

PDF TRANSCRIPT COVER PAGE

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

November 12, 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. |) | |
| |) | |
| <hr/> DONALD D. SHOOTER, |) | |
| |) | |
| Counterclaimant, |) | |
| |) | |
| vs. |) | |
| |) | |
| MICHELLE UGENTI-RITA, |) | |
| |) | |
| Counterdefendant. |) | |
| <hr/> |) | |

DEPOSITION OF JAVAN MESNARD
(Volume I)

Phoenix, Arizona
November 12, 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 I, taken
2 on November 12, 2019, commencing at 1:30 p.m., at the
3 law offices of PERRY CHILDERS HANLON & HUDSON, PLC, 722
4 East Osborn Road, Suite 100, Phoenix, Arizona, before
5 JULIE T. OTTMAR, a Certified Reporter in the State of
6 Arizona.

7

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3 WITNESS PAGE

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8 * * *

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E X H I B I T S

10

EXHIBITS DESCRIPTION MARKED

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Exh. 1 January 30, 2018, News Release 56

12

"Speaker Mesnard Releases Sexual
Harassment Report and Announces
Remedial Action"

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Exh. 2 Rules of the Arizona House of 66

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Representatives, 53rd
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Exh. 3 October 31, 2017, Yellow Sheet 73

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Report, News, Notes and Gossip

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Exh. 4 Sherman & Howard Report 76

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addressed to J.D. Mesnard

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Exh. 5 November 8, 2017, Yellow Sheet 82

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Report, News, Notes and Gossip

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Exh. 6 November 10, 2017, News Release, 82

24

"Speaker Mesnard Announces
Decision to Suspend
Representative Shooter's Duties
as Chairman of Appropriations
Committee; Employ Outside
Investigators"

25

1 **Exh. 7** November 15, 2017, News Release, 99
2 "House of Representatives
3 Retains Outside Counsel to
 Investigate Sexual Harassment
 Allegations"

4 **Exh. 8** January 30, 2018, e-mail to 107
5 Daniel B. Pasternak from Craig
 Morgan. Subject: House Report

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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 EXAMINATION

12 BY MS. REBHOLZ:

13 Q. Before we went on the record, we had a brief
14 conversation and your attorney indicated that you are
15 going to be claiming legislative privilege pretty much
16 to anything that you think we would be asking about
17 here today; is that a fair statement?

18 A. No.

19 Q. Okay.

20 A. Specific to legislative actions, I will assert
21 legislative privilege.

22 Q. Okay.

23 MR. TULLY: Why don't I make the record
24 for it.

25 MS. REBHOLZ: Sure. Go for it.

1 MR. TULLY: So Mr. Mesnard, who is here
2 today, is the Speaker of the Arizona House of
3 Representatives; and there was an investigation
4 performed by a law firm, Sherman & Howard, which, I
5 believe, is at issue in your lawsuit or at least some
6 of the claims are claims that are also listed in
7 that -- in that investigation.

8 The investigation itself, his
9 communications with the law firm, his communications
10 with anyone else within that House regarding that
11 investigation are all covered by the legislative
12 privilege and not subject -- he's not subject to being
13 questioned about them: the comments, the decisions,
14 any of the discussions regarding that. And so he's
15 asserting that and not going to be answering any
16 questions regarding the investigation.

17 He's also asserting, because I've read an
18 order from this court, that there's been a -- there's
19 an attempt to get the legal file regarding the
20 investigation. And it appeared to me, anyway, from
21 that file that the court had questions about who held
22 the attorney-client privilege with regard to
23 communications with that law firm, but found it had not
24 been waived.

25 So he's not going to inadvertently waive

1 it to the extent he holds it now and somebody else
2 doesn't hold it. So for that basis as well, he's not
3 going to be answering any questions regarding any
4 communications regarding the law firm, the
5 investigation at all.

6 You can ask fact questions, you know, to
7 the extent that he has any that are -- that do not --
8 that are not -- you know, do not impact that -- those
9 privileges.

10 MS. REBHOLZ: Okay. Well, I think we are
11 going to try to get started here and see what
12 information we can get, but I want to put on the record
13 our right to redepose him if we need to call him back
14 after having dealt with this with the judge, if there's
15 particular issues that we don't get sorted out today.

16 Is that -- do you have an objection to us
17 calling him to redepose him, if we need to, to go over
18 things should the judge find that --

19 MR. MASSEY: He will abide by any court
20 order that is issued.

21 MS. REBHOLZ: Perfect. Thank you.

22 MR. BERNSTEIN: It is also, for the
23 record, to reflect that counsel and/or the witness --
24 this is the first time at -- 1:30 on November 12,
25 2019 -- that they have indicated to any of the

1 attorneys who served the subpoena that the witness
2 would be invoking this privilege. And I say that in
3 light of the fact that I, personally, have incurred
4 great expense and my client has incurred great expense
5 traveling from New York to be here for this deposition.
6 And, obviously, had we known that this privilege was
7 going to be asserted, we could have addressed this
8 issue with the court long before we traveled out here.

9 So I just want the record to reflect
10 that.

11 MS. REBHOLZ: Okay. Let's get started
12 then.

13 BY MR. REBHOLZ:

14 Q. Good afternoon. My name is Jennifer Rebholz.
15 I'm going to take your deposition today. Can I have
16 you start by stating your full name for the record.

17 A. My name is Javan Daniel Mesnard.

18 Q. Okay. You understand that you are here today
19 in relation to the lawsuit that Ms. Ugenti-Rita filed
20 against Mr. Donald Shooter. Do you understand that?

21 A. Yes.

22 Q. Okay. You were subpoenaed to be here today?

23 A. Yes.

24 Q. Is it fair to say you didn't want to have to
25 be here today and be involved in this lawsuit?

1 A. I would have preferred to be somewhere else.

2 Q. You are not here voluntarily giving statements
3 about any information that you have about
4 Ms. Ugenti-Rita or Don Shooter; is that fair?

5 A. Nobody asked me to volunteer.

6 Q. You had to be subpoenaed at your home; you
7 wouldn't accept service anywhere else or have any of
8 your staff accept service in this matter?

9 A. I received service at my home, yes.

10 MR. TULLY: Object to foundation.

11 BY MS. REBHOLZ:

12 Q. You are here with an attorney?

13 A. Yep.

14 Q. Is that your personal attorney or an attorney
15 that's been appointed to you by the legislature?

16 A. I don't know -- how would that be?

17 MR. TULLY: The State of Arizona has
18 retained me to defend him in this lawsuit.

19 BY MS. REBHOLZ:

20 Q. You understand there's not a lawsuit being
21 filed against you?

22 MR. TULLY: In this deposition.

23 BY MS. REBHOLZ:

24 Q. Okay. So you understand there's nothing being
25 filed against -- this lawsuit has nothing to do with

1 you other than you as a fact witness. Do you
2 understand that?

