

PDF TRANSCRIPT COVER PAGE

**Javan Mesnard
Ugenti-Rita v. Shooter**

November 13, 2019



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Court Reporters

Videoconference

Transcription

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

MICHELLE UGENTI-RITA,)
)
 Plaintiff,)
)
 vs.) No. CV 2018-052586
)
 DONALD D. SHOOTER and SUSAN)
 SHOOTER, husband and wife,)
)
 Defendants.)
)
 _____)
 DONALD D. SHOOTER,)
)
 Counterclaimant,)
)
 vs.)
)
 MICHELLE UGENTI-RITA,)
)
 Counterdefendant.)
 _____)

DEPOSITION OF JAVAN MESNARD
(Volume II)

Phoenix, Arizona
November 13, 2019
1:30 p.m.

PREPARED FOR:

ATTORNEY AT LAW
(COPY)

Reported by:
Julie T. Ottmar, RPR
Arizona CCR 50084
AZ Registered Reporting Firm No. R1008

1 DEPOSITION OF JAVAN MESNARD, Volume II, taken
2 on November 13, 2019, commencing at 1:42 p.m., at the
3 law offices of WILENCHIK & BARTNESS, 2810 North Third
4 Street, Phoenix, Arizona, before JULIE T. OTTMAR, a
5 Certified Reporter in the State of Arizona.

6

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25

1 I N D E X

2

3 WITNESS PAGE

4 JAVAN MESNARD

5 EXAMINATION (Continued) BY MR. BERNSTEIN 119

EXAMINATION BY MR. MASSEY 199

6 RE-EXAMINATION BY MR. BERNSTEIN 206

7

8 * * *

9

E X H I B I T S

10

EXHIBITS DESCRIPTION REFERRED

11 Exh. 09 Journal of the House of Rep. 9

12 Exh. 10 Arizona Legislative Report News 168

Notes, Digital Edition, January
13 3

14 Exh. 11 House of Representative Ethics 180

Complaint to the House Ethics
15 Committee from Representative
Ray D. Martinez dated November
16 14, 2017. Subject: Minority
Leader Rebecca Rios

17 Exh. 12 News Release, "Speaker Mesnard 181

18 Releases Statement on Letter
from Representative Shooter,
19 Announces Expulsion Resolution"

20

21

22

23

24

25

1 (In accordance with ACJA 7-206(J)(3)(b), an
2 itemized, written list of rates and charges has been
3 disclosed to all parties or their attorneys and any
4 unrepresented witnesses.)

5

6

JAVAN MESNARD,

7

a witness herein, having been first duly sworn by the
8 Certified Reporter to speak the truth and nothing but
9 the truth, was examined and testified as follows:

10

11

(Exhibit Nos. 9, 10, and 11 marked.)

12

13

EXAMINATION (Continued)

14

BY MR. BERNSTEIN:

15

Q. Good afternoon, sir.

16

A. Hi.

17

Q. And the court reporter swore you in again.

18

Just want to remind you of some of the very basic
19 ground rules; that if, at any time, you want to take a
20 break to talk to your counsel, let us know. We are
21 more than happy to do that.

22

If you don't understand a question,

23

please let me know, because, if you answer it, it's

24

presumed that you understood the question.

25

Are you ready to go?

1 A. I am.

2 Q. Okay. During your time in the House of
3 Representatives for the State of Arizona, are you
4 familiar with the term "dark money"?

5 A. I am.

6 Q. If you can, just tell me, what does dark money
7 mean to you.

8 A. To me? Okay, that's interesting.
9 Essentially, it means money that is spent from an
10 outside organization that's used to influence an
11 election where the donors to the organization are not
12 disclosed.

13 Q. And as part of the investigation into
14 Mr. Shooter, did you promise dark money to
15 Ms. Ugenti-Rita?

16 A. No.

17 MR. TULLY: I'm going to -- well, okay.

18 BY MR. BERNSTEIN:

19 Q. Is there anything else about dark money that
20 you haven't answered in terms of what it means to you?
21 I just want to make sure your answer is full.

22 A. Not that I can think of.

23 Q. Okay. And what about during your time in the
24 House of Representatives for the State of Arizona, are
25 you familiar with the term "campaign" -- I'm sorry,

1 "illegal campaign money"?

2 MR. TULLY: Object to form.

3 A. Whether or not that's an official term, I
4 don't know, but I know that you can -- I know there's
5 such a thing as illegal campaign money.

6 BY MR. BERNSTEIN:

7 Q. And how does that work or what makes -- to
8 your knowledge, only to your knowledge, how does that
9 work or what makes it illegal?

10 A. So anything --

11 MR. TULLY: Hang on. Object to the form
12 and foundation.

13 MR. MASSEY: Join.

14 A. So anything that, essentially, doesn't follow
15 state law as to the -- who is contributing, how much
16 they are contributing, the reporting requirements that
17 go along with contributing. Any of those could be a
18 reason you'd be breaking the law, which, by definition,
19 would be an illegal campaign contribution. Even if it
20 was done in an otherwise than illegal way, you can
21 violate the law by not reporting it correctly, that
22 sort of thing.

23 BY MR. BERNSTEIN:

24 Q. Would it be fair to say then all dark money is
25 illegal campaign money, but not all illegal campaign

1 money is dark money or --

2 A. I don't see --

3 MR. MASSEY: Form --

4 BY MR. BERNSTEIN:

5 Q. No?

6 MR. MASSEY: Objection. Form and
7 foundation.

8 BY MR. BERNSTEIN:

9 Q. So then what, to your knowledge, is the
10 difference between dark money and illegal campaign
11 money, if there is one?

12 MR. TULLY: Object to the form of the
13 question.

14 MR. MASSEY: Join.

15 A. Repeat the question.

16 MR. BERNSTEIN: Ms. Reporter, please.

17 (Requested portion of record read.)

18 A. Dark money is a -- is a caricature of what I
19 just described a second ago. There's no -- to my
20 knowledge, no official definition of dark money. It's
21 a colloquial. So it has -- so dark money, according to
22 the definition I said a second ago, is entirely legal,
23 being that it's just a matter of the method, you know.
24 It's independent expenditures; they're not campaign
25 contributions to candidates. The donors to the

1 independent expenditure may not be disclosed -- or the
2 committee itself may not have to be disclosed. The
3 committee does have to disclose itself, but that is all
4 perfectly legal.

5 So the two terms have zero to do with
6 each other, though I suspect in the general public,
7 they are negative connotations of equal value. They
8 are not remotely legally accurate in comparing the two.

9 BY MR. BERNSTEIN:

10 Q. Okay. Did you at any time promise
11 Ms. Ugenti-Rita illegal campaign money for her
12 allegations against Don Shooter?

13 A. No.

14 Q. I'm going to show you what's been previously
15 marked as Exhibit 9, and I'll say I took your advice
16 yesterday and did some research in between, and I'm
17 going to show you Exhibit 9. And the cover page says,
18 "Journal of the House of Representatives 2018." Do you
19 see that?

20 A. I do.

21 Q. And I will make the representation that I did
22 not copy the whole journal, but specific pages, 101 to
23 113. Yes, 113.

24 Now, looking at this, have you ever seen
25 this, the original of this copy before?

1 A. Maybe. I've seen a lot of journals over the
2 years.

3 Q. Okay. Well, let's go back to the front cover.
4 The Journal of the House of Representatives 2018, do
5 you know -- looking at this cover, do you know what the
6 document -- what that book is?

7 A. I know that it's the Journal of the Arizona
8 House of Representatives.

9 Q. Okay. Is that where the bills and -- in part,
10 it might encompass a lot of other things, but if the
11 bills that were passed would be encompassed in this
12 book?

13 A. I believe so.

14 Q. Okay. And is this the book that you had
15 directed me to yesterday regarding when we talked about
16 the policy and the rule changes being passed and
17 adopted?

18 A. I believe so.

19 Q. Okay. So, now, looking at page 101 of this
20 document, you see at the very top, it says, "Thursday,
21 February 8, 2018"?

22 A. Yes.

23 Q. And it says, "Thirty-Second Day"?

24 A. Yes.

25 Q. Is it fair to say that's the 32nd day of the

1 session, which began with the first Monday or the
2 second Monday in January?

3 A. That seems likely.

4 Q. Okay. And then it says, "Business on the
5 Speaker's Desk"?

6 A. Yes.

7 Q. Okay. Can you just briefly tell me what that
8 means?

9 A. So there are certain day-to-day business
10 parliamentary procedures, motions that we go through.
11 Essentially, a script is given to me by the chief
12 clerk's office; and we make sure we cover it because
13 there are certain either legal or constitutional
14 obligations that go along with our daily sessions.

15 Q. So "Business on the Speaker's Desk" is
16 something that you have to make sure to take care of
17 that day?

18 A. I don't know that it has to be taken care of
19 on a particular day, but it probably has to be taken
20 care of. Actually, I don't even necessarily know that
21 because it's business on the Speaker's desk, it's
22 mandated to be taken care of. It would probably depend
23 on what it is, and you'd probably have to ask the chief
24 clerk.

25 Q. Let me see this, again: You were Speaker of

1 the House for how many years?

2 A. Two.

3 Q. And when something says, "Business on the
4 Speaker's Desk," is that different from bills being
5 introduced by other members?

6 A. I've never thought about it. Maybe.

7 Q. Well, again, sir, I promise I'm really just
8 trying to understand what "Business on the Speaker's
9 Desk" means, why it's called that, if you know.

10 A. So that's what I'm saying, is: I've never
11 really thought about it. So I've never drilled down
12 into what "Business on the Speaker's Desk" means as far
13 as, like, whether it's encompassing laws or something
14 separate. I don't know.

15 Q. Okay. So then underneath that, it says,
16 "Motion by Mr. Allen." Let me stop you there. Do you
17 know who Mr. Allen is?

18 A. I do.

19 Q. And who is Mr. Allen?

20 A. At the time, he was the House Majority Leader.

21 Q. Okay. So Mr. Allen made a motion that the
22 rules "be amended by adopting the proposed rule changes
23 as printed and distributed and, as amended, these Rules
24 are the Rules for the Second Regular Session," right?

25 A. Yeah, that seems right.

1 Q. And then it continues and says, "Rule 4, The
2 Speaker" and "Rule 38, Code of Conduct," correct?

3 A. Correct.

4 Q. Now, sir, just so we're clear, those are
5 the -- are those the rules that we talked about
6 yesterday that was previously marked as Exhibits 2 and
7 2A?

8 A. I believe so.

9 Q. Okay. I just want the record to be clear.

10 And then after B, it says, "The motion
11 carried," correct?

12 A. It says that.

13 Q. Do you see that?

14 A. Yes, I do.

15 Q. Okay. Can you tell me what that means,
16 please.

17 A. It means the motion passed.

18 Q. Okay. And with the motion to adopt those rule
19 changes; is that what it means?

20 A. That's what it's referring to, yes.

21 Q. Okay. And then after that, it says, "Motion
22 by Mr. Allen that the House adopt the harassment
23 prevention policy as printed and distributed." Do you
24 see that?

25 A. I do.

1 Q. And that's "Proposed Harassment Prevention
2 Policy, Arizona House of Representatives Policy on
3 Workplace Harassment," correct?

4 A. I see that.

5 Q. Okay. And then the next -- if you go all the
6 way to page 113 -- just, you know, if you just look at
7 each page, is that the policy, all these pages is part
8 of that proposed policy?

9 A. It looks that way.

10 Q. Okay. And then on the -- if you look at the
11 last page, page 13 -- 113, I guess halfway down the
12 page, it says, "The motion was then carried." Do you
13 see that, sir?

