I do not know.

21 MR. CHYNOWETH: No further

22 questions.

23

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1 A. No.

2 Q. Why isn't a letter from an

3 examining physician sufficient under policy

4 63?

5 A. Because we have stuck with

6 requiring the doctor who performed the

7 surgery. In past we've always gone back to

8 the Code of Alabama, and that's -- that's what

9 the policy has always been. I'm not sure why.

10 MR. ARKLES: Thank you. That's all

11 I have.

12 (The deposition of DEENA PREGNO,

13 concluded on November 14, 2018, at

14 12:35 p.m.)

15 FURTHER DEPONENT SAITH NOT

16

17

18

19

20

21

22

23

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1 EXAMINATION

2 BY MR. ARKLES:

3 Q. Just a couple of questions to

4 follow up. One, would you mind explaining the

5 acronyms and certifications you mentioned?

6 A. APOSTC is Alabama Peace Officer

7 Standards Training Commission. Every law

8 enforcement officer in the State of Alabama

9 has to meet APOSTC standards to be a law

10 enforcement officer. Tazer -- we have tazer

11 certification where you are tazed with a

12 tazer. OC is paper spray certification where

13 you're sprayed with paper spray. Firearms you

14 qualify every year to minimum standards,

15 firearms qualifications.

16 Q. To change the sex designation on an

17 Alabama birth certificate one needs to supply

18 a court order to the Department of Vital

19 Statistics, right?

20 A. If that's what's in the statute.

21 Q. Is the ALEA policy of providing

22 information to counties and municipalities

23 based on any statute or written policy?

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1 REPORTER'S CERTIFICATE

2 STATE OF ALABAMA )

3 JEFFERSON COUNTY )

4 I, Elaine Scott, Licensed Court

5 Reporter and Commissioner for the State of

6 Alabama at Large, hereby certify that on

7 November 14, 2018, I reported the deposition

8 of DEENA PREGNO, who was first duly sworn or

9 affirmed to speak the truth in the matter of

10 the foregoing cause, and that pages 1 through

11 128 contain a true and accurate transcription

12 of the examination of said witness by counsel

13 for the parties set out herein.

14 I further certify that I am neither

15 of kin nor of counsel to any of the parties to

16 said cause nor in any manner interested in the

17 results thereof.

18 \_\_\_\_\_

19 ELAINE SCOTT, Court Reporter

20 and Commissioner for the State

21 of Alabama at Large,

22 CCR License No. 354, Expires 9/30/19

23 MY COMMISSION EXPIRES NOVEMBER 16, 2019

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DOC. 48-7



# Exhibit 7

## Deposition of Diane Woodruff

**In The Matter Of:**

*Darcy Corbitt, Destiny Clark, and Jane Doe v.  
Hal Taylor, etc., et al.*

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*Diane Woodruff  
November 8, 2018*

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*Baker Realtime Worldwide Court Reporting & Video  
250 Commerce Street  
Third Floor, Suite One  
Montgomery, Alabama 36104  
[www.BakerRealtime.com](http://www.BakerRealtime.com)*

Original File 11-8-18 Diane Woodruff.txt

**Min-U-Script® with Word Index**

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1 IN THE UNITED STATES DISTRICT COURT  
 2 FOR THE MIDDLE DISTRICT OF ALABAMA  
 3 NORTHERN DIVISION  
 4  
 5 CIVIL ACTION NO.: 2:18-CV-00091-MHT-GMB  
 6  
 7 DARCY CORBITT, DESTINY CLARK, and JANE DOE,  
 8 Plaintiffs,  
 9 v.  
 10 HAL TAYLOR, in his official capacity as  
 11 Secretary of the Alabama Law Enforcement  
 12 Agency, et al.  
 13 Defendants.  
 14  
 15 DEPOSITION OF DIANE WOODRUFF  
 16 November 8, 2018  
 17  
 18 Taken before Elaine Scott, CCR,  
 19 Commissioner for the State of Alabama at  
 20 Large, in the Law Offices of the Alabama  
 21 Attorney General, 501 Washington Avenue,  
 22 Montgomery, Alabama, on Thursday, November 8,  
 23 2018, commencing at approximately 12:55 p.m.

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1 A P P E A R A N C E S (continued)  
 2  
 3 ALSO PRESENT:  
 4 Meredith Barnes  
 5  
 6 COURT REPORTER:  
 7 BAKER REALTIME WORLDWIDE REPORTING & VIDEO  
 8 250 Commerce Street  
 9 Third Floor, Suite One  
 10 Montgomery, Alabama 36104  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
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 19  
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 21  
 22  
 23

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1 A P P E A R A N C E S  
 2  
 3 FOR THE PLAINTIFFS:  
 4 AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
 5 Gabriel Arkles  
 6 125 Broad Street  
 7 18th Floor  
 8 New York, New York 10004  
 9  
 10 ALABAMA CIVIL LIBERTIES UNION FOUNDATION  
 11 Brock Boone  
 12 Randall C. Marshall  
 13 P.O. Box 6179  
 14 Montgomery, Alabama 36106  
 15  
 16 FOR THE DEFENDANTS:  
 17 OFFICE OF THE ATTORNEY GENERAL, STATE OF  
 18 ALABAMA  
 19 Brad A. Chynoweth  
 20 501 Washington Avenue  
 21 Montgomery, Alabama 36130  
 22  
 23

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1 13 Doctor's Letter 125  
 2 STIPULATIONS  
 3 It is hereby stipulated and agreed by  
 4 and between counsel representing the parties  
 5 that the deposition of DIANE WOODRUFF is taken  
 6 pursuant to stipulation and agreement; that  
 7 all formalities with respect to procedural  
 8 requirements are waived; that said deposition  
 9 may be taken before Elaine Scott, Certified  
 10 Court Reporter and Commissioner for the State  
 11 of Alabama at Large, without the formality of  
 12 a commission; that objections to questions  
 13 other than objections as to the form of the  
 14 questions need not be made at this time but  
 15 may be reserved for a ruling at such time as  
 16 the deposition may be offered in evidence or  
 17 used for any other purpose as provided for by  
 18 the Alabama Rules of Civil Procedure.  
 19 It is further stipulated and agreed  
 20 by and between counsel representing the  
 21 parties that the filing of the deposition may  
 22 be introduced at the trial of this case or  
 23 used in any manner by either party hereto

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1 Alabama Law Enforcement Agency and in  
 2 particular the creation, implementation, how  
 3 the medical unit works, questions in that area  
 4 mostly all related to or quickly related to  
 5 policy order 63, the order that lays out the  
 6 requirements for a person to change sex on a  
 7 driver's license.  
 8 So before we begin I would like to  
 9 give you just a few instructions. Try to  
 10 answer everything verbally so that way we make  
 11 sure the court reporter hears. And I'm going  
 12 to try to do this as well, try not to talk  
 13 over each other. So if I'm asking a question,  
 14 just let me finish and I'm going to try to let  
 15 you finish the answer because it's hard to,  
 16 you know, write it down when we're all  
 17 speaking. And try to answer everything  
 18 verbally so that way the court reporter can  
 19 get it. So nods and head shakes, you know,  
 20 can't hardly -- doesn't translate well. And  
 21 you can ask for a break, but just not while  
 22 I'm in the middle of a question or when you're  
 23 answering. We'll try to finish the answer and

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1 provided for by the Statute.  
 2 It is further stipulated and agreed  
 3 by and between the parties hereto and the  
 4 witness that the signature of the witness to  
 5 this deposition IS hereby waived.  
 6  
 7 DIANE WOODRUFF,  
 8 The witness, having first been duly  
 9 sworn or affirmed to speak the truth, the  
 10 whole truth and nothing but the truth,  
 11 testified as follows:  
 12  
 13 THE COURT REPORTER: Usual  
 14 stipulations?  
 15 (Affirmed by counsel.)  
 16  
 17 EXAMINATION  
 18 BY MR. BOONE:  
 19 Q. My name is Brock Boone, and I'm an  
 20 attorney for the ACLU of Alabama. We're here  
 21 today to discuss -- we represent the  
 22 plaintiffs in Corbitt v. Taylor. So I'm just  
 23 going to ask you some questions about the

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1 then we can take a break at that point.  
 2 A. Yes, sir.  
 3 Q. Okay. And just let me know if you  
 4 need to supplement or clarify something from  
 5 earlier and we can try to do that.  
 6 Have you ever been deposed before?  
 7 A. No, sir.  
 8 Q. Okay. Are you taking any  
 9 medication that would make you unable to  
 10 testify today?  
 11 A. No, sir.  
 12 Q. Okay. Did you prepare -- or what  
 13 did you do to prepare for the deposition  
 14 today?  
 15 A. I came over and spoke with  
 16 Mr. Chynoweth along with Meredith Monday of  
 17 this week. I actually didn't even know I was  
 18 going to be involved until possibly -- I  
 19 believe it was last week sometime or the week  
 20 before.  
 21 Q. Okay. So about three weeks ago --  
 22 A. Roughly.  
 23 Q. -- you didn't know for sure if you

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1 were going to be deposed?  
2 A. Right.  
3 Q. Okay. But on Monday you just had  
4 conversations with Brad and Meredith?  
5 A. Uh-huh.  
6 Q. Okay. Did you bring any documents  
7 with you today?  
8 A. No, sir.  
9 Q. Okay. Have you -- there's no one  
10 else you've spoken to about this deposition?  
11 A. Yes. I did speak with Jeannie  
12 Eastman who's involved in this also.  
13 Q. Okay.  
14 A. Just to tell her the day I was  
15 coming over here.  
16 Q. That's -- there's nothing else that  
17 was said?  
18 A. (Witness shakes head.) No, sir.  
19 Sorry.  
20 Q. So it was just about the date,  
21 nothing substantive about the case or what  
22 you're going to say or anything like that?  
23 A. No, sir.

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1 Q. Was there anyone else present at  
2 that time?  
3 A. No, sir. I think she just came  
4 into my office that day and asked what day I  
5 was going.  
6 Q. Okay. Is there any reason that you  
7 wouldn't be able to answer the questions fully  
8 and accurately today?  
9 A. No, I can't think of any unless I  
10 just didn't remember.  
11 Q. Yeah, I was going to get there.  
12 And so now I'm going to go into a little bit  
13 of your background. And as they prompted me,  
14 maybe I should have done it from the get-go.  
15 Could you state your full name?  
16 A. My name is Diane Woodruff, Diane  
17 Crew Woodruff.  
18 Q. Okay. And can you talk a little  
19 bit about your educational background?  
20 A. I have a bachelor's degree from  
21 Faulkner University in criminal justice.  
22 Q. When about was that?  
23 A. Actually I just got it in 2015.

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1 Q. Okay. So were you -- did you work  
2 right after high school, and could you explain  
3 a little bit about that?  
4 A. Yes. I worked -- that's a long  
5 time ago. Let me see if I can remember.  
6 Right out of high school I went to work for a  
7 forklift company, and then I worked at a hotel  
8 as the front desk clerk, and then I got the  
9 state job pretty much.  
10 Q. Okay. Could you give some years as  
11 to graduating high school and then, you  
12 know --  
13 A. I graduated high school in 1981.  
14 Right out of high school -- let me retract  
15 what I said. I worked at a day care center on  
16 base while I was attending AUM. And then I  
17 went to Troy State University for a while and  
18 was working at the forklift company. That was  
19 approximately probably '86, '87. And then  
20 worked at the Ramada Inn as a front desk clerk  
21 about '88, '89. And then in 1991 I got the  
22 job with the -- then the Department of Public  
23 Safety.

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1 Q. So how many years have you been  
2 with the Department of Public Safety or ALEA?  
3 A. Twenty-seven -- almost twenty-  
4 eight. In February it will be twenty-eight  
5 years.  
6 Q. Okay. Could you just for the  
7 record explain a little bit about the  
8 Department of Public Safety and how -- you  
9 know, I understand how it's a body under  
10 ALEA. Could you explain a little bit about  
11 that transition because that's pretty recent  
12 within the last five years.  
13 A. It was. Well, I'm not sure I  
14 understand explaining it, but we're currently  
15 the Department of Public Safety underneath the  
16 umbrella of the Alabama Law Enforcement  
17 Agency. Driver's license is one facet  
18 underneath the Department of Public Safety, in  
19 addition to Highway Patrol and -- to be honest  
20 I'm not even sure, we've had so many changes,  
21 what other -- where they all fall. I know  
22 where we fall and I know where highway patrol  
23 falls under the umbrella.

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1 Q. Was the Department of Public Safety  
2 at one point it was not under the Alabama Law  
3 Enforcement Agency?  
4 A. No. It was a state agency alone by  
5 itself.  
6 Q. When did it become under the  
7 umbrella of the Alabama Law Enforcement  
8 Agency?  
9 A. I want to say it was around 2014,  
10 2015.  
11 Q. Did anything change for you at that  
12 time with your employment?  
13 A. No, sir.  
14 Q. You kept your same position?  
15 A. Everything.  
16 Q. Okay. Your check still came from  
17 the same --  
18 A. Yes.  
19 Q. Okay. Well, I guess the name --  
20 A. Well, the name did change to the  
21 Alabama Law Enforcement Agency.  
22 Q. Okay.  
23 A. For a while -- in the very

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1 beginning of the transition we got away  
2 from -- driver's license really wasn't under  
3 the Alabama Department of Public Safety. It  
4 was under ALEA and it was under the Citizens  
5 Services Bureau. And then we had some more  
6 changes as the governor changed and they kind  
7 of did a restructuring again and brought back  
8 the Alabama Department of Public Safety and  
9 then put us underneath that and we kind of did  
10 away with the Citizen Services Bureau.  
11 Q. You have always been with the  
12 driver's license division?  
13 A. I have, uh-huh.  
14 Q. Okay. What was your title when you  
15 began in 1991?  
16 A. Driver's license examiner one.  
17 Q. Where was that at?  
18 A. 1040 Coliseum Boulevard here in  
19 Montgomery.  
20 Q. Okay. And could you give a time  
21 line as best you can of your employment  
22 history from 1991 when you're starting off as  
23 an examiner all the way up until today?

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1 A. Okay. I was hired in 1991 as a  
2 driver's license examiner one. I worked as an  
3 examiner one for ten years. So in 2001 I was  
4 promoted to driver's license examiner two.  
5 And then in 2005 I was promoted to the  
6 driver's license supervisor and transferred  
7 from the exam office to the headquarters  
8 office at 301 South Ripley Street. And then  
9 from 2005 to 2012 I was a driver's license  
10 supervisor. And then in 2012 I became the  
11 driver's license manager.  
12 Q. Okay. I'm sorry.  
13 A. I'm sorry.  
14 Q. You're talking kind of quicker than  
15 I expected.  
16 A. Okay.  
17 Q. And the titles too are just like --  
18 they're all new to me a little bit.  
19 A. Sure.  
20 Q. So driver's license examiner two in  
21 2001?  
22 A. Correct.  
23 Q. And then your next position was

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1 supervisor?  
2 A. Right, in 2005.  
3 Q. And was that -- when you were 2005  
4 supervisor, was that still on Coliseum  
5 Boulevard?  
6 A. No. That's when I transferred to  
7 our headquarters.  
8 Q. Okay. But when you were driver's  
9 license examiner two, that was on Coliseum  
10 Boulevard?  
11 A. Still on Coliseum, yes, sir.  
12 Q. Okay. So 2005 supervisor in the  
13 main office I'll call it?  
14 A. Right. Right.  
15 Q. And that lasted for two years you  
16 were a supervisor?  
17 A. No. I was a supervisor from '05 to  
18 2012.  
19 Q. Okay. So seven years --  
20 A. Seven years.  
21 Q. -- as a supervisor?  
22 A. Uh-huh.  
23 Q. And then from 2012 until --

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1 A. Now.  
2 Q. -- now you were a manager?  
3 A. Driver's license manager. Same  
4 location.  
5 Q. At the same location, which is  
6 obviously -- sounds like a promotion from  
7 supervisor?  
8 A. Right, uh-huh.  
9 Q. Can you explain your duties as a  
10 driver's license examiner one?  
11 A. I administered driving tests,  
12 knowledge and road tests, for regular  
13 operator, you know, regular cars and  
14 commercial vehicles, trucks and things like  
15 that.  
16 Q. Okay. And did -- and driver's  
17 license supervisor -- or examiner two, that's  
18 a promotion. Does that change your job  
19 responsibilities?  
20 A. I still administered examinations,  
21 but then I had -- took on a first line  
22 supervisory role. So then I was supervisor to  
23 the examiner ones which meant conducting their

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1 performance appraisals and, you know, guidance  
2 and that type thing.  
3 Q. Okay. Do people come to you  
4 regularly for questions?  
5 A. Uh-huh, they do.  
6 Q. Probably on a daily basis when you  
7 were examiner two?  
8 A. Yes.  
9 Q. Okay. So you did that for around  
10 four years it sounds like?  
11 A. Uh-huh.  
12 Q. And then you moved to the main  
13 office as a supervisor?  
14 A. Yes.  
15 Q. What were you -- tell me how your  
16 duties -- it seems like that's a drastic -- a  
17 big change from what you were doing before.  
18 Can you explain a little bit about what  
19 happens now when you became a supervisor?  
20 A. When I was promoted to supervisor I  
21 went to headquarters in the reinstatement  
22 unit, and so I was the supervisor over seven  
23 employees that handled walk-ins when people

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1 would come in to pay their reinstatement  
2 fees. Any mail we would get with  
3 reinstatement fees, inquiries as to driver's  
4 license eligibility, and reinstatement  
5 requirements, we answered all that, making  
6 bank deposits, that type thing. But I just  
7 supervised them.  
8 Q. What's a reinstatement? I think I  
9 know but --  
10 A. If you're suspended and you want to  
11 get your privilege to drive back, then you  
12 have to pay -- you know, have to meet certain  
13 requirements. If you have outstanding  
14 tickets, we have to get proof from the courts  
15 that you paid the tickets and then you'll owe  
16 us a reinstatement fee because when you go  
17 into suspension there's a fee to get it  
18 reinstated.  
19 Q. Okay. Did you ever -- were you  
20 making any -- when you were a supervisor, were  
21 you ever making any judgment calls in certain  
22 areas, or did you have protocol that you were  
23 following?

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1 A. We had outlined protocol. Now,  
2 with that there may be some judgment made as  
3 to if we say this is the particular document  
4 that we have to have from the court that says  
5 that they've satisfied this ticket that they  
6 had, for instance, well, because we deal with  
7 every court, municipality, and district court,  
8 you might get different paperwork sometimes  
9 that's not the standard form. So you might  
10 say okay, well, as long as it has these  
11 documents on it, you know, like the citation  
12 number, the date it was paid, you know, the  
13 person's name, all that, then we could take  
14 it. But it's not -- every once in a while you  
15 would just get one that was out of the  
16 ordinary.  
17 Q. What would you do when you got  
18 something that was out of the ordinary?  
19 A. We would make sure that it had the  
20 same -- basically the same information that  
21 the required document had. It just may not  
22 have been in that same format.  
23 Q. Did you ever have to make phone

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1 calls back to maybe the court system in a  
2 particular county?  
3 A. Sure, uh-huh, and other states too.  
4 Q. Other states?  
5 A. Uh-huh, yeah.  
6 Q. Okay.  
7 A. That's where the biggest  
8 discrepancies came in with the paperwork that  
9 we get -- paperwork we received from other  
10 states because they didn't use our state forms  
11 or anything, so --  
12 Q. Got you. Would you call other  
13 similar driver's license offices maybe in  
14 Georgia or Mississippi?  
15 A. Occasionally.  
16 Q. Do you ever --  
17 A. Occasionally.  
18 Q. Okay. Now, when your position went  
19 from supervisor to manager, was that one step  
20 up the chain basically?  
21 A. Pretty much, uh-huh.  
22 Q. Tell me how your job differed as  
23 manager.

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1 A. Well, when I became manager,  
2 instead of being over one unit, then I became  
3 over several units, three units, the  
4 reinstatement unit, the driver improvement  
5 unit, and the driver services unit.  
6 Q. Reinstatement, driver  
7 improvement --  
8 A. Driver improvement, uh-huh.  
9 Q. -- and --  
10 A. Driver's license services.  
11 Q. Can you -- I get reinstatement.  
12 That sounded like what you -- a lot like what  
13 you were doing before. Could you explain the  
14 other two units for me?  
15 A. Right. The driver improvement unit  
16 works in conjunction with the driver's license  
17 reinstatement unit, but they handle more  
18 speaking with courts, attorneys, and  
19 rectifying these problems so people can get  
20 their licenses back. Interlocking, problems  
21 with DUI people, things like that.  
22 And then the driver services unit  
23 handle -- we answer a lot of the department --

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1 I mean, division emails. And then if you  
2 don't get your driver's license in the mail,  
3 you'll call that unit. We'll try to find out  
4 where it is. If it's returned in the mail, we  
5 file it, hold it, you can come -- we'll mail  
6 it back out to you. We update driver records  
7 as far as addresses, anything like that, out  
8 of state, military, renewals by mail, things  
9 like that.  
10 Q. Explain a little bit about the  
11 emails. I'll wait for Brad to get back.  
12 A. Okay.  
13 Q. I know you said earlier that part  
14 of your -- in one of the units you look over  
15 the division emails. Could you explain a  
16 little bit about the emails and what you mean  
17 by that?  
18 A. We just have an email that the  
19 public -- you have a link to it on our web  
20 site if they have driver's license related  
21 questions, so somebody has to field those  
22 questions. We might answer the question or  
23 send it to another division for them to answer

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1 the questions. But I do need to clarify  
2 something as far as -- as far as when I came  
3 over as a driver's license supervisor, I was  
4 over the reinstatement unit first. Then about  
5 nine months later I was -- I moved and was  
6 over the medical unit, the medical and the CDL  
7 unit. I didn't mention it before because it  
8 was still the same title, but I moved offices  
9 and responsibilities.  
10 Q. Thank you for mentioning that. So  
11 that was when you were a supervisor?  
12 A. Yes, sir.  
13 Q. So you did nine months  
14 reinstatement and then you were over  
15 medical/CDL?  
16 A. Yes, sir.  
17 Q. Tell me a little bit about medical  
18 and CDL then.  
19 A. Okay. The CDL part is just the  
20 commercial driver's license unit. And we have  
21 to ensure that the agency stays within  
22 compliance of federal regulations with --  
23 pertaining to commercial driver's license and



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1 their hours of operation, how we give the  
 2 test, training, anything that pertains to a  
 3 commercial driver's license. And then the  
 4 medical unit, we have specific conditions that  
 5 are followed -- I mean, that we have listed on  
 6 the driver's license application, as a matter  
 7 of fact, you know, do you have epilepsy,  
 8 seizures, anything like that, when you go in  
 9 get your license. If you check yes to one of  
 10 those questions, well, we'll send -- the  
 11 examiner fills out a form, sends it in to the  
 12 medical unit. The medical unit then in turn  
 13 gets that form and sends another form to the  
 14 licensee and says, hey, this is a condition  
 15 that our medical advisory board has said that  
 16 needs to be followed to make sure that you're  
 17 taking care of yourself. And so we might  
 18 periodically get medical forms from them just  
 19 to ensure that they are taking care of  
 20 themselves and not a danger to the roadways.  
 21 Q. So if someone checks a box or says  
 22 yes on some possible impairment, you need  
 23 proof from them at that point. Is that for

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1 everything that's on that list?  
 2 A. Everything that on the driver's  
 3 license application.  
 4 Q. Even if it's -- I don't even know.  
 5 Is there something like asthma or is there  
 6 something that --  
 7 A. Yeah. Seizures, diabetes, I think  
 8 actually the way the questions reads,  
 9 seizures, diabetes, muscle or nerve problems,  
 10 and some of it is -- it doesn't even need to  
 11 be followed. I think one of the question is  
 12 have you lost consciousness or loss of bodily  
 13 control. Well, if you did it because you got  
 14 too hot at football practice, then that  
 15 might -- we'll just get one thing from your  
 16 doctor that says, hey, he just had one little  
 17 thing that he lost consciousness at football  
 18 practice, never happened before, hasn't  
 19 happened since, and he still has to wait six  
 20 months before he gets his license if you lose  
 21 consciousness or loss of bodily control. But  
 22 then after that point we might get one follow-  
 23 up from a doctor and not need another one.

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1 Q. How do you know to do that at that  
 2 point? How do you know six months -- how do  
 3 you know, well, let's call the doctor, let's  
 4 call the football coach or --  
 5 A. Well, we send it to the person, but  
 6 we have medical standards, and those are set  
 7 forth by our medical advisory board. We have  
 8 a board that consists of eighteen physicians,  
 9 and they provide guidance on what we should do  
 10 for certain -- those certain conditions.  
 11 Q. Do all of your guidelines in the  
 12 medical unit come from the medical advisory  
 13 board?  
 14 A. Yes.  
 15 Q. Is the board -- you said it's  
 16 eighteen members on the board?  
 17 A. Uh-huh, eighteen physicians.  
 18 Q. All eighteen physicians?  
 19 A. Uh-huh.  
 20 Q. All Alabama physicians?  
 21 A. Yes.  
 22 Q. How are they selected?  
 23 A. They're -- we contact -- or

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1 actually I think it says our director will  
 2 contact the Alabama Medical Association -- I  
 3 believe that's the correct terminology -- and  
 4 they will in turn send us names. We may say  
 5 we need a vision specialist because we try to  
 6 keep a variety of different physicians on the  
 7 board and so then they'll send us a name.  
 8 Q. So when they're creating, for  
 9 example, vision -- vision standards, the whole  
 10 board is going to vote on something -- well,  
 11 let's start at the beginning, I guess. Who  
 12 crafts the initial guidelines, do you know?  
 13 A. I don't know.  
 14 Q. Would you see -- okay. Also all  
 15 you know is that you see the finalized, what's  
 16 been approved by the advisory board?  
 17 A. Right. Now, I think the medical  
 18 unit -- I believe they still do -- has a  
 19 meeting with the board I think maybe once  
 20 every two years, and they go over any changes  
 21 that may be needed. For instance, they do a  
 22 lot more with your vision now than they --  
 23 than previously due to different surgeries and

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1 things like that. So they may discuss  
2 something like that, you know, or they may  
3 not -- they meet -- they have to have six to  
4 have a quorum and they do it teleconference,  
5 and so -- I haven't been privy to those in  
6 quite some time, but I did attend two.  
7 Q. Are you allowed to attend as many  
8 as you want?  
9 A. Uh-huh.  
10 Q. Can the public attend?  
11 A. No.  
12 Q. Okay. How come you have that  
13 privilege I guess?  
14 A. Well, I did as the supervisor. And  
15 then I could still as the manager if they  
16 needed -- like if their supervisor couldn't be  
17 there, they might say, you know, we want a  
18 supervisor there in addition to the unit  
19 commander, which is a sergeant, a state  
20 trooper sergeant, and he's always there.  
21 Q. On the guidelines, if there's a  
22 gray area with the guidelines, what do you do  
23 as the supervisor or even as the manager

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1 possibly?  
2 A. If we get -- on the guidelines or  
3 on paperwork that we receive that maybe  
4 doesn't fit into the guidelines?  
5 Q. Let's do paperwork that doesn't --  
6 A. I'm sorry.  
7 Q. No, that's okay. That's a good  
8 question. Yeah, paperwork that's received and  
9 you don't -- you know, it doesn't comply  
10 necessarily?  
11 A. Right. We would actually send it  
12 to an odd number of doctors on the board and  
13 let them all read over the documentation and  
14 advise us on what they feel like would be the  
15 appropriate further response from us.  
16 Q. Do you come up with suggestions and  
17 send them the suggestions --  
18 A. Huh-uh.  
19 Q. -- or do you just say we have a  
20 problem here?  
21 A. We have -- they have the  
22 standards. They look at the standards that  
23 they were involved in and then look at the

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1 particular condition and then advise them on  
2 which way they might need to continue.  
3 Q. So the only thing you would be  
4 sending is the facts of what's happening?  
5 A. Uh-huh. When it comes to the  
6 medical information that we receive, because  
7 we're not physicians we can just take it at  
8 face value as to what it says, you know.  
9 Q. And when you say odd number, I  
10 guess you mean three or more?  
11 A. Right, right.  
12 Q. Okay. So not one?  
13 A. No.  
14 Q. Okay.  
15 A. And the majority rules.  
16 Q. Okay. Who do you report to?  
17 A. I report to Sergeant Brian Duke.  
18 Q. Who does Brian Duke report to?  
19 A. Lieutenant Melissa Hubbard.  
20 Q. And then -- I'm going to go up the  
21 chain.  
22 A. That's fine. That's fine. And  
23 then Lieutenant Hubbard reports to Captain

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1 John Archer. And then Captain Archer reports  
2 to Chief Deena Pregno. And then Chief Pregno  
3 reports to Colonel Charles Ward. And then  
4 Colonel Ward reports to Secretary Hal Taylor.  
5 Q. Okay. I'm going to read it back  
6 from the top down to make sure I have it. So  
7 Secretary Hal Taylor, Ward, Pregno, Archer --  
8 A. Uh-huh.  
9 Q. I might have missed Lieutenant --  
10 A. Hubbard.  
11 Q. -- Hubbard. And then we have Duke?  
12 A. Uh-huh.  
13 Q. And then you?  
14 A. Uh-huh.  
15 Q. How often do you interact with  
16 Chief Deena Pregno?  
17 A. Daily.  
18 Q. Okay. What about Brian Duke?  
19 A. Daily.  
20 Q. Daily. And Archer?  
21 A. Daily.  
22 Q. And Hubbard?  
23 A. Daily.

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1 Q. Okay. It sounds like you don't  
2 have any authority to make any policy?  
3 A. No. We just follow policy.  
4 Q. Would you ever be a part of any  
5 meetings? Do they ever have brainstorming  
6 meetings or --  
7 A. Sure. Yes.  
8 Q. Could you give an example or two of  
9 what those might look like or --  
10 A. Well, for instance, now we're  
11 developing a new license, which is the  
12 hardship license, for individuals to get a  
13 license so they can work, pay their tickets  
14 off, and straighten out what problems they  
15 have. It's a limited license. And I've been  
16 involved in meetings to help in the  
17 development of that. The same thing with the  
18 interlock requirement for those individuals  
19 that receive a DUI.  
20 Q. Who is -- who are in those  
21 meetings?  
22 A. Usually Chief Pregno, somebody from  
23 our legal unit, IT personnel, and then usually

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1 we'll get the people that are going to be  
2 involved in actually working those documents  
3 when they come in. Sometimes those senior  
4 people will be in there just so we can try to  
5 develop the process.  
6 Q. The senior people who work on the  
7 documents, can you explain that a little?  
8 A. Like the unit -- the people in the  
9 unit that are going to be receiving that mail,  
10 opening it up, and processing it in the  
11 computer.  
12 Q. So, for example, some of those  
13 people are people that work under you?  
14 A. Right, right.  
15 Q. How many people are under you at  
16 this time?  
17 A. Let's see. I have -- hold on just  
18 a minute. Directly under me or indirectly?  
19 Directly under me I supervise six. And then  
20 they each have a unit under them. Well, most  
21 of them do. Some don't.  
22 Q. So directly six. Maybe give me an  
23 estimate of indirectly. So if you were to go

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1 all the way down the tree.  
2 A. I would say probably twenty.  
3 Q. Twenty total including the six  
4 or --  
5 A. No.  
6 Q. -- twenty plus the six?  
7 A. No. In addition to.  
8 Q. Okay. And that's all people in the  
9 main office?  
10 A. That's the people that I supervise  
11 in the main office.  
12 Q. You supervise?  
13 A. Right.  
14 Q. You don't have any supervisory duty  
15 over anyone in the field offices, right?  
16 A. No, huh-uh.  
17 Q. Okay. Do you know Jeannie Eastman?  
18 A. I do.  
19 Q. How do you know her?  
20 A. I supervised her. When I came on  
21 in the reinstatement unit in '07 she was a  
22 driver's license specialist and worked for me.  
23 Q. What's her current position?

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1 A. Driver's license supervisor.  
2 Q. Is that -- that's similar to the  
3 role you had previously?  
4 A. Uh-huh.  
5 Q. Okay. So she's one level down I  
6 guess?  
7 A. Exactly.  
8 Q. Sorry if these terms are --  
9 A. That is exactly right.  
10 Q. Okay.  
11 A. That's right.  
12 Q. But she didn't take your previous  
13 job? She didn't take your actual --  
14 A. She did take my position, yes.  
15 Q. Okay. Is she directly --  
16 A. But I don't supervise her.  
17 Q. Got you. Who is her supervisor?  
18 A. Brian Duke, Sergeant Brian Duke.  
19 Q. So you have the same direct  
20 supervisor, although you're one level higher?  
21 A. Right. We're on different floors  
22 is really pretty much the only reason it's  
23 like that. It's just more convenient.

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1 Q. Okay. Could you describe your  
2 understanding of her responsibilities?  
3 A. Well, she -- you know, she's the  
4 supervisor of the commercial driver's license  
5 unit, as I was. And so she would oversee that  
6 they process medical cards accurately because  
7 drivers are required to send those in.  
8 They're time sensitive so they have to go on  
9 the record, you know, pretty quick. She  
10 supervises the medical -- the people that  
11 generate the paperwork and review the  
12 paperwork in the medical unit.  
13 Q. Now, is it best to call it -- would  
14 you want me to call it policy order 63 or what  
15 would be best?  
16 A. That's fine.  
17 Q. Is it okay if I call it that?  
18 A. Sure.  
19 Q. And you know what I'm talking  
20 about --  
21 A. Sure.  
22 Q. I'm talking about the sex -- yeah.  
23 Tell me how the medical unit relates to the

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1 policy order 63.  
2 A. I'm not sure I understand the  
3 question.  
4 Q. That's fine. So policy order 63,  
5 someone is making decisions about whether or  
6 not -- checking it off -- whether to make the  
7 actual change from M to F, right?  
8 A. Right, right.  
9 Q. Because all it really gives is  
10 someone changing an M to F in a computer  
11 database, right?  
12 A. Correct.  
13 Q. Who are making -- who's making  
14 those decisions?  
15 A. The way I understand it now -- now  
16 I'm not in that unit any longer. But the way  
17 I understand it now, the paperwork comes in --  
18 I'm not sure who -- if Jeannie works it  
19 directly or if she has a specialist or  
20 somebody that works for her that reviews them  
21 directly. But if there's any question, then  
22 they would take it to Jeannie if there was a  
23 question. But they would just -- they would

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1 read that form or read the letter that we get  
2 in from the physician or look at the birth  
3 certificate to see, you know, that it does say  
4 it's amended or whatever and then apply that  
5 policy and review the form.  
6 Q. Okay. I'm going to get to that a  
7 little bit later.  
8 A. Okay.  
9 Q. I'm going to ask you if you could  
10 describe the responsibilities of Deena  
11 Pregno.  
12 A. She is over the entire driver's  
13 license division, which includes examining in  
14 the field, everybody at headquarters. Her  
15 responsibility -- she works closely with IT  
16 and developing new like licenses or new  
17 restrictions, depending on what the  
18 legislature passes, what laws they pass that  
19 affects driver licensing. She makes a lot of  
20 big decisions, meets with vendors.  
21 Q. Vendors. Can you explain?  
22 A. As far as if we need -- if we're in  
23 the market for any new equipment, you know,

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1 testing tablets or anything like that.  
2 Q. Is there anything else?  
3 A. No. That's kind of a nutshell  
4 definition.  
5 Q. Look at these charts right here.  
6 You've somewhat explained -- could you  
7 explain -- this is Plaintiff's Exhibit 1.  
8 (Plaintiff's Exhibit Number 1 was  
9 marked for identification. A copy  
10 is attached.)  
11 Q. I'm going to hand you this.  
12 A. Okay.  
13 Q. And just read the title at the top  
14 right here.  
15 A. Customer records?  
16 Q. Yes.  
17 A. Driver's license manager.  
18 Q. Yes. That's good. So your current  
19 position is at the top of customer records  
20 right now. This might be -- is this outdated?  
21 A. Yes. Yes. This one is actually a  
22 vacant position for a manager. They want to  
23 make another manager and this is the manager

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1 that they want to make. I'm more in customer  
 2 service as opposed to customer records.  
 3 Q. Okay. It has here -- your name is  
 4 one down from driver's license manager here,  
 5 correct?  
 6 A. Right, yes. So this is old, yeah.  
 7 Q. Okay. What year do you think this  
 8 is from?  
 9 A. It's --  
 10 Q. You might have to look at some  
 11 other names.  
 12 A. Yeah, let me look. It could be  
 13 anywhere from '07 to 2012.  
 14 Q. And you see that Jeannie Eastman is  
 15 kind of on the same level below driver's  
 16 license manager there?  
 17 A. Correct.  
 18 Q. So this is your old position of  
 19 driver's license supervisor?  
 20 A. Correct.  
 21 Q. And this is outside of the nine  
 22 months that you were in reinstatement?  
 23 A. Yes, sir.

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1 Q. So other than the nine months you  
 2 were in reinstatement, were you in the medical  
 3 unit/CDL for the rest of that time?  
 4 A. Until I was promoted, yes, sir.  
 5 Q. To manager. And you see Jerrolynn  
 6 Spencer is below you there as driver's license  
 7 specialist?  
 8 A. Yes, sir.  
 9 Q. Do you know Jerrolynn Spencer?  
 10 A. I do.  
 11 Q. How do you know her?  
 12 A. She worked for me.  
 13 Q. Okay. Could you describe a little  
 14 bit about her position there and how maybe it  
 15 evolved over time?  
 16 A. Well, when she worked for me, what  
 17 she did was she processed medical forms that  
 18 we got back in. Like I said, when the  
 19 examiner -- when the person comes in and gets  
 20 their license, you know, checks on the form  
 21 that, yes, I have diabetes, they send the form  
 22 into the medical unit. The medical unit,  
 23 which would be, for instance, Jerrolynn, she

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1 gets that form, sends it back -- sends another  
 2 form to the licensee that has a little bit  
 3 more information on it telling the licensee  
 4 you need to take this to your physician and  
 5 get it completed and have it back in here to  
 6 us within thirty days or however long they --  
 7 fourteen days, thirty days. I don't remember.  
 8 Q. And she's just simply going off the  
 9 guidelines as she's been given --  
 10 A. Uh-huh.  
 11 Q. -- that has come from the medical  
 12 advisory board at some point?  
 13 A. Right.  
 14 Q. So you don't currently work in  
 15 customer records?  
 16 A. No, I do not.  
 17 Q. But you did at some point?  
 18 A. Yeah. Well, no. It wasn't called  
 19 customer records -- I never heard that, but I  
 20 guess that's how they had it on the chart.  
 21 Q. Okay. Now I'm going to show you  
 22 Plaintiff's Exhibit 2.  
 23 (Plaintiff's Exhibit Number 2 was

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1 marked for identification. A copy  
 2 is attached.)  
 3 Q. This one says customer services.  
 4 A. Uh-huh.  
 5 Q. And your name is here at the top,  
 6 correct?  
 7 A. Right.  
 8 Q. Explain a little bit about customer  
 9 services and -- yeah.  
 10 A. Okay. Well, it's like I said  
 11 before, it's the units that I supervise. We  
 12 deal with a lot more people that come in --  
 13 walk-ins as far as paying reinstatement fees,  
 14 trying to solve their problems like they  
 15 didn't get their driver's license, renewing by  
 16 mail. If they have a problem renewing online  
 17 they get in touch with us. It's just more of  
 18 the customer service oriented part.  
 19 Q. And that's what you currently do?  
 20 A. Yes.  
 21 Q. And I'm seeing here -- I'm mostly  
 22 connecting here how we have driver improvement  
 23 down below, which is driver's license

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1 supervisor Walt Foster?  
2 A. Yeah, he's retired now.  
3 Q. Okay. Do you have an idea from  
4 some of these names that are on here what --  
5 what would you estimate the year to be for  
6 this table?  
7 A. It has to be at least eighteen  
8 months old, I mean, you know, eighteen months  
9 ago because, like I said, Mr. Foster is not  
10 here anymore. Let's see. That person is  
11 gone. Yeah, it's probably older than that.  
12 But that would be at least eighteen months  
13 ago.  
14 Q. It's correct in as much as that --  
15 that's -- you are still currently the manager  
16 of customer services?  
17 A. Correct. Yes, sir.  
18 Q. Now here is the -- this one there  
19 is a date on it. And if it's wrong, just  
20 please let me know. This is Plaintiff's  
21 Exhibit 3.  
22 (Plaintiff's Exhibit Number 3 was  
23 marked for identification. A copy

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1 A. She -- let me see if I can -- let  
2 me find her name. Okay. So she is -- she was  
3 a commander over driver's license division --  
4 examining division in the field. She worked  
5 out on Coliseum Boulevard.  
6 Q. Is that one location or is that --  
7 A. Well, she had a region which  
8 included Opelika -- I believe Selma was in the  
9 region. I'm not a hundred percent sure  
10 because they change those around sometimes.  
11 But, yeah, she was a region commander.  
12 Q. And she moved up at some point.  
13 You might not know the year. When do you  
14 think she was promoted to a higher position?  
15 Did she go -- do you know -- happen to know  
16 did she go straight to division chief or was  
17 she --  
18 A. She did. She went straight to  
19 division chief. It was after the  
20 consolidation, so just a guess, '15 maybe,  
21 '16. Probably '15, if I had to guess.  
22 Q. I'm about to wrap this stuff up  
23 about this part. Who held the position before

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1 is attached.)  
2 Q. It says driver's license division  
3 command staff.  
4 A. Uh-huh.  
5 Q. So the division chief now would be  
6 Deena Pregno, correct?  
7 A. Correct.  
8 Q. And I believe you are on here.  
9 A. At the very bottom.  
10 Q. At the very bottom.  
11 A. Yeah.  
12 Q. Yeah. And that is -- what I was  
13 going to ask you was that's -- as in where you  
14 are on the chart here, this hasn't changed  
15 where you're currently on Plaintiff's Exhibit  
16 3. You're still in that position today?  
17 A. Sure, uh-huh.  
18 Q. The same as you were April 1st of  
19 2013?  
20 A. Yes, sir.  
21 Q. Okay. And I see that Deena Pregno  
22 was -- can you tell me where she is at on here  
23 and then how she's moved up since 2013?