3 A. I understand it now.

4 Q. Have you ever had your deposition taken
5 before?

6 A. I have not.

7 Q. I'm sure your attorney has explained to you a
8 little bit about how this process works, but there are
9 a few things we are going to go over to hopefully make
10 it move a little more smoothly, okay?

11 A. Sure.

12 Q. First, the woman sitting next to you is a
13 court reporter. She's going to write down everything
14 we say, so it's important you answer a question out
15 loud, using words like yeses or nos rather than shaking
16 or nodding your head or making sounds like "uh-huhs" or
17 "huh-uhs." We may know what you mean here today, but
18 later on, it's going to be hard to tell if you meant
19 "yes" or "no," okay?

20 A. I understand.

21 Q. It is also important that we try not to speak
22 at the same time. I know in normal conversation, you
23 may know where I'm going with the question and want to
24 give an answer before I've completely finished
25 speaking, but if you can almost leave a little pause

1 between when I ask a question and when you give a
2 response, we are going to get a much clearer record,
3 okay?

4 A. Yep.

5 Q. I'm not trying to trick you here today. I'm
6 trying to get a little bit more information about some
7 things that occurred as you were Speaker of the House,
8 particularly between Ms. Ugenti-Rita and Mr. Shooter.
9 So if I ask you any questions here today that are
10 confusing to you today or that don't make sense, please
11 just ask me to reword those for you so that they do
12 make sense, okay?

13 A. Yep.

14 Q. Is there any reason you can't give clear and
15 accurate testimony here today?

16 A. No.

17 Q. Have you had any alcohol today?

18 A. No.

19 Q. Have you had any drugs, prescription or
20 otherwise, today?

21 A. Nope.

22 Q. And you understand at the beginning, you took
23 an oath to tell the truth and that's the same oath you
24 you would give in a courtroom in front of a judge and a
25 jury?

1 A. I do.

2 Q. All right. What, if anything, did you do to
3 prepare for your deposition today?

4 A. I spoke with my attorney.

5 Q. Did you review any documents?

6 A. The subpoena.

7 Q. Other than the subpoena, did you look at
8 anything?

9 A. No.

10 Q. Did you talk to anyone other than your
11 attorney to prepare for today?

12 A. Talking to my wife. I'm not sure I would
13 characterize that as preparation, but I let her know I
14 was being subpoenaed.

15 Q. Anything else that you talked to about the
16 facts?

17 A. No.

18 Q. Have you ever --

19 A. I'm sorry, actually, Eddie Farnsworth told me
20 he had been subpoenaed.

21 Q. So you talked with Mr. Farnsworth about it?

22 A. Yes, but we didn't -- other than he was giving
23 me a heads-up that he was subpoenaed and there were
24 people at the capitol that might be trying to serve me.
25 Of course, I wasn't actually at the capitol at the

1 time; that was the extent of our conversation.

2 Q. Have you ever discussed this case with
3 Ms. Ugenti-Rita?

4 A. You mean her lawsuit against Shooter?

5 Q. Yes.

6 A. No.

7 Q. Have you ever discussed it with Mr. Shooter?

8 A. No, not to my recollection.

9 Q. Let me get a little bit of background
10 information on you. What's your date of birth?

11 A. May 15, 1980.

12 Q. And what's your current address?

13 A. 1427 West Homestead Court, Chandler, Arizona
14 85286.

15 Q. Are you currently married?

16 A. Yes.

17 Q. How long have you been married?

18 A. Five years.

19 Q. What's your wife's name?

20 A. Holly.

21 Q. The same last name?

22 A. Uh-huh.

23 Q. Is that a yes?

24 A. Yes.

25 Q. How did you meet?

1 A. Met at the capitol.

2 Q. Did you work together?

3 A. No. Actually, I guess it depends on what you
4 mean by that, but we were never colleagues in that
5 sense. She worked for a different branch of
6 government.

7 Q. What branch did she work for?

8 A. The executive branch.

9 Q. Do you have any kids?

10 A. Yes.

11 Q. How many kids?

12 A. One.

13 Q. Have you ever served in the military?

14 A. No.

15 Q. Have you ever been convicted of a felony?

16 A. No.

17 Q. Have you ever been a party to a civil lawsuit
18 as either a plaintiff or a defendant?

19 A. Yes.

20 Q. When was that?

21 A. Multiple times. So do you want me to list
22 them all? Mostly it's landlord/tenant acts or loans or
23 things like that. In fact, all of them would fall into
24 those two categories, some sort of landlord/tenant or
25 loan situation.

1 Q. And the landlord/tenant situation, were those
2 where you were the landlord?

3 A. Correct.

4 Q. And the loan situations, was that with regards
5 to a business that you owned?

6 A. No. That was a personal loan to a friend at
7 the time.

8 Q. And did you file the lawsuit or was a lawsuit
9 filed against you in that instance?

10 A. In all instances, I filed the lawsuits.

11 Q. How long have you lived in Arizona?

12 A. Almost 30 years.

13 Q. Where did you move here from?

14 A. Colorado Springs.

15 Q. What brought you to Arizona?

16 A. My family.

17 Q. Did you go to school here?

18 A. Did I?

19 Q. Yes.

20 A. I did, yes.

21 Q. Attended ASU?

22 A. Among others, yes.

23 Q. Now, you are currently a member of the Arizona
24 State Senate; is that correct?

25 A. Correct.

1 Q. Is that since January of this year?

2 A. Correct.

3 Q. And before that, you were a representative in
4 the Arizona House of Representatives; is that correct?

5 A. Correct.

6 Q. How long were you in the House of
7 Representatives?

8 A. Eight years.

9 Q. And prior to becoming a member of the House of
10 Representatives, did you own your own business, JPSB
11 Dream Team?

12 A. I've owned a number of businesses and that was
13 one in which I was a partner in the business.

14 Q. What kind of business is that?

15 A. Investment.

16 Q. Do you still own that business?

17 A. I haven't done anything to dissolve it, but it
18 functionally doesn't exist anymore and hasn't for
19 years.

20 Q. Now, at some point while you were at the House
21 of Representatives, you became Speaker; is that
22 correct?

23 A. Correct.

24 Q. When was that?

25 A. I assumed the office in January of 2017.

1 Q. And what is the normal duration of a session
2 in the House?

3 A. Of a session, like the annual session?

4 Q. Yes.

5 A. It goes 100 days. On average, it's probably
6 closer to 120, just all depends. This last year was
7 right at the end of May, which was unusual. Usually
8 it's the end of April, beginning of May, somewhere in
9 there.