14 A. I do.

15 Q. Okay. So, again, what does that mean?

16 A. It means the motion passed.

17 Q. Okay. So is it fair to say then on February
18 8, 2018, is when the House passed the Arizona House of
19 Representatives Policy on Workplace Harassment?

20 A. It is correct to say that that was formally
21 adopted by rule on that date.

22 Q. Okay. So February 8 was the day that it was
23 formally adopted by the House, voted on and adopted by
24 the House, correct?

25 A. It is correct to say that this written policy

1 that is here was formally adopted on February 8.

2 Q. And this written policy that was adopted on
3 February 8 didn't supersede another written policy, did
4 it?

5 A. It did not supersede a written policy in this
6 context.

7 Q. And, sir, in the document that you have in
8 front of you, is there -- anywhere is it indicated on
9 who was present for this vote?

10 A. I think it did.

11 Q. Did it? Okay. That's fine.

12 A. I was looking at page 113 where it looks like
13 that's the third reading issue. So I don't -- I'd have
14 to look through to see if it specifically says.

15 Q. If you can, please.

16 A. Do you have the earlier pages?

17 Q. To that day? Do you think it would be there
18 somewhere?

19 A. Well, we would have taken attendance is the
20 first thing, so that would sort of tell you who's
21 there.

22 Q. Fair enough, okay. Now, let me ask you the
23 next question then. In these 13 pages that you have in
24 front of you, does it indicate on what the vote was?

25 A. It doesn't look like it does.

1 Q. Because it says, "The motion was then
2 carried."

3 A. Right.

4 Q. Does that have some significance to you as to
5 whether an actual vote was taken? Was it just a show
6 of hands? Did you just say it was carried or something
7 else?

8 A. No. So certain motions require a role call
9 vote. Other motions do not unless anyone requests a
10 role call vote; and pretty much anyone who wants one --
11 I think sometimes or maybe all the time it has to be
12 seconded, but you can pretty much get a role call vote
13 anytime you like. But if nobody wants a role call
14 vote, then it would be sort of by acclamation that
15 something is passed. And they probably -- I'm
16 guessing, I'm not the chief, but --

17 Q. I don't want you to guess, sir.

18 A. Then I'll stop.

19 Q. I don't want you to guess.

20 So let me just ask you then, let me just
21 break this down. You said some votes -- I'm sorry, did
22 you say votes?

23 A. Some motions.

24 Q. Thank you. Some motions require a vote, a
25 role call vote, correct?

1 A. Correct.

2 Q. What type of motions are those?

3 A. So I don't know them all. I can tell you some
4 that do and then others I wouldn't know whether they do
5 or don't. This is why they have a chief clerk, to
6 direct the parliamentary procedures.

7 Q. As Speaker of the House, you did not know what
8 motions needed a role call vote?

9 A. No. As Speaker of the House, I don't know
10 every single motion.

11 Q. Okay. So is it fair to say, sir, as you sit
12 here today, you don't know if the vote regarding the no
13 tolerance harassment motion required a vote or not?

14 MR. TULLY: Hang on. Object to the form
15 of the question and foundation.

16 A. Can you repeat the question.

17 (Requested portion of record read.)

18 A. I guess I would answer it this way: Since I
19 don't have every motion memorized, I can't possibly
20 know beyond a reasonable doubt whether or not it is or
21 is not required. Staff, however, is reliable and makes
22 those determinations. And so since it's not there, I
23 would bet a lot that it is not required.

24 BY MR. BERNSTEIN:

25 Q. When you say -- excuse me. When you say "it's

1 not there," what do you mean by that, sir?

2 A. In other words, because, at least in the pages
3 you gave me, I don't see a particular vote breakdown on
4 that motion, I would assume with a high degree of
5 confidence that it is not required for this type of
6 motion.

7 Q. But a vote could be taken; is that fair to
8 say?

9 A. A member can request a role call vote even if
10 role call votes are not automatically required.

11 Q. As Speaker of the House back on February 8,
12 2018, did you personally believe it was important to
13 take a role call vote on this specific motion?

14 MR. TULLY: Don't answer that question.
15 That's legislative privilege.

16 MR. BERNSTEIN: You are invoking
17 legislative privilege 17 questions into this line of
18 questioning?

19 MR. TULLY: You're asking him now --

20 MR. BERNSTEIN: Is that what you're
21 doing?

22 MR. TULLY: No. I'm not going to get
23 into a debate with you. I'm exercising -- exercising
24 rights to -- exercising the legislative privilege, and
25 he's not answering that question.

1 BY MR. BERNSTEIN:

2 Q. Would you expect -- if a role call vote was
3 taken, would you expect the tally of the vote to be in
4 those pages of what I showed you next to where it says
5 the motion carried or would it be somewhere else in the
6 book where I may be able to find it?

7 MR. TULLY: Object to foundation.

8 A. I don't know.

9 BY MR. BERNSTEIN:

10 Q. Just in your experience, have you ever looked
11 in this journal and have seen a role call tally after a
12 motion was taken like in the pages that we have in
13 front of you, if you remember? If you don't ...

14 A. Other than looking at this that you've given
15 me, I haven't perused through the journals of the House
16 in a long time.

17 Q. Do you know what the journals look like?

18 A. Yes.

19 Q. Can you describe them to me?

20 A. They are sort of an encyclopedic-looking book
21 yea thick and, you know, every year it probably varies
22 a little bit in width, but it's quite large.

23 MS. REBHOLZ: For the record, you were
24 showing --

25 THE WITNESS: I was showing you, I don't

1 know, a couple of inches thick.

2 MR. BERNSTEIN: So 4 or 5 inches,
3 Counsel? Would you agree with that?

4 MR. TULLY: No. Maybe 2.

5 THE WITNESS: I'll just say I think about
6 2 inches thick.

7 BY MR. BERNSTEIN:

8 Q. What about the color of the book? Do they
9 change colors or are they the same color all the time,
10 to your knowledge?

11 A. I think the most recent one or ones are tan.

12 Q. Are those public documents to your knowledge?

13 A. Yes.

14 Q. So would you agree that the House of
15 Representatives for State of Arizona adopted the --
16 their no tolerance policy used to expel Mr. Shooter one
17 full week after a vote to expel him was taken?

18 MR. TULLY: Hang on.

19 MR. MASSEY: Objection to the form.

20 MR. TULLY: Object to the form of the
21 question.

22 A. Can you repeat the question.

23 MR. BERNSTEIN: Please, Madam Reporter.

24 (Requested portion of record read.)

25 MR. TULLY: Object to the form.

1 THE WITNESS: I'm sorry, I need to
2 hear -- can you repeat the question a little more
3 slowly one more time.

4 BY MR. BERNSTEIN:

5 Q. And if there's something confusing you don't
6 understand, please let me know so I can repeat the
7 question.

8 A. I'm just going to be very careful in every
9 answer as you are careful in your questions.

10 Q. As you should be, sir.

11 (Requested portion of record read.)

12 A. No.

13 BY MR. BERNSTEIN:

14 Q. What part of that question do you not agree
15 with?

16 A. So we had a sexual harassment policy. As I
17 said before, it was not sort of consolidated into one
18 single written place, sort of start to finish, until we
19 adopted it in the House. That does not mean a policy
20 did not exist or any mechanism for expelling
21 Mr. Shooter prior to that date.

22 Q. Would you agree with me, sir, that the House
23 of Representatives for the State of Arizona adopted the
24 House of Representatives' no tolerance policy for
25 sexual -- written policy for sexual harassment used to

1 expel Mr. Shooter one full week after a vote to expel
2 him was taken?

3 MR. MASSEY: Objection to the form.

4 MR. TULLY: Object to the form as well.

5 A. Can you repeat the question.

6 (Requested portion of record read.)

7 A. No.

8 BY MR. BERNSTEIN:

9 Q. What would that part of that -- what, if any,
10 part of that question do you not agree with?

11 A. Every time you say "used to expel
12 Mr. Shooter," that is not correct. He would,
13 obviously, have been expelled by then anyway, so we
14 certainly didn't use it to expel him. We used the
15 powers of the legislature -- or the House to expel him.

16 Q. Okay. Would you agree with me, sir, that the
17 House of Representatives for the State of Arizona
18 adopted their written, no tolerance sexual harassment
19 policy one week after Mr. Shooter was expelled?

20 MR. TULLY: Object to the form of the
21 question.

22 MR. MASSEY: I'll join.

23 A. So the only clarification I'll make to that
24 question is that it assumes there was nothing at all of
25 any kind written before this date.

1 BY MR. BERNSTEIN:

2 Q. Sir, I -- I'm sorry, were you finished? I
3 don't want to cut you off.

4 A. Sure.

5 Q. Are you finished?

6 A. Yes.

7 Q. Okay. So the fact -- do you not recall
8 testifying a few minutes ago that prior to this
9 adoption -- adaptation that there was no written -- per
10 se, written house rule?

11 MR. MASSEY: Object to the form.

12 MR. TULLY: Join.

13 BY MR. BERNSTEIN:

14 Q. Did you testify to that, sir?

15 A. I testified this one was not adopted until
16 that date.

17 Q. So was there a written policy for the House
18 members regarding sexual -- regarding sexual harassment
19 in place prior to the vote on February 8 of this
20 policy?

21 A. There were aspects of a sexual harassment
22 policy written prior to this date. They existed in
23 different places, and they were not organized in this
24 way.

25 Q. What places did they exist?

1 A. So, for instance, when new members joined the
2 House, they go through training. That training is both
3 verbal and written in nature, whether it be PowerPoints
4 or presentations. That training includes sexual
5 harassment and other related-like ethics training as
6 part of it. I am certain that components are written
7 in that training.

8 In addition, there was internally written
9 sort of procedures for how staff or folks were to
10 handle sexual harassment types of situations. That was
11 not public because it was how internal staff is
12 supposed to operate. That was folded into this more
13 comprehensive written policy and made public.

14 So there were pieces out there that were
15 in many ways assembled into this, but that's not to say
16 that there was not, prior to this, any sexual
17 harassment policy or even any written policy.

18 Q. So you just mentioned something about policies
19 for staff, correct?

20 A. Did I say "staff"?

21 MR. BERNSTEIN: Well, Ms. Reporter, can
22 you read his answer back, please.

23 (Requested portion of record read.)

24 BY MR. BERNSTEIN:

25 Q. So the part that you spoke about, the internal

1 written for staff, would you agree with me that that
2 written part did not apply to the members?

3 A. I think the confusion that is driving your
4 question is perhaps in how I've communicated. So when
5 I say "for staff," I'm not talking about application of
6 a sexual harassment policy. I am talking about how
7 it's supposed to be handled once a harassment claim is
8 made.

9 So there are attorneys that I've been
10 calling staff, essentially, that are obligated to
11 certain things. That's all about process and procedure
12 and not the application of the policy.

13 Q. Okay. And so now you're talking about once a
14 complaint is made, how to investigate or how to deal
15 with it?

16 A. Correct.

17 Q. Not -- there's no policy, that's separate and
18 apart from a policy of what would entitle or make up a
19 claim of how -- of sexual harassment, correct?

20 A. So the totality is all together now. You
21 broke it down into two separate pieces, but the policy
22 cannot only begin with allegations, but also how
23 allegations are handled. That's part of -- or what
24 became part of one single policy.

25 Q. Okay. And then the first part you talked

1 about training.

2 A. Yes, the member training.

3 Q. Okay. When did -- has member training been
4 going back to the 1900's or when was this member
5 training started, if you know?

6 MR. TULLY: Object to foundation.

7 A. I don't know when the first member training
8 occurred, but as long as I can recall, new members get
9 new-member orientation.

10 BY MR. BERNSTEIN:

11 Q. When you say as far as you can recall, you
12 started in 2010?

13 A. I started being elected in 2011.

14 Q. Okay. Did you have that training?

15 A. Yes.

16 Q. So if you've been on record as saying training
17 went back, started in 2014, would that be incorrect as
18 a statement you might have made?