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1 you did?  
2 A. Pat Bryant.  
3 Q. Do you happen to know how long Pat  
4 Bryant was in that position?  
5 A. No, I don't.  
6 Q. Can you explain about policy order  
7 63 and its creation or when you first became  
8 aware of it?  
9 A. Well, as I understand it, when I  
10 went into the medical unit in '07 there wasn't  
11 a policy 63. We had a procedure on how we  
12 handled sex changes, but we didn't really have  
13 a policy. And by procedure I mean just --  
14 this is just what our -- because we didn't get  
15 that many at that time this is just what we  
16 do. And so then -- I don't know -- I can't  
17 say who. Somebody said, well, we need a  
18 policy because more people were inquiring and  
19 then they would want to see, where is that in  
20 writing or do you have a policy on that or  
21 whatever. And so the legal unit got involved  
22 at that point and developed the policy. Now,  
23 the first time I saw it, I couldn't tell you.

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1 Probably around 2000 and -- they probably  
2 started working on it sometime in 2011 maybe,  
3 2012. I'm not sure.  
4 Q. So they probably started working on  
5 the actual policy in 2011, around that time?  
6 A. That's a guess, yes.  
7 Q. Okay. What was the procedure then  
8 in 2007?  
9 A. That we would change the sex in the  
10 record with a doctor's letter that the doctor  
11 had to have performed the surgery, and it  
12 needed to say it was completed.  
13 Q. What surgery?  
14 A. The sex reassignment surgery.  
15 Q. Which one?  
16 A. I don't know. I don't know.  
17 That's just what the policy was that the  
18 doctor that performed the sex reassignment  
19 surgery would write in the letter that this  
20 person has undergone sexual -- I performed the  
21 surgery, the procedure, on this individual and  
22 it's been completed.  
23 Q. Okay. Were there any words -- as

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1 long as the words surgery was on there, then  
2 they would make the change?  
3 A. Yes. And it might say sex  
4 reassignment surgery. That's what we're --  
5 that's kind of what we were looking for it to  
6 say, they had completed the sex reassignment  
7 surgery.  
8 Q. Who told you that -- what to look  
9 for?  
10 A. I think the commander of the  
11 medical unit prior to me going in there.  
12 That's the way they had always handled it.  
13 And his name was Terry Chapman.  
14 Q. So Terry Chapman, commander of the  
15 medical unit, told you that's what we're  
16 doing?  
17 A. Well, I don't know if he told me  
18 directly. When I went into the unit then  
19 this -- you know, when a situation comes up,  
20 if you don't know, well, how do we handle this  
21 situation or whatever, then you may ask  
22 somebody. But I think -- just a guess --  
23 ultimately my guess would be that it came from

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1 him since he was the commander for several  
2 years prior to that.  
3 Q. Was this procedure ever written  
4 down?  
5 A. Huh-uh, not that I'm aware of.  
6 Q. Someone -- you just heard it in the  
7 hallway or --  
8 A. In the office.  
9 Q. You probably don't remember the day  
10 that you asked I guess?  
11 A. Oh, no.  
12 Q. Did someone tell you in a training?  
13 A. No. It was probably when we  
14 received either a telephone call or a  
15 letter --  
16 Q. And so --  
17 A. -- as to inquiring as to what they  
18 needed to do. And at that particular time  
19 changing the sex -- physically going in and  
20 changing it in the system there were only --  
21 you know, the medical unit was about the only  
22 unit that could do that is why it filtered  
23 through that unit.

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1 Q. How many people were in the medical  
2 unit at that time?  
3 A. Probably between six and ten.  
4 Q. Could all of those individuals make  
5 the change?  
6 A. No. Just the supervisor and maybe  
7 one other designee.  
8 Q. Did the other -- did the -- not the  
9 supervisor, not the designee. Did the  
10 other -- were the other people in the medical  
11 unit aware of this procedure?  
12 A. Yes. Well, and I can only speak  
13 for the -- when I was in there. Now, when I  
14 didn't work in there I don't know what they  
15 were aware of. But when I worked in there,  
16 even the people that didn't, you know, process  
17 that or whatever, they would know of the  
18 procedure.  
19 Q. But they just couldn't -- and when  
20 you say make the change, you mean change the M  
21 to an F or vice versa?  
22 A. Right, in the system  
23 programmically.

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1 Q. How long does that take?  
2 A. It's quick.  
3 Q. Like under thirty seconds to make  
4 the change?  
5 A. Oh, yeah.  
6 Q. Do you know Destiny Clark?  
7 A. No.  
8 Q. Do you know Darcy Corbitt?  
9 A. No, I don't.  
10 Q. Have you ever seen their names on  
11 anything?  
12 A. Not that I recall.  
13 Q. So you remember that there was talk  
14 around -- well, I'm not going to put words in  
15 your mouth. You heard rumors or something.  
16 Explain a little bit about when you knew that  
17 they were going to make the unwritten  
18 procedure something a little bit more  
19 official?  
20 A. Explain.  
21 Q. Did you -- well, you heard -- you  
22 said that you heard at some point around 2011,  
23 you're not sure on the year, that they were

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1 going to go from -- someone said -- you  
2 couldn't recall. Someone said we should write  
3 this down or something like that.  
4 A. Right.  
5 Q. Could you go into a little bit more  
6 detail about that?  
7 A. I'm still not quite clear but --  
8 probably because we were getting inquiries as  
9 to do you have this written down, what's your  
10 policy on this. And we didn't have a set  
11 policy. And so someone -- probably the  
12 medical unit commander -- again, just an  
13 assumption -- contacted the legal unit and  
14 said we need to get this in policy  
15 somewhere --  
16 Q. And --  
17 A. -- this is our procedure now and  
18 went from there.  
19 Q. You don't know of a meeting that  
20 took place?  
21 A. No, not that I'm aware of.  
22 Q. You weren't a part of any emails  
23 that might have been circulated about making

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1 this more official, right?  
2 A. I may have been consulted as far as  
3 do you know what the policy that we have or  
4 what is our procedure now when they started  
5 working on it. I don't know for sure. I  
6 don't remember if I got an email on it or not.  
7 Q. And what did you say when they  
8 asked you?  
9 A. That I'm not aware of one. We had  
10 a procedure but we didn't have a policy.  
11 Q. Okay. When they asked you about  
12 the procedure, what did you tell them?  
13 A. This is what we do, yes.  
14 Q. Did you ever give your opinion on  
15 it?  
16 A. As far as --  
17 Q. What did you think about the  
18 procedure? I'll ask that first. What did you  
19 think about the procedure?  
20 MR. CHYNOWETH: Object to the form.  
21 A. I felt like it was -- you know,  
22 because I'm not a physician, I can't determine  
23 anything. But I felt like it was okay if they

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1 had -- if they had surgery then they would be  
2 able to get a letter from the physician.  
3 Q. What about people who don't have  
4 surgery?  
5 A. Actually at that time when I was  
6 working in the medical unit I didn't have that  
7 many that didn't -- there were some I guess  
8 that came up. Basically if you didn't have  
9 the surgery we couldn't change the sex.  
10 Q. What did you think about that?  
11 MR. CHYNOWETH: Object to the form.  
12 A. Well, following guidelines, you  
13 know, which is what we have to do, I can't  
14 really have an opinion. You know, this is  
15 just what we have to do, you know, you don't  
16 need the guidelines or what we've set forth,  
17 so --  
18 Q. You're still human, I guess. Okay.  
19 A. Well, you would know. Yeah. And  
20 I'm very compassionate to people.  
21 Q. Did anyone ever complain?  
22 A. Yeah, I'm sure they did. I can't  
23 list -- I can't name anybody in particular,



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1 but I'm sure they did.  
2 Q. Do you remember anyone being upset  
3 or were they sad?  
4 A. Uh-huh, I remember talking to some  
5 sad people.  
6 Q. How did that make you feel?  
7 MR. CHYNOWETH: Object to the form.  
8 A. Obviously compassion for them.  
9 Q. You felt bad?  
10 A. Right. Just like anybody we  
11 can't -- we can't help, you know.  
12 Q. I understand. Do you know what --  
13 what problem were they trying to address with  
14 the procedure?  
15 A. As far as -- most of the time  
16 they -- if I'm answering -- if I'm  
17 understanding the question correctly, they  
18 just had -- maybe they would say they had gone  
19 through part of the whole procedure, like  
20 maybe they had lived as a different sex, you  
21 know, for a certain amount of time or whatever  
22 but they just hadn't gone to the surgery part,  
23 and so -- and I've been living like this for,

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1 you know, five years or whatever and -- that's  
2 probably the biggest that I can remember.  
3 Q. Why did the medical unit require  
4 surgery --  
5 A. I don't know.  
6 Q. -- as a requirement? Did you ever  
7 ask?  
8 A. No, I didn't.  
9 Q. So you were never a part of any  
10 meetings about the creation of the policy  
11 order 63, right?  
12 A. Huh-uh, I don't -- I don't recall  
13 going into any meetings about it.  
14 Q. No one ever asked your opinion  
15 about -- because, I mean, I feel like you are  
16 pretty high up. I'm almost surprised they  
17 didn't ask you, you know, what do you think we  
18 should do?  
19 A. The only thing they ever asked me  
20 is what do we do, what have we done to this  
21 point, and we've done this.  
22 Q. And it's your testimony today that  
23 they were the ones who kind of were going to

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1 create it?  
2 A. Right.  
3 Q. Do you know who those people were  
4 that were creating the policy?  
5 A. I spoke with an attorney by the  
6 name of Karen Lowe. That's the only person I  
7 contact -- that I had talked to about it.  
8 Q. Is that an attorney for ALEA?  
9 A. ALEA, uh-huh.  
10 Q. You don't know of any meetings  
11 taking place?  
12 A. No, sir, I don't.  
13 Q. What's your involvement with the  
14 medical unit once you became driver's license  
15 manager?  
16 A. Very little, very little. The only  
17 way I would get involved in anything with the  
18 medical unit at that point is if their  
19 supervisors, which means Sergeant Duke or  
20 Ms. Eastman were gone and they needed  
21 something right then.  
22 Q. Who's currently running the medical  
23 unit.

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1 A. Sergeant Brian Duke is the  
2 commander, and then Supervisor Eastman is  
3 right under him as the supervisor.  
4 Q. And about how many people are under  
5 Ms. Eastman?  
6 A. Well, let's see. She probably has  
7 at least ten, including the CDL unit, because  
8 they're kind of -- they're in the same office,  
9 but I think they've kind of separated their  
10 duties. Used to both the units were so small  
11 that everybody kind of did a little bit of  
12 everything. But now I think they've branched  
13 off, but they are still in the same location.  
14 Q. Do their duties -- do people hop  
15 back and forth when it comes to their duties?  
16 A. I don't think they do that. Like I  
17 said, I don't have a lot of dealings with  
18 them, but I think she's pretty much got it  
19 outlined that these people do this and these  
20 people do this. Now, in the event -- they're  
21 cross-trained, I'm sure, that somebody could  
22 fill in for somebody else.  
23 Q. Was that Ms. Eastman's idea?

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1 A. Well, just because the unit grew so  
2 much, and so they -- and CDL took on a whole  
3 lot more responsibility than they had at one  
4 time due to some federal regulations that we  
5 had to implement. And so they had to -- it  
6 couldn't be like it was. They had to strictly  
7 define what needed to be done by whom so they  
8 can -- there could be some accountability.  
9 Q. Do you know whose decision that  
10 was?  
11 A. To do that?  
12 Q. Yes.  
13 A. Probably Sergeant Duke I would  
14 imagine -- and Jeannie. They probably met  
15 together and decided.  
16 Q. And they could do that without  
17 going any farther up the chain?  
18 A. Right. They're still considered  
19 the same unit. It's just how they assign  
20 work.  
21 Q. How many people would you say are  
22 primarily medical unit, although they may be  
23 cross-trained?

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1 A. Now, I don't know the exact number  
2 cause I -- they all sit in there together,  
3 so -- I would say approximately maybe five,  
4 six at the most maybe.  
5 Q. Do you know who those individuals  
6 are?  
7 A. There's a new girl in there I don't  
8 know her name. But I know there's a Jean  
9 Head, Emily Baggett, Jackie Cutter, Jerrolynn  
10 Spencer, and like I said the new girl. And  
11 they may have one other one that answers --  
12 one other administrative assistant one that  
13 answers the phone. I'm not sure. She may  
14 answer the phone for both units.  
15 Q. Now, I'm a little confused on the  
16 policies and I was hoping you could help me  
17 out a little bit. I -- this will be -- what  
18 are we on -- 4. This will be Plaintiff's  
19 Exhibit 4.  
20 (Plaintiff's Exhibit Number 4 was  
21 marked for identification. A copy  
22 is attached.)  
23 Q. Now I know the date on this one.

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1 Could you read the date on this one?  
2 A. 7-1-2015.  
3 Q. Okay. Now, this is going to be  
4 Plaintiff's Exhibit 5. There is no date here.  
5 (Plaintiff's Exhibit Number 5 was  
6 marked for identification. A copy  
7 is attached.)  
8 Q. Do you know when this policy was?  
9 A. I believe it was around 2011 or  
10 '12. I think around '12, 2012.  
11 Q. Okay. And this one is kind of like  
12 the shorter one. I can tell you where it is  
13 in the discovery if that will be helpful for  
14 the record. It's discovery number 160.  
15 A. Now, this one -- oh, I'm not sure  
16 because that -- that one may even be more  
17 recent than that. These two probably came  
18 along not far from each other. I think this  
19 one just goes into detail more at the bottom.  
20 Q. Okay. I don't know if this will  
21 help. I think in the responses there was --  
22 policy order 63 was issued in 2012 and was  
23 revised on July 1st, which would be here,

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1 2015, which is Plaintiff's Exhibit 4. And  
2 then policy order 63 was revised again in  
3 April of 2016. Now, this one -- there's a  
4 date on an email here. This will be  
5 Plaintiff's Exhibit 6, and it's two pages. In  
6 the discovery it's 491 and 492. I'm going to  
7 hand this to you.  
8 (Plaintiff's Exhibit Number 6 was  
9 marked for identification. A copy  
10 is attached.)  
11 Q. Now, this is dated September 7th,  
12 2017.  
13 A. Uh-huh.  
14 Q. Could you say who it's from and who  
15 it's to on the email?  
16 A. It's from Jeannie Eastman and to  
17 Brian Duke.  
18 Q. And what does the subject say?  
19 A. Gender change policy 3 -- or gender  
20 change. Excuse me.  
21 Q. And then the attachment says?  
22 A. Gender change policy 3.  
23 Q. Okay. Now, does this look like the

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1 revised policy to you?  
2 A. The one -- this one right here?  
3 Q. Yes. Is this the 2016 revised  
4 policy?  
5 A. I don't know.  
6 MR. BOONE: Is it okay if we take a  
7 break?  
8 (Break taken.)  
9 BY MR. BOONE:  
10 Q. I'm going to enter this as  
11 Plaintiff's Exhibit 7. It's the original  
12 policy from 9-1-2012, driver's license policy  
13 order number 63, and this is D1. The second  
14 page of Plaintiff's Exhibit Number 7 is D2  
15 from discovery. And it's the current most  
16 up-to-date policy of policy order 63.  
17 (Plaintiff's Exhibit Number 7 was  
18 marked for identification. A copy  
19 is attached.)  
20 Q. And I'm going to get you to look at  
21 this. Could you turn to the second page,  
22 which is the most updated policy?  
23 A. Uh-huh.

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1 Q. I'm going to read the first  
2 paragraph, and if you could just explain what  
3 that means to you. It is the policy of the  
4 chief of the driver's license division that an  
5 individual wishing to have the sex changed on  
6 their Alabama driver's license due to gender  
7 reassignment surgery are required to submit to  
8 an examining office or the medical unit the  
9 following. Just stopping there, what does  
10 that -- how would you interpret that?  
11 A. That if they needed a sex change on  
12 their driver's license and it wasn't due to a  
13 typographical error that they would have to  
14 present the next statement.  
15 Q. So either to -- what about the  
16 examining office or the medical unit?  
17 A. Oh, that they could -- that was  
18 just to be more convenient for them where they  
19 didn't have to send it in to the medical  
20 unit. They could go in to an examiner. Prior  
21 to this they had to send everything through  
22 the medical unit.  
23 Q. Like the person wanting the change

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1 would have to send it in the mail themselves?  
2 A. They would have to submit it to the  
3 medical unit, yes.  
4 Q. But now the examining office will  
5 put on the stamps and everything like that?  
6 A. Right, right.  
7 Q. Or is it faxed or --  
8 A. Well, they would -- they would take  
9 the documentation in, and at this point they  
10 would call the medical unit to make the change  
11 and then based on -- they would show them or  
12 fax them or scan and email the documents they  
13 had so they could all review it.  
14 Q. So an examiner could make a  
15 decision in the field office about whether or  
16 not the change should take place?  
17 A. If they had that letter from the  
18 physician.  
19 MR. CHYNOWETH: Can you let him  
20 finish his question?  
21 THE WITNESS: Oh, I'm sorry. I  
22 thought you were finished.  
23 MR. CHYNOWETH: That's okay.

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1 MR. BOONE: Yeah. Thanks for  
2 saying that, Brad.  
3 Q. And another thing they told me -- I  
4 didn't notice it -- make sure to say yes or  
5 no, not just uh-huh or -- just to make it  
6 easier. I didn't notice it but I think a  
7 couple times.  
8 Okay. I'm going to go back to  
9 that. So someone in the examining office they  
10 get -- they get a document that says surgery  
11 on it, right?  
12 A. Yes.  
13 Q. What would they do next?  
14 A. They would review the document.  
15 That's what it tells them down here in the  
16 document, you know, that it looked okay. If  
17 they had any doubts about the document, they  
18 would contact the medical unit. If the -- you  
19 know, it pretty much outlines it there, but  
20 they would look over it to see that it says  
21 that the person -- what they are looking for  
22 is to see that the physician said that they  
23 had had the surgery, it was completed, and

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1 that that doctor performed the surgery.  
2 Q. And what does completed -- you  
3 don't know what completed means?  
4 A. That I guess that they were  
5 finished with whatever they needed to do for  
6 the sex reassignment.  
7 Q. Does it matter what the -- what  
8 type of surgery it was?  
9 A. Not that I'm aware of. That's not  
10 listed.  
11 Q. In number one here it stays -- I'm  
12 going to read it -- an amended state certified  
13 birth certificate and/or a letter from the  
14 physician that performed the reassignment  
15 procedure. The letter must be on a  
16 physician's letterhead. Could you explain how  
17 you would understand that?  
18 A. The letter needed -- it couldn't be  
19 just be on a piece of plain paper. It would  
20 need to have a phone number where we could  
21 call and verify the letter and the physician's  
22 information.  
23 Q. How many times have you made a

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1 decision on a letter's authenticity?  
2 A. Oh, I couldn't guess how many.  
3 Numerous.  
4 Q. Over a hundred?  
5 A. No, I wouldn't think over a  
6 hundred, no.  
7 Q. Closer to fifty?  
8 A. Probably. Between fifty and a  
9 hundred maybe. That's just a guess.  
10 Q. How many times did you call a  
11 physician's office?  
12 A. I didn't call a physician's  
13 office. I would ask -- usually ask someone  
14 that works for me to call a physician's  
15 office.  
16 Q. Does that include when you were a  
17 supervisor?  
18 A. Yes.  
19 Q. Okay. So when you were driver's  
20 license supervisor you would never make that  
21 phone call?  
22 A. Not usually, no.  
23 Q. But you have made the phone call?

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1 A. I can't recall any phone calls I  
2 made.  
3 Q. It's possible you called a  
4 physician's office.  
5 A. It's possible. I just can't  
6 recall.  
7 Q. Who would you instruct to make the  
8 phone call to a physician's office?  
9 A. At that time I had a young lady  
10 that worked for me named Katie Pouncey and she  
11 would usually do that for me.  
12 Q. How come you would delegate that to  
13 her?  
14 A. Because I had to review a lot of  
15 different documents for a lot of different  
16 conditions, not just sex reassignment, but a  
17 lot of different conditions that would come  
18 in. And so I would go through them and write  
19 what needed to be done on them, and then hand  
20 it to her for her to follow up for me.  
21 Q. For example, you would write male  
22 to female or female to male --  
23 A. Right.

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1 Q. -- at the top?  
2 A. Right. Or anything that I wanted  
3 to remember on there. I would also make notes  
4 on there.  
5 Q. On the actual document that they  
6 submitted?  
7 A. Right.  
8 Q. Would you ever write something like  
9 we need to call the doctor, for example?  
10 A. Sometimes. I usually had stacked  
11 that I -- she had -- she had bins on her desk,  
12 this could be completed and this needed  
13 follow-up.  
14 Q. Okay. So what would your  
15 instructions be if it needed to -- if a phone  
16 call needed to be made to a physician?  
17 A. Check on this one to make sure it's  
18 good, something to that effect.  
19 Q. And she would understand that to  
20 mean that means I need to call the doctor's  
21 office?  
22 A. Uh-huh.  
23 Q. And what would she do --

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1 A. Yes, I mean. Yes. I'm sorry. I'm  
2 sorry. I'm sorry.  
3 Q. To me I get used to it. But what  
4 would she do at that point?  
5 A. Contact the physician's office when  
6 she worked those, you know, when she got to  
7 that point.  
8 Q. What would she ask?  
9 A. Well, I don't know. I was in my  
10 office. I couldn't -- I'm assuming she would  
11 call and just say I want to verify -- we  
12 received a letter from you regarding this  
13 patient, can you tell me what the letter said.  
14 Q. But you are her supervisor, right?  
15 A. Uh-huh.  
16 Q. And you have no idea what she said?  
17 A. I don't know the exact verbiage  
18 that she used, but that's -- that's pretty  
19 much how we would do it.  
20 Q. As far as you know the only thing  
21 she's asking is just connecting the name to  
22 the physician's office, right?  
23 A. And making sure that the letter

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1 said what it said, what -- because we -- we  
2 have -- I know of one instance that we got --  
3 well, I don't know if it was on a sex  
4 reassignment, but we have gotten documents  
5 that contained -- that said that it was, you  
6 know, from the doctor, it looked like it was  
7 on the doctor's letterhead, but there was  
8 something suspect about it. And it didn't  
9 really -- it was reproduced. The doctor  
10 didn't really say that. It was a forgery.  
11 Q. What part of it was forged?  
12 A. The paragraph in it.  
13 Q. So someone had actually --  
14 A. Not for this -- not for these  
15 particular situations. Excuse me.  
16 Q. Oh, so this -- it has nothing to do  
17 with sex change?  
18 A. Not necessarily, no.  
19 Q. Okay.  
20 A. We've just gotten documents that  
21 were.  
22 Q. So you've never gotten a forgery  
23 related to changing the sex?

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1 A. I think we have had one that I can  
2 think of off the top of my head, one.  
3 Q. Do you know what the forgery was?  
4 A. It was a long time ago. I just  
5 remember -- I didn't -- I didn't deal with it  
6 in the beginning. I can -- no, I don't -- I  
7 know what the forgery was.  
8 Q. So you don't know if someone forged  
9 a signature. You don't remember?  
10 A. (Witness shakes head.)  
11 Q. You don't remember if they changed  
12 the words in the letter, but maybe --  
13 A. That's what I'm thinking it was,  
14 was that the information in the paragraph was  
15 incorrect.  
16 Q. But you're not sure?  
17 A. (Witness shakes head.) No.  
18 Sorry. I need to realize I need to talk.  
19 Q. Can you give me an example or tell  
20 me when you would ever say no to someone  
21 asking for a sex change in the system?  
22 A. If they presented documentation  
23 that said -- that didn't say what we needed it

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1 to say, which is right here, that the sex  
2 reassignment surgery has been completed and  
3 that I'm the physician that completed the  
4 surgery.  
5 Q. What if it just said surgery? What  
6 if they -- what if they forgot or -- I don't  
7 want to assume, but what if it just said  
8 surgery and it didn't say gender reassignment  
9 or sex reassignment on there?  
10 A. Then we would probably say we need  
11 to -- the doctor needs to be more specific.  
12 Q. So that would be an instance  
13 where --  
14 A. We would contact the license -- the  
15 person that submitted it, the licensee and  
16 just say we need your doctor to be a little  
17 bit more specific on this.  
18 Q. What if they said, I mean, some  
19 people get surgeries done in other countries.  
20 What if they're unable to get another letter?  
21 A. Well, then they can get -- if they  
22 can get an amended birth certificate we would  
23 take that.

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1 Q. So something as small as missing a  
2 word could keep somebody from getting the  
3 change in the system?  
4 A. It could, yes.  
5 Q. What if someone has a letter that  
6 it says hormone treatments? What happens  
7 then?  
8 A. We would more than likely tell them  
9 that we had to have more information.  
10 Q. And do some letters -- they don't  
11 specify what type of surgery, right?  
12 A. Right. It just needs to say sex  
13 assignment -- reassignment surgery.  
14 Q. So if someone were to get breast  
15 augmentation and the doctor wrote sex  
16 reassignment surgery they would be approved,  
17 right?  
18 A. Yes, if -- if it said sex  
19 reassignment surgery, yes.  
20 Q. It says here that -- in number two  
21 down in the middle of this which is -- it's  
22 the policy order 63, the most updated  
23 version. On number two it says if a physician

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1 correctly, Ms. Eastman just said we got -- you  
2 know, legal signed off on the policy order.  
3 Q. Were you working the medical unit  
4 at that time?  
5 A. Now, are you talking about the '16  
6 one or the initial one?  
7 Q. The initial one.  
8 A. Oh, yes, I was in the medical unit  
9 then.  
10 Q. And you don't remember seeing an  
11 email or anything?  
12 A. No, not -- no. I believe they just  
13 came down and handed it to us and said that  
14 they got it finished. I don't remember. I  
15 don't recall an email.  
16 Q. Okay. But you remember seeing a  
17 document and looking over a document --  
18 A. Yes.  
19 Q. -- that looks like the ones we're  
20 looking at today?  
21 A. Yes.  
22 Q. Is there anything different about  
23 the documents we're looking over today?

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1 letter is presented there is no need to  
2 contact the physician unless there's some  
3 doubt as to the authenticity of the letter.  
4 Many of the surgeries are performed in other  
5 countries. It sounds like you all went  
6 outside of that. There were times where  
7 you're not doubting the authenticity of the  
8 letter. You just wanted something more  
9 specific, right?  
10 A. Right.  
11 Q. You didn't think the letter was a  
12 forgery. You just thought, well, maybe it's  
13 missing sexual reassignment. It just says  
14 surgery or --  
15 A. Right, it didn't meet what we  
16 needed it to meet according to the policy.  
17 Q. Were you ever notified whenever  
18 policy order 63 came out?  
19 A. I don't know. I'm sure I was.  
20 Q. You don't remember an email or  
21 anything?  
22 A. No. I believe I was just notified  
23 just verbally. I believe, if I remember

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1 A. Well, the initial, what, from '12  
2 to '16? I mean, these are the documents that  
3 I saw.  
4 Q. Yes. Plaintiff's Exhibit 7, which  
5 is number one in the discovery, is this what  
6 you first saw?  
7 A. Yes. Wait. Let me make sure.  
8 Yes.  
9 Q. Now, when you were talking about  
10 the procedure, that was unwritten, right?  
11 A. Right.  
12 Q. Could you have changed it? Could  
13 you have changed the unwritten procedure?  
14 A. Could I have made a different  
15 decision if I was reviewing a document? Yes.  
16 Q. And did you ever?  
17 A. I may have.  
18 Q. How come?  
19 A. Just -- I don't -- maybe getting in  
20 a hurry or maybe it didn't say the exact  
21 wording of our procedure, but we didn't have  
22 it in writing to go back and refer to it this  
23 is just the way we do it. I can't remember a

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1 time, but I may have.  
2 Q. Do you think you ever did it in the  
3 favor of the person that's asking for the  
4 change --  
5 A. Yes.  
6 Q. -- when maybe you weren't supposed  
7 to?  
8 A. Probably.  
9 Q. What about the other way around?  
10 Did you basically rule in the individual's  
11 disfavor even though probably they should have  
12 had the change?  
13 A. No.  
14 Q. So it was only in favor of the  
15 person asking for the sex change?  
16 A. Probably, yes.  
17 Q. What were you told about the policy  
18 whenever it was the official policy order 63  
19 in 2012?  
20 A. I'm not sure I understand the  
21 question.  
22 Q. Did they just hand you the document  
23 or did they say we decided to write it down

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1 for these reasons, this is why?  
2 A. Well, I knew they were working on  
3 it because we didn't have one. And so when it  
4 was completed they just said, okay, we've got  
5 the policy completed.  
6 Q. To your knowledge, the only reason  
7 they wrote it down was because they -- there  
8 was -- these cases were coming up more often  
9 or -- I was a little confused on your  
10 testimony earlier. Explain why -- from what  
11 you remember, why did they write it down?  
12 A. We didn't have anything written  
13 down and you like to have standards to go by  
14 and we had more cases that -- people that were  
15 inquiring. And so we just felt like it -- you  
16 know, we had so many different scenarios come  
17 up in the driver's license division. Some  
18 come up once every five years. Some come up  
19 more often. And so this was coming up more  
20 often and we just needed to have some  
21 guidelines.  
22 Q. And what were they going off of?  
23 What were the guidelines based off of?

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1 A. They were based on our procedure  
2 that we did prior to.  
3 Q. The unwritten procedure?  
4 A. Yes, sir.  
5 Q. But you don't know who came up with  
6 the unwritten procedure?  
7 A. Oh, no, sir, unless -- unless it  
8 was -- no, I don't know. I don't know.  
9 Q. You don't know where they got that  
10 from, if they got it from another state or if  
11 they got it -- you have no idea where the  
12 unwritten --  
13 A. No, sir.  
14 Q. You just said, okay, that's the  
15 rule.  
16 A. They said this is what we do and  
17 that's what we did.  
18 Q. And you never questioned it?  
19 A. It was the procedure.  
20 Q. How did ALEA inform the public  
21 about the policy orders whenever it came out  
22 in 2012?  
23 A. And by public just meaning people

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1 that called in inquiring about it?  
2 Q. No. I mean, how did they inform  
3 the community that's not asking about it  
4 necessarily?  
5 A. I don't know.  
6 Q. Did they put out a press release?  
7 A. I don't know.  
8 Q. From your knowledge, there was no  
9 press release?  
10 A. I don't -- I don't know.  
11 Q. There was no announcements?  
12 A. I don't know.  
13 Q. Was it posted in any DMV offices?  
14 A. I don't know.  
15 Q. You don't know if it was posted on  
16 the wall of any DMV offices?  
17 A. No, sir.  
18 Q. And you never asked?  
19 A. No, sir.  
20 Q. But if someone were to call in once  
21 you have the paper policy would you tell them  
22 what the policy was?  
23 A. Yes, sir. Yes, sir.

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1 Q. What if they asked what surgeries  
2 were necessary?  
3 A. We would just tell them what our  
4 policy was. They needed to say complete --  
5 complete sexual reassignment surgery. I mean,  
6 the sexual reassignment surgery has been  
7 completed and that was it.  
8 Q. What would you say to someone, for  
9 example, if they were to say I can afford to  
10 get my testicles removed but not my penis,  
11 will that be enough for me to get the change  
12 on my license?  
13 A. What we would say, because I'm not  
14 a physician, is if your physician writes in  
15 and says this, then that's what we'll take.  
16 Q. And you would say as long as  
17 there -- as long as they -- it says sex  
18 reassignment surgery is complete, then you're  
19 good to go, right?  
20 A. Yes, sir. Yes, sir. I'm sorry.  
21 Yes, sir.  
22 Q. It's okay. When someone applies  
23 for a driver's license for the first time,

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1 what documentation must they present?  
2 A. A state certified birth certificate  
3 and a Social Security card and proof of  
4 address. And then if any name change they  
5 would need to have a name change document.  
6 Q. And that's when they apply for the  
7 first time?  
8 A. Yes, sir.  
9 Q. Is there anything else?  
10 A. Well, if they're fifteen to  
11 eighteen years of age they'll need to provide  
12 school proof. Now, if they're not a U.S.  
13 citizen then they would need their immigration  
14 documents. They can also present a valid U.S.  
15 passport.  
16 Q. If someone wants to trade in an  
17 out-of-state license for an Alabama license,  
18 what documentation must they present?  
19 A. Their out-of-state driver's license  
20 and their state certified birth certificate  
21 and then any name change document and proof of  
22 address or the -- anything on our authorized  
23 presence list but, yes, that's the meat and

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1 the potatoes.  
2 Q. When people first apply for a  
3 driver's license in Alabama, does anyone ever  
4 ask them from ALEA down if they are  
5 transgender?  
6 A. No, sir.  
7 Q. Would you agree that if a  
8 transgender person applying for an Alabama  
9 license for the first time presented  
10 documentation only reflecting the sex with  
11 which they identify and not the sex they were  
12 assigned at birth they would receive an  
13 Alabama license with a sex designation that  
14 matched the sex designation on their other  
15 documents?  
16 MR. CHYNOWETH: Object to the  
17 form.  
18 MR. BOONE: How come? I just want  
19 to make sure I'm -- can you answer the  
20 question?  
21 A. Can you repeat it cause it's kind  
22 of long?  
23 Q. It's long. If someone -- if

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1 someone is -- if the only documents that the  
2 DMV sees are documents of the sex that they  
3 identify with, would they receive an Alabama  
4 license with that sex designation?  
5 A. Are we talking about a birth  
6 certificate?  
7 Q. Yes.  
8 A. If they had a birth certificate --  
9 Q. Or --  
10 A. -- then that's the sex that we're  
11 going to use on the birth certificate.  
12 Q. Are birth certificates always  
13 required to get an Alabama license?  
14 A. You could bring your passport or  
15 your immigration documents.  
16 Q. So if someone brings in a  
17 passport --  
18 A. Uh-huh.  
19 Q. -- and it states female, what's the  
20 designation that's going to be put on their  
21 license?  
22 A. It would be female if we don't have  
23 anything to the -- you know, if you present



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1 two documents that are different, you know,  
2 just like if you came in and your name was  
3 John Smith on one document and John Jones on  
4 the other document, we operate on a paper  
5 trail documentation. So what brought it from  
6 John Smith to John Jones, the document that  
7 changed it? But if you brought in a passport  
8 that said female, your Social Security card,  
9 and your proof of address, then that's what  
10 would be put on your driver's license.  
11 Q. Okay. What if there is a  
12 contradiction? What if, for example, someone  
13 has one sex on their passport, one sex on  
14 their Social Security card? What would you do  
15 in that situation?  
16 A. Well the Social Security doesn't  
17 have a sex on it, so --  
18 Q. Okay.  
19 A. But if they --  
20 Q. Is there another -- can you give me  
21 an example of a contradictory situation?  
22 A. Let's say that they had a birth  
23 certificate and their out-of-state driver's

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1 license.  
2 Q. And they're different. Okay.  
3 A. Had two different sexes on it. We  
4 would want to see what -- why is there -- why  
5 is this not the same? Was it a typographical  
6 error with the state? What -- what -- what is  
7 this?  
8 Q. If the person responded it's a  
9 typographical error on my birth certificate,  
10 this is my sex though from my out-of-state  
11 license, is that what would be put into the  
12 license?  
13 A. On the birth certificate? We're  
14 going to go by what the birth document has.  
15 That's what we use on everything. Now, if  
16 it's different on the driver's license, we  
17 just have to see that trail that got us to  
18 where we are.  
19 Q. If you don't see the trail, then  
20 the birth certificate --  
21 A. Would be the default probably,  
22 yes. Yes, it would be the default.  
23 Q. Is that written somewhere?

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1 A. Or either -- no. Or either we  
2 would tell them we're going to have to find --  
3 we're going to have to delve into this a  
4 little deeper. We might have to contact that  
5 other state. We have to see -- we have to  
6 determine why it went from one to the other.  
7 Q. Where are you getting that from?  
8 Are there guidelines for that? You said that  
9 the birth certificate is the default. Is that  
10 an Alabama code?  
11 A. No. No. That's just the  
12 document -- that's their birth document --  
13 that's the document that -- that's their --  
14 like the first document that they use. That's  
15 what we go by.  
16 Q. How come?  
17 A. Now, that's in our -- that's in our  
18 training. That's in their examiner's manual  
19 that they bring in their birth certificate.  
20 That's what it is. We don't even -- that's  
21 why we don't take a state certified birth -- I  
22 mean, an out-of-state license by itself. You  
23 have to have a state certified birth

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1 certificate to accompany that. And that is in  
2 our procedures for examining.  
3 Q. If someone -- for example, if a  
4 transgender man were to come in with a birth  
5 certificate that said male and a driver's  
6 license that said male, you all would put male  
7 into the system, right?  
8 A. Yes.  
9 Q. And I think we already know this.  
10 I'm just clarifying. There's no form that  
11 someone has to turn in to get the sex change  
12 on the license, right?  
13 A. No, sir.  
14 Q. Is the policy with the out-of-state  
15 driver's license that you referred to where  
16 they have to have a birth certificate, is that  
17 a new policy?  
18 A. No.  
19 Q. How old is that policy?  
20 A. Well, it's probably in the past ten  
21 years maybe. I don't know. I don't know  
22 exactly.  
23 Q. If you were to -- within the past

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1 five years do you think?  
2 A. Yes, sir. Yes, sir.  
3 Q. But maybe within the past ten  
4 years. So it's somewhat of a new policy?  
5 A. That wouldn't be new to me, but  
6 right.  
7 Q. Yeah, I got you. And do you know  
8 where that policy came from?  
9 A. No, I don't.  
10 Q. Did it come from the legislature?  
11 You're unaware if it came from the  
12 legislature?  
13 A. I'm -- I don't know.  
14 Q. Okay. Do you -- when individuals  
15 are making the change in the system from male  
16 to female, female to male, does it ever have  
17 to go through a supervisor?  
18 A. No.  
19 Q. Is that the way it currently works  
20 in the medical unit?  
21 A. Yes. At one time it came from the  
22 supervisor's office, but not any longer.  
23 Q. Okay. Does Jeannie Eastman see

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1 every change in the system?  
2 A. Not that I'm aware of, no.  
3 Q. It's possible that people could  
4 change it on their own without Jeannie Eastman  
5 ever knowing it, right?  
6 A. It's possible. I don't know how  
7 they operate up there now because I don't work  
8 in the medical unit any longer.  
9 Q. Remind me, at the time when you  
10 were there is it possible that the supervisor  
11 doesn't see every change in the system?  
12 A. Not for the sex change at that time  
13 because I was only one of the few that could  
14 change it.  
15 Q. Could you name the people that can  
16 concurrently change it?  
17 A. I don't know everybody that can  
18 change it. I know that I can change it and  
19 the help desk can change it and then the  
20 medical unit can change it. That's all I'm  
21 aware of at headquarters that can change it.  
22 And they may be able to change it in the  
23 field.