10 Q. So usually January to April/May time frame?

11 A. Yeah.

12 Q. Now, before you were Speaker, at some point
13 were you a Speaker Pro Tem?

14 A. Yes.

15 Q. Can you tell me, what does that mean?

16 A. The Speaker Pro Tem position is appointed by
17 the Speaker since that's the only other person who can
18 manage the Chamber from the dais, either in the
19 Speaker's absence or if they want to take a break or
20 have other duties to attend to.

21 Q. And when were you a Speaker Pro Tem?

22 A. 2013 to 2014, a two-year term.

23 Q. And who was that under?

24 A. Andy Tobin.

25 Q. And so then he would have appointed you to

1 that role?

2 A. Correct.

3 Q. When you became Speaker in January of 2017,
4 how does it work? Is there some sort of pass-down,
5 Speaker to Speaker, before you transition in?

6 A. So the Speaker is chosen by the entire House.
7 That occurs as one of the very first acts of the new
8 legislature after everyone is sworn into session.

9 The beginnings of that session are
10 presided over by the oldest member of the Chamber, so
11 there's no Speaker-to-Speaker sort of formal passing of
12 the baton, if you will.

13 However, the Speaker is presumed to
14 become Speaker or presumed to be Speaker, the incoming
15 Speaker, for about two months prior to that. It occurs
16 after the election. There's an election of the
17 majority party. And so that two-month period of time,
18 there's a transition between one Speaker to the next
19 Speaker. So you start operating as Speaker before you
20 are formally sworn in as Speaker.

21 Q. So when you became Speaker -- who was the
22 Speaker before you?

23 A. David Gowan.

24 Q. So can you tell me about your transition and
25 some of your conversations you had with Mr. Gowan

1 before he took over as Speaker? What kinds of things
2 do you go over? Pending issues? What kinds of things?

3 A. A lot of it is staffing issues. The
4 transition of decision-making authority. For instance,
5 you know, when you spend money from the House budget on
6 whatever it is, you know, there's kind of this shared
7 decision-making, say, get the Christmas holiday off,
8 that sort of thing.

9 Otherwise, you know, within a matter of
10 days, there isn't a lot of interaction except for those
11 sorts of instances. Pretty much the incoming Speaker
12 is given latitude to begin crafting their staff, you
13 know, and start outlining, you know, kind of the agenda
14 for the next legislature. That's more of a political
15 function.

16 So there was a lot of hiring of staff and
17 some staff exited as well during that transition.

18 Q. Now, is the staff there year-round?

19 A. It is. Most of it anyway. Not all of it.

20 Q. And then when you take over, I know you said
21 there's some transitioning of staff, but is it mostly
22 the same people that kind of continue there over time?

23 A. If you are looking at the 180-ish employees of
24 the House, then 90, 95 percent of them are going to be
25 the same.

1 The staff closest to the leadership level
2 is the most likely to change and most of them changed.

3 Q. Do you remember any pending issues or any
4 conversations you might have had with Mr. Gowan during
5 your transition time to become Speaker? Any issues,
6 anything to expect to be concerned about in the year to
7 come?

8 A. We talked about a lot, so can you narrow it
9 down for me?

10 Q. Sure. Do you remember having any
11 conversations with Mr. Gowan about any ethics
12 complaints that might be pending or that he was
13 concerned about?

14 A. I was not aware of any ethics complaints.

15 Q. Now, Ms. Ugenti-Rita, my understanding, became
16 a representative in 2011; is that correct?

17 A. Yeah. That's correct, the same time as me.

18 Q. The same time as you?

19 A. Correct.

20 Q. You guys served in the House your whole time
21 together; is that correct?

22 A. Correct.

23 Q. During your time serving with Ms. Ugenti-Rita,
24 do you remember her ever mentioning to you or reporting
25 to you that she had been sexually harassed by anybody?

1 A. The first time, to my recollection, that she
2 brought up anything was, I think, right after or maybe
3 right before she was talking to the media about
4 Mr. Shooter.

5 Q. So that would have been in October of 2017?

6 A. Something like that. '17, yeah, that sounds
7 right.

8 Q. But from 2011 until that point, you don't
9 remember her ever mentioning anything to you about
10 being sexually harassed or treated poorly?

11 A. I don't.

12 Q. During your time as Speaker Pro Tem, do you
13 ever remember hearing anything about her complaining
14 about being sexually harassed?

15 A. Not to my recollection, no.

16 Q. During your initial time as Speaker in 2017,
17 did she ever bring up to you that she had been sexually
18 harassed?

19 A. The first time she brought it up was, as I
20 said, in, I guess, October-ish of 2017.

21 Q. So that would have been before kind of your
22 second term as Speaker?

23 A. Second year as Speaker.

24 Q. Second year, okay.

25 Now, when Ms. Ugenti-Rita first brought

1 this up to you, do you know, was it before or after she
2 posted on Twitter about being sexually harassed?

3 A. So, I mean, I don't remember the specific
4 order, but it would have been roughly the same time. I
5 think it was just before. I think she had called me to
6 kind of give me a heads-up about kind of the gist of
7 what she had written. I expressed concern when she was
8 talking about leader -- because somehow leadership was
9 brought up in the post in some way. I remember being
10 concerned that that would implicate me, even though I
11 had nothing to do with -- a lot of what she had brought
12 up really was from prior speakers.

13 And she agreed to sort of clarify that if
14 people asked, but it was mostly a heads-up to let me
15 know that that was coming, which is appreciated.

16 Q. When you were having that conversation with
17 her about leadership and who she may have reported it
18 to, did she tell you who she had reported it to?

19 A. Honestly, I don't remember. I don't remember.

20 Q. But she agreed that it was not you that she
21 had said anything to?

22 A. Oh, yeah.

23 Q. In that initial Twitter feed, she talked about
24 the fact that she was sexually harassed by a number of
25 people. Is that your recollection as well?

1 A. Honestly, I don't remember what else she spoke
2 about beyond Shooter.

3 Q. When she initially talked to you about the
4 Twitter feed, did she talk to you about Shooter or did
5 she just talk to you in general about the sexual
6 harassment?

7 A. Yeah. No, she talked to me about Shooter. It
8 was mostly focused on that. I don't remember if she --
9 she never named anybody else, to my recollection,
10 beyond Shooter. And everything at that point was her
11 issue with him, with Shooter.

12 Q. So she never made you aware of anybody else
13 that she believed had sexually harassed her?

14 MR. MASSEY: Objection to the form.

15 MR. TULLY: Join, to the extent that it
16 doesn't go into the investigation part.

17 A. I'm just going through my mind for a second.
18 She had told me about -- so -- yeah, I'm not going to
19 answer that. **Legislative privilege** for that one,
20 because anything she would have told me in this
21 particular case involved other members; and I'm not
22 saying they are harassing her or not, but other people
23 came up in the context sort of of this "Me Too" stuff
24 that was happening. So I'm not going to divulge what
25 she and I talked to -- or talked about in that context.