19 A. You're saying I made a statement that training
20 didn't start until 2014?

21 Q. I'm asking, do you remember making a statement
22 that --

23 A. I don't recall making that statement.

24 Q. If you made that statement, would that
25 statement be inaccurate or would today's statement be

1 inaccurate?

2 MR. TULLY: Object to the form.

3 MR. MASSEY: Join.

4 A. It is not accurate to say that training began
5 in 2014, I don't think.

6 BY MR. BERNSTEIN:

7 Q. So if there is that statement out there, that
8 would be the inaccurate one?

9 MR. TULLY: Object to foundation and the
10 form of the question.

11 A. I lack the context of what you're saying, but
12 I will say yeah.

13 BY MR. BERNSTEIN:

14 Q. Can you look at Exhibit -- previously marked
15 Exhibit 4? And I want you to read the little letter on
16 page 1 and then turn to page 4.

17 A. I've read page 1. And then what?

18 Q. Go to page 4, III.

19 A. Page 4, III. Okay, I'm there.

20 Q. And isn't it a fact that the investigation
21 conducted by Sherman & Howard was under this zero
22 tolerance policy against harassment, which was not
23 voted on by the members until February 8, 2018?

24 MR. TULLY: He's not going to answer that
25 question --

1 MR. MASSEY: Object to the form.

2 MR. TULLY: -- subject to the legislative
3 privilege.

4 MR. BERNSTEIN: He's not going to answer
5 questions based on documents that have been produced in
6 discovery that are of a public nature? I just want the
7 record to be very clear when the judge makes a decision
8 on this that you are invoking legislative privilege on
9 documents that have been produced and are public
10 knowledge.

11 MR. TULLY: No. I'm exercising the
12 legislative privilege for him not to answer your
13 questions.

14 MS. REBHOLZ: Is he exercising it or are
15 you recommending that he do it?

16 MR. TULLY: He's exercising it.

17 THE WITNESS: Yep.

18 BY MR. BERNSTEIN:

19 Q. Okay. You can put that away now. You can
20 leave it in front of you, but just to make life easier
21 for you, no more questions on that.

22 A. Okay.

23 Q. Were any members of the SHIT committee duly
24 elected by the citizens of Arizona?

25 MR. TULLY: Object to the form of the

1 question, and we're not going to refer to it with a
2 foul language.

3 MR. BERNSTEIN: Well, foul language or
4 not, when it's spelled out --

5 MR. TULLY: I'm going to address him not
6 to answer the question then.

7 BY MR. BERNSTEIN:

8 Q. So this is better, Counsel: Were there any
9 members of the S-H-I-T committee duly elected by the
10 citizens of Arizona?

11 A. I need to know what S-H-I-T committee means.

12 Q. You don't remember from yesterday when you
13 told me the acronym of the sexual harassment
14 investigative team?

15 A. Is that what it means?

16 Q. Do you not remember yesterday's testimony?
17 That's fine. If you don't remember yesterday's
18 testimony, that's fine.

19 MR. TULLY: Why don't you ask him a
20 question like an adult?

21 MR. BERNSTEIN: I just did.

22 MR. TULLY: Like an adult --

23 MR. BERNSTEIN: Counsel, you're the one
24 who's acting like a child by 17 questions when --

25 MR. TULLY: -- required of you by the

1 court.

2 MR. BERNSTEIN: I won't speak over. When
3 your client -- when you know that your client is sunk,
4 that's when you now try to invoke something. Any
5 member --

6 MR. TULLY: You know what --

7 MR. BERNSTEIN: Any members --

8 MR. TULLY: Hang on, hang on, hang on.

9 MR. BERNSTEIN: Any members of the --

10 MR. TULLY: Hold on, hold on.

11 MR. BERNSTEIN: -- of the sexual

12 harassment --

13 MR. TULLY: Hold on, hold on.

14 THE COURT REPORTER: I'm sorry, I can't
15 write you both talking at the same time.

16 MR. TULLY: This is the reason why, and
17 to make sure that -- did you get that language about
18 him being --

19 MR. BERNSTEIN: Yes.

20 MR. TULLY: Hang on. Will you be quiet
21 while I'm talking?

22 I want to know, did you get the
23 conversation of the testimony about his claiming my
24 client was sunk, because my client is not a party to
25 this lawsuit? And the lawsuit, by the way, doesn't --

1 I've read it since yesterday and replied. There's no
2 conspiracy alleged in the lawsuit claim.

3 There's a claim that someone offered dark
4 money. That's it.

5 MR. BERNSTEIN: Okay. That, to me, is a
6 conspiracy.

7 MS. REBHOLZ: And to respond briefly, in
8 the response to nonuniform interrogatories, there was
9 specifically --

10 MR. TULLY: Well, my client is not a
11 party to the suit.

12 MR. BERNSTEIN: Exactly.

13 MS. REBHOLZ: He's not, but the reason
14 that his testimony is relevant and the judge held that
15 his testimony was relevant, was in defense of the
16 claims regarding the defamation of -- the statement
17 from Shooter that there was a conspiracy against him
18 and Michelle Ugenti-Rita was part of it and him being
19 able to defend against that as a defamation claim.

20 MR. BERNSTEIN: Thank you.

21 BY MR. BERNSTEIN:

22 Q. Were any members of the sexual harassment
23 investigative team identified by you yesterday as --
24 under the acronym of S-H-I-T committee duly elected by
25 the citizens of Arizona?

1 MR. TULLY: Object to the form of the
2 question.

3 A. None were directly elected by the citizens of
4 Arizona.

5 BY MR. BERNSTEIN:

6 Q. How was someone indirectly elected?

7 MR. MASSEY: Form and foundation.

8 MR. BERNSTEIN: I'll withdraw the
9 question.

10 BY MR. BERNSTEIN:

11 Q. You say someone was -- not --

12 Can you repeat his answer, please.

13 (Requested portion of record read.)

14 BY MR. BERNSTEIN:

15 Q. What did you mean by that "none were directly
16 elected by the citizens of Arizona"?

17 A. So there's a vote on who the chief clerk is.
18 It's a vote by the members of the legislature, the
19 House in this case. So indirectly, through their
20 elected representatives, the people are selecting the
21 chief clerk to be the chief clerk.

22 Q. And who was that?

23 A. Jim Drake.

24 Q. How about any of the other six members of that
25 committee, were any of them directly or indirectly

1 elected by the citizens of Arizona?

2 A. So indirectly, yes, in the sense that they are
3 chosen by the Speaker of the House, who is chosen by
4 the members of the House, who are chosen by the people
5 of Arizona.

6 Q. So if a member -- so if a member elects to
7 have Burger King for lunch, is that indirectly a
8 decision made by the citizens of Arizona --

9 MR. MASSEY: Objection to the form.

10 BY MR. BERNSTEIN:

11 Q. -- because they elected that representative?
12 Is that what you're saying?

13 MR. MASSEY: Objection to the form of the
14 question.

15 MR. TULLY: Object to the form of the
16 question. It's harassment.

17 A. That's not what I'm saying.

18 BY MR. BERNSTEIN:

19 Q. Well, when does someone -- what does -- does
20 every -- I'm trying to understand, is every decision
21 made by an elect official indirectly made by the
22 citizens of Arizona because they elected that official?

23 A. So your question a moment ago was about the
24 people on the investigative team, not --

25 Q. Correct?

1 A. -- whether they are having Burger King.

2 Q. But that's my next question. Where do you
3 separate? What decisions of an elected official do you
4 associate being indirectly --

5 MR. TULLY: What's the relevance of this
6 question?

7 BY MR. BERNSTEIN:

8 Q. -- indirectly made by the official as compared
9 to not indirectly -- I'm sorry, indirectly made by the
10 citizens of Arizona and the ones not individually made
11 by the citizens of Arizona?

12 MR. TULLY: What relevance is this
13 question?

14 MS. REBHOLZ: Relevance isn't an
15 objection. You can object to form and foundation.

16 MR. TULLY: Well, I appreciate that.
17 Thank you, Counsel. But I will direct him not to
18 answer questions -- it's not a free-for-all. The new
19 Rules of Civil Procedure require questioning of all
20 discovery to be relevant. So we are not here to
21 answer -- to humor you with questions that you think
22 might be helpful in your attempt to quote, unquote,
23 sink my client. So --

24 MR. BERNSTEIN: I'm not attempting to
25 sink your client.

1 MS. REBHOLZ: Form.

2 MR. BERNSTEIN: My question to you is:
3 He said -- he used the term "indirectly." So my
4 question, I'm trying to --

5 MR. TULLY: He answered the question.

6 MR. BERNSTEIN: He didn't. I'm trying to
7 understand what decisions of an elected official is
8 indirectly from the citizens --

9 MR. TULLY: Why?

10 MR. BERNSTEIN: And what decisions were
11 not. That's all I'm asking.

12 MR. TULLY: Why? Why?

13 MR. BERNSTEIN: I'm not being questioned,
14 so if you want to subpoena me and put me under oath and
15 ask me why, I would love to do that. So that's --

16 BY MR. BERSTEIN:

17 Q. My question to you, is: You said the -- what
18 actions of an elected official do you say are
19 indirectly actions of citizens of Arizona and which
20 ones are not, if you can? I'm not asking you to list a
21 thousand different ones, but if you can put a category.
22 Something that has to do with, you know, business.
23 Some categories that in your mind what makes it
24 indirectly the citizens of Arizona who made that -- you
25 know, elected that person?

1 MR. TULLY: I'm going to object to the
2 form of the question.

3 A. I appreciate the clarification that you just
4 said in the end there talking about "elected that
5 person," because initially we were talking about people
6 before we started talking about food. So there is a
7 difference between decision-making like what you're
8 going to eat and the people that you hire who are then
9 working for the House and, by extension, certainly the
10 people of Arizona.

11 BY MR. BERNSTEIN:

12 Q. So just -- every person that you -- not you,
13 every person that a representative hires, you believe
14 is indirectly elected by the people of that district?

15 A. So the Speaker is the one who determines all
16 staff, so a representative is not going to determine
17 individual staff. Because the speaker is chosen by the
18 members of the House and because the members of the
19 House are chosen by the people of the state of Arizona,
20 then by extension -- elected is probably not the word I
21 would use, selected is probably the one I would just --
22 but they are indirectly selected by the people of
23 Arizona.

24 Q. All staff members?

25 A. All staff members.

1 Q. Okay. I think we just touched on this when we
2 were finishing up yesterday. I'd ask you to look at
3 Exhibit 8, sir. Have you seen that?

4 A. I have.

5 Q. Before yesterday -- because I know I showed it
6 to you yesterday, before yesterday, do you recall
7 seeing that document?

8 A. I don't recall either way.

9 Q. Okay. And have you had a chance to read it
10 again today?

11 A. I did.

12 Q. Okay. And you see where it says, "If your
13 client desires to" -- "If your client desires to submit
14 a written response to the Report, the Speaker" -- and,
15 again, that's you, sir?

16 A. That's me.

17 Q. "Asks that (1) the response be submitted in 5
18 business days (excluding today), and (2) be sent to
19 Mr. Tim Fleming at the House," correct?

20 A. I see that.

21 Q. Okay. So would you agree with me, did -- and,
22 Counsel, I'm not looking to go into attorney-client
23 here. Was Mr. Morten working -- Mr. Morten was your --

24 MR. TULLY: Morgan.

25 BY MR. BERNSTEIN:

1 Q. Morgan. Craig Morgan was the
2 investigator/attorney hired by the entity, the House of
3 Representatives?

4 A. That is correct.

5 Q. Okay. So is it fair to say that the House of
6 Representatives -- so did Mr. Morgan have the authority
7 to tell Mr. Shooter's attorney that -- on your behalf,
8 that he had five business days to respond?