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1 Q. When was the last time you made a  
2 change in the system or denied a change in the  
3 system?  
4 A. Me personally?  
5 Q. You personally.  
6 A. Oh, goodness. I don't know an  
7 exact time. It's been a long time.  
8 Q. Since 2015 have you?  
9 A. I just don't -- I can't say for  
10 sure. If I did any, it wasn't very -- it  
11 hasn't been very many. One, two possibly.  
12 Q. I remember you said you've had  
13 around maybe fifty opportunities to make  
14 changes or it's come before you, right?  
15 A. (Witness nods.)  
16 Q. Be sure to say yes.  
17 A. Yes. Yes.  
18 Q. What percentage of those times do  
19 you estimate a physician's office needed to be  
20 called out of those, around fifty?  
21 A. That I handled? I don't know. Not  
22 very many.  
23 Q. Is there any way you could give a

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1 percentage?  
2 A. No.  
3 Q. Like five percent?  
4 A. Maybe two to five percent.  
5 Q. Do you know about other people who  
6 have the ability to make changes? Do you know  
7 the percentage they might call a physician?  
8 A. I do not.  
9 Q. That's never come up in any type of  
10 conversation?  
11 A. No, sir.  
12 Q. What measures does the medical unit  
13 or -- anyone who has the ability to call a  
14 physician, what measures do they take to  
15 protect the privacy of the applicants?  
16 A. That's why they don't discuss  
17 what's in the letter. They ask the doctor to  
18 say what kind of letter did you -- what was  
19 contained in the letter that you sent me  
20 because we just say the name, we got a letter,  
21 can you verify that it's dated this date. And  
22 then if the doctor elaborates, then that's  
23 fine, but we don't -- we don't -- and we only

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1 discuss anything with just the person or the  
2 physician's office, not anybody that calls in  
3 and asks any question or anything.  
4 Q. When there's a call to a  
5 physician's office, could it be to anyone in  
6 the office?  
7 A. We usually -- I'm assuming -- I  
8 didn't call a lot of physician's offices. I  
9 would always ask for the office manager and  
10 then say that I -- you know, explain to them  
11 that I received a letter.  
12 Q. So it wasn't always the actual  
13 doctor?  
14 A. No. It's hard to reach the doctor.  
15 Q. Did you ask permission of the  
16 applicants before you made a call to the  
17 physician's office?  
18 A. No.  
19 Q. Does anybody ever ask the  
20 applicants beforehand?  
21 A. No. I don't know that answer.  
22 Q. As far as you know, no one calls  
23 the applicants to ask permission to look up

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1 Q. What was all said when you make  
2 those -- those conversations?  
3 A. It's usually this just doesn't have  
4 all the information we need, can you get some  
5 clarification on it.  
6 Q. Have you ever heard anyone in the  
7 office ever say something or be upset about  
8 not being able to change the sex designation  
9 for somebody?  
10 A. I'm sure there's been some people  
11 that were upset. I'm sorry. Excuse me.  
12 Rephrase that.  
13 Q. Sure. I'll rephrase it.  
14 A. Okay.  
15 Q. Have any of your colleagues --  
16 A. Oh, no, no, no.  
17 Q. -- ever been upset that they  
18 couldn't change because the policy restricted  
19 them from changing?  
20 A. Oh, no, sir. I'm sorry. I thought  
21 you meant people that called in.  
22 Q. Has anyone -- any of your  
23 colleagues ever expressed an opinions about

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1 their medical record?  
2 A. I don't know.  
3 Q. Has anyone at ALEA ever explained  
4 the purpose of the policy to you?  
5 A. Other than just to say we need  
6 documentation, no. I mean, no.  
7 Q. They never said why they need  
8 documentation?  
9 A. We need documentation on a lot of  
10 different things, name changes, all that type  
11 thing.  
12 Q. Have you ever talked to colleagues  
13 about applications to change sex designations  
14 that were denied?  
15 A. Have I ever talked to my colleagues  
16 about it? No, sir.  
17 Q. But you have shared at least to  
18 call a physician, you've talked -- you've  
19 delegated the responsibility?  
20 A. Sure.  
21 Q. So you've talked to them in some  
22 way, right?  
23 A. Yes.

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1 the policy, either positively or negatively?  
2 A. No, sir, not that I recall, other  
3 than the fact that we needed one.  
4 Q. Other than the fact that they just  
5 need the policy, that you need to enforce it,  
6 have you heard anyone else at ALEA discussing  
7 anything else about the policy?  
8 A. No. No, sir.  
9 Q. Do you agree with the policy?  
10 MR. CHYNOWETH: Object to the form.  
11 A. Yes, sir, I agree with the policy.  
12 Q. Why?  
13 A. From a standpoint of documentation  
14 it -- I just -- we operate as an identity  
15 document and everything that we do has to have  
16 a paper trail. And so that falls in line with  
17 the paper trail.  
18 Q. So if someone is seeing a doctor  
19 but hasn't had surgery, you still have a paper  
20 trail, correct?  
21 A. Yes, sir.  
22 Q. It's still a document. How come  
23 that's not good enough?

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1 A. I don't know.  
2 Q. In your personal opinion do you  
3 think that's good enough?  
4 A. If it just said what?  
5 Q. If it says that I'm receiving  
6 clinical treatment from a doctor, for example,  
7 is that good enough?  
8 A. No. I don't feel it's good enough,  
9 only from an -- I think about individuals that  
10 possibly are found unconscious or dead on the  
11 road and they're trying to make an identity of  
12 that person and that might hinder that if they  
13 couldn't make a good, you know, identification  
14 of that person based on that.  
15 Q. Are you saying that police officers  
16 can't identify a body if there's no license  
17 close by?  
18 A. I'm not a police officer so I don't  
19 know. This is just me thinking. We've always  
20 just gone by documentation and so -- I just  
21 think that they need documentation supporting  
22 that.  
23 Q. So you would agree that clinical

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1 treatment documentation is enough?  
2 A. I have to go by what the policy --  
3 MR. CHYNOWETH: Enough for what?  
4 Q. Enough to make the sex change in  
5 the system.  
6 A. It doesn't really matter what I  
7 think. I have to go by the policy.  
8 Q. You are the -- you're the driver's  
9 license manager, right?  
10 A. But I have policy I have to follow  
11 or I won't be the driver's license manager.  
12 Q. That's fair. So you don't know why  
13 Alabama doesn't just require clinical  
14 treatment?  
15 A. No, sir, I don't.  
16 Q. What do other states require?  
17 MR. CHYNOWETH: Object to the form.  
18 A. It varies.  
19 Q. Do they all require surgery?  
20 A. It varies. Some do. Some don't.  
21 Q. What do -- do more states require  
22 surgery -- I'm not wording this correctly.  
23 Do you know if the majority

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1 requires surgery?  
2 A. I can't recall. We -- we -- I  
3 don't know. I was thinking it came up at a  
4 conference I was at one time, but I don't  
5 remember.  
6 Q. So it wouldn't surprise you if you  
7 found out that the majority do not require  
8 surgery?  
9 A. It wouldn't surprise me, no, I  
10 don't guess.  
11 Q. Do you think identifying bodies in  
12 other states is different than identifying  
13 bodies in Alabama?  
14 A. No, sir.  
15 Q. Since you've the driver's license  
16 manager and you've worked at ALEA since 1991,  
17 do you think that genitals have anything to do  
18 with driving?  
19 MR. CHYNOWETH: Object to the form.  
20 A. No, sir.  
21 Q. Does genitals really have anything  
22 to do with everyday life when it comes to  
23 identification in your opinion?

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1 MR. CHYNOWETH: Object to the form.  
2 A. Everyday life? No, but it can  
3 have -- it can be another identifier.  
4 Q. In what circumstance?  
5 A. As far as -- if it's -- I don't --  
6 the way I look at it -- or the way we run into  
7 it at work, a lot of times another state will  
8 call us and say I've got a John Smith here in  
9 Alabama that has a bad record there. He's  
10 saying he's never been there. Well, what we  
11 do is we look at, you know, all the  
12 identifiers and see if that is that person,  
13 and that's just another one that helps  
14 identify.  
15 Q. So that's one of the only reasons?  
16 MR. CHYNOWETH: Object to form.  
17 A. That's all I can think of.  
18 Q. Some states don't require any type  
19 of documentation from doctors, correct?  
20 A. I guess. I'm not a hundred percent  
21 sure.  
22 Q. I don't know if I -- I don't think  
23 I'll submit this into evidence. I'm sure

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1 Gabriel will or we'll do it on another day.  
2 Are you aware of the resource guide from the  
3 AANBA? Have you ever seen this before, the  
4 resource guide on gender designation on  
5 driver's licenses and identification cards?  
6 A. I've never seen -- sorry. I've  
7 never seen that, no.  
8 MR. CHYNOWETH: Might as well put  
9 that into evidence.  
10 Q. Okay. I'll enter this into  
11 evidence as Number 8. This is the resource  
12 guide on gender designation on driver's  
13 licenses and identification cards. It is also  
14 marked in the discovery from pages 338 through  
15 380.  
16 (Plaintiff's Exhibit Number 8 was  
17 marked for identification. A copy  
18 is attached.)  
19 Q. I can hold off on that. Sorry. I  
20 was just going to show you -- it's just going  
21 to take too much time and I don't have the  
22 page -- actually I just pulled to it. Wow.  
23 That was fortunate.

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1 Does it look like -- from your  
2 experience -- how many states on there require  
3 surgery? And we're looking at page -- let me  
4 mark it. It's page 364 in the discovery. And  
5 the title of this page is U.S. Jurisdiction  
6 Driver's License and ID Card Policies. And it  
7 has a breakdown of different policies in  
8 different states. Now, this is from 2016, so  
9 I know there have been changes in some states.  
10 A. Okay.  
11 Q. How many states require surgery?  
12 A. Let's see. There's nine -- it  
13 looks like nine roughly.  
14 Q. And it looks like some states -- it  
15 looks like eight, nine, ten states don't  
16 require a form; is that correct?  
17 A. Yes.  
18 Q. So they would have no need for a  
19 paper trail; is that right?  
20 A. Well, it says certification  
21 accepted from medical or mental health  
22 providers. That would be documentation.  
23 Certification there would be documentation.

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1 And certification only accepted from limited  
2 range of health care providers, so there  
3 are -- there is a paper trail.  
4 Q. Okay. Is the -- I'm trying to see  
5 if the District of Columbia is on there.  
6 A. Yeah.  
7 Q. I don't know if a simplified form  
8 is required. My understanding is that it is  
9 only affirmation, but I don't have it right  
10 here in front of me. So I won't ask you about  
11 that --  
12 A. Okay.  
13 Q. -- since I don't have it in front  
14 of me, and it's not fair for you to answer on  
15 that. So I'm not going to do that.  
16 Do the terms gender reassignment  
17 surgery and reassignment procedure in the  
18 policy refer to the same thing?  
19 A. Yes.  
20 Q. What's your understanding of the  
21 term reassignment procedure in the policy?  
22 A. That they had surgery to  
23 irreversibly -- had irreversible surgery to

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1 change their sex.  
2 Q. But the word irreversible doesn't  
3 have to be there, correct?  
4 A. No, no.  
5 Q. What's the difference between sex  
6 and gender?  
7 A. I don't know.  
8 Q. On a driver's license can  
9 individuals change their height?  
10 A. They can.  
11 Q. What's required for that?  
12 A. They can tell us or either we have  
13 measurements in most of the offices on the  
14 wall they can see.  
15 Q. But you don't measure everybody,  
16 right?  
17 A. No.  
18 Q. There's no paper trail, right?  
19 A. No.  
20 Q. What about when individuals change  
21 their weight?  
22 A. No.  
23 Q. There's no paper trail?

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1 A. Right, because we don't start with  
2 anything.  
3 Q. You don't weigh them though?  
4 A. No.  
5 Q. Do you think everyone's weights are  
6 close to what they actually weigh?  
7 A. Oh, no.  
8 Q. So you would say that the weights  
9 are markedly different from actuality?  
10 A. Yes, I would.  
11 Q. Could that have a difference in  
12 identifying a body?  
13 A. It could.  
14 Q. Or could that make a difference in  
15 any type of identification?  
16 A. Possibly, yes.  
17 Q. Could individuals change their hair  
18 color on their license?  
19 A. Usually we put natural hair color,  
20 but it doesn't say natural hair color.  
21 Q. If someone has been, you know,  
22 dying their hair blonde for thirty years even  
23 though they're a brunette and they say can you

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1 put blonde on my license, would you make that  
2 change?  
3 A. Possibly, yes, sir.  
4 Q. You wouldn't do any type of  
5 testing?  
6 A. No.  
7 Q. There would be no paper trail,  
8 right?  
9 A. No.  
10 Q. I'm skipping some of these  
11 questions because we've been going for a  
12 little bit. If someone appears outwardly  
13 female but their license says male, do you  
14 think that would confuse a police officer when  
15 it comes to identification?  
16 MR. CHYNOWETH: Object to the form.  
17 A. Yeah, I don't know. I guess it  
18 would depend on the police officer. I don't  
19 know.  
20 Q. Hypothetically, would a police  
21 officer be confused if there was a woman  
22 wearing a dress, makeup, long hair, breasts, a  
23 feminine name, a feminine voice, and the woman

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1 person states she's a woman but her Alabama  
2 license says M, would that be confusing for  
3 the officer?  
4 A. Probably.  
5 Q. Not yes? Probably?  
6 A. Yes.  
7 Q. Yes, it would be confusing?  
8 A. It would be confusing.  
9 Q. Do you think the officer -- would  
10 the officer think there might be something  
11 wrong with the license?  
12 MR. CHYNOWETH: Object to the form.  
13 A. He could, yes.  
14 Q. Why is there a gender marker on our  
15 driver's license?  
16 MR. CHYNOWETH: Object to the form.  
17 A. I don't know that answer.  
18 Q. You've been working at the driver's  
19 license office since 1991. You've never  
20 thought about it before?  
21 A. It's just -- it's been on there  
22 since long before I got my driver's license.  
23 It's just -- no, I've never thought about it.

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1 Q. Do you see a problem if there were  
2 to not be a gender marker?  
3 A. Not that I can -- not off the top  
4 of my head, no. Other than it could cause  
5 people problems if they were going in  
6 somewhere. I don't know.  
7 Q. What do you mean?  
8 A. It could just -- it might cause  
9 them issues just because people are used to  
10 seeing that kind of thing on a driver's  
11 license.  
12 Q. Oh. Are you saying that because  
13 there's no sex designation they might -- I'm  
14 confused. Can you --  
15 A. Well, I just think people are used  
16 to seeing that on there, so it -- you know, it  
17 would just -- it could cause a problem I  
18 guess. I don't know.  
19 Q. Do you think that -- you have  
20 worked under the Department of Public Safety  
21 for a while. Do you think that the Department  
22 of Public Safety in Alabama should be  
23 concerned about the safety of all of its

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1 citizens and residents?  
 2 A. Yes.  
 3 Q. Are transgender people still  
 4 citizens and residents of the State of  
 5 Alabama?  
 6 A. Yes.  
 7 Q. Do you think that the Department of  
 8 Public Safety should care about their safety?  
 9 A. Yes.  
 10 Q. Have you ever liked Laura Ingram on  
 11 Facebook?  
 12 A. Have I ever liked her?  
 13 Q. Liked her.  
 14 A. No.  
 15 Q. You know what a -- you know, a like  
 16 on Facebook is when you like someone's page?  
 17 A. (Witness nods.)  
 18 Q. Right? Yes?  
 19 A. Yes, yes, yes. But I've never  
 20 liked Laura Ingram on Facebook.  
 21 Q. I have here Plaintiff's Exhibit --  
 22 (Plaintiff's Exhibit Number 9 was  
 23 marked for identification. A copy

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1 MR. CHYNOWETH: Object to the form.  
 2 A. I have never heard her say that.  
 3 Q. There's more, but -- but -- so you  
 4 didn't answer the question. I mean, do you  
 5 agree with her? I mean, do you -- well, I'll  
 6 just ask you.  
 7 A. Okay. Go ahead.  
 8 Q. Do you think that parents should be  
 9 embarrassed that they have a transgender  
 10 child?  
 11 MR. CHYNOWETH: Object to the form.  
 12 A. No.  
 13 Q. Do you think that hormone therapy  
 14 for a transgender child is child abuse?  
 15 MR. CHYNOWETH: Object to the  
 16 form.  
 17 A. No. But now my knowledge of that  
 18 is very limited, so I don't know what any of  
 19 that would mean.  
 20 Q. Okay. Have you ever liked -- I'm  
 21 skipping some of this. Have you ever liked  
 22 Billy Graham on Facebook?  
 23 A. Yes.

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1 is attached.)  
 2 Q. Okay. I have here Plaintiff's  
 3 Exhibit 9 which is taken from -- I'm assuming  
 4 this is your Facebook page. This is your name  
 5 Diane Crew Woodruff, right?  
 6 A. Uh-huh.  
 7 Q. These looks like things you have  
 8 liked before on Facebook.  
 9 A. Uh-huh. Well, evidently I did.  
 10 There's probably a whole lot more.  
 11 Q. Liked Laura Ingram?  
 12 A. Yes. Sorry.  
 13 Q. Do you know why you liked Laura  
 14 Ingram?  
 15 A. No, I don't.  
 16 Q. Do you agree with Laura Ingram when  
 17 she says that parents should be embarrassed  
 18 when they have a transgender child?  
 19 MR. CHYNOWETH: Object to the form.  
 20 A. I've never heard her say that.  
 21 Q. Okay. So do you agree with Laura  
 22 Ingram when she says hormone therapy for  
 23 transgender people is child abuse?

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1 Q. Okay. Do you agree with Billy  
 2 Graham when he says God gave LGBT people AIDS?  
 3 MR. CHYNOWETH: Object to the form.  
 4 A. No.  
 5 Q. Would you agree with Billy Graham  
 6 when he says the LGBT people and LGBT  
 7 lifestyles contribute to the decay of  
 8 civilization?  
 9 MR. CHYNOWETH: Object to the form.  
 10 A. No.  
 11 Q. I won't keep going. On October  
 12 10th -- let me get this email prepared for  
 13 you.  
 14 (Plaintiff's Exhibit Number 10 was  
 15 marked for identification. A copy  
 16 is attached.)  
 17 Q. Okay. Here we go. This email will  
 18 be marked as Plaintiff's Exhibit 10. It's an  
 19 email from -- yeah, here we go. At the  
 20 bottom -- there's two emails on Plaintiff's  
 21 Exhibit 10, which is also in the discovery as  
 22 1103. It's from Diane Woodruff to Jeannie  
 23 Eastman. It's on October 10th, 2017, at

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1 2:51 p.m. It says here -- here. I'll let you  
2 read it while I read it. It says here Iowa  
3 now changes the gender for transgender  
4 individuals the same way we do. I just  
5 thought you may want to see that for argument  
6 sake. I figure eventually legal in DL will  
7 want to look at the whole process again.  
8 Diane. Did you write that?  
9 A. I did.  
10 Q. What is DL?  
11 A. Driver's license.  
12 Q. What does that mean?  
13 A. The unit, the decision-makers.  
14 Q. Okay. The whole division or just  
15 do you mean like Deena Pregno? Does that  
16 mean -- what people does DL mean?  
17 A. The decision-makers, whoever  
18 makes -- the decision-makers in driver's  
19 license. So I guess that would be Chief  
20 Pregno.  
21 Q. And others?  
22 A. Yes.  
23 Q. At the top?

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1 A. Her command staff.  
2 Q. Her command staff. Who's all in  
3 her command staff? I don't think I ever got  
4 that.  
5 A. We went over it. Captain Archer.  
6 Q. Oh, okay. Those are all the  
7 command staff.  
8 A. Uh-huh.  
9 Q. So is it the line from you up?  
10 A. I'm not always included in it, but  
11 yes.  
12 Q. Are you part of the command staff?  
13 A. Not necessarily, no. I'm the  
14 driver's license manager, but there's a lot of  
15 decisions that they make that I'm not involved  
16 in.  
17 Q. But are you part of the command  
18 staff?  
19 A. Not officially. There's not an  
20 official command staff. That's just what we  
21 say, that's her command staff. And it's  
22 usually the trooper ranks.  
23 Q. So when you say command staff, who

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1 are you referring to?  
2 A. I'm referring from Sergeant Duke up  
3 above me.  
4 Q. Okay. So I'm sorry to make you do  
5 this again.  
6 A. That's okay.  
7 Q. Just so it's clean on the record,  
8 it's Duke --  
9 A. Hubbard, Archer, Pregno.  
10 Q. Okay. Looking back at this email,  
11 what did you mean by legal in DL will want to  
12 look at the whole process again?  
13 A. What we require.  
14 Q. And you're talking about the policy  
15 order 63?  
16 A. Yes.  
17 Q. Why?  
18 A. Just to see if there was some other  
19 options that might be out there.  
20 Q. How come?  
21 A. Because other states were doing  
22 things differently.  
23 Q. Is that --

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1 A. Based on this article evidently.  
2 Q. Is that -- I mean, the inference  
3 from that is that you thought we might -- that  
4 Alabama might not be doing it the right way;  
5 is that correct?  
6 MR. CHYNOWETH: Object to the form.  
7 A. No. It was just for informational  
8 purposes. Honestly I don't remember  
9 everything about this.  
10 Q. What did you mean when you said I  
11 just thought you may want to look to see that  
12 for argument sake?  
13 A. I don't know.  
14 Q. Was there -- this is in October  
15 10th of 2017.  
16 A. Uh-huh.  
17 Q. That's referring to some other type  
18 of conversation about the policy, right?  
19 A. I don't -- I can't answer that. I  
20 don't know.  
21 Q. It would be odd to send this email  
22 out of the blue. I just thought you might  
23 want to see that for argument sake.



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1 A. That's just an expression. I just  
2 say the article and thought that it might be  
3 interesting for her because she deals in this  
4 all the time and talks to individuals all the  
5 time.  
6 Q. Is there an ongoing argument that  
7 Ms. Eastman has about the policy?  
8 A. No.  
9 Q. Were there ever questions about the  
10 policy at any point?  
11 A. No. It's probably just not a very  
12 good choice of words on my part.  
13 Q. So at this time when you sent this  
14 you didn't have any doubts about the policy?  
15 A. No.  
16 Q. Or any -- you didn't have any  
17 doubts about its effectiveness?  
18 A. No.  
19 Q. Okay. The next -- does someone --  
20 I just want to make sure I put the right  
21 number. That was 10. Okay. I'm marking this  
22 as Plaintiff's Exhibit 11.  
23 (Plaintiff's Exhibit Number 11 was

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1 marked for identification. A copy  
2 is attached.)  
3 Q. This is a doctor's letter that  
4 Mrs. Woodruff signed off on. It's from the  
5 Reid Center.  
6 A. Uh-huh.  
7 Q. That is your initials, correct,  
8 DCW?  
9 A. Correct.  
10 Q. And it says here you changed the  
11 sex to female, right?  
12 A. Yes.  
13 Q. So that -- understanding that to  
14 mean you changed the sex in the database from  
15 male to female, right?  
16 A. Correct.  
17 Q. Why did you change it?  
18 A. I guess because she -- they  
19 produced a letter. Now, this was back in  
20 '09. I didn't have -- we didn't have a lot  
21 of -- we didn't have any -- we just had that  
22 procedure. We didn't have a policy.  
23 Q. The unwritten procedure?

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1 A. Right, right.  
2 Q. You don't see the word complete on  
3 the document, do you?  
4 A. Huh-uh. No, sir.  
5 Q. And you don't see the word  
6 irreversible on the document, do you?  
7 A. No, sir.  
8 Q. Do you know what kind of surgery it  
9 was?  
10 A. No, sir.  
11 Q. Could it possibly be breast  
12 augmentation?  
13 A. I don't know.  
14 Q. So it's possible that it could have  
15 been breast augmentation?  
16 A. I assume that's possible.  
17 Q. Okay. I'm marking another document  
18 Plaintiff's Exhibit 11. This is another --  
19 MR. BOONE: Should be 12.  
20 Q. Oh, 12. Thank you. I'm marking  
21 this Plaintiff's Exhibit 12. This is another  
22 doctor's letter that Mrs. Woodruff signed off  
23 on.

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1 (Plaintiff's Exhibit Number 12 was  
2 marked for identification. A copy  
3 is attached.)  
4 Q. Is that your initials at the top,  
5 DCW?  
6 A. Yes, sir.  
7 Q. And did you write that you changed  
8 the sex?  
9 A. Yes, sir.  
10 Q. Meaning you changed it from one to  
11 the other in the system?  
12 A. Yes, sir.  
13 Q. Why did you change it on this  
14 particular person, for this particular person?  
15 A. I guess because it says I performed  
16 an irreversible surgical procedure for the  
17 purpose for altering sex characteristics from  
18 female to male.  
19 Q. Okay. And that was good enough  
20 according to the unwritten policy at that  
21 time?  
22 A. The procedure, yes, sir. I  
23 completed his gender reassignment surgery.

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1 Q. This next one is Plaintiff's  
2 Exhibit 13 that I'll be sharing with you.  
3 It's another doctor's note with  
4 Mrs. Woodruff's initials at the top.  
5 A. Uh-huh.  
6 (Plaintiff's Exhibit Number 13 was  
7 marked for identification. A copy  
8 is attached.)  
9 Q. Is that your initials at the top,  
10 DCW?  
11 A. Yes, sir.  
12 Q. And why did -- and it says at the  
13 top that you changed the gender; is that  
14 correct?  
15 A. Yes, sir.  
16 Q. Meaning in the system you changed  
17 it from one sex to the other?  
18 A. Yes, sir.  
19 Q. And you kind of used gender and  
20 sex -- sometimes you say gender; sometimes you  
21 say sex, right?  
22 A. Yes, sir.  
23 Q. Why did you change it on this

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1 person?  
2 A. The surgical procedure was  
3 performed by me to irreversibly correct his  
4 anatomy and appearance and completed sex  
5 reassignment.  
6 Q. But you don't know what specific  
7 procedure was performed, right?  
8 A. No, sir.  
9 Q. You don't remember -- for any of  
10 these three documents that you just saw, you  
11 don't remember if you needed to call a doctor  
12 for any of those, right?  
13 A. No, sir, I don't.  
14 Q. And, like you said earlier, you  
15 probably wouldn't have cause there would have  
16 been a note on there, correct?  
17 A. Sometimes.  
18 Q. Were there times that you left  
19 documents blank?  
20 A. Uh-huh, possibly.  
21 Q. What does that mean for the person  
22 if the document was left blank?  
23 A. Just an oversight on my part.

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1 Q. Is it possible that people were  
2 changed in the system without any notation  
3 anywhere?  
4 A. By me or by someone else?  
5 Q. I can rephrase that. When you make  
6 a change or anyone else makes a change --  
7 let's just stay with you. When you make a  
8 change in the system, where do you record it?  
9 Other than just, you know, backspace, you  
10 know, F, adding an M or vice versa, where do  
11 you record that you did that?  
12 A. When you do that in the system on  
13 our activity page it should come up with a  
14 programmatic -- like when you change your name  
15 even it will say name change -- or it will say  
16 change. And it will say name, no; whatever,  
17 no; and then whatever you changed you'll have  
18 a yes by it.  
19 Q. So you could find all of the  
20 changes that you've made over time, right?  
21 A. I could?  
22 Q. Somebody could.  
23 A. Yes, I guess. I don't know for

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1 sure.  
2 Q. Because every time there's a change  
3 in the system it's marked in some way?  
4 A. Right, right. But I don't know why  
5 it -- I mean, it could have been changed from  
6 a typo or whatever, but yes. Yes.  
7 Q. Is there any way to distinguish sex  
8 versus name change? Could you pull out all  
9 the sex changes in the past year, for example?  
10 A. For -- due to surgery or due to  
11 anything, we just changed the sex because  
12 it -- I mean, it -- that's all we could get is  
13 just the sex was changed that I'm aware of.  
14 I'm not an IT person, so --  
15 Q. You're saying -- are you saying --  
16 A. What determines -- why did we  
17 change it? There's no way of knowing why it  
18 was -- I mean, we can't differentiate to pull  
19 those, just the ones that were changed due to  
20 this.  
21 Q. If someone were to -- for example,  
22 if you were to change twenty-five people's sex  
23 in the last year, and they said, well, can we

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1 pull and see who those twenty-five people  
2 were, would you be able to -- would someone be  
3 able to see those twenty-five people?  
4 A. I guess, yes. But, again, I'm not  
5 an IT person, but I'm assuming they could.  
6 Q. But other than just the backspace  
7 and adding -- changing the sex in the system,  
8 you're not recording it somewhere else? You  
9 don't keep notes?  
10 A. There is a comments page, and we'll  
11 go in there and add it in comments.  
12 Q. In that person's particular file?  
13 A. Yes.  
14 Q. And is that the end right there?  
15 A. Uh-huh.  
16 Q. So there's no other type of  
17 document that you would mark it in like we've  
18 changed this many people this year, for  
19 example?  
20 A. Not that I'm aware of. They may do  
21 something different now.  
22 Q. So there was not much of a record  
23 of you -- when you were doing this and making

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1 the changes in the system, there wasn't  
2 much -- there wasn't a paper trail?  
3 A. Well, we scanned these documents.  
4 That was our paper trail.  
5 Q. Okay. So just scanning these  
6 documents --  
7 A. And then doc -- and then putting it  
8 in comments.  
9 Q. Putting it in the comments in the  
10 individual file. And then, of course, the  
11 change is somewhat marked in the software  
12 program I guess that there was some -- someone  
13 went in there and made a change. There's got  
14 to be time stamps, right?  
15 A. Yes. Well, I don't know about time  
16 stamps, but there is a change.  
17 Q. Understood. Are you aware in the  
18 state code that sex is required for a driver's  
19 license?  
20 A. No.  
21 Q. Would it surprise you if I were to  
22 tell you that there's no sex requirement in  
23 the state code?

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1 A. Would it surprise me? Probably a  
2 little bit.  
3 Q. Well, I'm not going to do that now,  
4 but it's not in the state code, at least I  
5 can't find it.  
6 MR. BOONE: Is it okay if we take a  
7 short break? But I'm getting close.  
8 (Break taken.)  
9 EXAMINATION  
10 BY MR. CHYNOWETH:  
11 Q. I have just a few questions for  
12 you. Diane, do you know how driver's license  
13 examiners are trained?  
14 A. Yes, because I -- go ahead.  
15 Q. Have you done -- do you train  
16 driver's license examiners?  
17 A. Yes, sir, I do.  
18 Q. Do you train them on proper  
19 procedure for allowing people to update  
20 information on their driver's licenses?  
21 A. Yes, sir.  
22 Q. Are driver's license examiners  
23 trained to allow people to change their height

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1 and weight to anything whatsoever?  
2 A. Not anything. It has to be  
3 something observable that's reasonable.  
4 Q. So if a person who is five feet  
5 tall wants to change the height on their  
6 license to eight feet tall, is the driver's  
7 license examiner trained to allow a person to  
8 make that change?  
9 A. No. The way that they are trained  
10 is that if someone comes in with something  
11 that's like that, a situation like that, then  
12 they'll discreetly tell them we have to have  
13 something that's a little bit more true to  
14 what you are, reasonable or observable.  
15 Q. And would that be the same with  
16 respect to someone's weight?  
17 A. Yes. That's delicate, but yes.  
18 Q. I understand. Would that be the  
19 same with respect to someone's eye color?  
20 A. Yes.  
21 Q. So driver's license examiners are  
22 not trained to allow people to change the  
23 other physical characteristics on their

1 license aside from sex to anything whatsoever?  
2 A. Not anything whatsoever, no.  
3 MR. CHYNOWETH: Okay. I don't have  
4 any further questions.  
5 MR. BOONE: I don't either.  
6  
7 (The deposition of DIANE WOODRUFF,  
8 concluded on November 8, 2018, at  
9 3:23 p.m.)

10  
11 FURTHER DEPONENT SAITH NOT  
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1 REPORTER'S CERTIFICATE  
2 STATE OF ALABAMA )  
3 JEFFERSON COUNTY )  
4 I, Elaine Scott, Licensed Court  
5 Reporter and Commissioner for the State of  
6 Alabama at Large, hereby certify that on  
7 November 8, 2018, I reported the deposition of  
8 DIANE WOODRUFF, who was first duly sworn or  
9 affirmed to speak the truth in the matter of  
10 the foregoing cause, and that pages 1 through  
11 134 contain a true and accurate transcription  
12 of the examination of said witness by counsel  
13 for the parties set out herein.

14 I further certify that I am neither  
15 of kin nor of counsel to any of the parties to  
16 said cause nor in any manner interested in the  
17 results thereof.

18 \_\_\_\_\_  
19 ELAINE SCOTT, Court Reporter  
20 and Commissioner for the State  
21 of Alabama at Large,  
22 CCR License No. 354, Expires 9/30/19  
23 MY COMMISSION EXPIRES NOVEMBER 16, 2019

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DOC. 48-9

# Exhibit 9

## Deposition of Donald Leach Ph.D.

**In The Matter Of:**

*Darcy Corbitt v.*

*Hal Taylor*

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*Donald Leach*

*December 21, 2018*

---

*Tempest Reporting, Inc.*

*175 South Main, Suite 710*

*Salt Lake City, UT 84111*

*(801) 521-5222*

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UNITED STATES DISTRICT COURT  
 MIDDLE DISTRICT OF ALABAMA  
 NORTHERN DIVISION

DARCY CORBITT, et al., :  
 Plaintiffs, : Civil Action No.  
 -v- : 2:18-cv-91-MHT-GMB

HAL TAYLOR, in his official :  
 capacity as Secretary of the : Deposition of:  
 Alabama Law Enforcement : DONALD LEACH  
 Agency, et al., :  
 Defendants. :

Place: TEMPEST REPORTING, INC.  
 175 South Main Street, #710  
 Salt Lake City, Utah 84111

Date: December 21, 2018  
 9:03 a.m.

Reporter: Vickie Larsen, CSR/RMR

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A P P E A R A N C E S

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25 Also Present: (Present by videoconference):

Joshua Block

-oOo-

Page 4

1 Transgender & Intersex

2 Offenders in Jails by

3 Donald L. Leach II, Ph.D.

4

5 style="text-align: center;">-oOo-

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1 December 21, 2018 9:03 a.m.  
2 PROCEEDINGS  
3 (Exhibits 38-44 were marked for identification.)  
4 DONALD LEACH, Ph.D.  
5 called as a witness, having been duly sworn,  
6 was examined and testified as follows:  
7  
8 EXAMINATION  
9 BY MR. ARKLES:  
10 Q. Good morning, Don. My name is Gabriel  
11 Arkles, and I represent the plaintiffs in a lawsuit  
12 Corbitt v. Taylor.  
13 Could you please state your full name for  
14 the record.  
15 A. Donald L. Leach, L-E-A-C-H.  
16 Q. Thank you.  
17 We're communicating by videoconference  
18 today. Can you hear me okay?  
19 A. Yes.  
20 Q. All right. You just let me know if at  
21 any point you can't hear me clearly, all right?  
22 A. Yes.  
23 Q. You've been deposed quite a number of  
24 times before; right?  
25 A. I have.

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1 Q. All right. So I know you already know  
2 this, but I'm going to go over some of the basics  
3 anyway just to be sure.  
4 So -- so, first of all, while we are  
5 doing a videoconference today, there's still going to  
6 be a paper transcript that's created. So I'd like you  
7 to be sure to give answers verbally rather than just  
8 nodding your head or shaking your head or saying  
9 "uh-huh"; is that clear?  
10 A. Yes.  
11 Q. And also I need you to try to avoid  
12 talking over me or anyone else, and I'll try to do the  
13 same; is that okay?  
14 A. Yes.  
15 Q. And if I ask you anything that's  
16 confusing or that just doesn't make any sense, please  
17 say so. Is that okay?  
18 A. Yes.  
19 Q. And if at any point you need to clarify,  
20 correct, or supplement something that you've already  
21 said, that's fine, just let me know and you can go  
22 ahead and do that. Is that okay?  
23 A. Yes.  
24 Q. And of course you can ask for a break at  
25 any time. I just ask that you answer any question

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1 that I have already asked you before we do that. Is  
2 that okay?  
3 A. Yes.  
4 Q. Okay. Thank you.  
5 And can you tell me when you were  
6 retained as an expert in this matter?  
7 A. Approximately August this year.  
8 Q. Okay. And when you -- were you asked to  
9 make any assumptions in preparing your report?  
10 A. Not that I recall.  
11 Q. Okay.  
12 A. And it might have been later than August  
13 that I was retained, because I was driving down the  
14 highway at the time and we were talking at that point,  
15 and I can't remember which state I was in. All I  
16 remember is driving down the highway talking.  
17 Q. All right. So roughly August, but you're  
18 not sure if it was exactly August?  
19 A. Yeah, it might have even been later than  
20 that, actually.  
21 Q. All right. That's fine.  
22 And could you look at what should be  
23 marked as Plaintiff Exhibit 38, please.  
24 A. Okay.  
25 Q. Is this the opinion -- is this the report

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1 that you prepared as an expert in this case?  
2 A. Yes, it appears to be.  
3 Q. Thank you.  
4 And what did you do to prepare your  
5 report?  
6 A. I reviewed the documents that were listed  
7 within this report.  
8 Q. Did you do anything else to prepare the  
9 report, aside from your review of this document?  
10 A. Not that I recall. Discussions with  
11 Brad, that's about it.  
12 Q. And by "Brad," I assume you mean Brad  
13 Chynoweth, who's one of the lawyers for the defendants  
14 here; is that right?  
15 A. Yes.  
16 Q. And did you review any documents that are  
17 not listed in the report when you were preparing the  
18 report?  
19 A. Yes, I have since reviewed a document  
20 that wasn't necessarily used in preparing the report,  
21 but I have reviewed one since, so, yes.  
22 Q. Okay. And what's the document that you  
23 have reviewed since then?  
24 A. This is called the Transgender Offender  
25 Manual. It's a publication by the U.S. Department of

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1 Justice Center of Bureau of Prisons on a policy of  
2 transgender offender management.  
3 Q. Thank you.  
4 And just to be clear, that's something  
5 that you reviewed after writing your report and before  
6 the deposition today; right?  
7 A. Yes.  
8 Q. Okay. Thank you.  
9 And did you write your report from  
10 scratch, or did you build off of something that had  
11 already been written?  
12 A. No, I write everything from scratch.  
13 Q. Thanks.  
14 And aside from reviewing the documents  
15 you mentioned and talking with Brad, is there anything  
16 else that you did to prepare for the deposition today?  
17 A. Not that I recall.  
18 Q. Okay. If you turn to Page 5 in your  
19 report, the Case History Disclosure, is this list of  
20 your past depositions and trial testimony still up to  
21 date?  
22 A. As of today, yes.  
23 Q. Okay. Thank you.  
24 And do you recall which, if any, of these  
25 cases you testified at trial in as opposed to just

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1 being deposed?  
2 A. Rachel Hammers v. Douglas County, that  
3 would be Number 5. Anthony Waller v. Bradley  
4 Lovinger, that would be Number 11. Number 20,  
5 multiple initials v. The City of Puyallup. Number 22,  
6 Frank Hyman v. City of Philadelphia. That's it.  
7 Q. Thank you.  
8 And have you ever, aside from this case,  
9 prepared an expert report on transgender or intersex  
10 issues?  
11 A. No.  
12 Q. And have you ever, aside from in this  
13 case, prepared an expert report on driver's licenses  
14 before?  
15 A. No.  
16 Q. Thank you.  
17 And then I just want to make sure I have  
18 your compensation information correct. So you are  
19 being compensated \$200 an hour for a research  
20 consultation and report creation; right?  
21 A. Yes.  
22 Q. And you received \$3,000 for any part of a  
23 day involved in a video deposition; right?  
24 A. Yes.  
25 Q. So you're being compensated \$3,000 today;

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1 right?  
2 A. Yes.  
3 Q. Thank you.  
4 And -- and then \$2,000 for any part of a  
5 day spent on trial testimony; is that right?  
6 A. Yes.  
7 Q. And \$1,000 a day for travel and on-site  
8 consultation; is that right?  
9 A. Yes.  
10 Q. Okay. Great. Thank you.  
11 So I'm going to go through and I'm going  
12 to ask you for your definitions of some words that  
13 were used in your report, just to make sure that I  
14 understand them.  
15 So first could you explain your  
16 understanding of the term "sex"?  
17 A. My understanding of the term "sex"?  
18 Q. Yes.  
19 A. Well, that's a very broad understanding.  
20 As I try to illustrate in the report, there are  
21 multiple components to the term "sex." There is --  
22 there's -- and then when I do presentations, like I'm  
23 getting ready to do a presentation for the Los Angeles  
24 County Sheriff's Office regarding the management of  
25 lesbian, gay, transgender, and intersex persons within

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1 their system.  
2 It's a presentation I've done a number of  
3 times. You and I did it one time -- not -- not the  
4 exhaustive one that I do here -- where I talk about  
5 the three parts of it, as I did in the report.  
6 The first part of it is is it  
7 physiognomy? The actual, I guess what a lot of  
8 individuals might refer to as the biological levels of  
9 sex, and then you have the gender portion of sex, and  
10 then you have the idea of sexual preference.  
11 So there really are three components to  
12 sex that exist out there that have a tendency to get  
13 very jumbled together. I think that's the point I was  
14 trying to make in my report. They get jumbled  
15 together, they get mixed up, and it's important  
16 sometimes to come up with definitions. So which  
17 definition are we looking at.  
18 Q. Okay. Thank you.  
19 MR. ARKLES: Let the record reflect that  
20 Joshua Block has just joined me here in the room.  
21 Q. And what's the basis for that definition  
22 of sex?  
23 A. Sir?  
24 Q. What do you base that definition for sex  
25 on?