1 BY MS. REBHOLZ:

2 Q. So you had a conversation with her about other
3 people who may or may not have sexually harassed her,
4 but you are not going to answer based on legislative
5 privilege?

6 MR. MASSEY: Objection to the form.

7 THE WITNESS: I don't know what that
8 means.

9 MR. TULLY: He's just making an objection
10 to the question. You can answer, if you understand the
11 question. If you don't, then you can ask her to
12 rephrase it or repeat it.

13 A. Here's how I would --

14 MR. TULLY: Let me -- let me do this:
15 He's asserting the privilege to communications with
16 Ms. Ugenti-Rita that occurred as part of the
17 investigation into her claims against Mr. Shooter and
18 not any others that were part of the -- you know, part
19 of the legislative investigation -- part of his duties
20 as Speaker to investigate claims of this kind.

21 A. I'm going to add to that this: People come to
22 me as Speaker frequently with complaints or accusations
23 about other members that may or may not be true. It
24 might be harassment from, you know, political bias; it
25 could be any number of things. I'm trying to be very

1 careful because I don't want to implicate anybody, and
2 I don't know sort of like what -- the question is very
3 general that you're asking me. So that's why I'm being
4 very careful how I answer it.

5 BY MS. REBHOLZ:

6 Q. And I understand that. And I guess it's
7 probably not going to change how you answer this
8 question, but what I'm trying to get at is whether or
9 not there were other people who were accused of
10 harassment other than Don Shooter by Michelle
11 Ugenti-Rita that you're aware of.

12 MR. TULLY: Not as part of your
13 investigation.

14 THE WITNESS: Right.

15 She never brought up any formal
16 accusations against any other member.

17 BY MS. REBHOLZ:

18 Q. And I guess I just want to be clear on your
19 answer. She never brought up any formal complaint
20 against any other member outside of the investigation?

21 MR. MASSEY: I'm going to object to the
22 form.

23 MR. TULLY: I'm going to object to the
24 form. He's not going to testify as to whether anything
25 was brought up in the investigation or outside of the

1 investigation. He's just not going to answer.

2 BY MS. REBHOLZ:

3 Q. You were a member of the House in 2012; is
4 that correct?

5 A. Correct.

6 Q. Do you remember an ethics committee
7 investigation into Representative Craig (verbatim)
8 Patterson?

9 A. I do.

10 Q. What do you remember about that?

11 A. That there was one. That he, I think, was
12 accused of some sort of physical altercation with his
13 girlfriend or wife or somebody, somebody close to him.

14 Q. Do you remember ever seeing the investigation
15 that was done into the actions or allegations against
16 Craig Patterson?

17 A. No.

18 Q. Do you have any kind of understanding as to
19 whether or not there was an investigation that went to
20 the ethics committee?

21 A. Yeah. The ethics committee looked at it.

22 Q. And is that typically what would happen when
23 there's a complaint against a member?

24 A. If you --

25 MR. TULLY: Objection. Hang on, hang on.

1 What relevance does this have to your lawsuit with
2 Ms. Ugenti-Rita?

3 MS. REBHOLZ: One of the allegations that
4 Ms. Ugenti-Rita made against Mr. Shooter was that he
5 defamed her when he said that there was a conspiracy
6 against him.

7 So to the extent that previous
8 allegations against people went through the ethics
9 committee versus this instance where they clearly
10 didn't go through the ethics committee, I just want to
11 know his understanding of the normal process when
12 allegations were made against other committee members.

13 A. I'll explain the process. So if somebody
14 files an ethics complaint, that is a very formal
15 process that goes before the ethics chairman, who then
16 has discretion at that point as to whether they dismiss
17 it or they forward it to the rest of the ethics
18 committee.

19 It's all a very procedural basis. It's
20 not theory. It's not, I'm going to ... it's not, I
21 have done X, Y, Z. It's a very formal thing to file an
22 ethics complaint.

23 BY MS. REBHOLZ:

24 Q. Did either Michelle Ugenti-Rita or Don Shooter
25 ever file an ethics complaint?

1 A. No.

2 Q. Do you know if either ever asked for the
3 investigation to go before the ethics committee?

4 A. Shooter made broad statements about how he's
5 asked for an ethics investigation. It was very clear
6 to me, since he actually never filed an ethics
7 complaint, he must have been talking in sort of a
8 general sense of ethics, but he never filed any sort of
9 formal ethics complaints, nor did Michelle.

10 Q. Do you remember ever making statements that
11 once the investigation was made final, that it would go
12 to an ethics hearing?

13 A. No.

14 Q. In November of 2017, was an ethics complaint
15 made against Representative Rebecca Rios?

16 A. Yes.

17 Q. You were aware of that ethics complaint?

18 A. Yes.

19 Q. And this is at the same time the investigation
20 is going with Shooter and Ugenti-Rita; is that correct?

21 A. Yeah. This was actually the only ethics
22 complaint filed by anybody against anybody.

23 MR. MASSEY: I'm sorry, what was your
24 answer?

25 THE WITNESS: That was the only ethics

1 complaint filed by anybody against anybody.

2 MR. MASSEY: Thank you.

3 BY MS. REBHOLZ:

4 Q. And to be clear, Ms. Ugenti-Rita never filed
5 an ethics complaint against Don Shooter?

6 A. She did not.

7 Q. What led to your decision to perform an
8 investigation into Don Shooter?

9 MR. TULLY: He's not going to answer
10 that. He's not answering that.

11 BY MS. REBHOLZ:

12 Q. With regards to the complaint against
13 Ms. Rios, did you review that complaint?

14 A. Yes. A copy was eventually shared with me.
15 It first goes to the ethics chairman, and then they had
16 discretion over its dissemination.

17 At some point in there, I became aware of
18 the ethics complaint. I think it was even posted
19 online.

20 Q. You understand that Representative Ray
21 Martinez was the one that filed that complaint?

22 A. Yes.

23 Q. Do you understand that Mr. Martinez, in his
24 letter to the ethics committee, indicated that he had
25 concerns with Ms. Rios's interaction with a

1 sergeant-at-arms that led to his resignation?

2 A. Correct.

3 Q. Were you aware of any interaction between
4 Representative Rios and a sergeant-at-arms before
5 Mr. Martinez filed his complaint?

6 A. I had heard rumors.

7 Q. Who had you heard rumors from?

8 A. Gosh, a lot of people. It was a rumor mill
9 down there. I hear rumors from all kinds of people all
10 the time.

11 Q. What rumors did you hear?

12 A. I heard that Ms. Rios had an affair with --
13 the guy, at the time, was, I think, our Deputy
14 Sergeant-At-Arms. Some high ranking person. Not the
15 Sergeant-At-Arms, just to clarify. So I had heard
16 there was some sort of relationship there.