9 A. Yes.

10 Q. Okay. So you have no -- no qualms about that,
11 meaning that Mr. Morgan did not act outside the scope
12 of his duties?

13 A. Correct.

14 Q. Okay. Now, I don't know if you had a
15 chance -- you know what, this -- withdrawn.

16 Between yesterday when you left our
17 deposition and coming back today, and I want no
18 knowledge of anything that you spoke with your counsel
19 about, did you talk to anyone else about your
20 deposition and anything else you would be testifying to
21 today?

22 A. I did tell my wife I had an interesting
23 experience yesterday afternoon, but we didn't really go
24 into any details.

25 Q. Okay. Besides telling interesting -- did you

1 speak to anyone else?

2 A. I mentioned right before coming here to my
3 assistant that I was coming here for part 2 of the
4 deposition.

5 Q. Did you speak to Ms. Ugenti-Rita?

6 A. I did not.

7 Q. Did you speak to Brian Townsend?

8 A. I did not.

9 Q. Since the time you left here yesterday to
10 today, did you do any -- did anything happen to make
11 you recall whether or not Ms. Ugenti-Rita and
12 Mr. Townsend are currently married?

13 A. No.

14 Q. So is it fair to say that if they had a
15 wedding, you weren't there?

16 A. That is very fair to say.

17 MR. MASSEY: Can we take a short break?

18 MR. BERNSTEIN: Of course.

19 (Recess taken from 2:23 p.m. to 2:28
20 p.m.)

21 (Requested portion of record read.)

22 BY MR. BERNSTEIN:

23 Q. I know I have no intention of going --
24 rehashing this from yesterday, but, as you sit here
25 today, do you recall the day that Mr. Shooter was

1 expelled from the House?

2 A. The date or, like, what happened?

3 Q. The date. No, no, the date.

4 A. I think it was February 1.

5 Q. Okay. And would you agree with me, sir, that
6 February 1, based on the letter that you have in front
7 of you from Mr. Morgan, is less than five business days
8 from --

9 A. It is.

10 Q. -- from the date of the letter of January 30?

11 A. It is less.

12 Q. Okay. So is it fair to say that you reneged
13 on your promise to give Mr. Shooter five business days
14 to respond before the House voting on his expulsion?

15 MR. MASSEY: Objection. Form and
16 foundation.

17 A. I'm sorry, Counsel, I don't see where it talks
18 about voting on anything. It simply is five business
19 days to respond to the report, and he can certainly do
20 that within the five business days.

21 BY MR. BERNSTEIN:

22 Q. Okay. So is it your understanding that the
23 report was being sent to Mr. Shooter giving him five
24 business days to respond, and it was the intention --
25 it was your intension, as Speaker of the House, to seek

1 an expulsion vote before he had an opportunity to
2 respond?

3 MR. MASSEY: Object to the form.

4 MR. TULLY: He's not going to answer that
5 on the basis of legislative privilege.

6 BY MR. BERNSTEIN:

7 Q. When you -- when Mr. Morgan, as your agent,
8 gave Mr. Shooter five business days on January 30,
9 2018, to respond to the investigative report, was it
10 your understanding on Tuesday, January 30, 2018, at
11 10:04 a.m., that a vote would be taken before the five
12 days to respond?

13 MR. TULLY: He's not going to answer that
14 question on the basis of legislative privilege.

15 BY MR. BERNSTEIN:

16 Q. Do you know how the vote -- and forgive me if
17 I don't say this artfully. If you don't understand,
18 please let me know, because this is an important
19 question.

20 As you sit here today, do you know how on
21 February 1, 2018, the vote to expel Mr. Shooter came
22 about? Do you understand that? Again, I'm not trying
23 to -- I'm trying to --

24 A. The process?

25 Q. Yes.

1 A. Yes, I understand the process.

2 Q. How did the vote come about?

3 MR. TULLY: Let me object to the form.

4 You can answer as to the technical
5 process, but he's not going to answer any questions
6 about any of the motivations or anything concerning the
7 actual decision to have the vote.

8 A. A resolution was introduced and then a vote on
9 the resolution was held. It was a role call vote that
10 passed 56 to 3.

11 BY MR. BERNSTEIN:

12 Q. Okay. And did someone have to -- and, again,
13 forgive me for the art of my words. Does someone have
14 to put the resolution up? What's the mechanism to get
15 this vote on this resolution?

16 A. I don't know that there has to be a certain
17 way that such a resolution is carried out. I recall
18 previous efforts, you know, in the last 10 years or so,
19 where someone, I think, just stood up and made a motion
20 to expel somebody. So there wasn't, to my recollection
21 in some of these -- or at least one other that I can
22 recall, a written resolution to that fact. So I don't
23 know that it has to be done a certain way.

24 I can tell you what happened on February
25 1, but I'm not suggesting that what happened on

1 February 1 is the way it always has to happen.

2 MR. BERNSTEIN: I'm going to move the
3 response as nonresponsive.

4 BY MR. BERNSTEIN:

5 Q. So let's try it this way: Can you tell me
6 what happened on February 1, 2018?

7 MR. TULLY: I'm going to object to the
8 form of the question and direct you -- you want him to
9 answer just technically how the --

10 MR. BERNSTEIN: Let's start with
11 technically. Let's start with technically how --

12 MR. TULLY: Didn't he just answer that?

13 MR. BERNSTEIN: No. He said what
14 happened in the past, 10 years ago; and I can tell you
15 what happened on the -- it didn't happen every time.
16 And I can tell what happened on the 1st if you want me
17 to.

18 So I'm saying, please tell me what
19 happened on the 1st.

20 MR. TULLY: Hang on. I think he answered
21 that question. And then you asked a follow-up
22 question, and you are referring to the follow-up
23 question.

24 He can answer technically, you know -- if
25 you're asking -- if your question is, technically, how

1 did the motion to expel Mr. Shooter -- how is the --
2 how is that motion brought before the body, he can
3 answer that question.

4 MR. BERNSTEIN: He said it was a
5 resolution.

6 BY MR. BERNSTEIN:

7 Q. Is there a difference between a resolution and
8 a motion?

9 A. There is a difference.

10 Q. Okay. So let's start with that. Was this
11 done -- the vote to expel Mr. Shooter, was this done by
12 resolution or by motion?

13 A. Both.

14 Q. Okay. Explain to us the technical manner in
15 which the resolution and the motion occurred on
16 February 1, 2018.

17 A. So the resolution outlined grievances against
18 Mr. Shooter. As I said before, I don't know that
19 that's an obligation, but, nevertheless, the resolution
20 did.

21 There was then a motion to move the
22 resolution. That resolution passed 56 to 3.

23 Q. Let me stop you there. The resolution, does
24 someone -- does a member write it down and hand it to
25 you, hand it to the clerk? What is the actual -- I'll

1 use your counsel's word, the mechanism of how this
2 happens?

3 A. The mechanism is a member would direct staff
4 to draft a resolution using whatever verbiage the
5 member gave staff or may give staff some discretion to
6 fill in some places, but the member would direct staff
7 to craft a written resolution.

8 Q. Stop there. Were you the member who directed
9 staff to draft the resolution?

10 MR. TULLY: Don't answer that question.
11 Legislative privilege.

12 BY MR. BERNSTEIN:

13 Q. Okay. Do you know who the staff member was
14 who directed some -- withdrawn.

15 Do you know who the member was who
16 directed some staff member to draft the resolution?

17 A. I do.

18 Q. Okay. And who was that member who directed
19 the staff member to draft that resolution?

20 MR. TULLY: Can I talk to him for a
21 second?

22 MR. BERNSTEIN: Yeah, of course.

23 (The witness and Mr. Tully confer off the
24 record.)

25 MR. TULLY: He can answer the question.

1 A. I directed staff to draft the resolution.

2 BY MR. BERNSTEIN:

3 Q. And did you direct the staff -- did you direct
4 the staff member to draft the resolution as part of an
5 agreement with Representative Ugenti-Rita?

6 MR. TULLY: I'm going to direct him not
7 to answer based on legislative privilege.

8 BY MR. BERNSTEIN:

9 Q. Okay. So after the resolution was drafted by
10 your staff member, what then happened?

11 A. We went to the --

12 MR. TULLY: Well, I'm going to direct him
13 not to answer that question on behalf of legislative
14 privilege. You can ask him technically, you know, what
15 was the next process.

16 A. I assume you're talking procedure as opposed
17 to conversations or whatever.

18 BY MR. BERNSTEIN:

19 Q. Yes.

20 A. So can you clarify?

21 Q. Absolutely. So after you directed the staff
22 members to draft the resolution, I'm assuming that's
23 either pen-to-paper or computer strokes, some written
24 resolution, how many pages it was, what then happens
25 with this written resolution?

1 A. So it just sits there, essentially, as a
2 written resolution until somebody moves it. They have
3 to -- that's the motion I talked about earlier.

4 Q. Let me stop you. I want to try to do this
5 sequentially. You said it "sits there," sits where?
6 Does it sit on your desk as the Speaker's desk? The
7 clerk's desk? Does it sit on the person's desk who
8 drafted it? Where does it sit? What happens to it
9 physically? Does someone have to bring it into
10 Chambers and give it to you or give it to the
11 Sergeant-At-Arms? Give it to the clerk? What has to
12 physically happen to it?

13 A. It has to be physically given to the chief
14 clerk.

15 Q. Is a copy given to every member?

16 A. A copy is either given to every member or it's
17 posted and members can view it online.

18 Q. Do you know if Don Shooter was given a copy?

19 A. I don't know if he was given a physical copy.

20 Q. Okay. So, now, it's now drafted and it's now
21 with the chief clerk and the members have either --
22 it's either online or they've been given a copy,
23 correct?

24 A. Correct.

25 Q. Okay. Now, what happens? What's next --

1 mechanically or technically, what then happens?

2 A. As with any legislation, which would include a
3 resolution, somebody would have to move it. Moving it
4 essentially, puts it in play for discussion and
5 possibly a vote.

6 Q. Now, when you say "would have to move it," do
7 they have to submit something in writing days in
8 advance or do they just stand up and say, I want
9 something right then and there? Is there a time frame?

10 A. It could happen either way I suppose.

11 Q. Okay. How -- on February 1, 2018, how did it
12 happen in this case?

13 A. As I recall, I made the motion to move the
14 resolution.

15 Q. So you directed your staff member to draft it
16 and then you made the motion?

17 A. I believe that is what happened.

18 Q. Okay. And so now, as Speaker of the House, do
19 you sit somewhere -- somewhere special all by yourself?

20 A. As Speaker of the House, I have two chairs.
21 One is at the dais at the front and the other is among
22 the 60 desks on the floor.

23 Q. Okay. When you made this motion on February
24 1, 2018, do you recall where you were sitting? When I
25 say that, meaning if -- one of your two chairs or

1 somewhere else, if you remember?

2 A. I know that I spent most of the time in the
3 chair at the dais, but I may have come down from the
4 chair and made the motion from the floor, which is more
5 typical, but I don't remember for sure.

6 Q. When did you direct your staff member to write
7 the resolution?

8 MR. TULLY: Don't answer that question.

9 MR. BERNSTEIN: For what grounds?

10 MR. TULLY: Legislative privilege.

11 BY MR. BERNSTEIN:

12 Q. When did you make the determination that you
13 were going to direct the staff member to write the
14 resolution?

15 MR. TULLY: Don't answer that question,
16 the same basis.

17 BY MR. BERNSTEIN:

18 Q. When did you make the decision that you were
19 going to make the motion to take a vote on the
20 resolution to expel Don Shooter?