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1 A. Of the -- what I consider to be the three  
 2 components?  
 3 Q. Yes.  
 4 A. I guess my observations of issues that  
 5 we've had in a correctional environment. My  
 6 observations of how people are, in general, within  
 7 society, how we interact one person to another. The  
 8 discussions that even you and I have had in the past  
 9 when we've done presentations. Things of that nature.  
 10 Q. Thank you.  
 11 And could you clarify for me what the  
 12 term "physiognomy" or -- I'm not sure how to pronounce  
 13 it -- what the term "physiognomy" means?  
 14 A. The physical being, the physical makeup,  
 15 physical compositions. The actual structural  
 16 components that go into -- in this case it would go  
 17 into -- into sex. But physiognomy is pretty much the  
 18 actual physical structures that are associated.  
 19 Q. So -- and so I'd like you to listen to  
 20 this definition of physiognomy -- sorry --  
 21 physiognomy: A person's facial features and  
 22 expression, especially when regarded as indicative of  
 23 character or ethnic origin.  
 24 That's not what you mean; right?  
 25 A. No.

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1 Q. Okay.  
 2 A. See that would be more gender.  
 3 Q. So the facial features is more gender?  
 4 A. Well, the expression of facial features,  
 5 yes.  
 6 Q. Okay. Tell me -- could you explain to me  
 7 why that's a part of gender?  
 8 A. Well, how one tries to appear to others.  
 9 Now, if they're talking about the  
 10 physical structures, such as Adam's apple presence  
 11 versus no Adam's apple, that might be physiognomy in  
 12 the way I'm referring to it, okay, the physical makeup  
 13 of the body.  
 14 The expressions that one uses, how one  
 15 presents themselves to another could be used as gender  
 16 expressions, how they perceive and how they want to be  
 17 perceived by others. I mean, there's a number of  
 18 examples I could point out, if you like, that relate  
 19 to just your and my relationship.  
 20 Q. Sure. Go ahead.  
 21 A. Well, you know, I know you and I have  
 22 done presentations in the past in which I think we --  
 23 you and I talked to the large jail network. Isn't  
 24 that where we did our presentation in 2007? Jails of  
 25 a thousand beds or bigger? I think you and I were

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1 doing that.  
 2 Q. That's not what I recall. But go ahead  
 3 and --  
 4 A. No? Okay. I mean, we've -- I've done it  
 5 so many times, it's difficult.  
 6 But it's your presentation, or the  
 7 presentation of an individual that wants to come  
 8 across and be perceived to others one way, okay,  
 9 versus what might physically, physiognomically,  
 10 biologically -- again, we get -- we get -- start  
 11 getting into these definitional issues of what they  
 12 might be without them doing their own gender  
 13 expressions.  
 14 Q. Okay. So if I understand correctly, you  
 15 would say that -- that say whether and when somebody  
 16 smiles might be a part of gender, and the person's  
 17 Adam's apple might be a part of their physicality, and  
 18 both of those are a part of sex; is that right?  
 19 A. Well, not necessarily just the act of  
 20 smiling. The act of smiling itself is just -- is just  
 21 an attempt to transfer to somebody an emotion or an  
 22 impression.  
 23 Now, how you use that smile or the  
 24 context in which you use that smile may very well be  
 25 an expression of gender and also an expression of sex.

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1 I know, I mean, how many times as a male  
 2 have I gone up and talked to a female and definitely  
 3 not got the smile that I was hoping to get. I mean,  
 4 that happens to people. You know, if you get a smile,  
 5 again, it's an expression back and forth. It's a  
 6 transmittal of information.  
 7 Q. Okay. And so -- and so then what is your  
 8 understanding of the term "gender identity"?  
 9 A. What is my understanding?  
 10 Q. Uh-huh, yes.  
 11 A. Gender identity is how one perceives  
 12 themselves. What they perceive their own sex. And  
 13 the term in that way is being used synonymous with  
 14 gender identity; what they view their sex to be or  
 15 even not to be as far as a gender identity.  
 16 Q. Okay. And is that understanding of that  
 17 based on your observations in correctional settings  
 18 and your observations in general and information  
 19 you've gotten from trainings?  
 20 A. Well, yeah. Training, my background. I  
 21 mean, if you look at my CV, you can see my -- my  
 22 education was in social and political theory, with my  
 23 undergraduate degree, with the focus there being on a  
 24 major in psychology, a major in sociology, and a major  
 25 in political science. You know, very much in the



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1 realm of how people express themselves with one  
2 another and all those particular things.  
3 Even my graduate work in geography was  
4 based upon people's perception of space, place, and  
5 time and how they view themselves acting and  
6 interacting within their geographical environment. So  
7 -- so it's based upon a lot of those issues, yes.  
8 So training is one, education and  
9 background is one, observations from the correctional  
10 environment is one, and just being a human being and  
11 interacting and being an individual who's open to  
12 examine a lot of these -- these issues, because, you  
13 know, a lot of people aren't open to examining a lot  
14 of these issues.  
15 As you and I well know, you know, we can  
16 create quite a bit of disharmony amongst people when  
17 we begin to challenge their perceptions of things,  
18 like gender identity, sex, become problematic for  
19 them.  
20 Q. It can.  
21 And then -- and then could you just also  
22 define for me the term "sexual preference."  
23 A. Sexual preference is basically, as I term  
24 in my presentations, who it is that turns you on. Who  
25 it is that has you elicit that sexual excitement.

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1 That's sexual preference.  
2 Q. Okay. And could you define  
3 "transgender," please.  
4 A. Oh, wow. Now that's getting into a  
5 really complex area, because even from the time that  
6 you and I first did our presentations back in the  
7 early 2000s to now, we see that whole term changing.  
8 It's -- it's kind of -- it's morphing as -- as the  
9 societal recognition of the issues involved becomes  
10 much more prevalent.  
11 So to -- for me to give a definition of  
12 it, it would be just what I perceive it as being  
13 versus what it might be tomorrow. So what I say could  
14 be what it was yesterday.  
15 Q. And when you use the term "transgender"  
16 in your report, what did you mean by it in that  
17 moment?  
18 A. What was the last statement? In that  
19 moment?  
20 Q. Yes. What did you mean by transgender as  
21 you used it in your report?  
22 A. Typically, transgender is -- is basically  
23 what I've learned in my discussions and dealings with  
24 individuals like you, individuals that -- that have a  
25 -- a different biological physiognomic sex whose

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1 gender identity felt that was not in line with what  
2 they perceive themselves to be. As I say in my  
3 presentations, when they look in the mirror, who they  
4 see themselves as when they look in the mirror. That  
5 becomes an issue where an individual becomes --  
6 becomes transgender.  
7 So it's a person who -- who sees that,  
8 feels that, and then makes the decision that they're  
9 going to begin to live as the other gender, which  
10 might be separate from their physiognomy.  
11 Q. Thank you.  
12 And then I'm going to ask you the same  
13 thing for intersex. Can you tell me what that term  
14 means as you used it in your report?  
15 A. Intersex is more the medical term that  
16 refers to individuals that have ambiguous genitalia,  
17 or in the medical profession, disorders of sexual  
18 development.  
19 The American Intersex Society -- and I  
20 think that young lady was with us when we did the  
21 presentation out there, the president of it -- but  
22 it's individuals whose -- who have some level of --  
23 some level of sexual development which doesn't fit  
24 into what is the classical idea or what I talk about  
25 in my paper, either end of the continuum of what would

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1 be an individual's perception of fully female or fully  
2 male. That becomes intersex.  
3 Disorders of sexual development. And  
4 it's a range. And it's a range. We're truly causing  
5 the question of whether or not any of us are truly  
6 fully female or fully male. So we run into  
7 definitional issues even when we get to that point.  
8 Q. Right.  
9 So you said in your report sex is sort of  
10 a continuum between female and male; is that right?  
11 A. Intersex.  
12 Q. Okay. Intersex is people who are a  
13 continuum between female and male?  
14 A. Intersex lies on this continuum,  
15 intersex -- because there's a range in there. I think  
16 most people out in society, if -- when you talk, and I  
17 know when I do my presentations in jails and with law  
18 enforcement, and even with community groups, most  
19 individuals still want to think of intersex strictly  
20 as -- as a hermaphrodite, okay, an individual that has  
21 both fully functioning sexual organs.  
22 But the reality is, it's not like that.  
23 That is -- that is so rare that it's an anomaly, that  
24 it gets written of that you have two fully  
25 functioning. So, you know, that would be the middle

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1 of that spectrum of fully female to fully male.  
2 The truth of it is that people lie more  
3 somewhere along that continuum. And even the American  
4 Intersex Society is trying to get away from this whole  
5 idea of hermaphroditism. They want to eliminate that,  
6 because it brings up certain pejorative images when  
7 people talk about that.  
8 And it makes sense to me that they would  
9 because, again, it's a range rather than -- rather  
10 than a strict concept that people have that may -- may  
11 completely be false.  
12 Q. And when you refer to the American  
13 Intersex Organization, it's not the Intersex Society  
14 of North America that you're talking about, or a  
15 different organization?  
16 A. The Intersex Society of North America,  
17 yes.  
18 Q. Okay. Thank you.  
19 A. The president of it did the presentation  
20 with you and I. Do you recall she was there?  
21 Q. I think we might be thinking about  
22 different presentations but --  
23 A. Oh, man.  
24 Q. -- that's okay.  
25 A. Well, it just goes to show, I've been

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1 trying to get these ideas and concepts out, so we get  
2 definitions made all around the country for years now.  
3 2007 to now, that's 11 years.  
4 Q. Yes, that's -- it's a while.  
5 And you already touched on this, but  
6 could you also explain to me so -- so do you see the  
7 term "sex" and "gender" as different, and if so, how?  
8 What's the difference between those two?  
9 A. Well, it -- how do we want to use the  
10 term "sex," first off? Do we want to use the term  
11 "sex" in a very large overarching sense to meet all  
12 three parts?  
13 So, I mean, my presentation I give starts  
14 out, it's all about sex in jails, okay. Well, first  
15 off, what is sex in jails? If we use sex in jails as  
16 that big overarching term, it would then encompass  
17 physiognomy, it would encompass the gender identity,  
18 and it would encompass the sexual preference issues.  
19 Now, if we want to use sex as -- as the  
20 behavior that occurs between two individuals, that  
21 might be sexual preference, okay. But it could also  
22 be sexual identity and a gender identity in it. So,  
23 again, it's how do we want to define that. That's  
24 part of the whole issue here.  
25 Q. Okay. Just a couple more definitions.

Page 23

1 So could you tell me what the term "risk  
2 tolerance" means as you used it in your report?  
3 A. I'm sorry, I didn't catch the word.  
4 Q. Risk tolerance.  
5 A. Oh, risk tolerance. Yeah, risk  
6 tolerance. It's more of a concept that's used in risk  
7 management circles and insurance companies and, you  
8 know -- okay. Risk tolerance is how much the  
9 individual person, the agency had, or government, or  
10 even community. How much they're willing to tolerate  
11 potential risk versus non-risky type of  
12 decision-making processes.  
13 So risk tolerance is, you know, what  
14 you're willing to stake. Individuals that gamble,  
15 they go and they gamble at a casino and they put money  
16 on the table, obviously have a high risk tolerance  
17 level for the loss of money or else they wouldn't be  
18 doing the gambling.  
19 Individuals that don't want -- like, I do  
20 a lot of presentations in Las Vegas. Probably, I  
21 don't know, half a dozen or more times a year, and I  
22 never go to the gambling tables because I always  
23 figure I'm going to loose. So that mean my risk  
24 tolerance level for losing my money is pretty low in  
25 that case.

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1 And it works the same way when we're  
2 talking about decision-making in -- in how we're going  
3 to operate our facilities and our agencies and our  
4 governments. There are certain risk tolerance levels  
5 that we have to have.  
6 We see this all in this whole debate  
7 regarding medical marijuana around the country,  
8 recreational marijuana around the country. There is a  
9 level of risk tolerance in all of that that is  
10 being -- being expressed by both the public and  
11 government.  
12 So -- and we -- we just see that in  
13 operation. And we've seen it change in that -- in the  
14 last 20 years.  
15 Q. What change have you seen in the last  
16 20 years?  
17 A. In medical marijuana?  
18 Q. Oh, I'm sorry. I thought you were  
19 referring to -- I thought you were referring back to  
20 corrections. No, I don't need to hear about medical  
21 marijuana, thank you.  
22 A. No, no, let's talk about it in  
23 corrections. It's an interesting issue because --  
24 because, you know, in a correctional environment, we  
25 have to provide based on, you know, Estelle v. Gamble,

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1 the federal court cases, we have to provide acceptable  
2 level of medical care to individuals.  
3 All right. Well, what does that mean?  
4 Well, I can tell you back when I first started in  
5 corrections in the '80s, the idea of giving  
6 individuals psychotropic medications in jails, oh, no,  
7 no, we don't do that. People will come in, they might  
8 have acute psychosis, but when they came in, they  
9 weren't getting it.  
10 So we had a change in the corrections  
11 environment in which we began to prescribe and -- and  
12 provide to inmates in the jails psychotropic  
13 medications, with the realization that they could be  
14 trafficked, that there might be contraband issues,  
15 that you might have overdose issues. Okay, we had all  
16 that.  
17 And we had the same thing with narcotics  
18 in jails. And now we're starting to see, because of  
19 medical marijuana, where, wait a minute, if it's a  
20 legitimately prescribed medication recognized by the  
21 state, and the individual comes into a correctional  
22 institution and they have a valid prescription from a  
23 community provider, are we going to provide that  
24 medication to them in the jail setting, recognizing  
25 it's marijuana.

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1 Oh, my God, everybody's up in arms about  
2 it. Oh, we can't do that. We can't possibly do that.  
3 Contraband issues, okay. The potential overdose  
4 issues. It's the same discussion.  
5 And as I look back in my -- my career, I  
6 see that same discussion having occurred related to  
7 narcotics, related to psychotropic meds.  
8 So there may be -- may be a time where,  
9 yeah, we are giving out medical marijuana in our  
10 jails. And I have to tell you, in the law enforcement  
11 community, what do you think the response there is?  
12 They're up in arms on it. They didn't -- absolutely  
13 can't see it.  
14 But, you know, from a correctional  
15 administrator's perspective, if it's -- if it's a  
16 requirement that our jail physician also sees as a  
17 requirement, we're going to have to do this.  
18 I mean, there was a recent case that came  
19 out of the First Circuit regarding an individual up  
20 there in Suffolk County -- Suffolk County, New York,  
21 that had been refused hormones.  
22 I'm sure you have to be aware of this  
23 case; right? I mean, this one just came out not long  
24 ago; right? You're aware of this one? Yeah, it just  
25 came out.

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1 I couldn't believe it. I'm looking at  
2 the -- at the documents, I'm looking at a court case,  
3 it goes back to 2013. And this individual's in the  
4 Suffolk County Jail in New York, I mean, that's a  
5 pretty progressive state in the provision of  
6 correctional practices up there, and they're being  
7 refused hormone therapy in the jail, even though the  
8 VA physicians prescribed it, the jail doctor is  
9 mocking it, making fun of it and not prescribing it.  
10 I can't believe that in 2013 they were  
11 still doing that. Of course, what happened? The  
12 courts came down, we have to provide it. That's the  
13 type of changes that are happening out there.  
14 Q. Thank you.  
15 And then just continuing with terms, you  
16 used the term "baseline" in your report. Could you  
17 tell me what that means in that context?  
18 A. The term is what?  
19 Q. Baseline.  
20 A. Baseline. You have to have a starting  
21 point. It's like a race. I mean, you go to any kind  
22 of a race, they have a starting line at the race.  
23 Now, that starting line can be ten yards  
24 ahead if you wanted it, it can be ten yard behind if  
25 you wanted it, but everybody has a starting line.

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1 And baseline is the starting line. It's  
2 the foundation from which we can then build, modify,  
3 and create.  
4 Q. Okay. And the last one of these terms,  
5 "reasonable correction officer." What do you mean by  
6 "reasonable correctional officer"?  
7 A. Reasonable correctional officer, what a  
8 reasonable officer with adequate levels of training  
9 and experience would believe to be an appropriate  
10 practice.  
11 Q. Thank you.  
12 So I'm going to have us look at some  
13 question portions of your report now. If you turn to  
14 Page 18, and if you see right at the bottom, like the  
15 third line from the last, there's a sentence that  
16 begins "Lastly." Could you read starting "Lastly,  
17 harm can arrive..."  
18 A. Says:  
19 "Lastly, harm can arise from  
20 inappropriate restrictions on  
21 conditions of employment."  
22 Q. Keep going. I'll let you know when to  
23 stop.  
24 A. "All decisions arising the definition  
25 of 'sex'" -- and that should have

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1 been arising from the definition of  
2 sex -- "whether the one provided in  
3 Policy Order Number 63, carry a  
4 measure of risk. How risk adverse,  
5 or risk taking, the law enforcement  
6 or correctional administrator is  
7 grounded in that individual's  
8 personal and correctional  
9 philosophies, or 'weltanschauung.'  
10 The stat" -- there should have been  
11 the state -- "of Alabama provides  
12 through Policy Order Number 63 a  
13 starting point from which the law  
14 enforcement or correctional  
15 administrator can measure his or her  
16 policies or procedures."  
17 Q. Thank you.  
18 And is that, in fact, your opinion?  
19 A. Yes.  
20 Q. So would it be fair to say -- to say that  
21 different correctional administrators, based on their  
22 correctional philosophies, may make different  
23 decisions about what "sex" means?  
24 A. Yes.  
25 Q. Would it be fair to say that they make

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1 different decisions about how to handle a  
2 classification of transgender people for those  
3 sex-based policies?  
4 A. Yes. Yes. I mean, you see that --  
5 Q. And is that -- go ahead.  
6 A. Go ahead. You know, I'm -- there was a  
7 case out of Wyoming that was just spot on. That point  
8 where Dimarco v. Department of Corrections Wyoming, I  
9 think it was -- I don't know if you're familiar with  
10 that case -- but an individual was housed for about  
11 nine months in the Laramie County Jail in Wyoming, and  
12 was housed in one method, and that -- in general  
13 population, free access, programming, recreations,  
14 services.  
15 And when she was moved to the Wyoming  
16 Department of Corrections, they immediately put her  
17 into a lockdown situation for over 400 and some days.  
18 She had high levels of restriction on  
19 interaction, wasn't allowed to interact with other  
20 inmates, wasn't allowed to interact with many staff,  
21 was prevented in purchasing certain levels of  
22 commissary.  
23 I mean, there were a number of things  
24 that were wrong. Now, that's within the same state.  
25 And all it was was a bus ride from the county jail to

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1 the prison system.  
2 So, yeah, you see that happening.  
3 Q. And is it possible that there could be  
4 acceptable correctional practices that still vary in  
5 their definition of the term "sex"?  
6 A. Okay.  
7 Q. And -- sorry. So if you look back to  
8 Page 13, could you read the bolded language there?  
9 A. "In sum, my opinion is there is  
10 a governmental interest in having a  
11 standardized definition of sex, such  
12 as that established in Policy  
13 Order 63 for law enforcement and  
14 administrative purposes as expected  
15 by a reasonable correctional  
16 administrator so there is consistency  
17 in the development and application of  
18 administrative and operational  
19 policies and procedures."  
20 Q. And is that, in fact, your opinion?  
21 A. Yes.  
22 Q. So it's my understanding that it's  
23 helpful from a correctional perspective to -- for  
24 there to be a policy that leads to consistent  
25 information about sex on a driver's license.

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1 Do I have that right?  
2 A. Can you repeat that, please.  
3 Q. Sure.  
4 So is it your opinion that for  
5 corrections, it's useful for there to be a policy  
6 about driver's licenses that provide some consistent  
7 information about what they mean by "sex"?  
8 A. Yes.  
9 Q. Okay. And you're not taking -- you're  
10 not expressing an opinion about what the best  
11 definition of sex would be for that purpose, are you?  
12 A. No. Again, that best definition would be  
13 based upon the risk tolerance level.  
14 Q. Okay. So if instead of a current policy,  
15 Alabama had a policy that said a driver's license sex  
16 designation may be amended to reflect the person's  
17 gender identity, would that information be useful to  
18 correctional administrators?  
19 A. Yes.  
20 Q. Okay. And if they had a policy that  
21 permitted a change in sex designation when a doctor  
22 certified that appropriate clinical treatment had been  
23 provided, would that be helpful to correctional  
24 administrators?  
25 A. Well, we would have to know what the

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1 definition is of "appropriate clinical treatment."  
2 Q. Okay. So -- and if that was left to the  
3 discretion of the doctor, would that still be helpful  
4 to correctional administrators?  
5 A. Well, I think having a definition is what  
6 is helpful to correctional administrators. Having a  
7 starting point.  
8 Q. Okay. And so would -- would saying that  
9 the person had received appropriate clinical treatment  
10 serve as a starting point?  
11 A. It would help if that was what was part  
12 of the definition that was being provided.  
13 Q. Okay. Thank you.  
14 And, in your opinion, it would be an  
15 acceptable correctional practice to use a definition  
16 of sex different than the one provided in Policy  
17 Order 63; right?  
18 A. Yes, because it's all based on the  
19 discretion of the administrator of the correctional  
20 agency, how they're going to base those definitions,  
21 where are they going to get that information from, and  
22 if they do it off of Policy 63, then they're simply  
23 following as a baseline what was provided to them by  
24 the state. And it helps them to establish the  
25 rationale for their decision-making processes in

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1 developing their definitions.  
2 Q. And can you just spell out for me, how is  
3 that helpful?  
4 A. You mean how is it helpful to a jail to  
5 know what the sex of the individual is?  
6 Q. Well, how is it helpful to a jail to know  
7 what sex the -- the person is considered to be for  
8 purposes of driver's licenses?  
9 A. Well, again, it provides a starting point  
10 for them to develop their policies related to searches  
11 of the individual. Cross-gender searches, especially  
12 unclothed or strip searches by -- by differing sex  
13 individuals, you know, has been found to be intrusive.  
14 So, yeah, having that driver's license  
15 tells us a lot about what is the sex of both the  
16 employees, in that case, and the sex of the individual  
17 that is to be searched, or the arrestee, in that case.  
18 Q. In your experience, do correctional  
19 administrators typically take into account the sex  
20 designation on a driver's license in deciding how to  
21 apply those sex-based policies?  
22 A. Oh, sure, that's probably one of the --  
23 one of the foremost pieces of information that's used  
24 when booking an individual. The first time you come  
25 in contact with an individual into -- into your jail,

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1 you have to have someplace to get the information  
2 from. And most jails around the country, if the  
3 individual has a driver's license, they will use a  
4 driver's license, and most people do have a driver's  
5 license.  
6 Q. If somebody came into a jail and didn't  
7 have a driver's license, how would that correctional  
8 administrator handle that?  
9 A. Well, then that becomes a little bit more  
10 tricky for us. We then have to rely on secondary  
11 definitions of it. So it might be both the asking of  
12 the individual, it might require some sort of a  
13 medical examination by a qualified medical provider,  
14 it might involve us having a staff member simply begin  
15 the strip search processes and then if they -- if they  
16 perceive -- because I wouldn't say that they  
17 identify -- but if they perceive that the individual  
18 is not the same sex that they are, then they might  
19 have to stop that process.  
20 Q. Would it be acceptable for a correctional  
21 administrator to use a sex designation from a pass  
22 point as a starting point rather than a sex  
23 designation from a driver's license?  
24 A. If they want to put that in as part of  
25 their data point, yes, they could do that. That's a

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1 discretionary decision, just like the use of the male  
2 versus female. The receipt of the physician's letter  
3 is the discretionary decision from the State of  
4 Alabama and the driver's license.  
5 I mean, these are discretionary  
6 governmental decisions that we have to use in order to  
7 develop our baselines.  
8 Q. So if somebody came in and was booked in  
9 a jail and you had a driver's license, how would that  
10 driver's license influence what happened next?  
11 A. Oh, wow, I can give you a prime example  
12 of that if you'd like, okay.  
13 Q. Please.  
14 A. Good friend of mine, an under sheriff  
15 with the county in Grand Rapids, Michigan, had -- got  
16 a call. In fact, he called me up. I got a call, he  
17 had an arrestee was pulled over on the street for a  
18 traffic violation, simple traffic violation.  
19 The officer then went up to the vehicle,  
20 looked in the vehicle, saw what appeared to be  
21 60s-plus-year-old male, heavy beard. And when asked  
22 for the driver's license and insurance, presented a  
23 driver's license for a female.  
24 On the driver's license it had -- it had  
25 the name of the individual, but it had the sex

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1 designation as female.  
2 The officer then says this isn't your  
3 driver's license. And the arrestee, the pulled over,  
4 said that is my driver's license.  
5 And apparently what had happened and  
6 taken place with this individual was at some point in  
7 their -- in his or her late 30s, had gone through a  
8 crisis period and had been convinced that some sort of  
9 sexual reassignment surgery was the way to go in order  
10 to correct some of this phoria they were experiencing.  
11 So he then went through the whole  
12 process, lived that way for approximately 20 years as  
13 a female; had the birth certificate changed, had the  
14 driver's license changed, and lived that way.  
15 And then when he turned in his 60s he  
16 felt as though he'd made a grand mistake and decided,  
17 no, that was not the right thing to have happened to  
18 him.  
19 So he then quit taking the hormones, he  
20 began to revert back more appearances of being a male.  
21 So of course when he got pulled over he appeared to  
22 the arresting officer to be a male. The driver's  
23 license said female.  
24 So the arresting officer promptly  
25 arrested him for possession of a fraudulent

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1 instrument, okay. Now it's a felony. It went from a  
2 traffic stop to a felony possession of a fraudulent  
3 instrument.  
4 He gets brought to the jail. That's  
5 where I get called by the administrator, the under  
6 sheriff up there, a friend of mine. He's like, what  
7 should we do here?  
8 And that's how it impacts jails. Because  
9 the questions that he wanted was, who does the  
10 searching now, okay. Who -- who do I house him with  
11 now? How do I proceed? Or do I -- do I take the --  
12 the very risk adverse practice where I put them into  
13 a situation where they have no contact with anybody  
14 else in the jail, no contact with other inmates.  
15 I mean, very -- you know, what I consider  
16 to be kind of a very punitive-type of environment. So  
17 we talked about it.  
18 So, yeah, those issues about the driver's  
19 license have a huge impact on who's going to do the  
20 searches at booking, who's going to do the strip  
21 search, where we going to house, you know, what type  
22 of services are we going to provide, what type of  
23 programming are we going to allow access to.  
24 So, you know, a lot more decisions than  
25 just simply what's on the driver's license.

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1 Q. What did you advise that person to do  
2 with that person in Grand Rapids?  
3 A. Well, again, he had definitions. He had  
4 definitions for how they would do it. And what he was  
5 wondering was, okay, how do I modify my definitions?  
6 And that's what we talked about was,  
7 okay, how do we modify definitions? How do we go  
8 about doing this? Because all the old definitions  
9 that he had didn't seem to work in this situation,  
10 so -- but he needed a starting point.  
11 So at least we had a starting point for  
12 where to take the housing and supervision and  
13 services. So my -- my recommendations to him was, all  
14 right, you have an individual there. Who do you feel  
15 most comfortable with having search you?  
16 All right. The appearance -- by all  
17 outward appearances, we have a male. The genitalia  
18 has been reconstructed based upon sexual reassignment  
19 surgery. The breast implants had been removed.  
20 Okay, so who's going to do the strip  
21 searching of the individual? And, again, who do you  
22 feel most comfortable? And in this particular case,  
23 the gentleman had no problem with a male officer.  
24 So then it became an issue of where do we  
25 house in our jail? And when I asked him -- I asked

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1 him very simple question, was how often do -- do --  
2 does one inmate look at the sexual genitalia of  
3 another inmate?  
4 And the situation I used was, we have a  
5 lot of vets that are coming back from Iraq, from  
6 Afghanistan, from Syria, and I reflect back to my own  
7 experience in the Marine Corps during the Vietnam War  
8 where these Bouncing Bettys were used a lot by the  
9 North Vietnamese.  
10 These were small mines that would pop up  
11 about waist level, and when they went off, they  
12 didn't -- they didn't necessarily kill you, but they  
13 did blow your genitalia off. That was not an uncommon  
14 situation.  
15 So what I asked him was if you had a vet  
16 that came in and he'd had his genitalia blown off in  
17 an IED explosion, where would you house that veteran  
18 in your jail? Now all -- he just simply lacks --  
19 lacks a penis and a scrotum, okay. Where would you  
20 house him in the jail?  
21 And that was where we started. That  
22 became the baseline for the discussion about housing  
23 supervision, the provision of services to the  
24 individual.  
25 Q. And do you know what happened to that

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1 individual?

2 A. I believe they housed him in general

3 population in a male housing unit, just like they did

4 in the Dimarco case.

5 Q. Oh, okay. So in Dimarco, that case, that

6 was in a general population of a male prison?

7 A. No. She was in a general population

8 female.

9 Q. Okay.

10 A. With a penis.

11 Q. That's what I thought. I just wanted to

12 make sure.

13 A. Yeah, with a penis.

14 Q. Right.

15 And do you know if the charges --

16 whatever happened with the charges against that

17 individual?

18 A. Oh, no, I -- no, I -- that was it. That

19 was -- my involvement with it was simply to try to --

20 to focus the discussion, to take their starting

21 points, their initial definitions that had been made

22 on prior, and then how to modify those definitions.

23 And, really, that's what we're looking at

24 in this case, is you have the State of Alabama coming

25 up with a baseline from which modifications can be

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1 made by the different agencies. But it does provide

2 that starting point so that when they decide they're

3 going to use the driver's license, at least they have

4 an understanding of where the information for that

5 driver's license is being derived.

6 Q. Okay. And you've reviewed -- you've

7 reviewed Policy Order 63; right?

8 A. Yes.

9 Q. And so what is the information that you

10 understand Policy Order 63 to provide as a baseline?

11 A. Well, I'd like to review it again. I

12 mean, I didn't -- I haven't read it that closely to

13 where I memorized it. It's my understanding it's

14 biological male/biological female or -- or -- or

15 documentation from a qualified medical provider that

16 sexual reassignment surgery has been accomplished

17 successfully on the individual.

18 Q. All right. I think that you actually

19 quote that policy on Page 16, so if you wouldn't mind,

20 turn to Page 16 and review the block that you have

21 there, and just tell me if anything changes about that

22 information you think that it provides.

23 A. The amended birth certificate, which is

24 based upon documentation from a physician that

25 performed the sexual reassignment surgery stating that

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1 the surgery has been completed.

2 Q. Okay. Thank you.

3 So it sounds like when you -- when you

4 advise different correctional administrators, often

5 you're talking about what their definition of sex is

6 and whether it makes sense to -- to change that

7 definition in some way; is that correct?

8 A. Or modify their operational philosophy,

9 yes. Modifications.

10 Q. Okay. So rather than modify the

11 definition of sex that we're working from, modify

12 their philosophy, their operational philosophy; is

13 that right?

14 A. Well, a lot of times what you find when

15 you get into these discussions with agencies is they

16 don't have definitions, okay. They're not really sure

17 when you begin to question people, okay. Why do you

18 do that? Where do you get that information from? And

19 what's the basis for all that?

20 You begin finding out that nobody's

21 really thought about it that much. Everybody's acting

22 on these -- these general paradigms and the world

23 views that most people have of -- of male and female,

24 and they're not taking in any of the middle ground.

25 Some of the issues that are now coming up

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1 and surfacing in society and creating a lot of the

2 issues, such as this one about what do we do, what do

3 we think, how do we act?

4 Q. So would -- would jails typically have

5 recorded somewhere the definition of sex that's used

6 in the state driver's license policy?

7 A. What they would have -- like for our

8 jail, for instance, when we used it we had data

9 dictionaries. Are you familiar with the concept of a

10 data dictionary?

11 Q. Why don't you explain it to me.

12 A. Okay. Data dictionary have all these

13 forms, all these documents that we use in all our

14 agencies out there. And then on all these forms we

15 have these data points on there. And, for example, on

16 this -- in this discussion, the data point would be

17 sex, okay.

18 So we would need a definition of what sex

19 is. That would be the first part of the data

20 dictionary, what's the definition?

21 Now, my definition might be different

22 than your definition that's different than his

23 definition. But it's a starting point, at least. It

24 shows this was a definition I used for this data point

25 information.

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1 Then I have to say where do I get that  
2 information from? Let me give an example. We had an  
3 individual in our custody, they've been coming in and  
4 out of our jails. Always, you know, low-level things.  
5 Kind of our -- our Otis Campbell, as it were.  
6 Now, we were a 1,300 bed jail, 1,400 bed  
7 jail, but we had our share of Otis Campbells, okay.  
8 Ring the doorbell, it's cold outside, I'm drunk, I  
9 want to come home, you know, that type of thing.  
10 So this guy had been coming in and out of  
11 our jail for 20-some years. And one day he went over  
12 to court, and he told the judge in court, he said,  
13 Judge, I've been coming in here for -- for 20-some  
14 years and I've been telling you this is my name, but  
15 that's not my real name, here's my real name.  
16 The judge then issued an order saying  
17 everybody needs to change their records to reflect his  
18 real name.  
19 Now the question is, is what's the real  
20 name? All right. Now, of course, you know, we have a  
21 judicial order to make the change, so we'll make the  
22 change.  
23 But in some agencies, when you get booked  
24 into that agency, they have a data dictionary that  
25 says when I book you in and I use that data field that

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1 says name, I used a name that's given on the arrest  
2 citation.  
3 Arresting officer pulls you over in the  
4 street and he says, hey, you know, what's your name?  
5 And you tell him, My name is Tom Cruise. And he books  
6 you, he puts on the arrest citation Tom Cruise and he  
7 brings you to jail and we're booking you into the  
8 jail.  
9 And I look at the name, I say Tom Cruise;  
10 you've been booked in here five time in the last year,  
11 your name's not Tom Cruise.  
12 Now, at some jails, the policy, based  
13 upon their definition of name, is I will book the  
14 individual based on the name, the data point that is  
15 on the arrest citation, and then I just link it to the  
16 others.  
17 In other jails around the country, they  
18 will book the person into the name that he's known by  
19 in the jail. That's how they define it.  
20 Now, that sounds all clearcut and pretty  
21 easy, we can do that. Oh, no, you actually run into  
22 some legal issues by doing that. And we found this  
23 out in the state of Kentucky. Because in Kentucky, we  
24 were having individuals brought to the jail, and we  
25 would tell the arresting officer, That's not Tom

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1 Cruise, that's Tom Jones.  
2 And then the officer would change the  
3 arresting documents, which completely invalidated the  
4 arrest. And it didn't get caught until it went up in  
5 the court somewhere, okay.  
6 So, yeah, I mean, definitional points in  
7 the starting point for how you -- where you get the  
8 information, how you utilize the information, what  
9 your definition is, is important to jails and  
10 arresting agencies.  
11 Q. And so -- and when you were talking about  
12 how in many jails they don't necessarily -- they  
13 haven't necessarily given the definition of sex a lot  
14 of thought, is it your sense that the term "sex" would  
15 typically be defined in a data -- in a data  
16 dictionary?  
17 A. If -- if the jail's doing what they  
18 should be doing, then, yes, they need to do that.  
19 They need to have a definition. That helps all the  
20 employees in the jail, and it helps the inmate  
21 population in the jail also.  
22 Q. And I'm curious, is there sometimes a sex  
23 that's noted on an arrest citation as well?  
24 A. Absolutely.  
25 Q. So would it be the policy of some -- of

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1 some jails to use the sex as something on the  
2 arresting documents as the sex when booked into jail?  
3 A. You could do that, if that was in their  
4 data dictionary. If that was their discretionary  
5 decision, yeah, they could do that.  
6 Q. Okay. And I -- do jails sometimes update  
7 their data dictionaries with new definitions?  
8 A. Okay, so in an ideal world, my answer  
9 would be yes. In a practical world, I would say that  
10 most jails don't even have a data dictionary. Most  
11 jails are still kind of establishing or operating on  
12 established protocols and paradigms that are 20, 30,  
13 maybe even 40 years old, and that's part of the  
14 problem.  
15 That's why even LA Sheriff's Office, I  
16 mean, this is the largest jail in the country, 16,000  
17 inmates. That's a pretty big jail. \$2 billion  
18 operation, and they're going to have me come in and  
19 teach them about what is sex.  
20 That's LA, too, okay. That's LA, too,  
21 you got to keep that in mind. But it's this idea that  
22 there's recognition of these changing paradigms that  
23 exist and how we have to get our staff up to date in  
24 it.  
25 So, you know, 3,200 jails in the United



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1 States. 3,200. Now, that's according to the Bureau  
2 of Justice statistics. That's a lot of jails. And of  
3 those jails, probably 80 percent of them are 200 beds  
4 or less.  
5 So are these jails updating data  
6 dictionaries? No, they probably don't even have a  
7 data dictionary, because 50-some percent of them are  
8 50 beds or less. They're lucky to have staff working  
9 in the jail.  
10 So having a data dictionary, especially  
11 in smaller jails like that, is really more important  
12 than it is in places like LA County where everything  
13 gets really automated.  
14 Q. Okay. And if somebody called you for a  
15 consultation and said, you know, we've decided we want  
16 to create a data dictionary and we're trying to  
17 consider what we want to put in there for sex, what --  
18 what recommendations might you give them for -- for  
19 how to define sex in that data dictionary?  
20 A. Well, the first question I would ask is  
21 what is the information that they're looking to get?  
22 What's their definition of sex, okay. So if they're  
23 looking for a definition of sex in order to, let's say  
24 maintain the Fourth Amendment rights of the  
25 individual, so that the searches aren't more intrusive

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1 than they need to be.  
2 Then you're probably looking at a  
3 definition of sex that's going to be based on  
4 physiognomy, okay. The plumbing of the individual,  
5 all right. The physical appearance.  
6 Because in a jail setting, the sexual  
7 preference is a lot of times predicated on the  
8 physical appearance of the individual. I mean, that's  
9 what we like to believe, all right.  
10 So -- so, yeah, the -- it might be you  
11 have to get them to define what the term "sex" is to  
12 start with. What is it that you're looking to get at,  
13 and then go from there.  
14 And if it's -- if it's that they're  
15 looking to have sex to determine who is going to  
16 search the individual or who presents the least risk  
17 in searching the individual, and by that it would be a  
18 Fourth Amendment intrusive risk of the individual,  
19 then you're probably looking at the physiognomy of the  
20 individual. That's really what they're going to be  
21 looking at.  
22 Q. And when you say "the plumbing," do you  
23 mean -- or "physiognomy" -- do you mean the appearance  
24 of external genitals?  
25 A. Well, yes, it would be the appearance of

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1 external, because in corrections we -- we don't do  
2 internal examinations.  
3 Q. Okay. Okay. And do you mean any other  
4 aspects of the body when you refer to physical  
5 appearance in that way?  
6 A. Well, we -- we could use breast, the  
7 presence of breasts, things of that nature. You know,  
8 I can actually see how in the future we may even get  
9 down to chromosomal levels, or have to get to that  
10 level, chromosomal levels, I don't know.  
11 But, yeah, it's generally the physical  
12 appearance of the individual that would -- that would  
13 somehow constitute a risk to that individual in the  
14 environment or risk to the agency.  
15 Q. And so in the example you gave me, you  
16 suggested asking the individual who they would be  
17 comfortable being searched by, and that person was  
18 fine with being searched by a man. When does that --  
19 when does the preference of the individual come into  
20 decisions about searches?  
21 A. Okay. The -- when does the preference of  
22 the individual arrestee or individual inmate come --  
23 that's based upon the risk tolerance. That's a  
24 discretionary decision by the correctional  
25 administrators as to whether or not they're going to

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1 consider that.  
2 That's -- that's one of the baseline  
3 decisions that you have to make is are you going to  
4 give consideration to that. Again, discretionary  
5 decisions.  
6 MR. ARKLES: Okay. I'd like to take just  
7 a short break.  
8 THE WITNESS: Okay.  
9 (There was a break taken.)  
10 MR. ARKLES: Let's go back on the record.  
11 Q. So would it be fair to say that whatever  
12 sex is listed on a driver's license, correctional  
13 administrators would probably need more information to  
14 figure out how to apply a sex-based policy to a  
15 transgender person?  
16 A. Well, it would depend, again, on whether  
17 or not they've made that discretionary decision that  
18 they're going to apply policies like that.  
19 Part of what I try to do is go around and  
20 help jails to develop policies like that in the face  
21 of having no policy whatsoever and having no  
22 management, other than based upon what's on the  
23 driver's license.  
24 Q. Okay. So a correctional agency could  
25 decide to go with what was on the driver's license for

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1 all sex-based classification decisions; is that right?  
2 A. Discretionary decisions, yeah. For the  
3 administrator of that particular agency, yes. Keeping  
4 in mind their risk tolerance for things like Fourth  
5 Amendment violations or EEOC issues. I mean, there's  
6 a range of other issues that go into that risk  
7 tolerance decision-making process, but it's all  
8 discretionary.  
9 Q. So would you say a correctional  
10 administrator would have to have a high degree of risk  
11 tolerance to simply go off of what was on the driver's  
12 license?  
13 A. No. I would think that they would  
14 probably have a lower degree of risk tolerance and be  
15 more risk adverse to just simply go off of the  
16 driver's license.  
17 Q. And why is that?  
18 A. Well, because that provides them with a  
19 lot of good legal cover that way. I mean, if they're  
20 using the definition and the definition is  
21 established, in this case by the State of Alabama for  
22 what is male or female, and they're using that on the  
23 driver's license, then they get some liability  
24 coverage in their policies that say, well, look, we're  
25 getting our information about whether or not this

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1 individual is a male or female based upon what the  
2 state tells us that they're male or female, which is  
3 what they recognize on the driver's license. So they  
4 get some cover that way.  
5 Q. And would that be true regardless what  
6 state a driver's license is from?  
7 A. Well, I think that, yeah, that's -- I  
8 mean, if that's their data point, that's where they  
9 get the information for it, yeah, it would be true  
10 everywhere.  
11 Q. Okay. But as you mentioned earlier, if  
12 they wanted to take into account all of the aspects of  
13 physicality, gender identity, and gender expression,  
14 and sexual preference, they're probably not going to  
15 be able to do that based on just the sex designation  
16 on a driver's license; is that right?  
17 A. I would say that that's true, because  
18 that's -- that's just one data point in that decision  
19 process. That's one discretionary data point that  
20 they're using as part of making those decisions.  
21 Q. Okay. So would a reasonable correctional  
22 officer expect that two people with the same external  
23 genitals and the same gender identity might have a  
24 different sex designation on their license?  
25 A. I don't think you would expect that at

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1 all, no. You're talking about an officer?  
2 Q. Yes.  
3 A. You used the term "officer."  
4 Q. Yes.  
5 A. Yeah, line level staff.  
6 No. I think the line level staff are  
7 going to expect that gender identity, physiognomy, and  
8 the driver's license are all going to be reflective of  
9 one another.  
10 Q. So in Alabama -- I'd like you just to  
11 assume for a moment that what I'm telling you is true.  
12 So in Alabama, it is possible to change  
13 the sex designation on one's license based on either  
14 evidence of sex reassignment surgery or that one has  
15 amended their birth certificate.  
16 The amendment of the birth certificate  
17 can be a birth certificate from any jurisdiction, and  
18 some jurisdictions permit changes to birth  
19 certificates without sex reassignment surgery.  
20 So because of that, it is possible that  
21 two people who identify as male but who have female  
22 typical external genitals, one who was born in, say,  
23 Idaho would have male on his Alabama license, and one  
24 who is born in Alabama might be female on his license.  
25 Does that make sense so far?