17 Q. Did you hear that from Speaker Gowan before
18 you took over?

19 A. I did.

20 Q. What, if anything, did --

21 MR. BERNSTEIN: I'm sorry, did you hear
22 that?

23 THE WITNESS: I did.

24 BY MS. REBHOLZ:

25 Q. What, if anything, did Speaker Gowan tell you

1 about that alleged incident?

2 A. Essentially, the rumor.

3 Q. Why did he relay that to you?

4 MR. TULLY: Objection to the form. He
5 has no idea why he relayed it to him.

6 BY MS. REBHOLZ:

7 Q. What was your understanding of the purpose of
8 the conversation with Mr. Gowan telling you about
9 the --

10 MR. TULLY: You know, I'm going to object
11 to legislative privilege. It's all the conversations
12 with Mr. Gowan as well. I mean, those are
13 conversations he's gotten as part of the legislative
14 process of turning over power, and I'm not going to let
15 you have a free reign to ask him questions about that.

16 BY MS. REBHOLZ:

17 Q. Well, I guess my question is: Was this part
18 of the turning over of power or was this part of the
19 rumor mill?

20 MR. TULLY: Well --

21 A. In this case, both.

22 BY MS. REBHOLZ:

23 Q. Okay. Did you have a conversation with
24 Representative Martinez about his concern about
25 Ms. Rios?

1 MR. TULLY: Object to the form. When?

2 A. Yes. Before sometime. I don't remember, but
3 before he filed the complaint, he brought it up to me.

4 BY MS. REBHOLZ:

5 Q. And was it -- I believe in his letter, he
6 indicated it was about an hour-long conversation. Does
7 that sounds about right to you?

8 A. Probably.

9 Q. Tell me about that conversation with
10 Representative Martinez.

11 A. No.

12 MR. TULLY: Well, I'm going to direct him
13 not to answer that question, you know.

14 MS. REBHOLZ: Why can't he answer that
15 question?

16 MR. TULLY: It's a legislative process.
17 You can't go in and -- the guy has a private -- one
18 member comes in to the Speaker, you're asking about a
19 conversation that he had. What does that have to do
20 with your claim?

21 MS. REBHOLZ: It's, again --

22 THE WITNESS: If a court tells me --

23 MR. TULLY: Hang on.

24 THE WITNESS: Hold on. If a court tells
25 me to disclose a private conversation that I, as

1 Speaker, had with any member of the House, if I'm
2 forced to do that, I will. But, otherwise, I'm going
3 to reserve the right to say this is part of the
4 legislative process, part of the legislative
5 atmosphere. It's part of the House of Representatives.

6 So I'm not obligated to you, unless a
7 court tells me otherwise, to disclose private
8 conversations. I hold confidence with my members and
9 would only be, you know, giving that confidence up if
10 I'm ordered to do so.

11 MR. BERNSTEIN: Is that a different
12 privilege? Is that House Speaker privilege?

13 THE WITNESS: A legislative privilege.
14 Don't change my words. It's a legislative privilege.

15 MR. BERNSTEIN: We'll see.

16 BY MS. REBHOLZ:

17 Q. Did you have a conversation with the ethics
18 chair about your conversation with Representative
19 Martinez?

20 MR. TULLY: He's not going to answer that
21 question.

22 MS. REBHOLZ: He's not going to say
23 whether or not he had the conversation?

24 MR. TULLY: Yes.

25 MS. REBHOLZ: I'm not even asking what he

1 said in the conversation.

2 MR. TULLY: I'm saying, you know --
3 assert the privilege. It was part of his actions as
4 Speaker of the House.

5 BY MS. REBHOLZ:

6 Q. At some point, did you create a zero tolerance
7 policy against harassment and the general prohibition
8 against disorderly conduct?

9 A. I didn't create anything, but I did codify
10 what had previously been unwritten.

11 Q. You codified what had previously been
12 unwritten, what do you mean by that?

13 A. In other words, when people become members of
14 the legislature, they go through the training, the
15 rules are explained to them, and so on. Part of those
16 rules say, like, you know, don't harass people.

17 And what we did was, essentially, take
18 all of that and sort of construct it in a way that was
19 more easy for people to sort of follow a process for
20 when someone violates this. Kind of assemble it all in
21 one place, because up until then, it sort of hadn't
22 been written, at least in this kind of organized way.
23 All of it was haphazard across, you know, training of
24 new members.

25 Q. How did you codify that?

1 A. In the form of a written document.

2 Q. What's the process for codifying a new policy?
3 Do you have to have hearings on it?

4 A. So there's certain things I can do as Speaker.
5 Pretty much I can do whatever I want as it relates to
6 staff.

7 When it involves members, it gets a
8 little grayer. And so I'm still allowed to sort of
9 discipline up to certain things that require, according
10 to the Constitution, for instance, the entire Chamber
11 to act.

12 So the rules of the House do empower me
13 to make decisions regarding members. That was, for
14 instance, how I had the power to do the investigation.

15 Q. But with regards to implementing a new policy,
16 I know you said you can do that with a staff. How does
17 that work for policies for the members?

18 MR. TULLY: What is -- I mean, what does
19 that have to do -- what's the relevance to your claim
20 of defamation against Shooter?

21 MS. REBHOLZ: Again, as I indicated, in
22 one of the claims Ugenti-Rita says that Mr. Shooter
23 defamed her, saying that there was a conspiracy against
24 him. Part of that stems from this new policy that was
25 created solely for the purpose of investigating the

1 claims against him. I want to know how that policy
2 came into being and who that policy applied to to find
3 out, again, whether or not it was applied equally.

4 I mean, I'm going to try to get as much
5 as I can without getting into the report, which you've
6 said he's not going to answer. But finding out --

7 MR. TULLY: Well -- because it appears to
8 me you are doing a fishing expedition to get
9 information, not for the purposes of this suit, but for
10 the purposes of the suit your clients brought against
11 Mr. Mesnard.

12 MS. REBHOLZ: I have -- I have nothing to
13 do with that suit. I'm not an attorney in that suit.
14 My sole purpose is to defend against the claim that
15 Ms. Ugenti-Rita brought against Don Shooter.

16 If she wants to drop the claim about the
17 conspiracy, I don't have any other questions on this.
18 Until then, I have to defend him. And that's what the
19 judge said we are allowed to do.

20 MR. TULLY: And what is the -- what
21 was -- what is the conspiracy that is being alleged
22 that involves the creation of a policy?

23 MS. REBHOLZ: That, again, there was a
24 conspiracy against him compared to other people and
25 resulted in his ousting out of the House. He has

1 indicated that and Ms. Ugenti-Rita has claimed that
2 that somehow defamed her. I need to be able to defend
3 against it.

4 Again, if she wants to drop the claim,
5 I'm happy to go home, but that's not why we are here.
6 I need to be able to defend my client.