21 MR. TULLY: Don't answer that question on
22 the basis of legislative privilege.

23 BY MR. BERNSTEIN:

24 Q. Do motions have to be seconded before the vote
25 is taken on?

1 A. Some motions require a second. I am not sure
2 that all or even most require a second.

3 Q. As you sit here today, do you know what type
4 of motion or what about the motion would require a
5 second?

6 A. Offhand, I don't know. I would have followed
7 the directive of the parliamentary, the chief clerk.

8 Q. And who is that?

9 A. As I said before, it is Jim Drake.

10 Q. Jim --

11 A. Jim Drake.

12 Q. Drake. But he doesn't have voting powers,
13 does he?

14 A. He does not.

15 Q. As you sit here today, do you recall on
16 February 1, 2018, if this motion that you made required
17 a second?

18 A. I don't recall.

19 Q. Prior to taking the vote, did you provide any
20 notice to Mr. Shooter of your intention for the House
21 to take a vote on February 1, 2018, to expel him?

22 A. Yes.

23 Q. When did you give him notice?

24 A. Sometime that morning.

25 Q. February 1?

1 A.) February 1.

2 Q. On January 31, 2018, was it your intention to
3 take a vote to expel Mr. Shooter on February 1, 2018?

4 MR. TULLY: Don't answer that question.

5 MR. BERNSTEIN: For what reason?

6 MR. TULLY: Legislative privilege.

7 (The witness and Mr. Tully confer off the
8 record.)

9 BY MR. BERNSTEIN:

10 Q. Did you have any conversations --

11 MR. TULLY: Hang on.

12 MR. BERNSTEIN: Sure.

13 (The witness and Mr. Tully confer off the
14 record.)

15 BY MR. BERNSTEIN:

16 Q. Did you have any conversations with Mr. Morgan
17 regarding the crafting or wording of Mr. Morgan's
18 January 30, 2018, correspondence?

19 MR. TULLY: Don't answer that question on
20 the basis of legislative privilege and attorney-client
21 privilege.

22 BY MR. BERNSTEIN:

23 Q. Did Mr. Morgan's January 30, 2018 --
24 withdrawn.

25 To your knowledge, did Mr. Morgan's

1 January 30, 2018, correspondence intentionally leave
2 out the fact that a vote to expel Mr. Shooter may be
3 taken prior to the expiration of the time he had to
4 submit a response?

5 MR. TULLY: Don't answer that question on
6 the basis of legislative privilege and attorney-client
7 privilege.

8 MR. BERNSTEIN: Well -- okay.

9 BY MR. BERNSTEIN:

10 Q. Absent information you received from
11 Mr. Morgan, do you know if his January 30, 2018, letter
12 to Mr. Shooter's attorney purposely left out that the
13 House may vote to expel him within the -- prior to the
14 expiration of his five business days to respond to the
15 report?

16 MR. TULLY: Don't answer that question on
17 the basis of the attorney-client privilege and
18 legislative privilege.

19 BY MR. BERNSTEIN:

20 Q. Do you believe that suspending Mr. Shooter on
21 November 10, 2017, from his chairmanship was a punitive
22 measure?

23 MR. TULLY: Hang on a second. I suppose
24 you can answer it.

25 A. It was not.

1 BY MR. BERNSTEIN:

2 Q. It was not?

3 A. (No oral response.)

4 Q. Sir, are you familiar with the Arizona
5 Legislative Report News?

6 A. The -- yes, I believe so.

7 Q. Okay. "Digital Edition," the notes, "Digital
8 Edition"?

9 A. Sounds right.

10 Q. And I know I'm going to -- do you know a
11 person, I guess his first name is Luige, L-U-I-G-E,
12 last name is Delpuerto?

13 A. Delpuerto.

14 Q. Do you know him?

15 A. I do.

16 Q. And is he a reporter, looks like at the
17 Arizona Capitol Times?

18 A. He is.

19 Q. Is he someone that you've dealt with before?

20 A. Yes.

21 Q. Do you find him reputable?

22 A. I do.

23 Q. And you have no reason to really doubt stuff
24 that he's written? He's never misquoted you or made up
25 things about you? Is that fair to say?

1 MR. MASSEY: Objection. Form and
2 foundation.

3 MR. TULLY: Join.

4 BY MR. BERNSTEIN:

5 Q. To your knowledge?

6 A. To my knowledge, he has not.

7 Q. Okay. Did you ever consider at any time under
8 any scenario sending Mr. Shooter's investigation to the
9 ethics committee of the House?

10 MR. TULLY: Don't answer that question on
11 the basis of legislative privilege.

12 MR. MASSEY: Are we up to 10 now?

13 MR. BERNSTEIN: Is that 10, sir?

14 THE WITNESS: It is 10 on here.

15 BY MR. BERNSTEIN:

16 Q. Sir, look on page 1 of the document; we are
17 only going to be focusing on the page 1. Do you see
18 the third, I don't know, I guess heading? "Mesnard
19 says he can only control his actions." Do you see
20 that?

21 A. I do.

22 Q. And do you see the first sentence? It says,
23 "Mesnard said he will not take any further punitive
24 action until the investigation is complete, meaning
25 Shooter will have the same privileges as other

1 lawmakers come January 8." Do you see that?

2 A. I do.

3 Q. And besides -- do you know what he meant by
4 saying you "will not take any further punitive action"?
5 In fact, he's talking about removing Mr. Shooter from
6 his chairmanship, correct?

7 MR. MASSEY: Objection. Form and
8 foundation.

9 MR. TULLY: Join.

10 A. All right. That looks like what he's
11 referring to.

12 BY MR. BERNSTEIN:

13 Q. Well, it says, "Mesnard said." So he's
14 attributing that you said that you will take no further
15 punitive actions, correct, sir?

16 MR. TULLY: Object to the form and
17 foundation.

18 MR. MASSEY: Join.

19 BY MR. BERNSTEIN:

20 Q. You can answer.

21 A. Yeah, so what I'm -- I think what you're
22 suggesting is I must have used the term "punitive" with
23 him.

24 Q. Sir, I have no idea. I didn't speak to him.
25 I just know what's printed here and what you just

1 testified to.

2 So did you, in fact, take punitive action
3 against Mr. Shooter on November 10, 2017, by removing
4 him from his chairmanship?

5 MR. MASSEY: Object to the form.

6 MR. TULLY: Join.

7 A. I did not consider those actions to be
8 punitive.

9 BY MR. BERNSTEIN:

10 Q. So is Mr. Delpuerto, did he misquote you in
11 saying that you will take no further punitive actions?

12 MR. TULLY: Object to the form of the
13 question.

14 A. He did not misquote me because it is not a
15 quote.

16 BY MR. BERNSTEIN:

17 Q. It says, "Mesnard said he will not take any
18 further punitive action." So what punitive actions had
19 you taken against Mr. Shooter?

20 MR. MASSEY: Objection. Form and
21 foundation.

22 MR. TULLY: Join.

23 A. So you're asserting that because he included
24 the word "punitive," I must have said that word
25 somewhere when, in fact, that may be his interpretation

1 of my actions.

2 BY MR. BERNSTEIN:

3 Q. So, again, this gentleman misquoted you. He
4 says, "Mesnard said." I didn't say it. I am just
5 reading what he wrote. "Mesnard said."

6 A. Yes. And I'm noting, again --

7 MR. TULLY: Hang on, hang on --

8 A. -- this is not in quotes.

9 MR. TULLY: Wait, wait, until I get my
10 objection in. Object to the form and foundation.

11 BY MR. BERNSTEIN:

12 Q. So is it your testimony Mr. Delpuerto
13 misunderstood what you said, used different words than
14 what you said when he says, "Mesnard said"?

15 MR. TULLY: Object to the form and
16 foundation.

17 A. No.

18 BY MR. BERNSTEIN:

19 Q. So let's look above. And it says, "Special
20 Counsel is Wrapping Up Interviews." Do you see that,
21 sir?

22 A. I do.

23 Q. Okay. And it's one, two, three, four, on the
24 fourth line --

25 MR. TULLY: I'm sorry, I've got to catch

1 up with you. Where are you?

2 MR. BERNSTEIN: Sure. It's the paragraph
3 above it, "Special Counsel is Wrapping Up Interviews."

4 MR. TULLY: Yes.

5 MR. BERNSTEIN: Got it?

6 MR. TULLY: Yes.

7 BY MR. BERNSTEIN:

8 Q. Fourth sentence, "Mesnard previously told our
9 reporter that upon the conclusion of the investigation
10 and depending on the recommendation of the
11 investigative team, the matter could be referred for
12 review to the Ethics Committee." Do you see that sir?

13 A. I do.

14 Q. So isn't it a fact that you were considering
15 sending this to the ethics committee?

16 MR. TULLY: Don't answer that question on
17 the basis of legislative privilege.

18 MR. BERNSTEIN: So you are directing him
19 not to answer something he, obviously, has spoken to
20 reporters about? Where was the legislative privilege
21 when he was talking to reporters, Counsel?

22 MR. TULLY: I'm asserting the legislative
23 privilege. I'm not having him answer the question.

24 MS. REBHOLZ: He is asserting the
25 legislative privilege?

1 MR. TULLY: He is asserting the
2 legislative privilege.

3 THE WITNESS: Unless I say otherwise, you
4 can assume that he's speaking for me.

5 MR. BERNSTEIN: No. That doesn't --
6 doesn't -- this whole thing is improper.

7 THE WITNESS: That's not how that works?

8 MR. BERNSTEIN: No, it doesn't. You are
9 supposed to be invoking it the whole time.

10 MS. REBHOLZ: I just want to make sure we
11 have a record for later on. I'm not trying to
12 antagonize; I just want to make it clear for the
13 record.

14 BY MR. BERNSTEIN:

15 Q. Was Mr. Ray Martinez a republican or democrat,
16 to your knowledge, when he was an elected official?

17 A. He's a democrat.

18 Q. He's no longer an elected official, correct?

19 A. He is not, at least he's not in the
20 legislature.

21 Q. Is that because -- to your knowledge, is that,
22 in part, because his complaints went on deaf ears by
23 you and Mr. Farnsworth?

24 MR. TULLY: Object to the form,
25 foundation.

1 MR. MASSEY: Join.

2 A. My recollection is that Mr. Martinez ran for
3 election and lost.

4 BY MR. BERNSTEIN:

5 Q. I'm not sure that that's correct.

6 A. It may not be.

7 Q. The record will be clear on that.

8 Did you ever speak to Mr. Martinez about
9 his allegations against Ms. Rios?

10 A. Did I already answer that question? Yes.

11 Q. And where did that occur?

12 A. I think at a hamburger joint downtown.

13 Q. And do you recall when that was?

14 A. I do not.

15 Q. And do you recall anything that you said to
16 him when speaking with him?

17 MR. TULLY: Hang on a second.

18 (The witness and Mr. Tully confer off the
19 record.)

20 A. I don't specifically recall what I said to
21 him.

22 BY MR. BERNSTEIN:

23 Q. Do you recall telling him that there was
24 nothing you could do to help him with his concerns?

25 A. Not only do I not recall that, that seems

1 doubtful that I would have said that.

2 MR. BERNSTEIN: Can we take a break for
3 one second?

4 (Recess taken from 2:56 p.m. to 3:02
5 p.m.)

6 (Requested portion of record read.)

7 BY MR. BERNSTEIN:

8 Q. What do you recall telling him that you could
9 help him with?

10 A. My recollection is he was griping about a lot
11 of things. It came across as he wanted to vent to
12 somebody. He said a lot of nice things about me, which
13 is what made me uncomfortable venting to me; and I
14 walked away thinking, I hope he feels better because
15 he's gotten some stuff off his shoulders, off his mind.
16 So I don't know what I would have said I'm happy to
17 help him with. I was -- my being there was trying to
18 help him feel better.