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1 A. Yeah, because their definition -- again,  
2 here's where -- here's where that discretionary  
3 decision comes in in that whole process, is that part  
4 of their -- their definition for that driver's license  
5 designation says we will accept what another state  
6 says, all right.  
7 Now -- and that's their discretionary  
8 decision. They could very well write into that  
9 definition, we're not going to accept what another  
10 state says. You have to meet our criteria.  
11 So, yeah, you might have a birth  
12 certificate from Idaho that you had amended there and  
13 they don't require it; but in our state, your birth  
14 certificate, in order to be amended like that, we have  
15 that requirement. They could very easily make that as  
16 a designation.  
17 Q. Okay. And so, again, assuming that what  
18 I told you is true and they haven't made that  
19 designation, they are accepting certificates from  
20 other states, would that affect how useful this policy  
21 would be for -- as a baseline for correctional  
22 administrators?  
23 A. Yes. Because if you came in and you had  
24 "male" on your driver's license, and that basically  
25 operationalized decision-making for searches by other

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1 males, then that's how you would be searched, and that  
2 would give cover.  
3 And if the individual came in and they  
4 had "female" on their driver's license and that  
5 operationalized decisions that led to being searched  
6 by a female, again, that would give cover.  
7 So in that we would say that there was  
8 not a Fourth Amendment violation, because in each case  
9 the information that we used to drive our  
10 decision-making process for the intrusiveness of the  
11 search was based upon the information that was on the  
12 driver's license, which is recognized by the State of  
13 Alabama.  
14 Q. Okay. So whatever the policy is in  
15 Alabama, going by the license in Alabama would provide  
16 some legal cover for correctional administrators; is  
17 that right?  
18 A. Yes, it helps.  
19 Q. And earlier you talked to me about a  
20 person who had transitioned to female and then  
21 transitioned back to male who was -- who was stopped  
22 in Grand Rapids.  
23 Would it be possible that a transgender  
24 man, somebody who was assigned female at birth and who  
25 had not had genital reconstruction surgery and who had

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1 a beard, would also be stopped under those same  
2 circumstances and accused of not having a valid ID?  
3 A. Well, it depends on how the driver's  
4 license was issued.  
5 Q. If the driver's license were issued such  
6 that it said female but the person appeared typically  
7 male with clothes on, is it possible that the same  
8 thing could have happened that happened to the person  
9 you told me about in Michigan?  
10 A. I would imagine so, yes.  
11 Q. And do you -- you mentioned in your  
12 report that it's also important to identify staff sex  
13 for purposes of searches and supervision; is that  
14 right?  
15 A. Yes.  
16 Q. Is there a typical way that correctional  
17 administrators go about identifying the sex of staff  
18 members?  
19 A. Oh, my. Now you're really getting  
20 tricky. Geez, you're running into all sorts of EEOC  
21 issues. So I got a story for you, how's that?  
22 Q. Great. Great.  
23 A. All right. I like my stories for you.  
24 All right. Good friend of mine, the  
25 under sheriff in Charleston County, South Carolina;

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1 large jail, 2,600 beds. Sitting in his office one  
2 day, they're doing hiring, okay, for new employees.  
3 The -- and I've got -- I did an interview with him  
4 like this, a distance interview, and I use it in my  
5 presentations.  
6 And he describes how he's sitting in his  
7 office and these three members of the hiring board  
8 come to his office; one is a captain, she's an African  
9 American female; one is a sergeant, and he's an  
10 African American male; and then the other is just a  
11 male officer.  
12 And they come in the room and they say,  
13 Chief, we got a problem.  
14 So, okay, What's the problem?  
15 Said, Well, we -- we had a candidate come  
16 before the board, and we all looked at the folder.  
17 The folder and the information all looked really good,  
18 and we said, Send young lady in, because the name on  
19 the folder, the sex in the folder, all indicated that  
20 this was a female applying for a correctional officer  
21 job, all right.  
22 They bring the individual in, sits down  
23 at the table, and they look up and they say, Oh, there  
24 must be some mistake. We're expecting -- just as a  
25 name I'll toss out -- they're expecting Marsha.

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1 And he says, No, my name's Matthew, I  
2 used to be Marsha, from underneath a heavy beard.  
3 And they say, Well, what do you want us  
4 to do, chief?  
5 And he said, Well, was the individual a  
6 good candidate?  
7 They said, Well, yeah, yeah, good  
8 candidate.  
9 Well, how was the interview?  
10 Well, the interview was fine, yeah, good  
11 candidate.  
12 So he says -- he turned to the African  
13 American captain, female, and he says, you know, in  
14 Charleston ten years ago, 20 years ago, we'd have  
15 looked at you and we'd have said, a female officer  
16 working in the jail? In a male housing unit? In  
17 command? We can't do that. We can't have that.  
18 And he turned to the African American  
19 sergeant and he said, 40 years ago in Charleston,  
20 South Carolina, we'd have looked at you and said, an  
21 African American man working in the jail? We can't  
22 have that. We can't do that.  
23 He said, now, if we'd have lived and had  
24 those policies and kept those policies, neither one of  
25 you would be here or in your positions. So what do

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1 you think?  
2 They said, Well, you know, he would be a  
3 pretty good candidate, but we're not sure what we can  
4 do or how we're going to assign him, where he could  
5 work, who he could search, and all this.  
6 He said, I think we can manage that. He  
7 said, Let's hire him. Okay. So they then send him up  
8 the academy.  
9 Now, South Carolina has a state-run  
10 academy, central location up in Columbia. All  
11 officers go to it. The officer goes up to it. He was  
12 in the process, but he had not had sexual reassignment  
13 surgery, but he was in the process.  
14 So my friend, the under sheriff is  
15 telling me, he said, he gets a call a few months later  
16 and it's the director from that training academy, he  
17 said -- he says, Look, I've got a problem. He said,  
18 I've got an agency, they're sending me an individual.  
19 This individual's a transgender person. My God, where  
20 am I going to house her? You know, where do I --  
21 where do I put them in my facility?  
22 And so he said to him, Well, what did you  
23 do with the guy I sent you?  
24 He said, What do you mean do with the guy  
25 you sent me?

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1 He said, Yeah, we sent a transgender guy  
2 up to you months back. What did you do with him?  
3 He said, I didn't know that.  
4 He said, There you go. There's your  
5 answer, okay.  
6 So -- so when we're talking about these  
7 issues, especially in EEOC situations, they can become  
8 pretty tricky. Because on the other side of it, as  
9 you and I know -- maybe you were in the presentation  
10 in California that we did where the -- where guys in  
11 the class literally got up and threw the chairs. Do  
12 you remember that? And stormed out --  
13 Q. I wasn't there.  
14 A. Oh, yeah, they threw -- this is ungodly,  
15 we can't talk about these issues, and that's wrong,  
16 and we're not going to do that. And, okay, risk  
17 tolerance, all right. You can see risk tolerance  
18 right there, all right.  
19 So, you know, you get that side of it of  
20 an employee who says, Wait a minute, I'm not sure I'm  
21 comfortable searching a transgender individual, okay.  
22 All right.  
23 So these are complex issues that we're  
24 having to deal with, and all these definitions really  
25 go into play, especially for us in jails, because the

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1 driver's license for an employee makes a difference.  
2 Okay. What kind of positions are we going to assign  
3 them to?  
4 After the Prison Rape Elimination Act,  
5 they came out with standards about who can do  
6 cross-gender supervision, who can do cross-gender  
7 search. It just got even more complicated with that.  
8 And it becomes problematic when you start throwing in  
9 that whole EEOC element. But it's something we have  
10 to deal with.  
11 Q. So it sounds like there's no clear answer  
12 on how to categorize the sex of employees; is that  
13 right?  
14 A. No, no, because typically -- typically  
15 the individual comes in and they mark on their  
16 application what their sex is. They have to provide a  
17 driver's license, which we then use to verify  
18 information on the application.  
19 And I -- I will say that there have  
20 been -- I have heard of situations where individuals  
21 came in and what they put on the application differed  
22 from the driver's license, and that became an issue  
23 for them.  
24 Again, it goes to the risk tolerance  
25 level of the agency. Are we going to hire that kind

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1 of person?  
2 Q. And if they do hire that person, would it  
3 be acceptable for them to assign that person to duties  
4 based on the -- based on the sex they wrote down on  
5 their application rather than the sex that's on their  
6 driver's license?  
7 A. Well, we would -- we would match up the  
8 two.  
9 Q. So would it -- so -- okay.  
10 So let's say that there's an employee who  
11 applies who's transgender, and they say I identify as  
12 female and my passport says female, but my license  
13 says male. I would rather have the duties of a female  
14 officer.  
15 Is there -- would the only acceptable  
16 correctional process in that situation to be assigned  
17 that person male duties as a male officer because of  
18 their license?  
19 A. Now we're getting, again, that issue of  
20 risk tolerance and definitions on the agency. I mean,  
21 if the agency is willing and has a higher level of  
22 risk tolerance, they may well make that decision and  
23 only say, yeah, you could work as a female; or only  
24 say -- if they're risk adversive -- no, you can only  
25 work as a male.

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1 Because we also, in a situation like  
2 that, we also have to look at situations where female  
3 inmates, even though that individual identifies them  
4 self as a female, a female inmate may not feel  
5 comfortable with being searched by a transgendered  
6 individual like that.  
7 So we have to take all those things into  
8 account. I, as an administrator, do I want to try to  
9 defend my actions of assigning a person based upon, as  
10 you say, based upon their driver's license or based  
11 upon the application?  
12 That's -- again, that's a definitional  
13 issue that drives my decision-making processes.  
14 Q. And would it change anything if a  
15 driver's license says male but the passport says  
16 female?  
17 A. Well, again, it's no different than if  
18 they came in with a driver's license that says male,  
19 birth certificate that says female, they put something  
20 else on their application, it would make -- you still  
21 have to have a definition of where am I going to get  
22 the information to drive the institution process.  
23 Q. So then would it be -- would it be  
24 riskier to go with the sex designation that's on the  
25 passport than the sex designation that's on the

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1 driver's license?  
2 A. Value judgment right there. Riskier.  
3 Which is riskier? Do I bet on red or do I bet on  
4 black? Which is riskier, okay.  
5 You know, that's -- again, that's --  
6 that's where that risk tolerance level of the agency  
7 comes in, you know. In many agencies they're really  
8 tolerant.  
9 For example, in the Dimarco case in  
10 Wyoming. I was actually doing a presentation and I  
11 was talking about the Dimarco case, and I was telling  
12 them, Guys, you got to loosen up. You got to think  
13 outside the box. We got to -- we got to expand our  
14 world view, that weltanschauung. We got to change  
15 some of our thought processes on all of this.  
16 And I'm talking about Dimarco. And who  
17 stands up in the audience but the administrator from  
18 that jail, okay.  
19 And he says, Yeah, I was the  
20 administrator, and here's what happened to me. Here's  
21 the flack I got. Here's the accolades I got.  
22 So, you know, it's both positive and  
23 negative, and it comes down to what is the risk  
24 tolerance of the individual? What are they willing to  
25 stand by and defend? What kind of information are

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1 they going to use to defend their decision processes?  
2 And that's why definitions are so  
3 important, because without good definitions, you get  
4 things happening all over the board, and you don't  
5 have any consistency.  
6 Here's an example on that: I was doing a  
7 classification analysis down in Pima County, Arizona,  
8 and they classified people on all sorts of criteria.  
9 And -- and certain criteria drive you up a  
10 classification, which basically gets you housed with  
11 the more violent, more riskier population, or they  
12 drive you down in classification, which gets you  
13 housed in a less risky, less violent population.  
14 The problem was that all the elements  
15 that they were using were not defined, so everything  
16 drove everybody up.  
17 So their classification officer, I'm  
18 talking to them and they're talking about how on their  
19 instrument they -- they asked the individual, and they  
20 have points. If the individual's talkative -- like  
21 kind of like me here -- they're talkative, they get a  
22 point that goes up.  
23 And I asked them, why do you give them a  
24 point that drives them up a classification and takes  
25 them from minimum to medium or from medium to max, why

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1 do you give them a point?  
2 Oh, because if someone's talkative,  
3 they're trying to beat you out of something. They're  
4 trying to get over on you for something. Oh, okay.  
5 So the next data point they had on there  
6 was verbose. And I asked them, I said, Do you know  
7 the definition of verbose?  
8 No.  
9 So how do you know to give them a point  
10 or not?  
11 Oh, well, we give everybody a point on  
12 verbose anyway.  
13 So now they get two points. And verbose  
14 basically is defined as talkative, all right. And it  
15 drove everybody up.  
16 The outcome of this was an individual who  
17 was pulled off the top bunk, hit his neck on the sink  
18 on the way down, broke it, you got a billion dollar  
19 baby, like that movie. Spinal fracture, paraplegic.  
20 Okay.  
21 That was the outcome of an individual who  
22 otherwise, absent all these non-defined, ill-defined  
23 terms, ill-understood terms, absent all that would  
24 have been in a work release housing unit, not up in  
25 medium security.

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1 So, yeah, I mean, definitional issues are  
2 huge.  
3 Q. Would it be possible that some male  
4 inmates might feel uncomfortable being searched by a  
5 transgender woman? We'll talk about unclothed  
6 searches.  
7 So is it possible some male inmates might  
8 feel uncomfortable being searched unclothed by a  
9 transgender woman?  
10 A. Let me just say that -- that I've done  
11 presentations around the country with transmen, as you  
12 know, and I have been approached by people who were  
13 officers in the room during the presentation, who saw  
14 these same presenters in the bathroom, and came up to  
15 me afterward and expressed how they were dissatisfied  
16 and displeased with having to be in the same bathroom.  
17 So, yeah, I think you could say that both  
18 staff and inmates might have those feelings, yes. So  
19 as an administrator, my decision is am I going to  
20 override those concerns and decisions and their  
21 feelings for operational reasons? And my risk  
22 tolerance would say yes. Somebody else's risk  
23 tolerance would say no.  
24 Q. I guess what I'm trying to get at is  
25 isn't it possible that both male and female inmates

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1 might have concerns about being searched by a  
2 transgender woman?  
3 A. Yes.  
4 Q. Okay.  
5 A. But you know what, here's -- here's what  
6 it really is, okay. Here's what it really is. It  
7 really isn't being searched by a transgender man or  
8 transgender woman. It really isn't.  
9 It really gets down to that third option  
10 I talked about, that sexual preference. Their concern  
11 is that they're getting searched by somebody that's  
12 going to get titillated by the search. That's really  
13 the issue.  
14 The issue isn't -- isn't what's the --  
15 what's the gender identity of the person or what's the  
16 physiognomy of the person. The real issue is are they  
17 getting some sexual gratification out of my searches,  
18 out of what they're doing to me.  
19 That -- that's the whole thing behind  
20 this whole sexually intrusive nature under the Fourth  
21 Amendment processes, okay. An individual feeling  
22 embarrassed.  
23 And they're feeling embarrassed why?  
24 Well, they're feeling embarrassed because they feel as  
25 though the other individual is driving some sexual

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1 satisfaction, because that same individual would not  
2 feel the same way if they were being gynecologically  
3 searched by a male doctor.  
4 So it really has to do with their  
5 perception of what the individual's doing and what  
6 they're doing it for. That's why I do the three  
7 parts.  
8 Q. So -- all right. I'm just going to go  
9 back and try to make sure I have clarity.  
10 So if somebody had a driver's license  
11 that showed one sex, and a passport that showed  
12 another sex, would it require more risk tolerance to  
13 go with the sex that was listed on the passport as  
14 opposed to the one that was listed on the driver's  
15 license?  
16 A. Which is right? Which are you going to  
17 use in your definition? Which is right? That's what  
18 you're really asking. What is right? Okay.  
19 So I say, well, I'm going to use the  
20 passport. How do I know that's right? It's like the  
21 guy that came in said his name was different. He went  
22 to the judge and said, 20 years I've been coming in,  
23 my name's different.  
24 How do we know he's right? How do we  
25 know he's not really giving us a false name? So,

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1 again, which is right? The driver's license or the  
2 passport?  
3 So what I have to do is I have to -- I  
4 have to define the issue, define the term, and then  
5 I've got to define where I'm going to get the  
6 information from. If I've not conflicting information  
7 processes, I have to make a decision, yes. I've got  
8 to choose one or the other.  
9 Q. Okay. So it would -- so whether you went  
10 with a passport sex designation or a driver's license  
11 designation, that would be a decision that the  
12 correctional administrators would make based on how  
13 they are defining sex and where they have chosen to  
14 get that information from, and how they choose to  
15 resolve disparities; is that right?  
16 A. Yeah. And this is the prime example.  
17 This case is a prime example of how that plays out in  
18 a legal sense for correctional administrators and law  
19 enforcement administrators.  
20 I get some level of coverage in my  
21 decision-making discretion by saying that I used what  
22 the State of Alabama defines. I get some level of  
23 coverage from that.  
24 So as a correctional administrator, I  
25 wouldn't be surprised if a lot of them say, Well,

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1 we're going to use the definition of sex that is used  
2 on the driver's license by the State of Alabama,  
3 because if I then get sued because I used that versus  
4 the passport, if I then get sued, I have some level of  
5 legal coverage on which to base my decision-making  
6 process.  
7 I can go and sit in the court and say,  
8 Judge, look, we used what the State of Alabama told  
9 us. Now he, the judge, could still say the State of  
10 Alabama's wrong, but it doesn't mean that I didn't use  
11 that information, okay.  
12 Q. Okay. So when I refer to "PREA," I mean  
13 the Prison Rape Elimination Act, okay?  
14 A. I've heard of it.  
15 Q. So you're familiar with PREA; right?  
16 A. I am familiar with PREA.  
17 Q. And have you -- when you have done  
18 consultation for different correctional  
19 administrators, have you consulted on PREA compliance?  
20 A. Yes, I've discussed. I've done  
21 presentations on PREA compliance, yes.  
22 Q. Great. And have you ever advised or  
23 trained correctional administrators specifically about  
24 PREA compliance when it comes to cross-gender  
25 searches, searches of transgender people, or searches

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1 of intersex people?  
2 A. No. Mine is more on a broader scope of  
3 the -- the Prison Rape Elimination standards. Now,  
4 the act itself is law, but the standards that were  
5 promulgated as part of the act are all voluntary,  
6 okay.  
7 So whether a jail decides to comply with  
8 the standards, to meet some of the standards, meet all  
9 the standards, or to meet none of the standards,  
10 whether they decide that they're going to tackle that  
11 whole -- the whole issue of sexual violence in jail  
12 without using the standards, that's a discretionary  
13 decision that is left up to the local jail  
14 administrator.  
15 So they're not required to it. The only  
16 agencies under the act that are actually mandated to  
17 meet the standards is the Federal Bureau of Prisons,  
18 the Homeland Security, ICE agencies, and then those  
19 individuals that wish to contract with those entities.  
20 So you have states like the State of Utah  
21 was not complying with Prison Rape Elimination Act.  
22 The State of Texas wasn't complying with it for a  
23 while, then they decided that they would.  
24 And all of those would simply lose a  
25 certain percentage of federal funding that flowed to

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1 them. But, again, that compliance was strictly  
2 voluntary. Wasn't mandated.  
3 So, you know, the -- the standards are  
4 much like the ACA, American Correctional Association  
5 standards, or the NCCHC, the National Council on -- or  
6 the National Commission on Correctional Health Care  
7 standards.  
8 You know, these are all voluntary  
9 standards which help guide us, maybe, in our  
10 decision-making practices. Again, those discretionary  
11 decisions in the jails.  
12 So -- but on specifically about the  
13 searches of them, no. What I try to do is I try to --  
14 to provide information which helps to shape their  
15 world view, to change those thought processes, so that  
16 they can begin to think about it differently.  
17 I have a great video, and I got it off of  
18 TV. It was on one of these American jail program-like  
19 things. And in this particular video, it's a Las  
20 Vegas metropolitan jail. Now, this is a 3,000-bed  
21 jail ran -- at that time, ran by a good friend of  
22 mine, Jack Donohue. Good guy.  
23 And it's a video where they arrested a  
24 young lady sitting in a parking lot, and this is --  
25 this is a pre-Florence, the strip search case, okay.

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1 Q. Right.  
2 A. This is pre-Florence. And they arrested  
3 her sitting in a parking lot in Las Vegas, and she had  
4 an open container in her lap, in her car. Oh, my God.  
5 They arrest her, they look at her driver's license,  
6 says male. Obviously a female in the car.  
7 They brought her to the jail -- they  
8 arrested her, they bring her to the jail. So  
9 basically her charge was possession of an open  
10 container. The car wasn't on, she wasn't driving, she  
11 wasn't intoxicated.  
12 So they bring the young lady in the jail.  
13 And the whole video is about the process that the jail  
14 is going through to try to determine is this a male or  
15 a female?  
16 So here's what they decide. They bring  
17 the young lady in, and sure enough, in their system it  
18 says 100 percent male. But wait a minute, it looks  
19 like a female.  
20 So they decide we're going to search  
21 it -- and -- and I use this video in my training,  
22 because I also use the language that's used in it.  
23 They're going to search "it" to determine what "its"  
24 sex is.  
25 So they get a female officer and they

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1 say, We're going to have you take her over in the  
2 booth over there, and we want you to strip search her.  
3 And if during the strip search process you get to a  
4 point where you begin to identify what looks like a  
5 man to me, we're going to stop the search and we'll  
6 have a male officer come in.  
7 All right. That's what we're going to  
8 do. All on video, okay. So, I mean -- so -- all  
9 right. So I'm doing a presentation, and it just so  
10 happens that the jail administrator, Jack, was in the  
11 room.  
12 And I said, Jack, have you seen this  
13 video and have you thought about the legal  
14 implications of what they were doing in that video?  
15 First off, it's pre-Florence. So you're  
16 strip searching somebody for a nonviolent misdemeanor  
17 offense in a state where you had to have reasonable  
18 suspicion, okay. That didn't rise to that level.  
19 Secondly, you've got a female officer  
20 that you're sending in to strip search to try to  
21 determine genitalia. What training did you provide  
22 that officer in identification of genitalia, okay.  
23 That's another issue.  
24 I said -- and the third issue is -- is  
25 what about the fact that the staff are using a search

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1 like that to determine sex of the individual. I have  
2 to tell you, he had no idea the staff were doing that.  
3 So he gets on the phone and he calls the  
4 lieutenant from the video. He calls and brings him  
5 over to the conference. Gets the sergeant, come over  
6 to the conference. And we go through the video with  
7 them and we go through the problems with the whole  
8 thing.  
9 So, you know, yeah, I -- you know, these  
10 are all difficult issues for us, and having good  
11 definitions is important on how we're going to -- how  
12 we're going to manage our facilities of people coming  
13 in.  
14 Q. Okay. So I understand that you don't --  
15 that you don't train on PREA and searches  
16 specifically, and that -- and that PREA compliance  
17 isn't mandatory in the jails that you're training.  
18 Are you familiar with the PREA regulations about  
19 cross-gender searches and searches of transgender  
20 people?  
21 A. Yes, I am. But let's be clear.  
22 There's -- "regulations" is not the term. "Standard"  
23 is the term, okay. There are --  
24 Q. Why is that?  
25 A. Huh?

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1 Q. Why is that?  
2 A. Because that's what it says in their --  
3 in their materials, their standards.  
4 Q. Okay.  
5 A. Yeah, it's called the PREA standards.  
6 And they -- and you get audited based on those. Yeah,  
7 there's a whole -- a whole cottage industry on that.  
8 But I am familiar with the -- with the  
9 prohibitions under PREA that -- that have prohibitions  
10 of strip searching individuals, transgender, strictly  
11 to determine sex of the individual. Yeah, I am  
12 familiar with that.  
13 Yeah, that -- I think that's a problem,  
14 okay. I think it's a problem. We have to have better  
15 definitions than that.  
16 Q. You think that -- just to clarify -- you  
17 think that searching people just to find out what  
18 their genitals are is a problem; right?  
19 A. Well, yeah.  
20 Q. Okay.  
21 A. I personally do.  
22 Q. I want to make sure you didn't --  
23 A. No. That's my risk tolerance, okay.  
24 That's my risk tolerance.  
25 Q. Got it.

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1 And, you know, in the post-Florence  
2 world, how common are strip searches in jails, to the  
3 extent you can say?  
4 A. What -- what was your question?  
5 Q. So post-Florence, after that decision,  
6 how common is it for strip searches to be performed in  
7 jails?  
8 A. Let me -- let me just as a -- I guess to  
9 make sure everybody knows, I was the expert for the  
10 plaintiffs in Florence.  
11 Q. I didn't realize that. Thank you.  
12 A. Yeah, I -- I argued against -- I argued  
13 against the use of blanket strip searches. The bright  
14 line approach to strip searching, and I argued against  
15 that on several levels.  
16 But my primary level was it's not very  
17 effective the way that we do it when we do a blanket  
18 like that. Because when we do blanket strip searches,  
19 nobody gets strip searched really well, all right.  
20 What I liked was the idea of targeted  
21 strip searching that the reasonable suspicion provided  
22 with us. Because officers, if they really thought  
23 that guy had a weapon on him, they were going to do a  
24 much more thorough search versus officers that are  
25 just searching everybody.



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1 So I've been to places, like I was in a  
2 large jail out on the West Coast where individuals  
3 would come in, and they'd line them up on a big line  
4 on the gym floor, and they'd strip naked and they'd  
5 all turn around and bend over, and they all sort of  
6 walked down the line looking at everybody. And then  
7 he'd tell them to turn around, and they'd turn around.  
8 He say lift them up, and they'd lift them up and he'd  
9 walk down the line looking at them all that way, okay.  
10 That's manner search, but in that case,  
11 done in a group setting, all right. So there was a  
12 problem with all that. But in that search, you think  
13 he really saw anything? You think he really captured  
14 anything?  
15 And what I saw was -- was we were doing a  
16 lot of extra work. So now I'm going to look at it  
17 from -- from maybe the Toyota model in that how do I  
18 do more effective, more quality work?  
19 So how do I make my searches more  
20 effective in what I'm really looking to do, which is  
21 prevent the entry of contraband, prevent the entry of  
22 weapons, protect staff, you know, things of that  
23 nature, okay. That's what I'm really looking to do.  
24 And I do that when I do it targeted. But  
25 when I do everybody, nobody gets searched. That's the

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1 problem with that, okay. That's what I felt in  
2 Florence.  
3 So now post-Florence -- and I don't know  
4 if you listened to the arguments in Florence, but some  
5 of the arguments from the defendants in argument  
6 was -- were just ludicrous. They were talking about  
7 people hiding five gallons of pruno.  
8 You know what pruno is?  
9 Q. No, I don't.  
10 A. Homemade hooch, okay. The inmates make  
11 it in their cells.  
12 Q. Whatever it is, five gallons is a lot of  
13 gallons. Sorry, go on.  
14 A. Yeah, they're talking about five gallons,  
15 you know, and come on, who's hiding five gallons?  
16 Even on the worst strip search, if your staff isn't  
17 catching five gallons of pruno on somebody, you got a  
18 huge problem that's not related to the search, okay.  
19 That becomes employee management there, right? That's  
20 what we have there.  
21 So -- so, you know, I -- some of the  
22 issues in all that have come up with what I think is a  
23 bad policy, because in that the court never really  
24 established that bright line of where you can search.  
25 They said, well, if you're going into

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1 general population, you can be searched. But they  
2 don't define general population. So every jail you go  
3 into across the country has a different definition for  
4 it.  
5 So you go into some jails in Georgia,  
6 that bright line is the back door of the jail. So you  
7 get out of the police car, when you cross the  
8 threshold, you're stripable and you get stripped.  
9 In other jails, that bright line might be  
10 further down in the process. California, that bright  
11 line might be 12 hours in the process, okay.  
12 So, you know, I don't think it helped us.  
13 I think it really hurt us, as correctional  
14 administrators, more than helped us. I think the  
15 reasonable suspicion really provided definitions and  
16 definitions that were quantifiable.  
17 I mean, if a guy came in and he had drug  
18 charges, it was quantifiable. If he came in and had  
19 past contraband charges, quantifiable.  
20 But now, we're searching everybody and  
21 we're finding less. So you see, jails are now going  
22 to things like we need to use metal detectors because  
23 their staff just aren't doing good searches.  
24 Sorry, I prophesized a little bit on  
25 that. I, as an officer, did thousands and thousands

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1 and thousands of strip searches, and nobody enjoys  
2 strip inches. The inmates don't like it; we don't  
3 like it.  
4 Q. I believe it.  
5 So in the PREA standards, they say  
6 that -- let me back up.  
7 So is it useful to correctional  
8 administrators to know what genitals somebody has?  
9 A. Is it useful for them to know that?  
10 Q. To know it, yeah.  
11 A. It depends on how you manage your jail.  
12 If you manage your jail based on genitalia, then the  
13 answer would be yes. If you manage your jail based  
14 upon maybe gender identity, how the person feels about  
15 themselves and how they operate, then probably no.  
16 So, you know, it depends on -- again,  
17 that's where that definition of risk tolerance comes  
18 in. You know, in Laramie County, Wyoming, obviously  
19 the genitalia wasn't that important to the  
20 administrator. He was willing to house an individual  
21 that had male genitalia in a female housing unit.  
22 Now, when they went to the Wyoming  
23 Department of Corrections, they were not so willing to  
24 do that. Got housed in a male unit. You got a male  
25 penis, male unit. So, you know, again, risk

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1 tolerance. That operational decision.  
2 Q. Okay. And so if -- if a jail -- if a  
3 correctional administrator decides it is important, we  
4 do want to know what somebody's genitals are, would  
5 you have any recommendation on how they can find out  
6 about what the person's genitals are, aside from doing  
7 the strip search?  
8 A. Driver's license, birth certificate,  
9 passport, ask.  
10 Q. Okay. And do you recall what the PREA  
11 standards say about how it's acceptable to try to find  
12 out somebody's genitals?  
13 A. No, not off the top of my head I don't.  
14 Q. All right. I'm going to -- I'm going to  
15 read part of it, I don't have it for you to look at,  
16 and it says:  
17 "The facility shall not search or  
18 physically examine a transgender or  
19 intersex inmate for the sole purpose  
20 of determining the inmate's genital  
21 status. If a inmate's genital status  
22 is unknown, it may be determined  
23 during conversations with the inmate,  
24 by reviewing medical records, or, if  
25 necessary, by learning that

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1 information as part of a broader  
2 medical examination conducted in  
3 private by a medical practitioner."  
4 Does that seem consistent with your  
5 memory?  
6 A. I mean, that's how they define it.  
7 Q. Okay. And they don't mention driver's  
8 licenses as a way to determine somebody's genitals, as  
9 you recall; right?  
10 A. Not in that policy. Not in the statement  
11 you just made. I don't know what the rest of it says.  
12 I'd have to review all of it. But I think what --  
13 Q. Fair enough.  
14 A. I think the intent, and so if you look at  
15 that standard, they come out -- those standards, they  
16 have a whole intent section, because they try to  
17 explain what they're trying to get at in it, because  
18 it's so nebulous, you know, that whole thing.  
19 And the keyword in all that is examined  
20 for the sole purpose, okay, the sole purpose, all  
21 right.  
22 You know, there are a lot of individuals  
23 that are walking around out there that have ambiguous  
24 genitalia, and we don't typically go around checking  
25 each other's genitalia. I have to tell you, we don't

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1 do that.  
2 I mean, that's not -- you know, in  
3 jails -- and my story on that is when I was an officer  
4 back in the '80s, we had a guy that came in all the  
5 time, minor things, you know, shoplifting, possession  
6 of marijuana. Never anything big.  
7 His name was Bruce. Great guy. He was  
8 my trustee, all right. But when he'd get arrested,  
9 he's brought in. And whenever we had to put them up  
10 or get them out, they had to be strip searched.  
11 Well, Bruce was an African American male.  
12 And I can remember -- and I'm embarrassed by it now --  
13 but I can remember joking with Bruce during the strip  
14 search about how as an African American he got  
15 shortchanged, all right, in his genitalia.  
16 Because now looking back on it, with what  
17 I know now, I can tell you that I think that Bruce  
18 probably had a micropenis. Bruce was probably one of  
19 those intersex people out there. And Bruce was always  
20 housed as a male. Nobody was checking each other's  
21 junk in the housing units, okay. It just doesn't  
22 happen up there.  
23 Did we ever search Bruce that way to try  
24 to determine whether or not Bruce was fully male or  
25 fully female? No, we -- that wasn't being done.

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1 So I think what they're trying to get at  
2 in that policy under PREA is that -- is that we don't  
3 necessarily search individuals for their -- looking at  
4 their genitalia in order to determine what their sex  
5 is. And I think it's -- that was actually not a bad  
6 policy, because we don't provide training to staff in  
7 genitalia identification, i.e., what does a normal  
8 penis look like?  
9 I mean, we all think we know. We've seen  
10 the videos. We've -- you know, we all got movies out  
11 there, okay. Or what does a vagina or clitoris look  
12 like? Okay, I mean, we all think we know, but in  
13 reality, we don't know.  
14 This is part one of my presentations, by  
15 the way, is that -- is that, okay, so what training do  
16 we provide staff to identify that.  
17 And now you're starting to get some of  
18 the larger providers, medical providers out there,  
19 companies like Horizon, NAPCare, just these large  
20 companies out there are really starting to question  
21 whether or not they want their medical staff involved  
22 in going down and identifying the genitalia of the  
23 people in custody under PREA, okay.  
24 Because what training are they providing  
25 to that LPN -- the LPN, you know, on genitalia

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1 identification? There is a whole branch of medicine  
2 out there on genitalia identification.  
3 So, you know, these companies are  
4 saying -- and they're doing it on two levels. They're  
5 doing it on the one level of the training, okay, Monel  
6 issues; and then they're doing it a whole other risk  
7 management level -- here we go with risk tolerance  
8 again -- risk management level saying do I want to  
9 have to pay my staff to sit in court to try to defend  
10 their genitalia identification if they get sued on  
11 some Fourth Amendment violation.  
12 So people are starting to pull back and  
13 go, wait a minute, and it's just becoming a more  
14 tricky environment.  
15 Q. Thank you.  
16 Let's look at Exhibit 43. Okay. So  
17 let's look at Page 41. First, can you just describe  
18 what this document appears to be?  
19 A. This is a publication by the -- the  
20 private entity called the National PREA Resource  
21 Center, which is a private entity, commercial entity.  
22 It looks like it's their training for guidance in  
23 cross-gender and transgender pat searches published in  
24 February of 2015 by The Moss Group, Incorporated.  
25 Q. Thank you.