7 I don't understand how asking how a
8 policy is implemented and who it was implemented
9 against, that in any way goes against any kind of
10 privilege or any other reason why he didn't tell me how
11 the process works.

12 MR. TULLY: Well, I'll give you a little
13 more leeway here, but I'm not going to -- we're not
14 going to go into all the claims of the suit as to what
15 he was doing there, because your claim is against him,
16 Mr. Shooter, and Ugenti-Rita regarding defamation
17 claims, not decision-making by the Speaker or by the
18 House.

19 MS. REBHOLZ: And, again, I'm looking
20 for, how is the policy implemented against members.

21 A. So I'll go back to what I said before, it's a
22 gray area. It might even simplify it in terms of when
23 you have a policy, it's not implemented against
24 anybody, which was the phraseology you used. It is
25 simply a policy. And the policy predated me.

1 The only thing I did was, essentially,
2 take everything that had been floating out there,
3 including the vast majority of the policy was really,
4 how do you go about filing a complaint. There was sort
5 of -- it was not formal; it was informal, though it was
6 actually still written down.

7 So I took all that and assembled it to
8 put out there to make very clear what was practice in
9 my view. And I said this multiple times.

10 So at that point, anybody could sort of
11 follow this sort of manual if they wanted to file a
12 complaint. And we followed that as well. We didn't do
13 anything different than had that not existed. It just
14 was the codification of the policy.

15 BY MS. REBHOLZ:

16 Q. And is that different than filing an ethics
17 complaint?

18 A. It is.

19 Q. How is it different?

20 A. An ethics complaint is a formal, you know,
21 essentially, allegation that you file -- actually,
22 anybody can file against a member, so even the public,
23 and they submit it to the ethics chair.

24 Policies as to how -- sort of how we
25 conduct ourselves, how we operate in the House, you

1 know. A lot of that is decorum, but also it gets into
2 how you treat other people and if somebody is
3 mistreating somebody.

4 Then in this case, I was formalizing how
5 you go about expressing the complaint and kind of the
6 process to elevate it to the next level, who you can
7 talk to, confidentiality, all that, which there had
8 been a lot of questions about up to that point.

9 Q. Has there been any other complaints filed
10 throughout this process since the implementation in
11 2017 --

12 MR. TULLY: Object to foundation.

13 BY MS. REBHOLZ:

14 Q. -- that you know of?

15 A. To my knowledge, the folks that filed
16 complaints were entirely against Shooter, of which
17 there were many.

18 Q. Other than the ones that were filed against
19 Shooter, do you know of any other complaints that were
20 filed pursuant to your zero tolerance policy?

21 MR. TULLY: Object to the form.

22 A. I don't.

23 BY MS. REBHOLZ:

24 Q. And that's not a policy that was ever voted on
25 by the members of the House; is that correct?

1 A. It was.

2 Q. It was voted on?

3 A. Uh-huh.

4 Q. When was it voted on?

5 A. January or February time frame of 2018.

6 Q. And did it pass?

7 A. It did.

8 Q. Once the complaint was made against
9 Mr. Shooter, you made the decision to remove him as
10 chair of Appropriations; is that correct?

11 A. Yeah.

12 Q. And that's something that you --

13 A. Actually, at the time, it was suspended. I
14 didn't formally remove him.

15 Q. And that's something, as Speaker of House, you
16 could do?

17 A. Correct.

18 Q. And at the time Ms. Ugenti-Rita was chair of
19 Ways and Means; is that correct?

20 A. Correct.

21 Q. You did not suspend her chairmanship, did you?

22 A. No.

23 Q. You had several letters from members asking
24 you to either suspend both or to reinstate both; is
25 that correct?

1 MR. TULLY: Don't answer that question.
2 It's legislative privilege.

3 THE WITNESS: It's all public.

4 MR. TULLY: What's that?

5 MS. REBHOLZ: That's all public.

6 THE WITNESS: All public. The answer is
7 no. I had one letter signed by -- I forget how many,
8 but several members of the House.

9 BY MS. REBHOLZ:

10 Q. And you still chose not to reinstate
11 Mr. Shooter as chairman; is that correct?

12 A. Correct.

13 Q. And you chose not to remove Ms. Ugenti-Rita?

14 A. Correct.

15 Q. Once the investigation was complete, were you
16 provided with a draft copy of the report?

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

18 BY MS. REBHOLZ:

19 Q. Are you asserting a privilege?

20 MR. TULLY: Yes.

21 A. Yes.

22 BY MS. REBHOLZ:

23 Q. Did you have an opportunity to review and
24 revise that report?

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

1 Asserting the **privilege** as to all questions regarding
2 the report, its analysis.

3 MR. BERNSTEIN: Which **privilege**? Can you
4 be specific, please?

5 MR. TULLY: Yes. The **legislative**
6 **privilege** as well as the attorney-client privilege as I
7 earlier stated at the beginning of this.

8 BY MS. REBHOLZ:

9 Q. Do you know when Mr. Shooter was first shown a
10 copy of the report?

11 A. I'd need a calendar to go look at, but, yeah,
12 he was shown -- before it was released publicly, he was
13 shown a copy. Both of them were.

14 Q. Do you know -- do you know how long before it
15 was made public they were ...

16 A. I mean, a couple -- a day or two probably.

17 Q. Do you know if they were given any opportunity
18 to comment on anything that was in the report?

19 A. Yes.

20 Q. How were they advised to do that, if you know?

21 A. I don't remember.

22 Q. Was that something you would have directed
23 them to do?

24 A. I don't think so.

25 Q. Once the report was released, it was not sent

1 to the ethics committee for evaluation, correct?

2 A. Correct.

3 Q. Is that something you could have chosen to do?

4 A. Sure.

5 Q. Instead you decided to have a vote to expel

6 Don Shooter; is that correct?

7 MR. TULLY: Object to the form.

8 A. I said I opted to share with every member of
9 the House and the general public.

10 BY MS. REBHOLZ:

11 Q. Why did you decide to do that?

12 MR. TULLY: Don't answer that question.
13 It's part of the legislative privilege.

14 BY MS. REBHOLZ:

15 Q. Did you ever speak with the woman who made
16 allegations against Ms. Ugenti-Rita in the report?

17 MR. TULLY: Don't answer that question.
18 It's part of the legislative privilege.

19 BY MS. REBHOLZ:

20 Q. Are you asserting your privilege?

21 A. Yes.

22 Q. I don't know that I have any other questions
23 for you at this time. But, again, I reserve my right
24 to re-call you depending upon the court's ruling in
25 this case.

1 EXAMINATION

2 BY MR. BERNSTEIN:

3 Q. Good afternoon, sir. Earlier you were asked
4 about lawsuits that you were a party to.

5 MR. TULLY: Can I ask a question?

6 MR. BERNSTEIN: Sure.

7 MR. TULLY: Who do you represent?

8 MR. BERNSTEIN: I represent Mr. Shooter
9 on his counterclaim against Ms. Ugenti-Rita and have
10 been granted permission by the court today to ask
11 questions.