19 Q. Did you tell him about -- were some of his
20 gripes concerning what he perceived that he saw or knew
21 or heard about sexual harassment in the House?

22 A. His gripes -- I don't know if they were about
23 sexual harassment. I don't specifically remember that.

24 Q. You don't recall him -- did he talk about the
25 information he knew about Ms. Rios and the

1 Sergeant-At-Arms?

2 A. He shared with me the same rumor that I had
3 heard from people about Ms. Rios.

4 Q. And that wouldn't have been sexual -- you
5 didn't consider that to be sexual harassment?

6 A. Actually, in my rudimentary understanding,
7 perhaps, I don't consider consensual relationships to
8 be inherently harassing unless it's maybe an underage
9 minor or something.

10 Q. Well, what about -- so you don't consider
11 someone that works for someone in a consenting
12 relationship to be sexual harassment in the workplace?

13 MR. TULLY: What's the relevance of this
14 line of questioning?

15 MR. BERNSTEIN: Counsel, relevance,
16 again, as we know, is not a standing objection here.

17 MR. TULLY: My client is a fact witness
18 in your suit between his client. Now you are asking
19 him a question about a conversation he had with another
20 representative. Now you are asking him a question
21 about what his knowledge or thought of what constitutes
22 sexual harassment. I'm going to direct him not to
23 answer.

24 MR. BERNSTEIN: That's fine.

25 MS. REBHOLZ: You are going to direct him

1 not to answer based on relevance?

2 MR. TULLY: Relevance, yes.

3 MS. REBHOLZ: Again, I will remind you
4 that this is in regards to a defamation class having to
5 do with conspiracy against Mr. Shooter, who was
6 investigated for sexual harassment at the same time the
7 allegations were made against somebody else.

8 His understanding of what sexual
9 harassment is and how he treats those allegations is
10 100 percent reasonable and relevant.

11 MR. MASSEY: And I'll interpose an
12 objection to form and foundation to the question.

13 MS. REBHOLZ: So are you directing him
14 not to answer?

15 MR. TULLY: Right. Here's, I think, one
16 of the -- well, huge debate. Here's one of
17 the problems with your analysis: You're assuming that
18 the -- you know, that you -- well, you see, as a
19 legislator, he can take any action -- you know, take
20 various actions, make various motions; you're not
21 allowed to inquire as to the reasons why he did those
22 things or did not do those things. That would include
23 whether or not he took an action with regard to
24 Ms. Rios or not took an action. You can't ask him that
25 as speaker. That is part of his legislative privilege.

1 So, you know, this idea, what do you
2 think sexual harassment is, you know, is sort of
3 irrelevant because he can make any decision he wants
4 to.

5 So based on that, I'm going to direct him
6 not to answer.

7 MR. BERNSTEIN: So under legislative
8 privilege, not relevance, just so we are clear?

9 MR. TULLY: Well, it's irrelevant, too.
10 But if you want to -- if you want to go before the
11 court, I'll -- I'll probably explain it to the court,
12 both.

13 MR. BERNSTEIN: We will be before the
14 court, so I just want the record to be clear.

15 MR. TULLY: That's fine. I'm happy to go
16 before the court and explain all this.

17 MR. BERNSTEIN: I'm sorry, so you are
18 directing him not to answer for legislative privilege?

19 MR. TULLY: Yes.

20 MR. BERNSTEIN: And relevance?

21 MR. TULLY: Yes.

22 MR. BERNSTEIN: Okay.

23 BY MR. BERNSTEIN:

24 Q. Do you know when Mr. Martinez filed his ethics
25 complaint?

1 A. I know that it was after the investigation had
2 begun between -- regarding Mr. Shooter and
3 Ms. Ugenti-Rita. I don't remember how soon after, but
4 it would have been in the November/December time frame.

5 Q. When you say after the Ugenti-Rita/Shooter
6 investigation began, what are you -- what date,
7 milestone, are you considering? Are you considering
8 when Mr. Morgan's office was given the -- given the
9 assignment to do the investigation on November 15 or
10 when the sexual -- what date are you using?

11 A. So my guess, because I don't --

12 Q. Well, I don't want you to guess.

13 A. What do you want me to say? I said I don't
14 recall, like, three times.

15 Q. I'm going to withdraw the question.

16 A. Okay.

17 Q. Let's see if we can do it this way, because I
18 don't want you to guess: The evidence before us is
19 that on November 15, Mr. Morgan's firm -- the Sherman's
20 firm was assigned or retained to do the investigation
21 of Shooter and Ugenti, okay?

22 A. Okay.

23 Q. Do you believe that Mr. Martinez filed his
24 ethics complaint before or after that date?

25 A. I don't remember.

1 Q. Okay. If he filed it before that date, before
2 the November 15th date, is there any reason why you
3 would not have directed that Mr. Martinez's complaint
4 be considered by the Sherman law firm as part of their
5 investigation into sexual harassment allegations in the
6 legislature -- in the House?

7 MR. TULLY: He's not going to answer that
8 question on behalf of the legislative privilege, the
9 basis of legislative privilege.

10 BY MR. BERNSTEIN:

11 Q. Just so the record is clear, I can show you
12 what has been previously marked as Exhibit 11. Do you
13 see that, sir?

14 A. I do.

15 Q. And we can agree that the House of
16 Representatives' ethics complaint is dated November 14,
17 2017, correct?

18 A. I see that.

19 Q. And this was a sworn statement?

20 A. It appears to be.

21 Q. I have no further questions on that document.

22 Let me take the other documents and get
23 them out of the way. Make sure we have them right
24 here. I'm just doing this to make sure I'm not missing
25 any exhibits because the reporter will get very, very

1 mad at me.

2 I guess we didn't mark this.

3 (Exhibit No. 12 marked.)

4 BY MR. BERNSTEIN:

5 Q. Sir, I believe -- well, we saw press releases
6 that are released from your office. I guess Exhibit 1
7 was one of them, right? That's just a press release
8 that comes out of your office?

9 A. Correct.

10 Q. And can you just tell me briefly how -- the
11 mechanism behind how these press releases are developed
12 and released, to your knowledge?

13 A. So, generally speaking, it will be staff and
14 me or members consulting on an issue, conversation
15 about what should be released, what should be said, how
16 it should be said. And then staff will draft it up.
17 Different members may handle it differently as to
18 whether or not they personally edit or personally write
19 things. Most don't.

20 And then eventually, once it's finished
21 and agreed upon, it's sent out to some member of media
22 outlets by the communications director or the
23 equivalent person.

24 Q. And at the bottom, it says, "Director of
25 Communications," that's a contact person?

1 A. Correct.

2 Q. And when there's quotes -- these news
3 releases, they are coming from you, personally, from
4 your office, correct?

5 A. It's coming from my office, correct.

6 Q. And when there are quotes, those are quotes
7 attributed to you, correct, sir?

8 A. That is correct.

9 Q. Okay. I'm going to ask you to look at what
10 was marked as Exhibit 12. And if you look at, I guess,
11 the third paragraph in bold of the quotes, it says,
12 "I've spoken with the individual referenced by
13 Rep. Shooter." Do you see that?

14 A. I see it.

15 Q. Okay. And, again, we confirm when it says,
16 "I've spoken," that means you, Speaker Mesnard,
17 correct?

18 A. Correct.

19 Q. It says, "I've spoken with the individual
20 referenced by Rep. Shooter, and the individual has
21 stated that the letter does not reflect the
22 individual's reaction to the report." Do you see that?

23 A. I see it.

24 Q. So is it fair to say, sir, that you -- that
25 this quote is saying that you spoke to the individual

1 and that she did not -- that her reaction is not what
2 Representative Shooter stated in his letter, correct?

3 A. There's no gender reference.

4 Q. So when you say "there's no gender reference,"
5 what do you mean, sir?

6 A. You just said "her," implying that that was
7 somewhere on this release, but it is not.

8 Q. Okay. So "I've spoken with the individual
9 referenced by Rep. Shooter." What individual -- if you
10 want to leave gender out, what individual were you
11 speaking about? Is it fair to say it was the person
12 who made the complaint regarding Representative
13 Ugenti-Rita?

14 MR. MASSEY: Objection to the form.

15 MR. TULLY: Do you want to have a
16 discussion?

17 THE WITNESS: Yes. Can you give us a
18 second?

19 MR. BERNSTEIN: Sure. Take all the time
20 you want.

21 Let the record reflect that counsel and
22 the witness are leaving to discuss in the middle of an
23 open question.

24 (The witness and Mr. Tully confer off the
25 record.)

1 MR. TULLY: Let me explain my client's
2 concern here. He's never -- he spoke to this
3 individual, you know, at least implied, based on
4 anonymity. He's never disclosed -- I understand you
5 know who it is. Shooter may want it disclosed; she may
6 want to be fine with -- he or she may want to explain
7 who it is, but he's never publicly indicated the gender
8 or the name of the individual that he spoke to.

9 And so, you know -- so, I guess, you
10 know, he's a little -- you know, not having spoken to
11 that person is a little concerned about the -- you
12 know, divulging the identity. If you have questions
13 that aren't about that, then I suppose, you know --

14 MR. BERNSTEIN: Counsel, there are a
15 couple of things you just said. He hasn't spoken to
16 him or her, but the press release says he spoke to that
17 person.

18 MR. TULLY: Right. He hasn't spoken to
19 her since.

20 MR. BERNSTEIN: Okay.

21 MR. TULLY: Him or her to suggest --

22 MS. REBHOLZ: If it makes --

23 MR. TULLY: Hold on.

24 MR. BERNSTEIN: Counsel, if it makes it
25 any easier for your client, two things: Here's the

1 article where Mr. Shooter says her, her, her, her. And
2 your --

3 MR. TULLY: That would probably be --

4 MR. BERNSTEIN: Off the record.

5 (Discussion off the record.)

6 MR. BERNSTEIN: Just so you are clear,
7 also, that the witness -- the person in question sat
8 exactly where your client is sitting no more than three
9 hours ago.

10 MS. REBHOLZ: Jena Karako (phonetic) was
11 here earlier today giving testimony.

12 MR. BERNSTEIN: So if that relieves
13 any -- she was here today and testified.

14 MS. REBHOLZ: And testified she
15 remembered having a conversation with you. I mean, I
16 don't know if that makes you feel better about it, but
17 I just wanted to let you know that.

18 MR. BERNSTEIN: But if you wanted to look
19 also at Mr. Shooter's letter just doesn't name her.
20 Just says her, her, her, her, and your response is the
21 person identified -- the person referenced by Shooter.
22 So you were worried about gender. I wasn't going to
23 put the person's name, you know.

24 THE WITNESS: Okay.

25 BY MR. BERNSTEIN:

1 Q. All right.

2 MR. TULLY: So you want to go ahead with
3 the -- either ask him the same question or ask him --

4 MR. BERNSTEIN: Let's see what the
5 question was. I forgot the question.

6 (Requested portion of record read.)

7 A. So can you please restate your question?

8 BY MR. BERNSTEIN:

9 Q. Absolutely. I'll withdraw it.

10 So you have the press release in front of
11 you?

12 A. I do.

13 Q. Okay. And it says, "I've spoken with the
14 individual referenced by Rep. Shooter."

15 A. That's what it says.

16 Q. "And the individual has stated that the
17 letter" -- I'm assuming Representative Shooter's
18 letter?

19 A. Correct.

20 Q. -- "does not reflect the individual's reaction
21 to the report."

22 A. Correct.

23 Q. And as you sit here today, you recall having a
24 conversation with this individual?

25 A. I do.

1 Q. Okay. And who was -- where did this
2 conversation take place?

3 A. It took place at the House. Well, it took
4 place via telephone. I was at the House.

5 Q. It was via a telephone conversation?

6 A. Correct.

7 Q. And had you known this person's identity --
8 how did you know this person's identity?

9 MR. TULLY: Let me -- if you --

10 MR. BERNSTEIN: Let me withdraw the
11 question.

12 BY MR. BERNSTEIN:

13 Q. Let me ask you this way: Did this person call
14 you or did you or your staff call this person?

15 A. My memory is that there was a conversation
16 that I had with folks on the investigative team who
17 knew who this person was. I told them to reach out to
18 this person to see if they wanted to speak with me
19 directly concerning the accusations Mr. Shooter was
20 making that invoked them.