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1 Now let's turn to Page 41.  
2 A. What page? 4-1?  
3 Q. 4-1.  
4 A. Okay.  
5 Q. So I'm going to ask you to read the third  
6 bullet, including the three options, then I'm going to  
7 ask your opinion about it. But first can you just  
8 read out the -- it starts with "There are three  
9 practices..."  
10 A. "There are three practices  
11 consistent with PREA" -- and, again,  
12 remembering that PREA is voluntary,  
13 not all jails comply, not all prison  
14 systems comply, okay -- "with PREA  
15 for assigning staff to perform pat  
16 searches on transgender and intersex  
17 inmates and residents:  
18 "Option 1: Searches are conducted  
19 only by medical staff;  
20 "Option 2: Searches are conducted by  
21 female staff only, since there is no  
22 prohibition on the pat-searches  
23 female staff can perform (except in  
24 juvenile facilities)."  
25 And having run a juvenile facility, I can

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1 tell you that that's not right either, okay. That's  
2 not right. That's all based on the standards that are  
3 put out by the Office of Juvenile Justice and  
4 Delinquency Prevention, OJJDP. Those also are  
5 volunteer standards that you put out if you want money  
6 from the federal government from those agencies.  
7 "Option 3: Asking inmates to  
8 identify the gender of staff with  
9 whom they would feel most  
10 comfortable. This preference can be  
11 documented at intake."  
12 Q. Okay. So would you agree with these as  
13 options for doing pat searches of transgender people?  
14 A. No.  
15 Q. Tell me why not.  
16 A. Okay. First off, searches are conducted  
17 by medical staff, okay. The search is a custodial  
18 function. It's a security function, not a medical  
19 function. So medical staff are performing a custodial  
20 or correctional security function. That's not right.  
21 That's not -- I wouldn't see that as appropriate,  
22 okay.  
23 Now, if we want to cross-train our  
24 staff -- and I know that on -- we had individuals that  
25 worked for me at our jail and I -- and in other jails

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1 around the country that were former medical providers,  
2 they were LPNs, they were RNs, got out of the  
3 business, came into jail, whatever -- for whatever  
4 reason. So, I mean, you have that in there.  
5 So, I mean, the individual like that that  
6 might have both the cross-training of being medical  
7 and a security officer performing a security function,  
8 then that might be appropriate.  
9 But by medical staff, most medical staff  
10 in jails are not security officers. I, as an  
11 administrator, my risk tolerance, won't let me have  
12 them do a security function, all right.  
13 I have some coverage under -- under  
14 federal law, federal case law, okay, you know,  
15 Turner v. Safley. I've got custody staff doing  
16 searches as a security, right? I've got a legitimate  
17 penal interest in custody staff doing it.  
18 But when you start having medical staff  
19 cross those boundaries and doing security functions,  
20 it kind of muddies the water from a risk tolerance  
21 level, from my perspective, okay. I would rather have  
22 a custodial officer do it. That's that one, okay.  
23 Searches are conducted by female staff  
24 only. You know, basically what we're doing is we're  
25 telling our male staff, we don't trust that you're not

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1 going to be sexually titillized by searching female  
2 inmates, all right. That's what we're doing. That's  
3 what -- basically what we're saying.  
4 Why can't a male search a female? Why?  
5 When we look at policing agencies, take the -- take  
6 the Kentucky State Police or the Utah State Police.  
7 When they're out in the middle of nowhere and they  
8 pull over an arrestee, they pull over somebody for a  
9 traffic violation, they arrest them on DUI. Their  
10 policy will require, before you put that individual in  
11 the back seat of your cruiser, you must search them  
12 for the presence of weapon and drugs.  
13 Why? Because we actually have people  
14 shoot officers in the back from the back seat of the  
15 cruisers. Because we actually had people overdose on  
16 drugs they secreted on their body prior to the search  
17 in the back seat of cruisers. So we have that.  
18 Now, these officers, they perform those  
19 searches in the community. So that's a male officer  
20 searching a female. Why is it all of the sudden when  
21 they cross the threshold of the jail, they can no  
22 longer do that?  
23 We can expect professionalism from our  
24 police officer, but not professionalism from our  
25 correctional staff? Absolutely wrong.

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1 We can expect professionalism from both  
2 sides, if as administrators we demand it, we train it,  
3 we supervise it. That's the critical aspect of that.  
4 So, you know, just saying that only  
5 female staff can do it, that also assumes that you  
6 won't have like I had, a female inmate who was going  
7 to lodge litigation against us against a female  
8 officer who was titillated by the search that she was  
9 conducting on that female inmate.  
10 Why? Because everybody knew that that  
11 female officer was openly lesbian. Again, we're  
12 getting -- now we're getting into that third part,  
13 that sexual preference part.  
14 Now, this particular inmate didn't mind  
15 being searched by the other female officers, only the  
16 lesbian officer.  
17 Why? Because she's concerned that the  
18 officer is being titillated; that there's some sort of  
19 sexual gratification being obtained by the officer.  
20 And that's what this policy is looking to  
21 do when they say only by female staff. This assumes  
22 the female staff are not going to be sexually  
23 gratified with touching the male genitalia.  
24 That could be wrong, okay. Or how  
25 about -- how about a gay man pat searching another gay

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1 -- another man? Or could a gay man not search a  
2 female and not become sexually titillated? That's  
3 where all these things get all mixed up and all thrown  
4 together in one big ball.  
5 So, yeah, I mean, I kind of have a  
6 problem with that. Plus, you know the most difficult  
7 staff to recruit in jails from a correctional  
8 perspective are female officers. We have difficulty  
9 getting them in, getting a percentage into our jail to  
10 be able to work under these same sex guidelines.  
11 Now -- and we're not even talking about  
12 EEOC issues here, okay. When you have a policy that  
13 says only female, you'd better be able to back it up  
14 under EEOC.  
15 How am I restricting that officer from  
16 doing the same level of searches that that employee's  
17 doing? Employee/employee, that's how you have to do  
18 it.  
19 Keep going?  
20 Q. Well, so you talked about the first two  
21 options. How about the third option?  
22 A. You know, again, the third option I like.  
23 I like. Third option is the one I try to train,  
24 because I try to expand people's minds about what  
25 we're doing out there. I like it.

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1 Understand that my risk tolerance level's  
2 really high, okay. You know, I -- and I did stuff in  
3 my jail that other jails laugh at me about.  
4 When I've done this presentation on sex  
5 in jails, I did it -- I did it for the Kentucky Jails  
6 Association, and I had people in there screaming bible  
7 phrases at me.  
8 Now, do you think that they're going to  
9 think that that third one is appropriate? Okay. My  
10 risk tolerance says I would do the third one. But if  
11 their risk tolerance says that they won't do the third  
12 one, that's really the most commonly acceptable  
13 correctional practice out there.  
14 And you know what you hear when you --  
15 when you mention doing that? You hear jail people go,  
16 oh, yeah, that's because every guy's going to come in  
17 and say I want to be searched by her, because the  
18 inmate wants to get titillated by it. Come on.  
19 You know, I -- I -- personally, I just  
20 don't find that as realistic. But that's my  
21 perspective, all right. And, again, it becomes a  
22 definitional issue of how we want to operate our  
23 jails.  
24 I won't say that it's wrong to not do  
25 that, and I won't say it's wrong to do that. I would

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1 say that in our changing world, this evolving sense of  
2 decency that we have in our society, some of our  
3 practices have to change, but we need definitional --  
4 definitions on which to base how we make those  
5 changes. That's critical.  
6 So one other thing. Gender of staff.  
7 Gender of staff. Are we talking about what the staff  
8 identify as or are we talking about what the staff has  
9 as plumbing?  
10 Q. Right.  
11 A. You see how definitions come in.  
12 Q. So it sounds like you don't think that --  
13 that restrictions on cross-gender pat searches are  
14 appropriate; is that right?  
15 A. No. Not blanket like this, no. This is  
16 a blanket policy, no. Blanket policies like that, no.  
17 Q. Okay.  
18 A. I've had my discussions with Andy Moss on  
19 this. I know Andy. You know Andy.  
20 Q. Is Andy one of the authors of this -- of  
21 this guidance you think?  
22 A. It's by The Moss Group.  
23 Q. Yeah.  
24 A. That's her company. I like Andy.  
25 Q. So -- so if you don't think that, in

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1 general, cross-gender pat searches should be  
2 prohibited, then it isn't necessarily required to  
3 figure out how to classify somebody for purposes of  
4 sex before doing a pat search; is that right?  
5 A. Well, you have to have an idea of who to  
6 have them search, right? So you have to have some --  
7 you have to have some basis.  
8 Q. Well, but I thought you said that for pat  
9 searches it would be okay to have men search women or  
10 to have women search men?  
11 A. Oh, yeah.  
12 Q. Am I wrong?  
13 A. In my jail it would be. And, in fact --  
14 in fact, we instituted cross-gender supervision in --  
15 I was thinking it was, like, '89, '90, maybe.  
16 Prior to that, in the state of Kentucky,  
17 female officers -- they were called matrons, you  
18 couldn't even call them officers, they were called  
19 matrons -- they only dealt with the female inmates and  
20 the male officers only dealt with the male inmates.  
21 Which was okay except that there was one  
22 captain, one lieutenant, one sergeant position. So if  
23 you were a female officer and you came -- a female  
24 matron at that time -- you came to work, your  
25 opportunities for advancement within the organization

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1 were significantly limited.  
2 There was one sergeant, one lieutenant.  
3 But if you were a male officer, we had, God, 25  
4 sergeant positions, and a dozen lieutenant positions.  
5 So from an employee/employer perspective,  
6 we were really discriminating against our female staff  
7 in the way we managed them in that way. So we  
8 integrate them.  
9 Now, when we did that, all the male staff  
10 claimed that the female officers were going to get  
11 raped and assaulted, they couldn't control the male  
12 housing units, the jail was going to go into a riot,  
13 it was going to burn down, people were going to get  
14 out, the community was going to be killed,  
15 thermonuclear weapons are going to go off. I mean,  
16 that's what you hear, okay. I mean, you get this  
17 slippery slope argument.  
18 In reality, we found that one of the best  
19 performing officers we had in the jail was a  
20 62-year-old female that the inmates called mom. She  
21 could get them to do anything. She didn't have any  
22 fights, okay. So that was good.  
23 But the male staff, they all resented it.  
24 And I think some of it was now it opened up those  
25 positions to the female officers, okay. Yeah, now

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1 they got a little more competition, all right. That  
2 was one issue.  
3 The next thing we found after doing that  
4 was when -- when altercations were happening, they  
5 were sending all the male officers to the  
6 altercations, all right.  
7 And so now we had use of force issues for  
8 an officer showing he had more use of forces than this  
9 other officer over here, so it looked like he was  
10 being a thug in the jail. When in reality, it was how  
11 we're operationalizing their uses of force policy. We  
12 were only sending the males.  
13 So we became an equal opportunity  
14 ass-kicking jail. Meaning if you were a female  
15 officer, you got to go in on that fight too.  
16 Everybody went in.  
17 And you know what we found? When we  
18 started sending only women in or we started sending  
19 women in with the men, fights went down. Inmates  
20 chilled out when they came in, because they didn't  
21 want to fight the women.  
22 Now, is that true across the board? No.  
23 We did have some fights with women. But basically,  
24 across the board, we did not have that. So, again,  
25 it's how we operationalize some of these things.

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1 And then we decided, well, we're going to  
 2 do cross-gender searches; meaning you get assigned to  
 3 booking based upon a rotation, like you were talking  
 4 about, just a rotation.  
 5 If your name comes up, you're working  
 6 booking. If you're in booking and a person -- guy  
 7 comes in, you search the guy; woman comes in, you  
 8 search the woman, doesn't care what you are. We did  
 9 that.  
 10 You know, we got grievances filed by our  
 11 male staff. Not the female staff, the male staff.  
 12 They felt uncomfortable searching the female inmates  
 13 that were being arrested and being brought in. And we  
 14 told them, it's only going to be based upon how  
 15 professional you are. That's what you have to rely  
 16 on.  
 17 And we did that. Eventually it became  
 18 such an issue we had to actually back off that policy,  
 19 because our male staff were so much against it. The  
 20 female officers, they had no problems whatsoever with  
 21 it. They could be professional in it.  
 22 So what we're talking about in this is  
 23 professional conduct on the part of the staff; train  
 24 it, supervise it, have a good policy that defines it  
 25 all. That's critical.

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1 Q. Okay. What's your position on  
 2 cross-gendered unclothed searches?  
 3 A. We have to look at the Supreme Court for  
 4 the guidelines from that. I mean, we've got -- we  
 5 have plenty of guidelines from the Supreme Court that,  
 6 except under exigent circumstances, the cross-gender  
 7 searches -- now, we're talking about searches, okay,  
 8 the correctional practice -- cross-gender searches is  
 9 really more intrusive for a female than it is for a  
 10 male.  
 11 So, typically, it's frowned upon for any  
 12 sort of cross-gender searches by -- by males on  
 13 females and females on males.  
 14 Q. And that's for the unclothed searches;  
 15 right?  
 16 A. That's the unclothed searches, the strip  
 17 searches, yeah. And, you know, and again, that's not  
 18 all -- that's not based on the fact that a male  
 19 officer, like a doctor, could not be professional in  
 20 the conduct of the duties.  
 21 It's all based upon the notion and the  
 22 idea that a male strip searching a female would be  
 23 titillated by it, okay, would be sexually excited by  
 24 it. There would be some sort of gratification  
 25 achieved by it.

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1 And the fact of the matter is, is that's  
 2 just not true, okay. And it goes the other way too.  
 3 Because what we don't see is we don't see the issues  
 4 out there of gay men stripping male inmates that are  
 5 hetero. But, you know, I've had grievances filed by  
 6 inmates on that, both ways. It's a little more  
 7 difficult, isn't it, in a jail.  
 8 Q. But you had never assigned somebody to do  
 9 a search based on their sexual preference; right?  
 10 A. No. I -- I'm going to assume the  
 11 officers can perform professionally, unless they  
 12 dictate and show me otherwise.  
 13 I don't care who turns you on. I don't  
 14 care what your gender is. I don't care what your  
 15 plumbing is. I care that you conduct yourself in a  
 16 professional manner that you've been trained to do.  
 17 Q. Okay. Okay. Let's talk about housing.  
 18 So, in your opinion, the rationale for  
 19 separating people in custody based on gender is to  
 20 reduce the incidents of sexual behavior, both rape and  
 21 consensual sex; is that right?  
 22 A. That's -- that's the concept, yes.  
 23 Q. Okay.  
 24 A. But it doesn't work.  
 25 Q. But it doesn't work?

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1 A. Oh, no. That's why we have the Prison  
 2 Rape Elimination Act. I mean, you still have -- you  
 3 still have male on male consensual acts and you have  
 4 female on female consensual acts.  
 5 You still have male on male rape, and you  
 6 still have female on female rape, okay. So, you know,  
 7 it -- I -- I thought it was -- I thought it was  
 8 interesting in doing the research to find out that  
 9 Alabama actually allows you to -- to house in the same  
 10 cell husband and wife, okay.  
 11 Now, we won't even get into trying to  
 12 determine -- trying to define the term husband and  
 13 wife, okay, but in Alabama, it's okay.  
 14 Q. Actually, what do you think the  
 15 definitional issues would be around husband and wife?  
 16 A. Oh, my. All right. So, you know, okay.  
 17 I mean, we're getting into some really gray territory  
 18 here.  
 19 First off, if we're going to define it,  
 20 we're going to have to come up with what is the  
 21 definition of husband and wife.  
 22 Are we going to include in that  
 23 definition man and man, because the courts -- now we  
 24 have court cases now which say that because same-sex  
 25 marriages are -- have been approved by the Supreme

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1 Court, okay, we can't prohibit same-sex marriages, as  
2 they tried to in Kentucky, okay, other places, Utah,  
3 we can't prohibit those.  
4 We now have to actually provide for  
5 same-sex marriages of inmates in prisons and jails.  
6 Did you know that? Were you aware of that? Yeah.  
7 So, okay. All right.  
8 So in that situation, is that a husband  
9 and wife? Does it meet the definitional criteria of  
10 husband and wife? Or are we going to define husband  
11 and wife as husband is a male, wife is a female, okay.  
12 Male based on what's the definition of  
13 male; female based on definition of female. You see  
14 now we start getting -- it's more complicated as we go  
15 on through all this.  
16 When really -- when really, ultimately,  
17 what we're trying to prohibit in jail settings and in  
18 prison settings is -- is sexual contact.  
19 You know, I -- I was against -- I  
20 spoke -- I was on the board of directors for the  
21 American Jail Association, I was quite vehement with  
22 the Prison Rape Elimination Commission in my  
23 presentations to them, my discussions with them, about  
24 we don't need a whole other level to prevent sexual  
25 violence in jails and prisons. We already have plenty

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1 of law that says rape is not appropriate. Plenty of  
2 law that says we must protect inmates from violence  
3 arising from contact with other inmates.  
4 And it doesn't say only one kind of  
5 violence or another. It says violence. So that means  
6 psychological violence, okay, verbal violence,  
7 physical violence, or sexual violence.  
8 So we didn't really need this whole other  
9 layer that PREA standards provided out there. We  
10 didn't really need that to muddy the water of what  
11 we're doing in jails and prisons.  
12 That's my perspective, okay. All we have  
13 to do is protect people when they're in our custody,  
14 and we want to protect them as best we can.  
15 Q. And is there any other rationale for  
16 separating people by gender in jails, aside from  
17 preventing sexual contact?  
18 A. Well, you have the Fourth Amendment  
19 issues of individuals feeling the intrusiveness of  
20 being seen, the rights to privacy that's guaranteed  
21 under the Fourth Amendment.  
22 Yeah, I mean, if you co-house males and  
23 females together, you could very well have females  
24 filing litigation that she felt violated.  
25 In fact, there was a case that came out

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1 of Florida recently where -- where the jail had --  
2 had -- basically they misidentified the woman. She  
3 came in, a 50-year-old woman, brought into custody on  
4 some outstanding warrant charges, and when she was  
5 being booked into jail, she said she was a female.  
6 But she also admitted that she was taking hormone  
7 therapy, okay.  
8 The hormone therapy happened to be  
9 because she was a 50-year-old female. So she was on  
10 hormone replacement therapy, something my wife and a  
11 lot of other women in my age group are doing, all  
12 right. Not unusual.  
13 Oh, well, this sent up a red flag to some  
14 of the people that were in the jail, that wait a  
15 minute, this may be not a woman; this actually may be  
16 a man, depending on how you want to define those, but  
17 apparently they defined those as biological man. And  
18 they said she's being housed with females, she needs  
19 to be housed in the male housing unit.  
20 And they promptly housed her in a male  
21 housing unit, and she stayed in that male housing  
22 unit, okay. That's a problem, yeah.  
23 Now, she filed under this intrusiveness.  
24 So, yeah, you could have females saying, you know, I  
25 feel unduly embarrassed and my privacy rights have

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1 been intruded upon. You can have males do the same  
2 thing. There's nothing to say you couldn't have males  
3 do it.  
4 Q. So you said before that separating people  
5 in order to prevent sexual contact doesn't work --  
6 A. No, I didn't say it doesn't work. I said  
7 it's not working the way that whole philosophy intends  
8 for it to do.  
9 Q. Okay.  
10 A. Okay.  
11 Q. Tell me how it is working.  
12 A. Huh?  
13 Q. Tell me how it is working.  
14 A. Oh, well, I mean, come on now, you know,  
15 there is -- there is a certain level of sexual  
16 violence that would occur out there that we have to be  
17 cognizant of, all right.  
18 But what we really need to be doing is we  
19 need to be separating out individuals that are  
20 demonstrating sexually predatory behavior from  
21 individuals that are not. That's what we need to be  
22 doing.  
23 I don't care if it's a male and a female,  
24 or if it's female and female. We ran -- in our jail,  
25 we ran co-ed housing units in our jail. Again, we had

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1 a high risk tolerance.  
2 Our intake unit, you know, in most jails  
3 around the country, females get a very short amount of  
4 resource placed toward their housing, supervision,  
5 service provision.  
6 There was a 2002 report that came out  
7 from the National Institute of Corrections that talked  
8 about the -- the lack of good classification housing  
9 and supervision policies for female offenders in the  
10 country, because nobody puts money toward them.  
11 So, for example, you have a place like  
12 Memphis, Shelby County, Tennessee, 33 -- 3,600-bed  
13 jails, and they have very strict prohibitions in the  
14 state of Tennessee on separating males from females,  
15 sight and sound.  
16 Now, why do we have a site and sound  
17 separation once they cross that threshold of the jail?  
18 They can sit together in the back seat of the cruiser,  
19 but once they cross the threshold of the jail, we have  
20 to have them separated.  
21 That's because we all know if they can  
22 even hear each other, they're going to become sexually  
23 titillated by it, they're going to get some sort of  
24 gratification out of it. Okay, that's why we have to  
25 do this sight and sound separation.

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1 So you can't have them being booked in  
2 the same area. You can't have them being housed in  
3 the same area. Here's how it worked out in Memphis:  
4 The males had a beautiful sitting area, they had  
5 televisions to watch that they could, you know, pass  
6 the time with. They had telephones that they can call  
7 and get bonded out of custody with. Those were all  
8 available to them.  
9 You went to the female side, they were  
10 given a large utility closet, no television, no  
11 telephone. When they wanted to make a call, they had  
12 to get an officer to get them out, to walk them up the  
13 hall so the males couldn't see them, so that they  
14 could make a phone call so they could get bonded out  
15 of custody.  
16 Now -- okay. Now we got a Fifth  
17 Amendment right to bond, right? Okay. But it seemed  
18 to be being hindered a little bit by these practices  
19 of sight and sound separations. That's the way it  
20 gets worked out.  
21 Now, in our jail, we ran an intake unit,  
22 we ran a passive seating area where males and females  
23 all sat together. We ran an intake housing unit,  
24 there was a co-ed housing unit, the males and females.  
25 Males go on the lower level, females on the upper

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1 level. They came down, they commingled in the common  
2 areas.  
3 We ran a work release housing unit with  
4 the males housed on one side and the female on the  
5 other side, and in between we had vending machines,  
6 and we had a pool table, ping pong table, a seating  
7 area, and they commingled freely. The males didn't go  
8 on their side, they didn't go on the male side.  
9 I mean, you know, okay. Did we ever have  
10 any problems in there? No. No, because we were  
11 proactive. As soon as we started seeing a behavior of  
12 an inmate inappropriate, we dealt with that behavior  
13 right then. That's how you have to do it.  
14 But that's my risk tolerance. When I  
15 talk about doing this, the jails around the country,  
16 they throw hands up. They're like, oh, my God, you  
17 can't do that. They'll be having sex all over the  
18 place.  
19 You know, what I find personally is that  
20 most people can control their sexual urges when  
21 they're in jail, and that short period of time that  
22 they're in, that they don't feel a need to have sex  
23 with every female that walks in the door, nor do the  
24 females feel that they have to have sex with every  
25 male that walks in the door, and it work both ways.

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1 And if you give people the opportunity to  
2 -- to demonstrate adult rational behavior, you reward  
3 them for that, and you sanction them when you don't.  
4 You'll get that from them.  
5 But, again, that's my -- that's -- my  
6 risk tolerance level's really high. Some people say  
7 we got to punish.  
8 Q. And when people ask you about your  
9 recommendations for how transgender people should be  
10 housed, what would you tell them?  
11 A. Now, again, you're talking to Don Leach,  
12 what would I recommend. I would ask an individual  
13 where do you feel most comfortable being housed. Can  
14 you live in a male housing unit? Yes. Okay, we'll  
15 put you in there.  
16 If you have any problems while you're in  
17 there, you let us know. If there's any issues come  
18 up, you let us know. If something happens while  
19 you're in there, you let us know. You inform them  
20 that they have to help participate in their  
21 incarceration.  
22 So we'll put you where you feel most  
23 comfortable, but if a problem develops, you have to  
24 tell us. But you know what, I would tell that to  
25 anybody. I would tell that to anybody that goes in a



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1 housing unit. If you start having a problem with  
2 other inmates in there, we want to know about it,  
3 okay.  
4 Doesn't matter whether or not you're  
5 male, female, transgender, transsexual, it makes no  
6 difference. I want to know if there's a problem in  
7 there. That's the issue.  
8 You know, so, yeah, in my mind, I would  
9 do that. I would have the individual sign off that  
10 they understand this, sign off that they're making an  
11 adult, rational decision, and then -- and then there's  
12 a risk.  
13 Years ago we had a policy that when you  
14 came in a jail, you gave up all of your jewelry when  
15 you got booked in. So if you had a ring on, you had  
16 to take it off; you had piercings, you had to take  
17 them out. Regardless, all jewelry came off.  
18 Why? Because if you don't take it off  
19 and you get in there with the other inmates, they're  
20 going to bite your finger off to get that ring.  
21 They're going to fight you to get that from you.  
22 They're going to extort it from you, and all this.  
23 That was the idea.  
24 So, you know, the fights that we had  
25 trying to get wedding rings off of people that hadn't

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1 taken it off in 40 years, got arrested for DUI. They  
2 come in the jail and they can't get it off because  
3 they put it on 40 years ago and they're fat now, they  
4 can't get it off. What do we do? We cut it off,  
5 okay, or we fight them to get it off.  
6 You know, we said, Whoa, whoa, why are we  
7 doing this? Let's think about this. This doesn't  
8 make sense. So we quit doing it.  
9 So, you know, unless you came in with a  
10 piece of jewelry that was obviously going to be --  
11 could be used as a weapon, we let you keep it. You  
12 got a tongue stud, keep the tongue stud. You got ear  
13 studs that won't come out, keep the ear studs.  
14 You sign a waiver saying, hey, look,  
15 there's a risk on this. There may be a problem  
16 associated with this, I understand it, but I don't  
17 want to do this.  
18 Now, we didn't do that with necklaces,  
19 okay. We didn't do that with bracelets or things that  
20 could come off. But we did that for things that we  
21 were fighting people and having problems in managing.  
22 Our costs went down. We looked at it, in  
23 one year we put out 30-some-thousand dollars replacing  
24 cut off jewelry, after the person went to court and  
25 the charges were dismissed. We had to replace their

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1 jewelry for them or fix the jewelry. Lost jewelry,  
2 oh, my God.  
3 So once we went to the policy, the only  
4 complaints we had about jewelry issues in the housing  
5 units was from our officers. They lost them in  
6 fights. They get in and get their necklace ripped  
7 off, that type of thing.  
8 So, again, you got to examine your  
9 policies sometimes.  
10 Q. And are you aware of any standards,  
11 regulations, administrative guidance or best practices  
12 documents that say that correctional administrators  
13 should rely on the sex designation on a driver's  
14 license in deciding where to house people?  
15 A. Okay. That's a very broad spectrum.  
16 Q. It is very broad, yes.  
17 A. Because, you know, you look at the state  
18 of Kentucky, and the state of Kentucky we do have  
19 administrative regulations that are promulgated by the  
20 legislator about the management of individuals in  
21 jails.  
22 Now, I think there's maybe -- used to be  
23 30-some, but I think that's down to maybe 20 or so  
24 that have that in the country. I don't know what they  
25 all say, okay. I don't know what they all define.

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1 I know they all have definitions for  
2 these things, all right. I don't think any of them --  
3 my -- just off the top of my head, I don't -- I don't  
4 believe any of them really go to the level of detail  
5 that you're asking in that question.  
6 So that's regulations. Now you're  
7 talking about best practices. You're talking about,  
8 you know, what people are doing out there. That's all  
9 over the board. That's all over the board.  
10 Q. Can you -- I realize you don't know all  
11 of them and you might not remember them off the top of  
12 your head, but can you recall any that specifically  
13 recommend using the sex designation from a license?  
14 A. No, they don't typically go that far.  
15 Q. Okay. Thank you.  
16 A. They -- generally, you find the state  
17 promulgated standards are very broad nature. They  
18 would say something like the jail, we have a policy  
19 separating males from females, or by sight and sound.  
20 That's the one from Tennessee I know.  
21 The one from Alabama is actually cited in  
22 my report, you know. So, you know, I mean, they don't  
23 go into that level of specificity. That's left to the  
24 discretion of the individual administrator.  
25 Q. And, in your experience, jails aren't --

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1 jails aren't placing gay men with women because of  
2 their sexual preference, are they?  
3 A. I don't know. I don't know what all  
4 jails are doing. I could say that if I had a -- okay.  
5 Now let's go back to it. Three parts, remember.  
6 Q. Yes.  
7 A. Physiognomy, the plumbing; you've got the  
8 gender identity; and then you've got sexual  
9 preference.  
10 So you could very easily have an  
11 individual that has male genitalia, female gender  
12 identity, and has a preference for males. So does  
13 that make him a gay man? His gender identity is  
14 female. I don't know.  
15 But if we're going to house by gender  
16 identity and that individual feels most comfortable  
17 being housed in a female housing unit, then I would  
18 house that person in a female housing unit, but the  
19 sexual preference would still be for men.  
20 Q. So what if there's somebody who has male  
21 typical genitalia, and who has a male gender identity,  
22 and he was attracted to other men. Would you place  
23 that person with men or with women?  
24 A. It depends. What is my policy?  
25 What's -- what's my policy on how I'm going to house

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1 individuals? If I'm going to house based upon gender  
2 identity and who they gender identify as, it would be  
3 with a man, right? Being a male population. If I use  
4 it based upon physiognomy, he's a man, going to be  
5 with the men.  
6 You know, again, you know the story --  
7 I'm sorry if I'm boring you with my stories, but I've  
8 been -- I've done all this, okay.  
9 When I first started working at the jail,  
10 we made strict separations of our homosexuals. Oh, my  
11 God, you can't put a homosexual man in the general  
12 population with men. They'll be having sex all over.  
13 That was the idea. It's not working,  
14 okay. Because you know what, even gay men can control  
15 their sexual urges, believe it or not. They don't  
16 want to have sex with every guy out there just because  
17 it's a guy. But a lot of guys like to think that.  
18 And the reason they like to think that is  
19 because they're a guy and they want to think that  
20 they're attractive. Well, fundamentally, a lot of us  
21 aren't attractive to other human beings.  
22 Okay. There are some people attracted to  
23 some, and some aren't attracted to others. That's the  
24 reality of it, okay. And for those that we're not  
25 attracted to, I can actually withhold my sexual

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1 gratifications.  
2 All right. So when I first started  
3 worked in the jail, we made these separations. And  
4 how do I know that you were homosexual? Okay, you  
5 told me. You looked homosexual to me. What does that  
6 mean? I don't know.  
7 I -- he look homosexual to you? I don't  
8 know. He look homosexual to you? I don't know. I  
9 think he is. How many votes for homosexual? Okay, we  
10 got three votes, he's homosexual. He went in the  
11 homosexual unit.  
12 A guy comes in, he's a feminine. He goes  
13 in the homosexual unit. Okay, where was all our sex  
14 happening? In our homosexual unit. Where are all our  
15 problems of sexually predatory behavior happening? In  
16 our homosexual unit.  
17 All right. So I had a young trustee that  
18 was working for me one day, kid named Turk. Good --  
19 good trustee, good inmate. Homosexual. He was housed  
20 in the homosexual unit.  
21 I would get him out of there and let him  
22 work. Why? God, he was intelligent. He had a year  
23 of college. He was intelligent. You could talk to  
24 him. I mean, he had low level charges, possession  
25 charges.

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1 I mean, you know, okay, he's not a  
2 threat. He's minimum security. Let's get him out of  
3 that unit, let him work. So he worked for me, and he  
4 worked for me for a while. And one day he came to me  
5 and he said -- he said, Mr. Leach, I don't understand,  
6 why do I have to be housed in a homosexual unit when I  
7 know all those guys in the general population, we  
8 all -- we all come from the same street, we all went  
9 to school together. I don't have sex with them out  
10 there, I'm not going to have sex with them in here.  
11 So I went down and I talked to the  
12 administrator at that time, Ray Sabatini, and he and I  
13 had been doing consulting since, geez, back in the  
14 '80s, we'd been doing consulting work. And, you know,  
15 he taught me all I know about this, because our risk  
16 tolerance level is high.  
17 We said, yeah, why are we doing this?  
18 This doesn't make sense. We're going to start  
19 separating out people based on sexually predatory  
20 behavior, not on whether you're gay.  
21 Because you know who we didn't do it  
22 with? Our female population. We didn't separate out  
23 the individual females who were -- who were butch  
24 lesbians. We didn't separate them out. But who was  
25 in there having sex with other females in a general

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1 population unit? Sexual predatory female inmates.  
2 So we decided we're going to -- we're  
3 going to separate based upon sexually predatory  
4 behavior. Again that preference, who turns you on,  
5 even though it may not be a turn-on by the -- by the  
6 sex, but a turn-on by the other issues that we know  
7 that come with rape and violence like that, doesn't  
8 make a difference. We have a duty to protect.  
9 So, yeah, you know, we have to look at  
10 our population and make our separations like that.  
11 And at one point, that was all over the United States.  
12 But nowadays, it's getting kind of passé that you  
13 separate out individuals that are -- that are gay, but  
14 it doesn't mean it still doesn't happen. It does.  
15 Some jails out there still do it.  
16 And the rationale would be that if he's a  
17 gay man, you put him in with men, he's going to have  
18 sex with those men, or those men are going to force  
19 him to have sex. And the fact of the matter is,  
20 that's not necessarily true.  
21 Q. Do you know which jails are still doing  
22 that, offhand?  
23 A. No, not off the top of my head. I know  
24 when I walk in them, I go, Oh, my God. Typically it's  
25 the smaller jails around the country. You know,

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1 larger jails are trying to get away from that, but  
2 typically it's the smaller jails.  
3 Q. All right. Let's look back at your --  
4 let's look back at your report again.  
5 A. Are we done with this Exhibit 43?  
6 Q. Yeah, I think we're done with that.  
7 All right. So let's go back to Page 18.  
8 And, again, that last paragraph just starting at  
9 "Ultimately" now, could you just read that out for me.  
10 A. "Ultimately, from a correctional  
11 administrator's perspective, the  
12 definition of 'sex' is intended to be  
13 used to drive decisions that will  
14 reduce the likelihood of harm  
15 occurring to the individual inmate or  
16 other inmates. Harm can arise from  
17 the conduct of inappropriate  
18 searches. Harm can arise from  
19 inappropriate housing. Harm can  
20 arise from inappropriate supervision.  
21 Harm can arise from inappropriate  
22 restrictions on conditions of  
23 confinement. Lastly, harm can arise  
24 from inappropriate restrictions on  
25 conditions of employment."

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1 You want me to keep going?  
2 Q. That's good. No, that's good there.  
3 So I just want to make sure I understand  
4 what you mean by each of these types of harm.  
5 I'm sorry, getting a little echo.  
6 So we've talked about searches. So  
7 inappropriate searches would be -- well, why don't you  
8 just tell me. Could you just summarize what an  
9 inappropriate search could be that could cause harm.  
10 A. Well, that would be one that might rise  
11 to the level of being a Fourth Amendment violation.  
12 Being too intrusive.  
13 Q. Okay. And so inappropriate housing.  
14 What's an example of inappropriate housing that could  
15 lead to harm?  
16 A. Well, I just -- I just kind of described  
17 it with that whole decision about -- the whole  
18 discussion on homosexual inmates. You know,  
19 inappropriate housing could be placing the person  
20 into -- into a setting where -- where they may become  
21 victimized or where they may victimize others. That's  
22 the type of harm that might occur.  
23 Q. Okay. And I think you gave me some  
24 examples about this maybe when you were talking about  
25 the path where women could only supervise women and

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1 men could only supervise men, but could you describe  
2 for me, you know, what is inappropriate supervision  
3 that could lead to harm?  
4 A. Well, inappropriate supervision would be  
5 a situation where you're placing let's say a male  
6 officer into -- into a female housing unit and you're  
7 having problems that are arising from that.  
8 Again, these are all decisions that --  
9 that might be predicated upon operational philosophy,  
10 but which result in litigation from female inmates  
11 that are saying, hey, look, this officer being in here  
12 is too intrusive, because every time they come around  
13 to do supervision of my welfare, the hourly check by  
14 looking in on the inmate, looking in the cell, they  
15 might see me on the toilet, they might see me going to  
16 the bathroom, and I find that that's too intrusive.  
17 You could get that type of thing, so that  
18 could be a harm from that.  
19 Q. Okay. And what about harm that can arise  
20 from inappropriate restrictions on conditions of  
21 confinement?  
22 A. Well, that's allowing the person to  
23 participate in programs, recreational activity. So  
24 you do like they did with Dimarco in the Wyoming case,  
25 you know. She comes in and they place all these very

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1 onerous, punitive restrictions on -- on Dimarco just  
2 because she was a transgender, transsexual individual.  
3 Didn't arise out of any behavior, any demonstration.  
4 So, for example, Dimarco, I think at one  
5 point she wanted to purchase some female supplies,  
6 which were readily available in the commissary to  
7 other female inmates, all right. I don't recall what  
8 they were, but things maybe like makeup or curlers or  
9 something like that, okay.  
10 And she was prohibited from doing that.  
11 They said, no, you can't order that. You know, you're  
12 not a female, you can't order that. That type of  
13 thing.  
14 Her -- her recreation was really  
15 restricted. She was allowed one hour a day out. She  
16 was prohibited contact with the other inmates. You  
17 know, these are pretty punitive housing environments,  
18 okay, conditions of confinement on an individual  
19 that's based upon a perception that if you put them  
20 out there, she would either be harmed, okay, or cause  
21 harm.  
22 You know, that's where that risk  
23 tolerance all comes in. It's a scale. It's a balance  
24 that we have to do.  
25 Q. And then -- and then there's also the

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1 harm from inappropriate restrictions on conditions of  
2 employment. I think you already gave me some  
3 examples, but can you just summarize what harm could  
4 arise from inappropriate restrictions on conditions of  
5 employment?  
6 A. Oh, well, you could get litigation, EEOC  
7 litigation from officers that are being restricted  
8 from working certain posts, you know, things of that  
9 nature.  
10 You know, you could get -- you -- you  
11 know, we're starting to see litigation coming from  
12 officers coming through unions about -- about  
13 having -- having staff doing some of these transgender  
14 searches when they don't feel comfortable doing it.  
15 What do you do with a staff member where  
16 you have a policy -- formal policy that says you will  
17 allow searches to be based upon the gender the  
18 individual identifies with, and then the individual  
19 says I would be best searched by a -- a female  
20 officer, but I do have male genitalia, but my gender  
21 identity is female.  
22 And then you put a female officer to do  
23 that search, and the female officer feels as though I  
24 can't conduct that search. I can't do that. I can't  
25 look at that male genitalia. You should not force me

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1 to have to look at male genitalia as part of my  
2 duties.  
3 We're starting to see some of that. And  
4 it's more -- it's more backlash against this whole  
5 idea, okay, than it is really against the male  
6 genitalia. That's -- that's my perception.  
7 Q. If that came up in the jail while you --  
8 that you ran, that a female officer was concerned  
9 about doing a search of a transgender woman, how would  
10 you deal with that?  
11 A. Tell her she needs to act professionally.  
12 Q. All right.  
13 A. It's her duty.  
14 MR. ARKLES: Let's take another -- just a  
15 quick break, and then we can check in and see where we  
16 are, okay?  
17 THE WITNESS: Okay.  
18 (There was a break taken.)  
19 MR. ARKLES: We can go back on the  
20 record.  
21 Q. So let's take a look now at Exhibit 44.  
22 And can you identify this document?  
23 A. It's called "Issues Surrounding Managing  
24 Lesbian, Gay, Bisexual, Transgender & Intersex  
25 Offenders in Jails," and it was authored by me.

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1 Q. All right. So let's look at Page 5, and  
2 could you read the paragraph beginning at the bottom  
3 of Page 5 with "Typically jail" and continues on to  
4 the top of Page 6.  
5 A. "Typically jails base the determination  
6 of offender 'sex' on physiognomy of  
7 the offender. Line Officers are the  
8 ones making this determination based  
9 on asking or on looking at the  
10 offender unclothed. In situations  
11 where there may be some ambiguity  
12 (such as with intersex or those  
13 transgender persons in the" jail --  
14 "in the middle of surgical  
15 reassignment) staff will resort to  
16 medical staff for a recommendation."  
17 And this has worked well, for the most  
18 part, until now. Keep going?  
19 Q. Yes.  
20 A. "Now consideration may have to be  
21 made for 'gender identity.' Will we  
22 begin to query offenders at booking  
23 for their 'gender identity'? Will  
24 'gender identity' have as big an  
25 impact on offender management as

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1 'sex'?"  
 2 Continue?  
 3 Q. You can stop there. That's all good.  
 4 Thank you.  
 5 So here you stated that -- that the  
 6 determination of offender sex used to be made based on  
 7 asking the person, looking at the person when they're  
 8 not wearing clothes, or getting a recommendation from  
 9 medical staff; is that a fair summary?  
 10 A. I don't know if I mentioned medical staff  
 11 in there. Yeah, yeah, they'll talk to medical staff,  
 12 yeah, but that's after. But this all occurs after the  
 13 initial booking has occurred in which the initial  
 14 assignment of sex has been obtained. So this is down  
 15 -- this is a process down the line. This isn't at the  
 16 back door when they first come in.  
 17 Q. Okay. So here you were not referring to  
 18 how jails identify the sex of the offender initially;  
 19 is that right?  
 20 A. No. I think I was talking in a much  
 21 broader sense on how -- how jails operate. I wasn't  
 22 being specific in this, no.  
 23 Q. Okay. And you -- so that in the future  
 24 it may become necessary to ask people about their  
 25 gender identity at booking; is that right?