12 MR. TULLY: And you represent
13 Mr. Shooter in defense of --

14 MS. REBHOLZ: The defense of the
15 defamation. He filed a counterclaim against
16 Ms. Ugenti-Rita.

17 MR. BERNSTEIN: And just so the record is
18 clear, I stated earlier, because I anticipate some
19 objections from you, Ms. Ugenti-Rita's complaint, and
20 I'm reading from -- in several places, but I'll just
21 read from one place, paragraph 32.

22 "On or about November 8, 2017, and again
23 on February 1, 2018, after his expulsion, Defendant
24 Donald Shooter slandered and defamed Plaintiff by
25 making false and defamatory statements to third parties

1 and Plaintiff, including but not limited to, one, that
2 Plaintiff was lying about his harassment and, two,"
3 counsel, "that the only reason why Plaintiff made the
4 allegation against him was that she was motivated by
5 promises of dark money, illegal campaign money."

6 So Ms. Ugenti-Rita has clearly, in her
7 pleadings, talked about a conspiracy and dark money as
8 the reasons that my client is alleging that she made
9 these allegations against him. So any potential
10 involvement that this gentleman has with this dark
11 money and conspiracy are certainly relevant in this
12 matter.

13 BY MR. BERNSTEIN:

14 Q. Sir, do you remember being asked questions
15 about lawsuits that you were involved in?

16 A. You mean just now?

17 Q. Yes. By counsel previously. She asked you
18 about prior lawsuits.

19 A. Yes.

20 Q. And you said you were involved in
21 landlord/tenant and loans?

22 A. Yeah.

23 Q. And those are the only ones and you were a
24 plaintiff in those, correct?

25 A. Yeah.

1 Q. Isn't it a fact that that's not accurate
2 testimony? In fact, you are a defendant right now in
3 another lawsuit?

4 A. Sure.

5 Q. Okay. You didn't testify to that, did you,
6 sir?

7 A. So when she was asking --

8 Q. Yes or no.

9 MR. TULLY: Hey, hey, no, no. He's going
10 to answer the question. This isn't New York, buddy.
11 We are not doing -- we are not doing this bully
12 nonsense, so just stow the act. It's Arizona.

13 MR. BERNSTEIN: It's a yes-or-no
14 question.

15 MR. TULLY: He'll answer it as fully as
16 he wants to. Otherwise, we'll just get up and leave.

17 MR. BERNSTEIN: Get up and leave, get up
18 and leave. Be my guest. That's your prerogative. You
19 might --

20 A. What do you want me to answer fully?

21 BY MR. BERNSTEIN:

22 Q. My question is: Did you -- when you were
23 asked the question if you were involved in any other
24 lawsuits, did you, in fact, not mention the fact that
25 you were a defendant in a lawsuit currently? Yes or

1 no, sir.

2 A. I'm not obligated to answer in the terms
3 you've outlined for me.

4 Q. Says who?

5 A. Why do I have to obey you?

6 Q. Because I'm asking you a question, and it's a
7 yes-or-no question.

8 A. That last part is your editorial comment.

9 Q. I'm not going to do this with you. If you
10 can't answer -- sorry, if you can't answer yes or no,
11 let me know.

12 A. I will answer --

13 Q. Can you answer the question yes or no, sir?

14 A. I will answer the question fully if you want
15 me to.

16 Q. That is not a full question --

17 A. It's a yes-or-no question for you.

18 Q. The question is: Sir, when you were asked
19 questions about lawsuits you were in, isn't it a fact
20 that you did not mention that you were a defendant in a
21 litigation?

22 A. So what she was asking me about was my past,
23 sort of about me and my background she said. So when
24 we were talking about lawsuits, I was thinking in terms
25 of my past. She had asked me questions about my

1 business. Those were what I was answering.

2 MR. BERNSTEIN: Move to strike the part
3 that's nonresponsive. So, now, Counsel --

4 BY MR. BERNSTEIN:

5 Q. I'm sorry, is that a smirk? Do you think this
6 is funny?

7 A. I find you interesting.

8 Q. Oh, that's good, interesting. Well, I'm not
9 here to interest you or to amuse you.

10 A. I'm not allowed to --

11 MR. MASSEY: Let me just interpose an
12 objection here.

13 MR. BERNSTEIN: This is very, very
14 serious.

15 MR. TULLY: Hold it. Hold it. Hold it.

16 MR. MASSEY: We are here for a
17 deposition, not to argue with the witness or be
18 disruptive.

19 MR. BERNSTEIN: I agree with you,
20 Mr. Massey. I just don't like that he's smirking at me
21 and that he finds it --

22 MR. MASSEY: Well, that's your perception
23 of what he's doing.

24 MR. BERNSTEIN: Correct. You are
25 absolutely right, and he confirmed it. So I just want

1 the record to be clear because we are not videotaping
2 it, which we will do the next time.

3 BY MR. BERNSTEIN:

4 Q. So, now, sir --

5 A. Just so I understand my rights, am I allowed
6 to smile or not?

7 Q. If you find something funny, be my guest and
8 laugh.

9 A. I didn't laugh; I did smile.

10 Q. Smirked.

11 Okay. So, now, you indicated earlier
12 that you spoke with Ms. Ugenti-Rita prior to any
13 investigation being conducted regarding her allegations
14 against Mr. Shooter, correct?

15 A. Yep.

16 Q. Okay. So when she told you -- withdrawn.

17 Did you read her Twitter posts in or
18 around October or November of 2017?

19 A. Probably.

20 Q. And in those posts, did you see that she
21 indicated that she had been sexually harassed since she
22 first entered the House by many -- by various members,
23 more than one? Do you remember reading that?

24 A. I don't specifically remember reading that. I
25 remember reading mostly about Shooter. It is entirely

1 possible she talked about -- I know she didn't name
2 anybody else, but if she made mention of other people,
3 that's possible.

4 Q. So my question to you is: In October or
5 November, before any investigation started, did you ask
6 her about what other members may have harassed her?

7 A. Did I ask her about other members?

8 Q. Correct. Before any investigation.

9 A. I don't -- honestly, I don't remember.

10 Q. You were the House -- you were the Speaker of
11 the House at the time, correct?

12 A. Yes.

13 Q. Would it not have been important for you to
14 know if there were other members of the House harassing
15 her?

16 A. She was voluntarily telling me who was
17 harassing her, at least who she was upset about. So I
18 took her at her word.

19 Q. So if you took her at her word, her word and
20 her post indicated there was more than one individual.

21 So, again, my question is: As speaker of
22 the House, was it important to you to determine what,
23 if any other members, current or past -- withdrawn.
24 Any other members, current members, were who had
25 harassed her? Was that important for you to know?