21 I then put the ball in this person's
22 court as to whether or not they were open to that
23 conversation. I don't remember then who called whom,
24 only that, at some point, I was speaking with this
25 person on the phone.

1 Q. And do you remember who you reached out to to
2 get in touch with this woman?

3 A. I would have asked my staff to contact
4 whomever was appropriate. I don't remember knowing or
5 them even telling me who that person was.

6 Q. Did you know the identity of that person
7 before you asked your staff to contact this person?

8 MR. TULLY: Let me -- you can answer to
9 the extent that you didn't get the information as part
10 of investigation or the -- or from the attorneys.

11 A. At this point, names had been thrown around
12 pretty fast and furious. So I had become aware of this
13 person's name. I would not have known it was, indeed,
14 this person until speaking with them on the phone.

15 BY MR. BERNSTEIN:

16 Q. And so as you sit here -- you have no reason
17 to doubt your quote, that this person told you that
18 Representative Shooter's letter did not reflect the
19 individual's reaction? Do you recall that?

20 A. To the report, correct, I do.

21 Q. And if I tell you, sir, that not more -- not
22 less than four or five hours ago, the person sat in the
23 exact seat that you're sitting in and absolutely denied
24 that allegation and, in fact, said that she completely
25 agreed with what Mr. Shooter wrote, but was upset that

1 he wrote the letter?

2 MR. MASSEY: Objection to the form.

3 BY MR. BERNSTEIN:

4 Q. Do you -- would you say that she wasn't
5 telling the truth under oath today?

6 MR. MASSEY: Objection to the form.

7 MR. TULLY: Object to form and
8 foundation.

9 A. What I would say is that that is not
10 consistent with what was communicated to me.

11 BY MR. BERNSTEIN:

12 Q. So is it fair to say that either you or this
13 witness is either mistaken or intentionally not telling
14 the truth? Is that what you're saying?

15 MR. TULLY: Object to the form and
16 foundation.

17 MR. MASSEY: Join.

18 A. That's not what I'm saying.

19 BY MR. BERNSTEIN:

20 Q. What are you saying, sir?

21 MR. TULLY: That's not a question.

22 BY MR. BERNSTEIN:

23 Q. What are you saying? If it's not a mistake
24 and it's not a lie and this woman says, I absolutely
25 agreed with what Representative Shooter said in the

1 letter, then how do you explain your quote saying that
2 she said it did not reflect her reaction?

3 MR. MASSEY: Objection to the form and
4 foundation.

5 MR. TULLY: Join.

6 A. So my quote reflects my conversation with this
7 individual. I cannot speak to what this individual may
8 have said before or after or four hours ago.

9 I can only testify to what this
10 individual communicated to me and the others that were
11 in the room as well.

12 BY MR. BERNSTEIN:

13 Q. Correct. So if I'm saying that this
14 individual said she did not tell you during this
15 conversation that what Representative Shooter wrote did
16 not reflect her opinions and, in fact, did reflect her
17 opinions, she would not be telling the truth?

18 MR. MASSEY: Objection to the form and
19 foundation.

20 MR. TULLY: Join.

21 A. Do you want me to speculate?

22 BY MR. BERNSTEIN:

23 Q. No. I want you to tell me. She sat here and
24 said, I did not tell him that that did not -- that that
25 did not reflect my reaction to the report. She said, I

1 told him it did reflect my reaction to the report. I
2 was just not happy that Shooter sent it.

3 MR. MASSEY: Objection to the form and
4 foundation.

5 BY MR. BERNSTEIN:

6 Q. So I'm asking you, how do you -- how do you
7 reconcile your statement that this woman told you this
8 and this woman's statement that she didn't tell you
9 this?

10 MR. MASSEY: Objection to the form and
11 foundation.

12 MR. TULLY: Join.

13 A. I mean, how am I supposed to answer that
14 question?

15 BY MR. BERNSTEIN:

16 Q. Let's move on to the next one.

17 As you sit here today, you see the
18 quote -- and it's still the same paragraph, there's a
19 hyphen in the middle of the third sentence. "Despite
20 repeated requests from the individual's attorney that
21 Representative Shooter not do anything to jeopardize
22 the individual's anonymity." Do you see that?

23 A. I do.

24 Q. And as you sit here today, you recall this
25 individual telling you that her attorney made repeated

1 requests to Mr. Shooter's counsel to do nothing to
2 jeopardize her anonymity? Do you see that? Do you
3 recall that?

4 A. Where are you looking on this?

5 Q. Okay. It's the second paragraph, the second
6 bold, where it says, "I've spoken with." Do you see
7 that?

8 A. Uh-huh.

9 Q. And then it's one, two, three, four -- three
10 sentences down, starts three sentences down, it says,
11 "to use the individual as a pawn," hyphen or dash,
12 "despite repeated requests from the individual's
13 attorney." Do you see that?

14 A. Yes.

15 Q. So my question to you is: Do you recall in
16 this conversation that this individual told you that
17 her attorney had reached out to Representative Shooter
18 on numerous occasions or made repeated requests -- I
19 should say, made repeated requests, not to do anything
20 to jeopardize her anonymity? Do you see that?

21 A. I do.

22 Q. And as you sit here today, you recall her
23 telling you that her attorney made such repeated
24 requests?

25 A. I don't recall her telling me.

1 Q. Well, that's your quote, correct, sir?

2 A. There's a very important period between the
3 first and second sentence.

4 Q. Well, sir, it's still one quote. There's
5 quotes from the beginning and there's quotes at the
6 end, nothing in between, correct?

7 A. Correct.

8 Q. So this whole paragraph is a quote being
9 attributed to you, correct, sir?

10 A. That is correct.

11 Q. Okay. So, again, if this individual sat here
12 today and said that never happened, that myself and my
13 attorneys never reached out to Representative Shooter,
14 was she lying today or are you?

15 MR. MASSEY: Objection. Form and
16 foundation.

17 MR. TULLY: Join.

18 A. So my quote there says that I spoke with this
19 individual and this individual told me the letter
20 doesn't reflect their feelings -- or Mr. Shooter's
21 letter didn't reflect their feelings of the report.

22 Then there's a period and then there's
23 another sentence that is speaking generally of
24 information I was given at the time. I don't recall if
25 it was given from this person directly, from this

1 person's attorney, or if it was the investigative team
2 communicating to me what their interaction with this
3 person's attorney had been. So I can't recall whether
4 or not this person specifically said that as part of
5 the conversation, only that that was information I had.

6 BY MR. BERNSTEIN:

7 Q. So it's now your -- if I understand your
8 testimony, that someone else might have told you that
9 repeated requests were made to Shooter's attorney? Is
10 that what you're saying?

11 MR. MASSEY: Form.

12 A. That is possible.

13 BY MR. BERNSTEIN:

14 Q. It's possible. Anything is possible, sir. We
15 can all get hit by a car when we walk out of here.
16 Anything is possible, but is that probable? Is that
17 what happened on that day?

18 MR. MASSEY: Objection. Form,
19 foundation.

20 A. I do not know.

21 BY MR. BERNSTEIN:

22 Q. Isn't it a fact that you created and made up
23 this quote as part of your conspiracy with Ugenti-Rita
24 to get Don Shooter?

25 A. Since there were, like, three accusations in

1 that question, can you repeat it, please.

2 Q. Sure.

3 MR. BERNSTEIN: I'm sorry, can you --
4 Julie, can you read his last answer?

5 (Requested portion of record read.)

6 BY MR. BERNSTEIN:

7 Q. Okay. Who would have told you -- I'm sorry.

8 MR. MASSEY: Excuse me, I do want the
9 opportunity to ask a few questions. I don't have very
10 long.

11 MR. TULLY: We are running on four hours.

12 MR. MASSEY: We are at four hours. I
13 don't know how long you've agreed to go or anything
14 else.

15 THE WITNESS: I think we are over four
16 hours actually.

17 MR. BERNSTEIN: Are we? I don't know.

18 MR. MASSEY: So I want an opportunity to
19 ask some questions. I don't have much, though.

20 BY MR. BERNSTEIN:

21 Q. As you sit here today, can you tell me one
22 factual part of those three statements attributed to
23 you that you actually remember happening on February 1,
24 2018?

25 MR. TULLY: Object to the form of the

1 question.

2 A. Can you repeat the question.

3 BY MR. BERNSTEIN:

4 Q. Well, sure. I'll withdraw it.

5 You just said that it's possible some
6 other people told you that Shooter's attorneys were --
7 repeated requests were made to Shooter's attorneys,
8 correct?

9 A. That is correct.

10 Q. What else -- and let me ask you, who was --
11 who was Representative Shooter intimidating by sending
12 his letter?

13 A. This person that he was referencing.

14 Q. How was he intimidating her?

15 A. That's how I interpreted it.

16 Q. How was he intimidating her, sir?

17 A. Well, he's invoking this person into this
18 discussion, which according to my conversation with
19 this person, was not factually accurate. It was not
20 expressing this person's feelings. That is
21 intimidating to someone who doesn't want to be part of
22 this at all. That was also made clear to me by this
23 person.

24 Q. Well, let's ask you this: Did Representative
25 Shooter name her?

1 A. His letter, I don't think, named her.

2 Q. So if he didn't name her and unless the leak
3 came out of your office or someone working for you, how
4 would he be retaliating against her if he didn't name
5 her?

6 A. As I said a little while ago --

7 Q. I'm sorry, intimidating.

8 A. By this point, names were flying fast and
9 furious as to who people were referenced in the report
10 as individual or interviewee number whatever-they-were.

11 So this person expressed concern that
12 they were going to be, sort of, out there for all to
13 see; and I find that, then, Mr. Shooter's continual
14 efforts to invoke them for his purposes, to bring them
15 into the investigative conversation against what was
16 expressed to me at the time, their wishes, I find that
17 intimidating.

18 Q. What is your definition of retaliation?

19 A. Retaliation is when someone does something
20 back against somebody in response to something done to
21 them.

22 Q. Okay. What did this person do to
23 Representative Shooter?

24 A. I have no idea what they did to Mr. Shooter.

25 Q. Okay. So how did he retaliate against them?

1 How was that letter retaliation based upon your press
2 release?

3 A. So you're suggesting that the word
4 "retaliation" in this case is only applicable to this
5 individual.

6 Q. So you're telling me it's not? It's your
7 quote, sir, so -- it's your quote, your words. So
8 you're saying that when you used the word
9 "retaliation," it wasn't as against the woman in the
10 letter, especially since --

11 A. I would have applied the word "retaliation"
12 most specifically to Ms. Ugenti-Rita.

13 Q. And, sir, just for your edification, the only
14 person who this individual complaining is afraid of and
15 swore under oath is Ms. Ugenti-Rita.

16 MR. MASSEY: Objection to the form.

17 BY MR. BERNSTEIN:

18 Q. She sat here and testified that she was afraid
19 that she would be here today for intimidation and
20 retaliation and everything in her carrier and job. So
21 does that information at all cause you to rethink your
22 quotes from February 1, 2018?