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1 A. I think so.  
 2 Q. All right. And in this paragraph you did  
 3 not mention using driver's license as a way to  
 4 determine sex; is that right?  
 5 A. No, because that -- again, that would  
 6 have been at the back door. So that would have been  
 7 the initial process. Before we ever get to the point  
 8 where they're getting the clothes off, we've already  
 9 determined at least an idea of what their sex is, and  
 10 that's where we would use the driver's license.  
 11 Q. Okay. So now let's look back to Page 1.  
 12 If you can just read the whole first paragraph, but  
 13 only the first paragraph.  
 14 A. Okay.  
 15 "The call came from booking. 'You  
 16 got to get down here and see this  
 17 woman being booked! She's a '10' if  
 18 I ever saw one!'"  
 19 Now, this story is 1985, okay, that's how  
 20 far back this -- this story went.  
 21 "Off to booking and sure enough  
 22 there's a female Officer pat frisking  
 23 a stunning '10.' Everything's fine  
 24 until the search hits the crotch. By  
 25 the look on the Officer's face

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1 something is amiss, or more  
 2 accurately something is a-present.  
 3 Off to the strip search room where  
 4 there's a shocking discovery: this is  
 5 no woman - at least not in the  
 6 conventional sense. But wait, from  
 7 the waist up she looks like a woman,  
 8 then again from the waist down a man.  
 9 Needless to say this generated  
 10 discussion on where are we going to  
 11 put this person, who is going to do  
 12 the searches, and what about the  
 13 hormones 'she' needs? This was to be  
 14 our first major exposure to  
 15 transgender/transsexual offenders.  
 16 While some of those decisions worked  
 17 'back then'" -- I mean, yeah, that  
 18 story was 1985 -- "'back then' those  
 19 same decisions would not be made  
 20 today. Times have changed."  
 21 Q. And can you tell me which decisions  
 22 worked back then but would not be made today?  
 23 A. Oh, well, first off, we wouldn't called  
 24 up to the floors anymore today. People wouldn't call  
 25 around like that anymore today. Come down here and

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1 take a look. That's the first thing.  
 2 Q. Okay.  
 3 A. The second thing is, is that -- is that  
 4 we probably would have done more querying of the  
 5 individual nowadays in the booking area. If we -- if  
 6 during the pat search the female officer felt as  
 7 though there was something amiss, we would probably do  
 8 more discussion prior to doing -- prior to doing a  
 9 search, yeah. And so there would be -- just the whole  
 10 processing of it might have been different.  
 11 Back in 1985 -- and I'm not sure that you  
 12 know this -- but back in the -- in the late '70s,  
 13 early '80s and through the '80s, Lexington, Kentucky,  
 14 where the jail that I was working at and the  
 15 administrator of, the University of Kentucky was --  
 16 actually had a reputation and was renowned  
 17 internationally for conducting sexual reassignment  
 18 surgeries.  
 19 So we -- we would get a lot of people who  
 20 were in the process. And typically they were  
 21 individuals that were in the process who had bad check  
 22 charges or drug-related charges.  
 23 Q. Okay. So male officers observing a woman  
 24 being pat frisked because she was attractive, that was  
 25 one of the decisions that was okay for back then but

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1 would not be made today; is that right?  
 2 A. Well, I think the whole -- the whole  
 3 surprise nature of it, yeah. Yeah. Looking back on  
 4 it, that was probably an inappropriate correctional  
 5 response to be doing. Now, that's judging it from the  
 6 perspective 2018 to 1985.  
 7 Q. It's been a while.  
 8 And the -- and responding to that  
 9 discovery with a strip search, that was one of the  
 10 things also that worked at the time but different  
 11 decision would be made today?  
 12 A. Yeah, we -- yeah, now in my jail, okay --  
 13 again, this is a risk tolerance issue, okay. In our  
 14 jail I would say, wait a minute, we're going to talk  
 15 and find out first. Let's find out what's the  
 16 identification, let's talk to her about, you know, who  
 17 would you best be searched by. Let's find out.  
 18 Because really the issue there is -- is  
 19 am I feeling a -- a penis and a scrotum when I come up  
 20 between the legs, or am I feeling a bag of cocaine,  
 21 bag of marijuana, a small -- a small handgun wrapped  
 22 in -- wrapped in cloth or something, you know. I've  
 23 seen these things, okay, found these things at  
 24 booking.  
 25 So, you know, I mean, this is not

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1 unusual, all right. So now to do a strip search to  
 2 discover contraband like that, absolutely.  
 3 So maybe -- maybe what we do, we ask the  
 4 person first. Instead of saying off to the strip  
 5 search room, okay, we go, wait a minute, look,  
 6 something seems amiss here. Let's talk about this a  
 7 minute. That's probably the more appropriate  
 8 response.  
 9 Q. Right. And so then if you determined  
 10 that there was a reasonable suspicion that there was  
 11 contraband there, then you would perform the strip  
 12 search; right?  
 13 A. Yeah, if she still -- in this case, if  
 14 the individual -- and I recall this case vividly,  
 15 because I have to tell you, she was a ten, okay,  
 16 vivid. Everybody was down there.  
 17 I think nowadays what we'd probably do is  
 18 if there was a question about it, we would say, okay,  
 19 we -- realize we have to search and make sure there's  
 20 no contraband, so we're going to have to search more  
 21 thoroughly. So you could do a more thorough pat  
 22 search, okay.  
 23 Q. Okay.  
 24 A. I mean, you know, you can -- typically if  
 25 it's a .357 you can feel it tucked between the legs.

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1 Q. Okay. So then my last questions are just  
 2 to run through your qualifications.  
 3 So -- so you have a Ph.D.; correct?  
 4 A. I do.  
 5 Q. And what was that Ph.D. in?  
 6 A. Public administration.  
 7 Q. And what was the subject of your  
 8 dissertation?  
 9 A. I didn't -- didn't catch that.  
 10 Q. What was your dissertation on?  
 11 A. Decision support systems for running  
 12 jails. How to make quality decisions. It had -- in  
 13 fact, it was all about this type of thing. How to  
 14 data dictionary and how to gather the data, measure  
 15 the data, and use the data to drive decision-making.  
 16 Q. And did you use decisions about sex for  
 17 transgender people as an example when you were writing  
 18 that way back then?  
 19 A. No, no, no. This -- this had -- this was  
 20 a much broader perspective of how we manage jails  
 21 using data-driven decisions, rather than using  
 22 anecdotal evidence and things that we think are the  
 23 way they are.  
 24 And like all the stories I've been  
 25 telling you, we all think it's like this, but, you

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1 know, we start collecting the data, we find it's not.  
 2 That's why.  
 3 Q. Okay. That's what I thought. Just  
 4 wanted to make sure.  
 5 A. It was a boring dissertation. You can  
 6 get it. You'd be the only one that ever read it,  
 7 other than my wife.  
 8 Q. And where did you get your degree from?  
 9 Your Ph.D. from?  
 10 A. It was a university called Kennedy  
 11 Western University out of Cheyenne, Wyoming.  
 12 Q. Okay. And is that an accredited  
 13 university?  
 14 A. I don't think they were accredited at  
 15 that time, no. They were the very first -- they were  
 16 what would be called the bleeding edge of distance  
 17 education in the United States back then.  
 18 They were one of the only universities  
 19 that provided a fully distance learning degree program  
 20 in the United States. Nowadays, that's pretty common  
 21 that they -- universities do this all over the  
 22 country, you see it.  
 23 But back -- back in -- when I first  
 24 started in 1996, geez, how many -- computers hadn't  
 25 been around all that long in 1996. So the idea of

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1 doing, you know, distance programming was -- was  
2 pretty unusual and pretty cutting edge.  
3 I actually found out about the program  
4 through the -- the Bureau of Prisons. I was working  
5 with a number of people at that time, networking with  
6 the National Institute of Corrections and other  
7 members of the Bureau of Prisons, and they mentioned  
8 the program to me as a way for working professionals  
9 in the correctional field to be able to get programs,  
10 to be able to get advanced degrees. So that's how I  
11 got into it.  
12 Q. Great.  
13 And can you explain to me the difference  
14 between law enforcement and corrections?  
15 A. Well, law enforcement is -- is a --  
16 typically used for law enforcement in a community  
17 setting. Corrections is inside the walls. Could be  
18 inside the walls in the jail, inside the walls in a  
19 prison, it could be inside the walls in a boot camp or  
20 a juvenile facility. That's typically corrections.  
21 Q. And your expertise is inside the walls  
22 corrections; is that correct?  
23 A. Yeah. I would say the majority of my  
24 work, 99 percent of it has been -- been in jails and  
25 prisons. I have done some street level law

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1 enforcement. We were -- in Kentucky, the jailer is a  
2 constitutionally elected official separate from the  
3 sheriff.  
4 So the sheriff ran street patrol and law  
5 enforcement in the community, tax collection, things  
6 like that. Whereas, the jailer was responsible for  
7 the housing and care and custody of inmates. Kind of  
8 a Daniel Boone common law system of England.  
9 During that process the jailer had  
10 statewide powers of law enforcement. So we could make  
11 arrests, we could chase people across county lines,  
12 throughout the whole state. Whereas, the sheriff's  
13 law enforcement authority was basically limited to the  
14 individual county.  
15 So, you know, as I -- when I was working  
16 at the jail, we worked in the community as law  
17 enforcement officers, typically, doing second jobs. I  
18 mean, it was, like, evening work, weekend work, things  
19 like that.  
20 But we were law enforcement. So I made a  
21 number of arrests in the community and law enforcement  
22 in the community that way too.  
23 Q. Okay. And so for purposes of your  
24 opinion, were you -- are you relying on expertise of  
25 the law enforcement officer in addition to

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1 correctional administration?  
2 A. Well, more how the two interface, okay.  
3 More how the two interface. You know, I've arrested  
4 people so I know what I have to do on the street.  
5 I've been -- I've also booked people in the jail,  
6 managed people in the jail, so I know what I have to  
7 do on that side of the house.  
8 You know, both sides of the house have --  
9 have a real need for definitional issues so that we  
10 know what we're talking about, we know how we're  
11 making the arrest and how we gather the data and the  
12 information for the arrest, and then how we utilize  
13 that in the processes.  
14 But I would say, like I said, 99 percent  
15 of what I did is in a correctional setting.  
16 Q. Okay. Just to flesh out on the community  
17 side, so when was the last time that you worked as a  
18 law enforcement officer in the community?  
19 A. So when was the last time I made an  
20 arrest as a law enforcement officer?  
21 Q. Sure, let's go with that.  
22 A. Okay. February 2008, maybe.  
23 Q. Okay.  
24 A. Like I said, we had law enforcement  
25 authority the whole time I was there, we had full

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1 power. So, you know, worked off and on all through  
2 that time.  
3 Q. And is your consulting and training work  
4 also for law enforcement agencies in addition to  
5 correctional agencies?  
6 A. Is there a -- I didn't understand the  
7 question.  
8 Q. So you do training and consultation work  
9 for various correctional agencies; is that right?  
10 A. Yes.  
11 Q. And do you also do that work with  
12 agencies that are doing law enforcement on the  
13 community side?  
14 A. If they ask me to, I have. I was  
15 doing it -- in fact, I was doing this  
16 transgender/transsexual management seminar, the  
17 Part 1, Part 2, Part 3 parts up in the state of Maine  
18 for the Maine Jail Administrators Association, and I  
19 had the chief law enforcement officer for the state of  
20 Maine sitting in on my class. So, yeah, I mean, yeah,  
21 they do.  
22 Q. Okay. Great.  
23 And -- and have you worked in prisons in  
24 addition to jails?  
25 A. Have I worked or have I consulted?

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1 Q. Well, let's go with work first.  
 2 Have you worked in prisons?  
 3 A. No. My -- my whole time that I worked,  
 4 my employment was with the Lexington-Fayette County  
 5 Government.  
 6 Q. Okay. And then have you consulted with  
 7 prisons?  
 8 A. Yes.  
 9 Q. Okay. Are there unique considerations to  
 10 jails as opposed to prisons?  
 11 A. There are some -- some fundamental  
 12 differences, but the vast majority of issues are very  
 13 similar. Jails are short-term holding agencies,  
 14 typically 85 to 90 percent of the population that roll  
 15 through a door of a jail, they get out of the jail  
 16 without going any further into the system.  
 17 That other, you know, 15, 10 percent that  
 18 roll on to a prison are there for a much longer span  
 19 of time.  
 20 So they have issues that deal with much  
 21 longer histories of managing inmates in custody than  
 22 jails do. But that changed now. You have to  
 23 understand, that changed.  
 24 Q. When did it change?  
 25 A. It changed in California when they --

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1 when they began to put people out of the prison system  
 2 in the state of California into local county jails.  
 3 So now there are some individuals serving up to  
 4 25 years in the county jail within the state of  
 5 California.  
 6 You've seen some states around the  
 7 country that enacted legislation that allows people to  
 8 serve between five and seven years in the local county  
 9 jail.  
 10 You're seeing a lot of -- a lot of states  
 11 where they contract with jails for the housing of  
 12 inmates from a correctional institution in the jail.  
 13 So an individual may be sentenced to  
 14 three or four years in the state prison, but actually  
 15 serve the whole time in the county jail. But, yeah,  
 16 there's been kind of a change that's going on out  
 17 there.  
 18 Q. So more and more they're -- people are in  
 19 jail for longer periods of time; is that right?  
 20 A. Oh, sure, and that has a huge impact on  
 21 how you're going to manage individuals that are  
 22 transsexual, transgender, individuals that are  
 23 undergoing any aspects of sexual reassignment surgery,  
 24 undergoing the hormone therapy. I mean, that all has  
 25 massive impacts on jail.

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1 So, you know, what we used to be able to  
 2 get away with in jails was, oh, we can't do that in a  
 3 jail, they're only here for a short time, you know,  
 4 they're going to be with us and gone. It's starting  
 5 to change around.  
 6 So now there are things that we used to  
 7 be able to say we're not going to do, and the courts  
 8 haven't held us to do, that they may hold us to do in  
 9 the future.  
 10 Q. Wouldn't an example of that be something  
 11 like sex reassignment surgery?  
 12 A. You know, it could well be. It could  
 13 very well be.  
 14 Q. What other things are you thinking of  
 15 when you say jails haven't been held to do some things  
 16 because it's such a short period of time, that that  
 17 might be changing?  
 18 A. Okay. For example, colonoscopies. Jails  
 19 typically didn't do colonoscopies on people. Why? We  
 20 don't really have them long enough to get in. But we  
 21 have to recognize that black males have a higher level  
 22 of colon cancer than white males do, and African  
 23 American males between 45 and 60 years old have a  
 24 higher rate of colon cancer.  
 25 So if we're going to house African

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1 American males, even for two, three, four years in the  
 2 local county jail, and they're in that range, we may  
 3 have to be doing colonoscopies. Now, think of the  
 4 cost of a colonoscopy. What is it going to cost a  
 5 jail to do that?  
 6 Mammographies for female inmates, all  
 7 right. You get certain age, groups of females, you  
 8 get certain ones that have -- are in that risk  
 9 category. We may be having to do mammographies.  
 10 So there are a lot of those types of  
 11 situations we haven't had to do in the past that we're  
 12 probably going to be required to do in the future.  
 13 There's one that's coming up now, which  
 14 is -- which is this medication assisted transitioning,  
 15 individuals that are opiate addicted. They're on --  
 16 in the community, they're on long-term methadone,  
 17 Suboxone, buprenorphine maintenance programs.  
 18 Well, you know, typically when they  
 19 rolled into a jail, we said we're the jail, they're  
 20 here for a short time, we don't do that in the jail.  
 21 Now it's starting to look like because of  
 22 the issues that are surrounding the management of  
 23 those people, you know, the -- the severe medical  
 24 issues or serious medical problems, we may wind up  
 25 having to do that.



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1 So, again, that's all that changing  
 2 landscape.  
 3 Q. All right. Thank you.  
 4 And you're not claiming to have any  
 5 medical expertise; right?  
 6 A. I have my EMT certification, but that's  
 7 about it. That was through the Lexington Fire  
 8 Department back when I was working at the jail, yes, I  
 9 had that. But other than that, no.  
 10 Q. Okay. And do you have any degrees in  
 11 biology?  
 12 A. No. I was a liberal arts major.  
 13 Q. So was I.  
 14 And have you ever worked in the motor  
 15 vehicle department before?  
 16 A. No.  
 17 Q. And do you have expertise in driver's  
 18 licenses, specifically?  
 19 A. No.  
 20 Q. Okay. And have you ever been  
 21 disqualified as an expert before?  
 22 A. Not to my knowledge.  
 23 Q. Okay. And since you have experience  
 24 making arrests, I'd like to ask just a couple of  
 25 questions following up on that.

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1 So at the point where you make an arrest,  
 2 how do you identify -- do you identify the sex of the  
 3 person who you're arresting?  
 4 A. I did. Had it write it on -- had to  
 5 write it on the citation.  
 6 Q. And so how did you decide what to write  
 7 on the citation for sex?  
 8 A. I used his driver's license.  
 9 Q. Okay. Did you -- as far as you recall,  
 10 did you ever arrest somebody who you thought might be  
 11 transgender or intersex?  
 12 A. Not that I can recall, no.  
 13 Q. Have you ever arrested somebody who  
 14 didn't have a driver's license?  
 15 A. Not a juvenile? Not a juvenile.  
 16 Assuming it's not a juvenile. I've arrested  
 17 juveniles, they didn't have driver's licenses.  
 18 Q. With juveniles who did not have driver's  
 19 licenses, how did you determine what sex to write  
 20 down?  
 21 A. Physical appearance. And we would talk  
 22 to them, of course. You know, we're talking about a  
 23 long time ago. That would have been back in the --  
 24 that was in the '80s.  
 25 Q. Okay.

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1 A. Long time ago.  
 2 Q. When you talked to them, did they -- did  
 3 you ask questions about their sex?  
 4 A. No, I don't -- I don't recall -- I don't  
 5 recall really talking about their sex to them too  
 6 much. It just -- it just was more obvious. Again,  
 7 we're talking about back in the '80s.  
 8 Q. Okay. Could you tell me, are there  
 9 unique concerns in a correctional environment that  
 10 aren't necessarily relevant in the community?  
 11 A. Are there unique concerns in the  
 12 correctional environment that are not relevant in the  
 13 community?  
 14 Q. Yes.  
 15 A. Well, I -- yeah, I mean, we have the  
 16 Fourth Amendment issues. I mean, intrusiveness of the  
 17 search, okay, where we have a policy that's going to  
 18 require a pretty intrusive search, a strip search, you  
 19 don't see many strip searches in the community. That  
 20 would probably be one.  
 21 You know, housing. You know, having to  
 22 make a decision about what apartment you can live in  
 23 the -- in the community. I don't know that any  
 24 governmental agency makes a decision on what apartment  
 25 you can be housed in based upon your sex or gender

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1 identity or other issues, I'm not aware of it. So, I  
 2 mean, that might be another one.  
 3 Other than that, yeah, I don't -- that's  
 4 about it off the top of my head.  
 5 MR. ARKLES: All right. So I'm going to  
 6 take another very short break. I think we're probably  
 7 wrapping up here, and so unless -- of course Brad will  
 8 also have an opportunity to ask you questions.  
 9 Why don't we just take one last  
 10 five-minute break.  
 11 (There was a break taken.)  
 12 MR. ARKLES: We can go back on the  
 13 record, and I have no further questions at this time.  
 14 MR. CHYNOWETH: No questions from the  
 15 defendants.  
 16 MR. ARKLES: All right. Then I think  
 17 we're done.  
 18 Vickie, is there anything that you need  
 19 from us?  
 20 THE REPORTER: Do you both want a copy of  
 21 the transcript?  
 22 MR. ARKLES: Yes, please.  
 23 MR. CHYNOWETH: Yes.  
 24 THE REPORTER: Do you want the doctor to  
 25 read and sign? Or do you have read and sign?

1 Or do you want to read and sign?  
2 MR. CHYNOWETH: I'm okay waiving that, if  
3 that's okay with you, Don.  
4 THE WITNESS: That's okay with me.  
5 (The deposition was concluded at 12:38 p.m.)  
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1 Reporter's Certificate  
2  
3 State of Utah )  
4 County of Salt Lake )  
5 I, Vickie Larsen, Certified Shorthand  
6 Reporter and Registered Merit Reporter, in the State of  
7 Utah, do hereby certify:  
8 THAT the foregoing proceedings were taken  
9 before me at the time and place set forth herein; that  
10 the witness was duly sworn to tell the truth, the whole  
11 truth, and nothing but the truth; and that the  
12 proceedings were taken down by me in shorthand and  
13 thereafter transcribed into typewriting under my  
14 direction and supervision;  
15 THAT the foregoing pages contain a true  
16 and correct transcription of my said shorthand notes so  
17 taken.  
18 IN WITNESS WHEREOF, I have subscribed my  
19 name this 4th day of January, 2019.  
20  
21  
22  
23 Vickie Larsen, CSR/RMR  
24  
25

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# DOC. 48-10

Pages 1, 5-10, 59-68, 81, 82-101

# Exhibit 10

## Deposition Exhibits PX1-44

(but not including PX11-13, PX15-21, PX24-30  
that are filed under seal as Ex. 10a)

## ALABAMA LAW ENFORCEMENT AGENCY

Revised Date: 07-01-2015

Driver License Policy Order No 63

Source: Legal Unit

### **SUBJECT: CHANGING SEX ON A DRIVER LICENSE DUE TO GENDER REASSIGNMENT**

It is the policy of the Chief of the Driver License Division that an individual wishing to have the sex changed on their Alabama driver license due to gender reassignment surgery are required to submit to an Examining office OR the Medical Unit the following:

1. An amended state certified birth certificate and/or a letter from the physician that performed the reassignment procedure. The letter must be on the physician's letterhead.

IF THE INDIVIDUAL INITIALLY REPORTS TO AN EXAM OFFICE FOR THE GENDER CHANGE:

1. The examiner is to review the document(s) presented for authenticity and contact the medical unit in order to make the necessary system change.
2. If a physician letter is presented, there is no need to contact the physician unless there is some doubt as to the authenticity of the letter. Many of the surgeries are performed in other countries.
3. After the system changes are completed, the examiner will then scan the documents presented into the driver record, and issue the person a corrected duplicate license (if not renewal time) for the duplicate fee.
4. The documents presented are to be given back to the applicant.

IF THE REQUEST IS MAILED TO THE MEDICAL UNIT: The medical unit will:

1. Review the document(s) for authenticity. The letter does NOT have to be submitted by the physician's office, the subject may send it in.
2. Make the necessary system updates (changing gender) and place a comment referencing the changes in the driver history.
3. The document(s) presented will be mailed back to the subject along with a letter informing the subject they can obtain a duplicate online or by visiting an ALEA or probate/license office.
4. The letter to the subject and the document(s) presented are to be scanned into the driver history.





**ALABAMA LAW ENFORCEMENT AGENCY  
DRIVER LICENSE DIVISION**

301 SOUTH RIPLEY STREET/ P.O. BOX 1471/ MONTGOMERY, AL 36102-1471  
PHONE: 334.242.4400/ ALEA.GOV

Woodruff  
Plaintiff's Exhibit  
Number 5  
11/8/18

**SUBJECT: CHANGING SEX ON A DRIVER LICENSE DUE TO  
GENDER REASSIGNMENT**

It is the policy of the Chief of the Driver License Division that an individual wishing to have the sex changed on their Alabama driver license due to gender reassignment surgery are required to submit to an Examining office OR the Medical Unit the following:

1. An amended state certified birth certificate and/or a letter from the physician that performed the reassignment procedure. The letter must be on the physician's letterhead.



**ALABAMA LAW ENFORCEMENT AGENCY  
DRIVER LICENSE DIVISION**

301 SOUTH RIPLEY STREET / P.O. BOX 1471 / MONTGOMERY, AL 36102-1471  
PHONE 334.242.4400 / ALEA.GOV

**ROBERT  
BENTLEY**  
GOVERNOR

SPENCER

**SUBJECT: CHANGING SEX ON A DRIVER  
LICENSE DUE TO GENDER REASSIGNMENT**

It is the policy of the Chief of the Driver License Division that an individual wishing to have the sex changed on their Alabama driver license due to gender reassignment surgery are required to submit to an Examining office OR the Medical Unit the following:

1. An amended state certified birth certificate and/or a letter from the physician that performed the reassignment procedure. The letter must be on the physician's letterhead.

**IF THE INDIVIDUAL INITIALLY REPORTS TO AN EXAM OFFICE FOR THE GENDER CHANGE:**

1. The Examiner is to review the document(s) presented for authenticity and contact the medical unit in order to make the necessary system change.
2. If a physician letter is presented, there is no need to contact the physician unless there is some doubt as to the authenticity of the letter. Many of the surgeries are performed in other countries.
3. After the system changes are completed, the Examiner will then scan the documents presented into the driver record, and issue the person a corrected duplicate license (if not renewal time) for the duplicate fee.
4. The documents presented are to be given back to the applicant.

**IF THE REQUEST IS MAILED TO THE MEDICAL UNIT: The medical unit will:**

1. Review the document(s) for authenticity. The letter does NOT have to be submitted by the physician's office, the subject may send it in.
2. Make the necessary system updates (changing gender) and place a comment referencing the changes in the driver history.
3. The document(s) presented will be mailed back to the subject along with a letter informing the subject to report to either a probate office/license commissioner or an Examining office to purchase another license.
4. The letter to the subject and the document(s) presented are to be scanned into the driver history.

**Woodruff**  
**Plaintiff's Exhibit**  
**Number 6**  
11/8/18

---

**From:** "Eastman, Jeannie" <EXCHANGELABS/EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/RECIPIENTS/5F9485C89E274E929686774AE175929 F-EASTMAN, JE>  
**Sent:** 9/7/2017 8:56:00 AM -0500  
**To:** "Duke, Brian" <brian.duke@alea.gov>  
**Subject:** gender change  
**Attachments:** Gender Change Policy 3.docx

Jeannie Eastman  
Driver License Supervisor  
Alabama Law Enforcement Agency  
Office: 334-242-4777  
[jeannie.eastman@alea.gov](mailto:jeannie.eastman@alea.gov)

**Please note that my email address has changed**



Woodruff  
Plaintiff's Exhibit  
Number 7  
11/8/18

## DEPARTMENT OF PUBLIC SAFETY

Revised Date: 09-01-2012

### Driver License Policy Order No 63

Source: Legal Unit

#### I. CHANGING SEX ON A DRIVER LICENSE DUE TO GENDER REASSIGNMENT

- A. It is the policy of the Director and the Driver License Division that individuals wishing to have their sex changed on their Alabama license due to gender reassignment surgery are required to submit to the Medical Unit an amended birth certificate along with documentation on letterhead from the physician that performed the sexual reassignment surgery stating the surgery has been completed.
- B. Once the documentation is submitted to the Medical Unit, if acceptable, a letter will be sent to the subject informing them to purchase a duplicate license with the corrected sex listed.



## ALABAMA LAW ENFORCEMENT AGENCY

### DRIVER LICENSE DIVISION

301 SOUTH RIPLEY STREET / P.O. BOX 1471 / MONTGOMERY, AL 36102-1471  
PHONE 334.242.4400 / ALEA.GOV

ROBERT  
BENTLEY  
GOVERNOR

SPENCER COLLIER

### SUBJECT: CHANGING SEX ON A DRIVER LICENSE DUE TO GENDER REASSIGNMENT

It is the policy of the Chief of the Driver License Division that an individual wishing to have the sex changed on their Alabama driver license due to gender reassignment surgery are required to submit to an Examining office OR the Medical Unit the following:

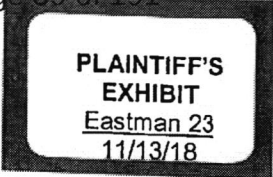
1. An amended state certified birth certificate and/or a letter from the physician that performed the reassignment procedure. The letter must be on the physician's letterhead.

#### IF THE INDIVIDUAL INITIALLY REPORTS TO AN EXAM OFFICE FOR THE GENDER CHANGE:

1. The Examiner is to review the document(s) presented for authenticity and contact the medical unit in order to make the necessary system change.
2. If a physician letter is presented, there is no need to contact the physician unless there is some doubt as to the authenticity of the letter. Many of the surgeries are performed in other countries.
3. After the system changes are completed, the Examiner will then scan the documents presented into the driver record, and issue the person a corrected duplicate license (if not renewal time) for the duplicate fee.
4. The documents presented are to be given back to the applicant.

#### IF THE REQUEST IS MAILED TO THE MEDICAL UNIT: The medical unit will:

1. Review the document(s) for authenticity. The letter does NOT have to be submitted by the physician's office, the subject may send it in.
2. Make the necessary system updates (changing gender) and place a comment referencing the changes in the driver history.
3. The document(s) presented will be mailed back to the subject along with a letter informing the subject to report to either a probate office/license commissioner or an Examining office to purchase another license.
4. The letter to the subject and the document(s) presented are to be scanned into the driver history.



IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

DARCY CORBITT, DESTINY )  
CLARK, and JOHN DOE, )

Plaintiffs, )

v. )

Civil Action No.  
2:18-cv-00091-MHT-GMB

HAL TAYLOR, in his official capacity )  
as Secretary of the Alabama Law )  
Enforcement Agency; Colonel )

CHARLES WARD, in his official )  
capacity as Director of the Department )  
of Public Safety; DEENA PREGNO, in )  
her official capacity as Chief of the )

Driver License Division, and JEANNIE )  
EASTMAN, in her official capacity as )  
Driver License Supervisor in the Driver )  
License Division, )

Defendants. )

**DEFENDANTS' ANSWERS TO  
PLAINTIFFS' FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and in compliance with the "Protective Order" dated May 18, 2018 (doc. 33), Hal Taylor, Charles Ward, Deena Pregno and Jeannie Eastman ("Defendants") hereby respond as follows to the *Plaintiffs' First Set of Interrogatories to Defendants*. In formulating these responses, Defendants have relied on information presently

available to them and will furnish any such information to the Plaintiffs to the extent required under Rule 26 of the Federal Rules of Civil Procedure.

### INTERROGATORIES

1. Identify all policies, whether written or unwritten, and all revisions to those policies, concerning whether and when people may change the sex designation on an Alabama driver's license, including the dates on which those policies were issued and revised.

**RESPONSE:** Defendants object to this interrogatory to the extent identifying written or unwritten policies would require defendants to disclose information protected by the attorney client privilege or work product privilege.

Without waiving these objections, defendants state that Policy Order 63 determines whether an individual may change the sex designation on an Alabama driver license. Policy Order 63 was issued in 2012 and was revised on July 1, 2015. Policy Order 63 was revised again in April 2016.

2. Identify each person who has any personal knowledge or information regarding the meaning, creation, revision, promulgation, implementation, or enforcement of Policy Order 63.

**RESPONSE:** Defendants object to this interrogatory to the extent that the request to identify "each person who has *any* personal knowledge" regarding Policy Order 63 is vague or ambiguous. Defendants object to this interrogatory to the extent that identifying "each person" with "any" personal knowledge whatsoever of Policy Order 63 is irrelevant to any party's claim or defense, not proportional to the needs of the case, overly broad, and unduly burdensome. Defendants object to this interrogatory to the extent that identifying any individual requires the disclosure of information protected by attorney client privilege.

Without waiving these objections, defendants state that Deena Pregno and Jeannie Eastman have personal knowledge regarding the meaning, creation, revision, promulgation, implementation, or enforcement of Policy Order 63. Defendants further state that current and former members of ALEA's Legal Unit

have such personal knowledge but any knowledge they possess is protected by attorney-client or work product privilege.

3. Identify each person who has any personal knowledge or information regarding the meaning, creation, revision, promulgation, implementation, or enforcement of Defendants' defenses.

**RESPONSE:** Defendants object to this interrogatory to the extent that the request to identify "each person who has any personal knowledge . . . of Defendants' defenses" is vague or ambiguous. Defendants object to this interrogatory to the extent that identifying "each person" with "any" personal knowledge whatsoever of "Defendants' defenses" is irrelevant to any party's claim or defense, not proportional to the needs of the case, overly broad, and unduly burdensome. Defendants object to this interrogatory to the extent that identifying any individual requires the disclosure of information protected by attorney client privilege. Defendants further object to this interrogatory on the grounds that this litigation is in its early stages and the request to identify "each person" with knowledge of "Defendants' defenses" is premature.

Without waiving these objections, defendants state that, aside from legal counsel, Deena Pregno and Jeannie Eastman have personal knowledge of defendants' defenses. Defendants further state that they anticipate retaining the services of one or more expert witnesses in this case and will disclose the identities of these witnesses in accordance with the Scheduling Order entered in this case.

4. Identify each person who possesses or controls any data, documents, evidence or other tangible items regarding the creation, revision, promulgation, implementation, or enforcement of Policy Order 63.

**RESPONSE:** Defendants object to this interrogatory to the extent that the request to identify "each person who possesses or controls" any tangible items regarding Policy Order 63 is vague or ambiguous. Defendants object to this interrogatory to the extent that identifying "each person" with possession or control of tangible items regarding Policy Order 63 is irrelevant to any party's claim or defense, not proportional to the needs of the case, overly broad, and unduly burdensome. Defendants object to this interrogatory to the extent that identifying any individual requires the disclosure of information protected by attorney client privilege.



Without waiving these objections, defendants state that the Chief of the Driver License Division at ALEA, Deena Pregno, maintains ultimate authority over the possession of any tangible items related to the creation, revision, promulgation, implementation, or enforcement of Policy Order 63. Jeannie Eastman, Supervisor of the Driver License Division Medical Unit possesses or controls tangible items regarding the implementation or enforcement of Policy Order 63. Defendants further state that the Legal Unit possesses tangible items related to Policy Order 63 but that these items are subject to attorney-client or work-product privilege.

5. Identify each person who possesses or controls any data, documents, evidence or other tangible items regarding the creation, revision, promulgation, implementation, or enforcement of Defendants' defenses.

**RESPONSE:** Defendants object to this interrogatory to the extent that the request to identify "each person who possesses or controls" any tangible items regarding "Defendants' defenses" is vague or ambiguous. Defendants object to this interrogatory to the extent that identifying "each person" with possession or control of tangible items regarding "Defendants' defenses" is irrelevant to any party's claim or defense, not proportional to the needs of the case, overly broad, and unduly burdensome. Defendants object to this interrogatory to the extent that identifying any individual requires the disclosure of information protected by attorney client privilege. Defendants further object to this interrogatory on the grounds that this litigation is in its early stages and the request to identify "each person who possesses or controls" tangible items regarding "Defendants' defenses" is premature.

Without waiving these objections, see the response to Interrogatory 4.

6. Describe any and all government interests Defendants assert that Policy Order 63 serves, as well as how those government interests are furthered by Policy Order 63.

**RESPONSE:** Defendants object to this interrogatory to the extent that the request for "any and all" government interests served by Policy Order 63 is vague or ambiguous, irrelevant to any party's claim or defense, not proportional to the needs of the case, overly broad, or unduly burdensome. Defendants object to this interrogatory to the extent that it seeks a legal conclusion. Defendants object to this interrogatory on the grounds that this litigation is in its early stages and the

information it seeks is premature. Defendants object to this interrogatory to the extent that the information it seeks is protected by the attorney client privilege.

Without waiving these objections, and subject to the right to supplement these responses, defendants state that Policy Order 63 serves the State's interests in providing an accurate description of the bearer of an Alabama driver license. An Alabama driver license provides identification for law enforcement and administrative purposes, including, but not limited to, purposes related to arrest, detention, identification of missing persons or crime suspects, and the provision of medical treatment. Policy Order 63 furthers these interests by providing a uniform understanding of what physical characteristics underlie the sex designation on a driver license. Policy Order 63 serves the State's interests in maintaining consistency between the information contained on a driver license and that contained on a birth certificate since obtaining an amended birth certificate to change a sex designation requires proof that the individual's sex has been changed by surgical procedure. *See* Ala. Code § 22-9A-19(d).

7. Identify all documents and communications in Defendants' possession or control or upon which Defendants rely related to the government interests described in response to interrogatory 4.

**RESPONSE:** [Defendants understand this interrogatory to contain a drafting error and construe it to refer to the government interests described in response to interrogatory 6]. Defendants object to this interrogatory to the extent that the request for "all" documents relied on related to the interests served by Policy Order 63 is vague or ambiguous, irrelevant to any party's claim or defense, not proportional to the needs of the case, overly broad, or unduly burdensome. Defendants object to this interrogatory on the grounds that this litigation is in its early stages and the information it seeks is premature. Defendants object to this interrogatory to the extent that the information it seeks is protected by the attorney client privilege or work product privilege.

Without waiving these objections, defendants state that they rely on Alabama Code §§ 22-9A-19(d), 32-6-6, 32-6-9(a).

8. Identify all documents and communications reviewed, referenced, relied upon directly or indirectly, or considered by Defendants prior to and as a basis or impetus for the following:

- a. The original creation of Policy Order 63; and

b. Any and all revision of Policy Order 63.

**RESPONSE:** Defendants object to this interrogatory to the extent that the request for “all” documents relied on related to the creation or revision Policy Order 63 is vague or ambiguous, irrelevant to any party’s claim or defense, not proportional to the needs of the case, overly broad, or unduly burdensome. Defendants object to this interrogatory on the grounds that this litigation is in its early stages and the information it seeks is premature. Defendants object to this interrogatory to the extent that the information it seeks is protected by the attorney client privilege or work product privilege.

Without waiving these objections, defendants state that they or their predecessors relied on Alabama Code §§ 22-9A-19(d), 32-6-6, 32-6-9(a).

9. Identify any and all procedures that constitute “gender reassignment surgery,” “sexual reassignment surgery,” or “the reassignment procedure” for purposes of changing the sex designation on an Alabama driver’s license.

**RESPONSE:** Defendants object to this interrogatory on the grounds that the request to identify “any and all” procedures that constitute gender reassignment surgery under Policy Order 63 is vague or ambiguous, irrelevant to any party’s claim or defense, not proportional to the needs of the case, overly broad, or unduly burdensome.

Without waiving these objections, defendants state that to change the sex designation on an Alabama driver license, Policy Order 63 requires proof of sexual reassignment surgery that includes an irreversible surgical change of sex characteristics, including genital reassignment.

10. Describe the process and criteria by which it is and, since the enactment of Policy Order 63 has been, determined whether a person has undergone “gender reassignment surgery” or “sexual reassignment surgery” under Policy Order 63.

**RESPONSE:** Defendants state that the process and criteria identified by Policy Order 63 for determining whether a person has had sexual reassignment surgery is “[a]n amended state certified birth certificate and/or a letter from the physician that performed the reassignment procedure. The letter must be on the physician’s letterhead.” Defendants further state that this process may also involve

a member of ALEA's Medical Unit contacting the office of the physician on the letter to confirm the required procedure was performed.

11. Describe each factual basis that predicates Defendants' first affirmative defense (labeled 2 under affirmative defenses in Defendants' answer, regarding failure to state a claim).

**RESPONSE:** Defendants object to this interrogatory to the extent that the request for "each factual basis" underlying the second affirmative defense is vague or ambiguous, irrelevant to any party's claim or defense, not proportional to the needs of the case, overly broad, or unduly burdensome. Defendants object to this interrogatory to the extent that it seeks a legal conclusion. Defendants object to this interrogatory on the grounds that this litigation is in its early stages and the information it seeks is premature. Defendants object to this interrogatory to the extent that the information it seeks is protected by the attorney client privilege.

Without waiving these objections, defendants state that they are aware of facts, or have a good faith basis to believe that discovery will reveal facts, that show some or all plaintiffs do not view their transgender status as private or confidential, that their driver license does not disclose their transgender status, that their sex designation on their driver license does not subject them to increased danger, that their driver license does not compel plaintiffs to disclose their transgender status, that complying with Policy Order 63 before changing a sex designation on an Alabama driver license does not compel plaintiffs to accept unwanted medical treatment, that Policy Order 63 does not discriminate against transgender individuals. Defendants reserve the right to add to or alter these facts as discovery proceeds.