23 MR. MASSEY: Objection to the form.

24 MR. TULLY: Join.

25 A. I'm not --

1 MR. TULLY: And foundation.

2 A. I'm not rethinking anything.

3 BY MR. BERNSTEIN:

4 Q. Isn't it a fact, sir, that this press release
5 was simply a part of your agreement with Ugenti-Rita
6 and other members of the Arizona legislature to get rid
7 of Don Shooter?

8 A. No, it is not.

9 Q. Isn't it a fact that you expelled Don
10 Shooter -- you drafted a resolution, took a motion to
11 expel Don Shooter on February 1, 2018, two days after
12 he was given five business days to respond to the
13 report as part of an agreement with Ugenti-Rita and
14 other members of the Arizona State legislature? Isn't
15 that true, sir?

16 A. It is not.

17 MR. BERNSTEIN: I have no further
18 questions.

19 MR. MASSEY: I have just a couple of
20 them.

21

22 EXAMINATION

23 BY MR. MASSEY:

24 Q. Let's work backwards a little bit. On this
25 Exhibit 12, I think you still have that in front of

1 you, the last sentence of that second, full-bolded
2 paragraph, it states, "He's not standing up for the
3 victim, but rather is further victimizing the
4 individual." When you say "he's," he is, you were
5 talking about Mr. Shooter?

6 A. Correct.

7 Q. And then the next paragraph, "Representative
8 Shooter's letter represents a clear act of
9 retaliation." And I believe your impression was the
10 retaliation applied to Ms. Ugenti-Rita, right?

11 MR. BERNSTEIN: Objection to form and
12 foundation.

13 A. Correct.

14 BY MR. MASSEY:

15 Q. "And intimidation, and yet another violation
16 of the House's harassment policy, so I will be moving
17 to expel him from the House of Representatives
18 immediately." That was your -- those were your
19 impressions and understandings at the time of this
20 release the first part of February 2018?

21 MR. BERNSTEIN: Objection to foundation
22 and form.

23 A. That is correct.

24 BY MR. MASSEY:

25 Q. The letter or the e-mail, which is

1 Exhibit No. 8, was referenced many times; and it says,
2 in part, "In case we do not see or speak to each other
3 today, I write to let you know that if your client
4 desires to submit a written response to the Report,"
5 and then goes on from there. Do you know if
6 Mr. Pasternak ever responded to Mr. Morgan and said, we
7 do intend to or we don't intend to file a report?

8 MS. REBHOLZ: Form. Foundation.

9 MR. TULLY: I direct him not to answer on
10 behalf of attorney-client privilege.

11 BY MR. MASSEY:

12 Q. Do you know if Mr. Pasternak intended -- other
13 than through conversations with your counsel, do you
14 have any understanding whether Mr. Pasternak intended
15 to file a written response for Mr. Shooter?

16 MR. BERNSTEIN: Objection to --

17 MS. REBHOLZ: Objection. Form and
18 foundation.

19 A. I do not.

20 BY MR. MASSEY:

21 Q. Yesterday, early on in your deposition, you
22 indicated that there were several women that had
23 complained about Mr. Shooter; is that accurate?

24 A. That's correct.

25 Q. And were those complaints by several women

1 against Mr. Shooter about him sexually harassing them?

2 A. They were.

3 Q. Do you know -- how many women were you aware
4 of that had complained about Mr. Shooter?

5 A. Every day that went by, there were more, so
6 you would have to ask me on which day we are talking.

7 And then during the course of the
8 investigation itself, there were more. So ...

9 Q. Is it accurate for me to state that after
10 Ms. Ugenti came out and disclosed publicly that she had
11 been harassed by Mr. Shooter, that's when other women
12 started coming forward?

13 A. That is correct.

14 Q. Were you aware of any reputation that
15 Mr. Shooter had specifically around the legislature
16 about his reputation about harassing or being rude to
17 women?

18 MR. BERNSTEIN: Objection. Form and
19 foundation and relevance.

20 A. That's amusing.

21 MR. MASSEY: Let the record reflect he's
22 smirking.

23 MR. BERNSTEIN: Me? The witness, yeah.

24 MS. REBHOLZ: You, with your relevance
25 objection.

1 THE WITNESS: I'm not the only one
2 smirking, Counsel.

3 Can you repeat your question.

4 BY MR. MASSEY:

5 Q. Sure. Were you aware of a reputation that
6 Mr. Shooter had around the legislature about --
7 concerning harassing or making sexually inappropriate
8 comments to women?

9 MS. REBHOLZ: Form and foundation.

10 MR. TULLY: Object to the form.

11 A. I was aware that Mr. Shooter had a reputation
12 that, at the very least, could be interpreted by some
13 people to be rude or harassing. I had not observed
14 something directly myself that I would characterize
15 that way, but I didn't attend any of the functions that
16 he attended where some of that -- those accusations
17 were made.

18 BY MR. MASSEY:

19 Q. During the period of the investigation for,
20 let's say the January/February 2018 time period, was
21 Ms. Ugenti in any leadership position at that time
22 other than of her committee?

23 A. No.

24 Q. Is it your understanding that she was -- the
25 allegations that Mr. Shooter made against her were a

1 part of the investigation that was undertaken by Craig
2 Morgan and the firm he was employed by?

3 MR. BERNSTEIN: Objection to form and
4 foundation.

5 MR. TULLY: I'm going to direct him not
6 to answer on behalf of legislative privilege.

7 BY MR. MASSEY:

8 Q. Did the report that you reviewed that was made
9 public indicate that Ms. Ugenti, that Mr. Shooter's
10 allegations against Ms. Ugenti had been investigated as
11 well?

12 A. The report indicated that allegations
13 Mr. Shooter had made were investigated.

14 Q. Is it accurate for me to state that
15 Mr. Shooter, to your knowledge, did not make any
16 allegations against Ms. Ugenti until after she went
17 public with her complaints about sexual harassment from
18 him?

19 MS. REBHOLZ: Objection. Form and
20 foundation.

21 A. That's correct. I recall that --

22 MR. TULLY: There's no question.

23 BY MR. MASSEY:

24 Q. Was that part of what you were referencing
25 when we were discussing Exhibit No. 12 in the

1 retaliation --

2 A. That is correct.

3 Q. So it was your impression, at that time, that
4 Mr. Shooter was retaliating against Ms. Ugenti?

5 MS. REBHOLZ: Form and foundation.

6 MR. BERNSTEIN: Objection. Form and
7 foundation.

8 A. That is correct.

9 BY MR. MASSEY:

10 Q. At one point, did Mr. Shooter get up in the
11 legislature and offer an apology to the membership?

12 A. I believe in his comments on the day of his
13 expulsion, while I don't remember them all, I think so.
14 I think it was a general; and it was not seemingly
15 aimed at anybody, but I think it was a general
16 I'm-sorry-if-I-offended-people type of thing.

17 Q. And, finally, when did you first find out that
18 your deposition was going to be required here? Was
19 that when you heard from -- when you spoke to
20 Mr. Farnsworth?

21 A. That's correct.

22 Q. Did anybody contact you and ask you to have an
23 informal discussion prior to subpoenaing you for
24 deposition?

25 A. Not that I know of.

1 MR. MASSEY: That's all the questions I
2 have.

3 MR. BERNSTEIN: I have one more question.
4

5 RE-EXAMINATION

6 BY MR. BERNSTEIN:

7 Q. The allegations made by Mr. Shooter against
8 Ms. Ugenti, do you remember what they were?

9 MR. TULLY: Hang on. To the extent that
10 they are not -- you don't know that from conversations
11 with the attorneys -- well, the attorneys in the
12 investigation, you can answer.

13 MR. BERNSTEIN: I'm sorry --

14 A. His accusations were about her conduct. I
15 think he gave two examples.

16 BY MR. BERNSTEIN:

17 Q. And the two examples, didn't he give -- wasn't
18 his allegation about her allegedly having an affair?

19 A. That was one of the allegations.

20 Q. And he didn't allege anything having to do
21 with -- well, withdrawn.

22 The investigation as to Ms. Ugenti-Rita
23 conducted by the Sherman law firm?

24 A. What?

25 Q. The allegations investigated by the Sherman

1 law firm, the investigation -- isn't it the Sherman law
2 firm? Isn't that the name of the law firm?

3 MS. REBHOLZ: Sherman & Howard.

4 MR. TULLY: What's the question?

5 BY MR. BERNSTEIN:

6 Q. The question is: The allegations investigated
7 by them, that only had to do with the woman, the young
8 lady, who made the allegations against Ugenti-Rita,
9 correct?

10 MR. MASSEY: Form and foundation.

11 MR. TULLY: I'm going to direct him not
12 to respond to that based on legislative privilege.

13 BY MR. BERNSTEIN:

14 Q. Based upon his -- based upon your review of
15 the report, which is a document here -- if you want me
16 to show it to you, I'll show it to you again -- the
17 only allegations investigated by the investigators had
18 nothing to do with the allegations made by Mr. Shooter,
19 correct?

20 MR. MASSEY: Objection. Form and
21 foundation.

22 A. I would need to review it to recall.

23 BY MR. BERNSTEIN:

24 Q. Okay. So I will show you what was previously
25 marked as Exhibit 4, and I think it's page 73.

1 A. Actually, that wouldn't be the page. It would
2 be the entirety of the report, so you'll have to give
3 me a moment.

4 Q. Okay. If you look at 73, it's the Ugenti
5 allegations, if that makes it easier for you.

6 A. So on page 2, the paragraph right below No. 3,
7 it talks about the scope of the investigation and
8 includes allegations made in -- or reporting in the
9 press. And some of what was reported in the press had
10 to do with the affair that you mentioned, that
11 allegation of an affair, as well as an allegation of an
12 inappropriate comment in a committee hearing. So my
13 belief is that those were investigated.

14 MR. BERNSTEIN: Okay.

15 MR. TULLY: All right. Read and sign.

16

17 (3:52 p.m.)

18

19

20

21

JAVAN MESNARD

22

23

24

25

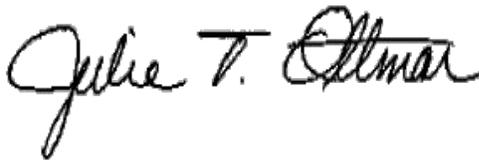
1 STATE OF ARIZONA)
) ss.
 2 COUNTY OF MARICOPA)

3 BE IT KNOWN that the foregoing proceedings were
 4 taken before me; that the witness before testifying was
 5 duly sworn by me to testify to the whole truth; that
 6 the foregoing pages are a full, true and accurate
 7 record of the proceedings, all done to the best of my
 skill and ability; that the proceedings were taken down
 by me in shorthand and thereafter reduced to print
 under my direction.

8 I CERTIFY that I am in no way related to any of
 9 the parties hereto nor am I in any way interested in
 the outcome hereof.

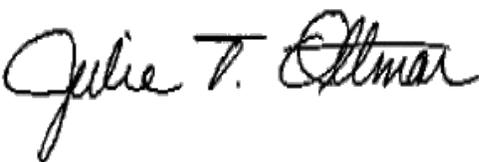
- 10 [X] Review and signature was requested.
- 11 [] Review and signature was waived.
- [] Review and signature not required/requested.

12 I CERTIFY that I have complied with the ethical
 13 obligations set forth in ACJA 7-206(F)(3) and ACJA
 7-206(J)(1)(g)(1) and (2). Dated at Phoenix, Arizona,
 this 18th day of November, 2019.

14
 15 

16
 17 _____
 Julie T. Ottmar, RPR
 Arizona Certified Reporter No. 50084

18
 19 I CERTIFY that OTTMAR & ASSOCIATES, INC., has
 20 complied with the ethical obligations set forth in ACJA
 7-206 (J)(1)(g)(1) through (6).

21
 22 

23
 24 _____
 OTTMAR & ASSOCIATES, INC.
 25 AZ Registered Reporting Firm No. R1008