12. Describe each factual basis that predicates Defendants' second affirmative defense (labeled 3 under affirmative defenses in Defendants' answer, regarding standing).

**RESPONSE:** Defendants object to this interrogatory to the extent that the request for "each factual basis" underlying the third affirmative defense is vague or ambiguous, irrelevant to any party's claim or defense, not proportional to the needs of the case, overly broad, or unduly burdensome. Defendants object to this interrogatory to the extent that it seeks a legal conclusion. Defendants object to this interrogatory on the grounds that this litigation is in its early stages and the

information it seeks is premature. Defendants object to this interrogatory to the extent that the information it seeks is protected by the attorney client privilege.

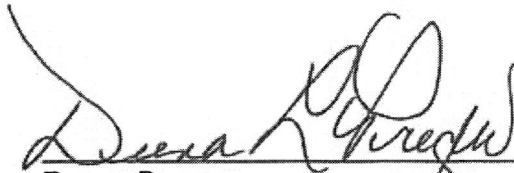
Without waiving these objections, defendants state that they are aware of facts, or have a good faith basis to believe that discovery will reveal facts, that some or all plaintiffs lack standing as to Count I because they have voluntarily publicly disclosed their transgender status, that plaintiff Darcy Corbitt may lack standing as to all claims because she does not intend to become an Alabama resident or acquire an Alabama driver license, and other such facts as discovery may reveal. Defendants reserve the right to add to or alter these facts as discovery proceeds.

13. Describe each factual basis that predicates Defendants' third affirmative defense (labeled 4 under affirmative defenses in Defendants' answer, regarding statute of limitations)

**RESPONSE:** Defendants object to this interrogatory to the extent that the request for "each factual basis" underlying the fourth affirmative defense is vague or ambiguous, irrelevant to any party's claim or defense, not proportional to the needs of the case, overly broad, or unduly burdensome. Defendants object to this interrogatory to the extent that it seeks a legal conclusion. Defendants object to this interrogatory on the grounds that this litigation is in its early stages and the information it seeks is premature. Defendants object to this interrogatory to the extent that the information it seeks is protected by the attorney client privilege.

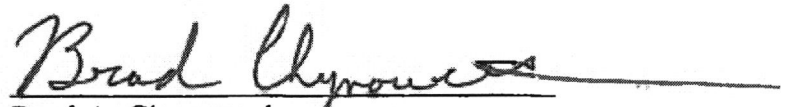
Without waiving these objections, defendants state that they are aware of facts, or have a good faith basis to believe that discovery will reveal facts, that some or all plaintiffs were aware, or should have been aware of, Policy Order 63 and were subject to the application of Policy Order 63 before February 6, 2016. Defendants reserve the right to add to or alter these facts as discovery proceeds.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing Answers to Interrogatories are true and correct to the best of my knowledge, information, and belief based upon information that has been provided to me.

  
\_\_\_\_\_  
Deena Pregno  
Chief, Driver License Division  
Alabama Law Enforcement Agency

6/22/2018  
\_\_\_\_\_  
Date

As to objections:

  
\_\_\_\_\_  
Brad A. Chynoweth  
Assistant Attorney General

Steve Marshall  
Attorney General

Winfield J. Sinclair  
Assistant Attorney General

State of Alabama  
Office of the Attorney General  
501 Washington Avenue  
Montgomery, Alabama 36130  
(334) 242-7300  
(334) 353-8440 (fax)  
bchynoweth@ago.state.al.us  
wsinclair@ago.state.al.us

**Counsel for Defendants**

### CERTIFICATE OF SERVICE

Pursuant to an agreement memorialized in the Report of the Parties' Planning Meeting, electronic service is acceptable for this document. I hereby certify that I have served a copy of the foregoing document on Brock Boone (bboone@aclualabama.org), Randall C. Marshall (rmarshall@aclualabama.org), Gabriel Arkles (garkles@aclu.org) and Rose Saxe (rsaxe@aclu.org), via email on this the 22nd day of June 2018.

s/ Brad A. Chynoweth  
OF COUNSEL

PLAINTIFF'S  
EXHIBIT  
Pregno 37  
11/14/18

Alabama Department of  
**Public Safety**

REPLY MAY BE MADE TO:

*Legal Unit  
P.O. Box 1511  
Montgomery, Alabama  
36102-1511*

*September 9, 2004*

Lisa Mottet  
Transgender Civil Rights Project  
National Gay and Lesbian Task Force  
1325 Massachusetts Ave., NW  
Suite 6000  
Washington, DC 20005

Dear Ms. Mottet,


I recently spoke with Ms. [REDACTED] in referenced to Alabama's policy on how a transgender individual can change the gender or sex designation on his or her driver's license. Our policy is as follows:

Names on driver licenses can be changed upon receipt of court ordered name change affidavits. However, the sex on a driver license is not changed prior to the completion of successful surgery, and then the attending physician, or a physician who has knowledge of your medical condition and has examined you must submit acceptable documentation attesting to the success of the surgery. *Medical Advisory Board Opinion*

In essence, the sex on the driver's license will only be changed upon successful completion of surgery and with corresponding documentation from the attending physician who has knowledge of the success of the surgery.

If you should need further assistance, please do not hesitate to contact me.

Sincerely,

  
Michael W. Robinson  
Assistant Attorney General

MWR/cs





***DARCY CORBITT, DESTINY CLARK and JOHN DOE, Plaintiff,***  
**v.**  
***HAL TAYLOR, CHARLES WARD, DEENA PREGNO and JEANNE EASTMAN, Defendants,***  
***in the***  
***U. S. DISTRICT COURT, MIDDLE DISTRICT of ALABAMA, NORTHERN DIVISION***  
***CIVIL ACTION NO. 2:18-cv-00091-MHT-GMB***

**EXPERT REPORT**

**I. INTRODUCTION**

This is a report addressing the issues related to the governmental interest in establishing baselines and definitions for determine the data term "sex," from which appropriate administrative and operational policies and procedures will be developed. This report is predicated upon the information outlined in the section "Materials Reviewed." Should additional information be disclosed that affects my opinions and conclusions, I reserve the right to alter my opinions and conclusions as necessary.

**II. QUALIFICATIONS**

I have been employed in the criminal justice system since 1984 when I began work with the Fayette County Detention Center in Lexington, Kentucky, as a Deputy Jailer. In 1985 I was assigned as Training Coordinator for the Fayette County Detention Center and began the development of a formal Pre-service and In-service Deputy Jailer training program for the jail. An area of additional assignment was the development, revision and maintenance of the Detention Center's policies and procedures. I remained in this position until 1992 when I assumed the position of Planning and Research Analyst at the Detention Center to develop and implement an objective jail classification system. This implementation included the development of a management information system infrastructure and programming to accomplish the goals of the jail classification system. I attained the position of Administrative Deputy, Senior (Deputy Director) for the Division of Detention in 1996 assuming increased levels of administrative responsibility that included a primary role in the planning, design and construction of a 1000+ Direct Supervision detention facility, combining the principles of Objective Jail Classification with Direct Supervision. Throughout my tenure I continued to perform the functions of a Deputy Jailer often wearing two, or more hats. Performing those essential job functions varied and diminished in frequency as the supervisory responsibilities within the agency increased.

In 2001, I was assigned the additional responsibility of contract development and management for privatized services (food, medical, mental health, commissary, inmate telephones) and various other projects. In 2004, I was assigned the development and supervision of the Lexington-Fayette Urban County Division of Community Corrections Bureau of Professional Standards which included Internal Affairs; Safety, Sanitation and Standards; and Administrative and Disciplinary Hearings. I retired from my last position in August 2008.

My consulting activities began in the early 1990's. I have been a certified instructor of correctional curriculum since 1985, and have been a FBI certified firearms instructor and a Federal Bureau of Prisons defensive tactics instructor. I have taught and consulted for the National Institute of Corrections since 1990, the American Jail Association since 2004, and other criminal justice system consulting agencies. I have assisted in developing policies and procedures for jails throughout the country. I have conducted numerous classification system evaluations of mega-jails, large jails, medium jails and small jails in various states around the US for the National Institute of Corrections and other contractors. I am experienced in matters involving overall jail management including, but not limited to, such areas as the use of force; issues of security and operations; the provision of medical and mental health services; classification and inmate behavior management; contract management for privatized services (food, medical, mental



health); management information systems; strip search; gang and security threat group management in jails. I have co-created and developed a new jail management paradigm – Mission Based Management. I received a Bachelor of General Studies in Social and Political Theory and a Doctorate in Public Administration. I have been a member of the Board of Directors for the American Jail Association and serve as Second Vice-President on the Executive Board. I am also on the faculty of the Americans for Effective Law Enforcement (AELE), where I instruct at seminars on topics of Inmate Classification, in-custody death prevention, Prison Rape Elimination Act and serve on the Editorial Board for AELE's publications.

In recent years, I have become involved in litigation consultation and expert witness work for both the plaintiff and the defense. These cases primarily involved strip search, classification, use of force, medical care, in-custody deaths and conditions of confinement. My opinions are given within a reasonable degree of professional certainty in those areas involving jail and correctional issues, acceptable correctional practice, correctional administration and correctional supervision.

III. **PUBLICATIONS**

1. "The Use of Force Continuum: Is it Worth Keeping?" (Part 2); Collins, William; Swartz, Jeffrey; and Leach, Donald, Correctional Law Reporter, May/June 2011
2. "The Use of Force Continuum: Is it Worth Keeping?" (Part 1); Collins, William; Swartz, Jeffrey; and Leach, Donald, Correctional Law Reporter, December/January 2011
3. "Arrestee Strip Searches: An Administrator's View", Correctional Law Reporter, July/August 2010
4. "PREA Redux: What's It Going to Cost Us?", American Jails, Hagerstown: May/June 2010
5. "PREA Redux: What's It Going to Cost?", Correctional Law Reporter, December/January 2010
6. "Prison Rape Elimination Act Lives On", Correctional Managers Report, December/January 2009
7. "Carrots versus Sticks: Managing Behavior in the Jail", - American Jails, Hagerstown: November/December 2008
8. "PREA Draft Standards are PREA 'DAFT' Standards" -Correctional Managers Report, August 2008
9. "Carrots versus Sticks: Managing Behavior in the Jail", -Correctional Managers Report, April/May 2008
10. "Issues Surrounding Managing Lesbian, Gay, Bi-sexual, Transsexual, and Intersex Offenders (LGBTI) in Jails", - American Jails, Hagerstown: November/December 2007; LJN Exchange, National Institute of Corrections, US Department of Justice, 2006; and Corrections Professional, November 2007
11. "Excited Delirium: Fact or Fiction", - LJN Exchange, National Institute of Corrections, US Department of Justice, 2007
12. "Are Tasers in Jails a Great New Tool or Another Headache", - LJN Exchange, National Institute of Corrections, US Department of Justice, 2006
13. "Mission Creep and the Role of the Jail in Public Health Policy" - LJN Exchange, National Institute of Corrections, US Department of Justice, 2004
14. "Creating a New Jail Management Paradigm", Kennedy-Western University, Published Dissertation, 2004
15. "Journey into Objective Jail Classification", Leach, Don and Sabbatine, Ray, American Jails, Hagerstown: January 1999
16. "A New Strip Search Paradigm", Leach, Donald and Sabbatine, Ray, American Jails, Hagerstown: November/December 1996

**IV. COMPENSATION**

My rate of compensation is \$200.00 per hour for research, consultation and report generation. My fee for depositions and trial testimony is \$2000 per any part of a business day, video depositions are \$3000 per any part of a business day, and \$1000 per any part of a business day for travel, awaiting trial testimony or onsite consultation plus all reasonable expenses (travel, printing and duplication).

V. **CASE HISTORY DISCLOSURE**

Cases in which I have testified in court or deposition in the past four years:

1. *Donald J. Hinson v. Sheriff Grady Judd, et al.*, (U. S. District Court, Middle District of Florida, Tampa Division, 8:17-CV-02039-JDW-MAP, 10/2018)
2. *Solomon Cindea v Matthew Abbott, et al.*, (U. S. District Court, Northern District of Ohio, Eastern Division, 4:17-cv-02525, 09/2018)
3. *Debra Hopkins v Board of Wilson County, Kansas, Commissioners, et al.* (U.S. District Court, District of Kansas, 2:15-CV-2071-CM-GLR, 08/2018)
4. *Michelle Kindoll, v. Southern Health Partners, et al.*, (U. S. District Court, Eastern District of Kentucky, Northern Division at Covington, 2:17-CV-84-DLB-JGW, 07/2018)
5. *Rachel M. Hammers v Douglas County, et. al.*, (U.S. District Court, District of Kansas, 2:15-CV-07994-CM-KGG 06/2018)
6. *James Barnes v. Sheriff John T. Boyd, LaPorte County Sheriff's Department, LaPorte County et al.*, (U. S. District Court, Northern District of Indiana, 3:16-CV-00190-RLM-MGG, 01/2018)
7. *Robert Moore v. Mason County, Kentucky and Mason County, et al.*, (U. S. District Court, Eastern District of Kentucky, 2:16-CV-00185-DLB-CJS, 01/2018)
8. *Randy S. Hisey, for James Merchant v. Woodbury County; et al.*, (U. S. District Court, Northern District of Iowa, Western Division, 7C16-CV-4111, 11/2017)
9. *Taylor Martin v Miguel Huapilla, Dayton Gaston, Joseph Peaks and Michael Scott*, (U. S. District Court, Middle District of Florida, 2:16-cv-537-FTM-99MRM, 08/2017)
10. *Jose Luis Garza v City of Donna, Texas*, (U.S. District Court, Southern District of Texas, McAllen Division, 7:16-CV-00558 05/2017)
11. *Anthony Waller v Bradley Lovinger*, (U.S. District Court, District of Colorado, 14-CV-02109-WYD-NYW, 05/2017)
12. *Bradley Johansen v. Officer A.J. Cox and the City of Kent*, (U.S. District Court, Western District of Washington at Seattle, 216-CV-004160, 01/2017)
13. *Rachel M. Hammers v Douglas County, et. al.*, (U.S. District Court, District of Kansas, 2:15-CV-07994-CM-KGG 08/2016)
14. *Charles Axl Rose v. McCreary County, et al.*, (U. S. District Court, Eastern District of Kentucky, 6:14-CV-00111-GFVT, 03/2016)
15. *Timothy Redmond, et. al. v Scott Crowther, et. al.*, (U. S. District Court, District of Utah, 2:13-cv-00393DAK, 7/2015)
16. *Jerome Odom, v Steve Whidden*, (Twentieth Judicial Circuit, Florida, Civil Division, Number 2012-570-CA, 7/2015)
17. *Christina Bobbin, v Corizon Health, Inc., f/k/a Prison Health Services, Inc., et. al.*, Mike Scott, et. al., (U. S. Dis-

trict Court, Middle District of Florida, 2:14-cv-158-FtM-29DNF, 07/2015)

18. *Shana Bennett v Hinds County, Mississippi, and John and Jane Does 1-100*, (U. S. District Court, Southern District of Mississippi, 3:14-CV-753-DNJ-FKB, 02/2015) consolidated with *Damion Lewis and Derrick Lewis v Hinds County, Mississippi, John and Jane Does 1-100*, (U.S. District Court, Northern District of Mississippi, 3:14-cv-450-TSL-JMR, 02/2015)
19. *Joseph Reilly v Sheriff of Leon County, Florida*, (U. S. District Court, Northern District of Florida, 4:14-CV-00397-RH-CAS, 01/2015)
20. *FK.S., K.K., H.M., T.K., J.H., S.B., S.C., T.S., C.K., D.R., L.A., and M.L., v City OF Puyallup, Police Chief Bryan Jeter, Lieutenant Edward Shannon*, (U. S. District Court, Eastern District of Washington, 3:13CV-05926, 12/2014)
21. *Oral Jason Murphy v Clark County Sheriff's Office, Paul Gaudette, Tammy Webster*, (U. S. District Court, Eastern District of Missouri, 13-CV-1103, 11/2014)
22. *Frank Hyman, v City of Philadelphia, Warden Clyde Gainey, Deputy Warden Gerald May, Lieutenant Demond Anderson, Corrections Officers Dwayne Corley and Ryan Hoover*, (U. S. District Court, Eastern District of Pennsylvania, 10-499, 05/2014)
23. *Christina Smith v Erie County Sheriff's Department; Erie County Board of Commissioners; Terry Lions; D. Todd Dempsey; Brittany M. Hausman; Sarah R. Worley; Jason A. Beatty; Kyle Bellamy; Linda Scroggy; and Perkins Township Board of Trustees* (U. S. District Court, Northern District of Ohio, 3:12-CV-01853-DAK, 09/2013)

VI. **MATERIALS REVIEWED**

I reviewed the following materials in formulating my opinion in this case.

1. "Adult sex offender-Identification requirements," § 15-20A-18, Code of Alabama Title 15, Criminal Procedure, Chapter 20A
2. "Changing Sex on a Driver License Due to Gender Reassignment," Driver License Division, Alabama Law Enforcement Division
3. Defendant's Answers to Plaintiffs' First Set of Interrogatories dated 06/22/2018
4. "Detention and Correctional Standards for Maine Counties and Municipalities," Maine Department of Corrections, Inspections Division, September 2005
5. Documentation of Receiving Sexual Reassignment Surgery
  - 5.1. Affidavit, Dr. Pierre Brassard dated 01/20/2011
  - 5.2. Affidavit of Dr. Charles Garramone
    - 5.2.1. Dated 12/24/2009 (x2)
    - 5.2.2. Dated 01/21/2010
    - 5.2.3. Dated 01/12/2010
    - 5.2.4. Dated 01/21/2010
    - 5.2.5. Dated 05/17/2010
    - 5.2.6. Dated 06/15/2011
    - 5.2.7. Dated 01/04/2013
    - 5.2.8. Dated 10/30/2013
    - 5.2.9. Dated 03/04/2014
    - 5.2.10. Dated 04/21/2014
    - 5.2.11. Dated 02/05/2015
    - 5.2.12. Dated 11/30/2015
    - 5.2.13. Dated 07/21/2016
    - 5.2.14. Dated 09/28/2017
  - 5.3. Amended Certificate of Live Birth, Center for Health Statistics, Alabama
    - 5.3.1. Dated 09/18/2009
    - 5.3.2. Dated 04/21/2014
    - 5.3.3. Dated 12/15/2014
    - 5.3.4. Dated 06/18/2015
    - 5.3.5. Dated 11/24/2015

5.3.6. Dated 12/23/2015

5.3.7. Dated 04/04/2016

5.4. Certificate of Live Birth, Division of Vital Records, Department of Health and Mental Hygiene, Maryland  
dated 06/05/2017

5.5. Chromosome Analysis, Laureate Medical Group dated 07/21/2003

5.6. Correspondence

5.6.1. Dr. Marci L. Bowers

5.6.1.1. Dated 03/14/2008

5.6.1.2. Dated 03/02/2016

5.6.2. Dr. Michael Brownstein

5.6.2.1. Dated 12/10/2008

5.6.3. Dr. Lazaro Cardenasicamarena

5.6.3.1. Dated 01/18/2012

5.6.4. Dr. Alan Dulin

5.6.4.1. Dated 03/31/2017

5.6.5. Dr. Beverly Fischer

5.6.5.1. Dated 08/03/2011

5.6.6. Dr. William Hadden

5.6.6.1. Dated 08/13/2014

5.6.7. Dr. Sherman N. Leis

5.6.7.1. Dated 08/12/2014

5.6.8. Dr. Keelee J. MacPhee

5.6.8.1. Dated 01/07/2016

5.6.9. Dr. Huey G. McDaniel

5.6.9.1. Dated 06/27/2016

5.6.10. Dr. Christine McGinn

5.6.10.1. Dated 06/22/2015

5.6.11. Dr. Daniel Medalie

5.6.11.1. Dated 04/16/2012

5.6.11.2. Dated 08/01/2014

5.6.12. Dr. Toby R. Meltzer



- 5.6.12.1. Dated 06/05/2013
- 5.6.12.2. Dated 08/13/2013 (x2)
- 5.6.13. Dr. Robert I. Oliver
  - 5.6.13.1. Dated 01/18/2017
- 5.6.14. Dr. Scott Parry
  - 5.6.14.1. Dated 09/18/2014
- 5.6.15. Dr. Peter Raphael
  - 5.6.15.1. Dated 07/29/2014
  - 5.6.15.2. Dated 09/21/2016 (x2)
- 5.6.16. Dr. Harold M. Reed
  - 5.6.16.1. Dated 05/07/2009
  - 5.6.16.2. Dated 03/04/2013
  - 5.6.16.3. Dated 06/05/2015
  - 5.6.16.4. Dated 05/16/2017
- 5.6.17. Dr. Kathy L. Rumer
  - 5.6.17.1. Dated 11/30/2017
- 5.6.18. Dr. Stephen Steinmetz
  - 5.6.18.1. Dated 03/09/2016
  - 5.6.18.2. Dated 11/03/2016
  - 5.6.18.3. Dated 05/30/2017
- 5.6.19. Dr. Preecha Tiewtranon
  - 5.6.19.1. Dated 12/13/2013
- 5.6.20. Dr. Suporn Watanyusakui
  - 5.6.20.1. Dated 08/26/2014
- 5.6.21. Dr. Scott R. Weisberg
  - 5.6.21.1. Dated 06/10/2011
  - 5.6.21.2. Dated 10/23/2012
- 5.7. Driver's License, Alabama dated 03/17/2017
- 5.8. Email, "RE: RE: gender change," from Jeannie Eastman to Barbara Toney dated 10/18/2017; 1203 hours
- 5.9. Judgment of change of Name and Issuance of New Birth Certificate After Anatomical Change of Sex by Surgery, Civil District Court for the Parish of Orleans, Louisiana dated 04/01/2016

- 5.10. Order, Probate Court of Mobile County, Alabama, dated 04/15/2015
- 5.11. Order to Amend Vital Record, Circuit Court of Mobile County, Alabama dated 04/07/2014
- 5.12. Order to Change Name, Gender and to Issue and Amend Vital Record (Birth Certificate), Houston County Circuit Court, Alabama dated 11/17/2011
6. Driver License Policy Order Number 63, Department of Public Safety, revised date 09/01/2012
7. First Amended Complaint for Declaratory and Injunctive Relief filed 07/25/2018
8. Jail and Prison Legal Issues: An Administrator's Guide, William Collins, Esq., published by the American Jail Association, updated 2006
9. "Minimum Standards for Local Correctional Facilities," Chapter 1400-1, "Rules of the Tennessee Corrections Institute, "Correctional Facilities Inspection revised 11/2004
10. Performance-based Standards for Adult Local Detention Facilities, 4<sup>th</sup> Edition, American Correctional Association, June 2004
  - 10.1. 2016 Standards Supplement, American Correctional Association, 2016
11. Protective Order filed 05/18/2018
12. *Bell v Wolfish*, 441 U. S. Supreme Court, 520 (1979)
13. *Estelle v. Gamble*, 429 U.S. 97; 97 S. Ct. 285; 50 L. Ed. 2d 251; 1976 U.S. LEXIS 175, (1976)
14. *Farmer v Brennan* (92-7247), 511 U.S. 825 (1994)
15. *Turner v Safley*, 482 U.S. 78 482 U.S. 78 (1987)

**VII. EXHIBITS TO BE USED TO SUMMARIZE OR SUPPORT OPINIONS**

I may employ some, or all, of the materials referred to in the previous section to summarize or support my opinions. This report is predicated on the facts as presented through reviewing the provided materials.

**VIII. FOCUS OF EXAMINATION**

My review focused on the following issue:

- A. *Is there a governmental interest in having a standardized definition of sex, such as that established in Policy Order 63, for law enforcement and administrative purposes as expected by a reasonable correctional administrator?***

**IX. OPINION**

My opinion is predicated on a comprehensive review of the information listed in Section VI. My opinions and conclusions are given within a reasonable degree of professional certainty in those areas involving jail and correctional issues, acceptable correctional practice, supervision and administration. I reserve the right to supplement or alter my opinions and conclusions should additional information be received.

- A. *In sum, my opinion is there is a governmental interest in having a standardized definition of sex, such as that established in Policy Order 63, for law enforcement and administrative purposes as expected by a reasonable correctional administrator so there is consistency in the development, and application, of administrative and operational policies and procedures.***

**X. COMMENTS AND BASIS FOR OPINION**

In preparing my opinion, I relied upon my training and experience in corrections as an officer, instructor and administrator along with training and information provided by attorney and correctional law expert Mr. William Collins, Esq. in *Jail and Prison Legal Issues: An Administrator's Guide*<sup>1</sup>. Additionally, my opinions and basis for opinions reflect my continuing studies and research of correctional management issues. Those studies and research include frequent review of case studies, correctional articles<sup>2</sup> and participation in correctional conferences and workshops conducted by, the Americans for Effective Law Enforcement; Institute for the Prevention of In-custody Death; the American Jail Association, and the American Correctional Association, both as a presenter and as a participant.

My opinions arise from the information reviewed; are the product of that review; reflect relevant professional duties; standards of care; and, accepted practices in the field of corrections. Any reference to court opinions and/or use of legal terms reflects my training and experience in the correctional profession and as a correctional practices expert. My reference to cases or use of any terms that have a specific legal definition is not intended to express any legal expertise beyond the scope of my experiences and training as a correctional officer, and correctional administrator, and as used by a knowledgeable correctional administrator in operating that which the Courts have determined to be a Constitutionally-based correctional facility.

In corrections, agency policies and practices are intended to conform to Constitutionally-based duties; applicable state regulatory standards; and standards of care and training. Supervision is intended to ensure knowledge and application of those Constitutional duties by correctional staff. Policy is a guideline enacted through procedures that are intended to demonstrate Constitutionally-based acceptable correctional practices. The various correctional duties, standards of care and accepted practices have all evolved over time, illustrating "the evolving standards of decency that mark the progress of a maturing society."<sup>3</sup>

The phrase "acceptable correctional practice" refers to how objectively reasonable correctional professionals perform, or should perform, their duties based on legal policy codified and adopted into policy and procedure, that is published, trained and supervised. "Acceptable correctional practice" does not refer to "best practice" or "ideal practice", but rather to those situations and practices that correctional personnel confront as part of their customary duties. They generally fall within a range of options available to the officer in any given situation.

I relied on my training, experience and knowledge as a correctional administrator in evaluating the governmental need for baseline definitions that provide for the consistent application of policies and procedures to law enforcement and correctional agencies.

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<sup>1</sup> *Jail and Prison Legal Issues: An Administrator's Guide*, William Collins, Esq., published by the American Jail Association, updated 2006

<sup>2</sup> Correctional publications that I routinely read and review provide current thoughts, issues, problems, solutions, relevant case law include the *Correctional Manager's Report*; the *Correctional Health Care Report*; the *Correctional Law Reporter*; the *Correctional Mental Health Report*; *American Jails* magazine; *Jail and Prisoner Law Bulletin*; *AELE Monthly Law Journal*; and *Corrections Today* magazine.

<sup>3</sup> *Estelle v. Gamble*, 429 U.S. 97; 97 S. Ct. 285; 50 L. Ed. 2d 251; 1976 U.S. LEXIS 175, (1976)

**XI. ANALYSIS**

Baselines, and the definitions that are used to establish those baselines are at the core of the development of policies and procedures governing key facets for the administration and operation of law enforcement and correctional agencies. Law enforcement and correctional administrators appreciate policies and procedures that are well defined, and clearly delineated. This baseline definition is intended to provide for the consistent application of those policies and procedures. It is the purview of law enforcement and correctional administrators to establish policies and procedures predicated upon definitions provided by the state or the courts, if not internally developed. Whether provided by the state or the courts, the definitions provide a baseline from which law enforcement and correctional administrators can make decisions regarding administrative and operational issues. Such is the case where a definition for the concept of sex, when being used as an identifying characteristic, is required.

The problem is that "sex," as a biological noun, when employed as an identifying characteristic, is not easily defined in a manner that generates broad acceptance and agreement. The concept of "sex" is often used synonymously with concept of gender, and vice versa. Depending upon the context of the discussion, this may well be wrong.

In a broad social and biological context, sex is a state of being, how one thinks about oneself, externally and internally. Sex is a how others perceive us, and we, them. Sex is how we act towards others, and others toward us. In essence there are three parts to our sexual being: physiognomy; gender identity; and, sexual preference.

Sex, in the context of Policy Order Number 63, refers to the physiognomy of the individual, typically male or female. Gender is more frequently used when referring to social and cultural differences as opposed to physiognomical differences, typically the perception of oneself as male or female separate from physiognomy. Even in sex physiognomy, there is the mistaken perception that an individual's sex is readily defined as either male or female, with easily identifiable male or female genitalia to guide the identification. This is not accurate.

It is probably more accurate to see the individual's physiognomical sex as lying somewhere along a continuum, with what can be described a "fully male" at one end and "fully female" at the other. In between are intersex individuals who may have ambiguous genitalia or retain gonadal histology, chromosomes and internal reproductive organs of the opposite physiognomy. According to the Intersex Society of North America, the occurrence of babies born with atypical genitalia is approximately 1 in 2000 live births.<sup>4</sup> The number of individuals that lie somewhere on the continuum may be even higher when considering that other characteristics associated with being intersex may not be readily visible but identifiable by other means. The ambiguity about physiognomy, as demonstrated by the presence of intersex individuals, is why definitions are critical in forming the baseline from which to structure policies and procedures. This is especially true for correctional facilities.

Any discussion of "sex" must include a discussion of one's perception of his or her "sex," or "gender identity." Gender identity is the second part of our sexual being; but, gender identity and physiognomy are not always congruent. For the vast majority of people, physiognomy and gender identity coincide. For others, there is a disparity between physiognomy and gender identity. The "sex" these individuals perceive themselves as being does not match what they see when they look in the mirror. Nor does their "sex" match what others see them as being based upon physiognomy.

A baseline definition of "sex" in the physiognomy sense provides starting point from which an exchange of

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<sup>4</sup> See <http://www.isna.org/faq/frequency>

views can occur. As with any concept there may be disagreement about the what constitutes the "best" baseline definition of sex. While there may be disagreement about the definition of sex, there are circumstances, especially in law enforcement and corrections, where a definition of sex is essential to the application of policies and procedures. By way of analogy, an example is the definition of adult and juvenile. The definitional distinction between what is an "adult" and a "juvenile" are set by legislatures and courts. And these definitions are crucial in determining appropriate incarceration practices. Similarly then, this need for a definitional distinction of the term "sex" is the situation that has resulted in the state of Alabama developing Driver License Policy Order Number 63. Policy Order Number 63 adopts a definition of "sex" as needed to change that designation on the state-issued driver's license as being,

"It is the policy of the Director and the Driver License Division that individuals wishing to have their sex changed on their Alabama license due to gender reassignment surgery are required to submit to the Medical Unit an amended birth certificate along with documentation on letterhead from the physician that performed the sexual reassignment surgery stating the surgery has been completed."<sup>5</sup>

And the definition of "sex" is further refined in the policy directive, "Changing Sex on a Driver License Due to Gender Reassignment"

"An amended state certified birth certificate and/or a letter from the physician that performed the reassignment procedure. The letter must be on the physician's letterhead."<sup>6</sup>

Policy Order Number 63 serves as a baseline definition of "sex" that can be applied in law enforcement and correctional policies, practices and procedures. While recognizing that while there may be other definitions, employed by other agencies, the definitions within Policy Order Number 63 provide a baseline for Alabama Law enforcement and correctional agencies to develop administrative and operational policies, practices and procedures. Having an established starting point from which to develop administrative and operational policies, practices and procedures is critical especially in an environment where the concept, such as sex, is so readily misunderstood.

In corrections, there are many custodial policies, procedures and practices that are based on the definition of "sex." The decision by the state of Alabama defining sex as it has in Policy Order Number 63 provides a foundation upon which correctional agencies can begin to develop their own internal "data dictionary." A "data dictionary" defines both the data term, such as what is "sex", and where that data information is derived. A "data dictionary" provides an organized reference point for staff. The data dictionary provides a standardized definition for all staff to use when employing the data term, such as "sex". Using the data dictionary, everyone works from the same definition regardless of where in the custodial process the individual lies: starting with the initial booking and continues through release from custody. Critical decisions on housing, supervision and the provisioner care services are predicated on data terms, such as "sex."

The first correctional decision in which the data term "sex" plays an essential role is the conduct of searches. Who searches whom will be decisions arising from the definition of the term "sex." It is commonly acceptable correc-

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<sup>5</sup> Driver License Policy Order Number 63, Department of Public Safety, 1. A., revised date 09/01/2012

<sup>6</sup> "Changing Sex on a Driver License Due to Gender Reassignment," Driver License Division, Alabama Law Enforcement Division, 1.



tional practice for searches to be conducted by members of the same "sex."<sup>7</sup> While clothed searches by members of the opposite sex (or "cross-gender") is acceptable correctional practice, it is generally limited in use. The intent of this practice is to avoid Fourth amendment violations related to the manner of the search.

There is a legitimate governmental interest in conducting a through search of all individual entering the correctional facility.<sup>8</sup> In an attempt to preserve as much of the individual's dignity as possible, the clothed search (or pat-down) would be conducted by member of the same "sex;" the idea being that a search by a member of the same "sex" would be less intrusive and disconcerting. It is commonly prohibited in a correctional facility for members of the opposite "sex" to conduct unclothe (strip) searches unless there are exigent circumstances. Crucial in these decisions of who is searched by whom is the definition of the data term, "sex."

Another area wherein the definition of the data term "sex" is critical is when making housing decisions. The commonly acceptable correctional practice is to not co-house members of the opposite "sex." The intent is to minimize sexual behavior occurring in the housing units, regardless of whether the sexual behavior is consensual or coerced. Underpinning this separation by "sex" is the concern that co-housing members of the same "sex" increases the opportunity for prohibited sexual behavior to occur. In some states, such as Tennessee, inmates of the opposite "sex" must be separated by sight and sound.<sup>9</sup> Surprisingly, Alabama is the only state that provides for the co-housing of men and women, as long as they are married.<sup>10</sup> Needless to say, this creates another definitional issue for correctional administrators when making the determination of what is "married."

What cannot be overlooked in the discussion of "sex" and custodial practices is the consideration that must be made for the "sex" of the involved staff. In any discussion of non-exigent strip searching, the "sex" of the inmate and the "sex" of the staff member must be clearly defined. This prevents the incurrence of Fourth Amendment rights violation. In housing and inmate supervision issues, "sex" of both the inmate and the staff member may carry potential Equal Employment Opportunity concerns. This potential issue is recognized in the Idaho jail standards,

"Policies governing supervision of female inmates by male employees and male inmates by female employees are based on equal employment opportunity and inmate privacy needs. Except in emergencies, or the safety of the inmate is in question, facility employees are not permitted to observe inmates of the opposite sex in toilet and shower areas. Male and female employees are available, as needed, to conduct or assist in the admissions process of female and male inmates, conduct searches of inmates, and perform other sensitive pro-

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<sup>7</sup> See Tennessee Jail Standards, 1400-1-07, "Security," (5) "Procedure shall differentiate between the searches allowed (orifice, pat, or strip) and identify when these shall occur and by whom such searches may be made. All orifice searches shall be done under medical supervision. Prisoners shall be searched by jail personnel of the same sex, except in emergency situations." And Maine, H. 17, "All prisoners shall be searched thoroughly whenever entering or leaving the holding area. Any strip search shall be conducted in private and in a manner that preserves the dignity of the inmate; by a staff member of the same sex in an area completely free from members of the opposite sex; and under sanitary conditions."

<sup>8</sup> These governmental interests is primarily for preventing the introduction of contraband but also may include the identification of medical problems.

<sup>9</sup> See Tennessee Jail Standards, 1400-1-17, "Classification," (2)"This plan ensures total sight, sound or physical contact separation between male and female inmates and between adults and juveniles being tried as adults." And Maine R. "Facilities," 4. "Female inmates shall be provided housing areas separate by sight and audible sound from male inmates. All shower and bathroom facilities shall be designed to prevent direct viewing by staff and inmates of the opposite sex to insure the inmates' right to privacy."

<sup>10</sup> See Alabama Code Title 14. Criminal Correctional and Detention Facilities, Chapter 6, "Jails," § 14-6-13 "Men and women prisoners, except husband and wife, must not be kept in the same room or apartment"

cedures involving inmates.”<sup>11</sup>

This Idaho policy creates the need to define “sex”, in this case being what is “male” and what is “female.” The application of the Policy Order Number 63 would provide one definition for “sex” from which an Idaho correctional administrator could develop, implement and supervise policies and procedures related to housing and supervision. A similar situation is faced by correctional administrators in Alabama jails. Policy Order Number 63 provides a definition that can be employed when determining the “sex” of both inmates and staff. Whether the Alabama jail administrator makes the decision to use the definition of “sex” as provided in Policy Order Number 63, or to use another definition, is discretionary. That discretion is going to be based on the “risk tolerance” level of the correctional administrator.

“Risk tolerance” is the willingness of the correctional administrator to take risks, or to avoid them. Managing human behavior is a risky business for correctional administrators. As stated previously, decisions on housing, supervision and care services have to be made for effective management of human behavior. “Risk tolerance” is the amount of variability the correctional administrator is willing to tolerate arising from a given decision, policy or practice. It is a balance between the perceived benefits and perceived risks with a given practice. Every correctional administrator has his or her own level of risk tolerance that will guide policy decisions. The more liberal philosophical approach the correctional possess, the more risk that same administrator will be willing to tolerate. Whether the correctional administrator chooses to use the Policy Order Number 63 definition of “sex” or another, that choice will be guided by the administrator’s “risk tolerance.”

“Risk tolerance” is also a reflection of local community standards. The level of risk a correctional administrator in a major metropolitan area versus a more rural community will reflect the local community values. Ultimately, the correctional administrator is going to be responsive to, and accountable to, the local community. Policy Order Number 63 is reflective of the community standards for the state of Alabama as interpreted by the state’s elected officials.

What complicates the “risk tolerance” decision defining “sex” is the issue of sexual preference. Sexual preference refers to who one is attracted to sexually. Sexual preference is complex and multifaceted. It is not as straightforward as physiognomical male attracted to physiognomical female (and vice versa), or physiognomical male to physiognomical male. Complicating the discussion is gender identity. Combining physiognomy, gender identity and sexual preferences results in variety of sexual existences that colors the perception of any one of the individual elements. Definitions of what it means to be straight; gay; lesbian; bi-sexual; and, asexual are complicated by physiognomy and gender identity. A definition of “sex”, such as that provided by Policy Order Number 63, provides a starting point for discussions regarding what can then be defined into categories of homosexual, heterosexual or bi-sexual behavior.

Ultimately, from a correctional administrator’s perspective, the definition of “sex” is intended to be used to drive decisions that will reduce the likelihood of harm occurring to the individual inmate or other inmates. Harm can arise from the conduct of inappropriate searches. Harm can arise from inappropriate housing. Harm can arise from inappropriate supervision. Harm can arise from inappropriate restrictions on conditions of confinement. Lastly, harm can arise from inappropriate restrictions on conditions of employment. All decisions arising the definition of “sex,” whether the one provided in Policy Order Number 63, carry a measure of risk. How risk aversive, or risk tak-

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<sup>11</sup> Chapter 7, “Security and Control,” “Inmate Supervision and Management,” 07.04 (ref. 03.03) (Revised 12/03) (Revised 12/09)

ing, the law enforcement or correctional administrator is grounded in that individual's personal and correctional philosophies, or "weltanschauung,"<sup>12</sup> The stat of Alabama provides through Policy Order Number 63 a starting point from which the law enforcement or correctional administrator can measure his or her policies and procedures.

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<sup>12</sup> "Weltanschauung" is defined as a worldview held by a person or group.

**XII. REPORT CONCLUSION**

Correctional and law enforcement agencies need definitions for data elements, such as what is "sex." The definition is intended to be used when developing agency policies and procedures. The definition is intended to be used when identifying individuals in the community. The definition is intended to drive decisions on housing, supervision and care services. The development of the definition of "sex" is a discretionary decisions within the purview of the agency, such as the Alabama Law Enforcement Agency. Correctional and law enforcement agencies have the discretion to adopt the definition of "sex" as put forward in Policy Order Number 63 as is; modify the definition as put forward in Policy Order Number 63; or, in the absence of a legal definition, to create their own definition.

I reserve the right to supplement or alter my opinion should additional information be received.



Donald L. Leach II

October 31, 2018