1 MR. TULLY: He's not going to answer that
2 question. We're going to assert the legislative
3 privilege.

4 MR. BERNSTEIN: This is before any
5 investigation was ever ordered.

6 MR. TULLY: You're asking him about his
7 decision-making process as Speaker of the House, so
8 he's not going to testify about that.

9 MR. BERNSTEIN: Okay.

10 BY MR. BERNSTEIN:

11 Q. You indicated that Mr. Shooter never filed a
12 formal ethics complaint, correct?

13 A. Correct.

14 Q. And Ms. Ugenti-Rita didn't file one either,
15 did she?

16 A. Correct.

17 Q. But despite the fact that no complaints were
18 filed, you felt it incumbent upon you to order an
19 investigation?

20 MR. TULLY: He's not going to answer that
21 question. Legislative privilege.

22 BY MR. BERNSTEIN:

23 Q. Did you order an investigation of Ms. Rios's
24 allegations?

25 A. That was a decision of the ethics chair at

1 that point since a formal ethics complaint had been
2 filed. And I told the ethics chair he could avail
3 himself of the investigative committee if he so chose.

4 Q. Just so I'm clear, you told Mr. Farnsworth
5 that he could submit Ms. Rios -- the allegations
6 against Ms. Rios to this investigative -- the law firm
7 that was doing the investigation?

8 A. Correct.

9 MR. BERNSTEIN: So just for the record, I
10 think the witness has waived any **privilege** because he's
11 now answered something, which would have been
12 **legislative privilege** as he was acting in his scope.
13 So I think the witness has now waived his **privilege**,
14 but I'll leave that, obviously, to Counsel's decision.

15 THE WITNESS: That's all public.

16 MR. TULLY: Don't talk.

17 BY MR. BERNSTEIN:

18 Q. It's public that you told Mr. Farnsworth that
19 he could refer it to this investigation law firm, the
20 firm that was doing the investigation?

21 A. Yeah.

22 Q. Okay. Can you tell me where that is in
23 public?

24 A. I'll have to find it for you. I don't know.

25 Q. Okay.

1 A. He may have even said it himself, but it was
2 plainly talked about by everybody, which is why her --
3 that investigation was online alongside the rest of
4 them.

5 Q. You indicated earlier that you spoke to
6 Ms. Ugenti-Rita out of concern for yourself, that her
7 statement that she had gone to membership -- to
8 leadership prior and when answered, you were afraid
9 that would look negative upon you. Do you recall that
10 testimony?

11 MR. TULLY: Form.

12 MR. MASSEY: Join.

13 A. So my focus was on clarity. People could
14 misunderstand that she was thinking she had come to me;
15 she had not. She agreed that that was unclear. And so
16 all we discussed was, moving forward, please clarify
17 that when you say "leadership," which can mean a lot of
18 different things, it predated yours truly.

19 BY MR. BERNSTEIN:

20 Q. Correct. And she agreed to do that, to
21 clarify?

22 A. Yes.

23 Q. Okay. So my question to you is: Did you
24 agree to do anything for her in response to her
25 agreeing to clarify her statement for you?

1 A. No.

2 Q. Okay. And you would agree with me, sir, that
3 when you became Speaker of the House, the House did not
4 have a written policy concerning sexual harassment,
5 correct?

6 A. Yes and no. There were written pieces, for
7 instance, when members get training, you'll see a
8 PowerPoint or they'll see different things, so it is
9 text. In that sense, it is written. There was not a
10 sort of more comprehensive, organized version of it
11 until we assembled it.

12 Q. Are you familiar with the Yellow Sheet Report?

13 A. Yes.

14 Q. What is that?

15 A. It's sort of an internal political, almost
16 gossip column.

17 Q. And is that something that's published?

18 A. Yeah. You can subscribe.

19 Q. Okay. And they have reporters, to your
20 knowledge?

21 A. Yes.

22 Q. Have you ever given interviews to reporters
23 that you believe to be associated with the Yellow Sheet
24 Report?

25 A. Many times.

1 Q. Do you have any reason to -- as you sit here
2 today, do you have any reason to question the
3 credibility or the accuracy of what is contained in
4 those reports that are attributed to you?

5 MR. MASSEY: Objection. Form,
6 foundation.

7 MR. TULLY: Join.

8 A. I've never been misquoted.

9 BY MR. BERNSTEIN:

10 Q. Thank you.

11 (The witness and Mr. Tully confer off the
12 record.)

13 BY MR. BERNSTEIN:

14 Q. I'm sorry, I forgot, at any time if you need a
15 break for the bathroom or to talk to counsel, please
16 just let me know. We are more than happy to have that
17 break.

18 Now, if I -- please, I heard some and I
19 didn't hear some, so I apologize. Did you say that the
20 policy was adopted by the House in January/February
21 2018?

22 MR. TULLY: Object to form.

23 A. Correct.

24 BY MR. BERNSTEIN:

25 Q. And that was what was called a zero policy --

1 the zero tolerance policy?

2 A. I probably characterized it or maybe others
3 did in this way. I don't remember specifically if I
4 used those -- if I used that characterization or title
5 of the policy.

6 Q. So would you agree with me, sir, that this
7 policy that we are talking about was enacted months
8 after the House retained a law firm to conduct an
9 investigation of Mr. Shooter?

10 A. No. So the formulation of all of those
11 pieces, as I have already described, were then approved
12 by the House. That's not to say there had not been a,
13 for instance, zero tolerance policy previously. It's
14 just that this was organized into a formal process that
15 people could easily identify and follow. And that was
16 formally adopted by the House in January or February.

17 That's not to say that anyone couldn't,
18 essentially, follow that process prior to then or have
19 filed a complaint prior to then. It just made it
20 very -- more easily understood by the general public.

21 Q. Now -- can we mark this?

22 (Exhibit No. 1 marked.)

23 BY MR. BERNSTEIN:

24 Q. Sir, if you'd take your time to look at this.
25 Have you had an opportunity to read it?

1 A. I did.

2 Q. Thank you, sir.

3 And if you look -- this is dated January
4 30, 2018?

5 A. Yep.

6 Q. Okay. And it's "Speaker Mesnard Releases
7 Sexual Harassment Report and Announces Remedial
8 Action." Do you see that?

9 A. Correct.

10 Q. And then you see there's bullet points farther
11 down?

12 A. I do.

13 Q. And the third bullet point says, "Speaker
14 Mesnard will propose augmenting the House rules, which
15 carry the full force of law, to require a formal
16 anti-harassment policy by which all Members must
17 abide." Do you see that?

18 A. Yes.

19 Q. Would you agree with me, sir, that as of June
20 (verbatim) 30, 2018, there was no such House rule?

21 MS. REBHOLZ: January 30.

22 MR. BERNSTEIN: January 30, thank you.

23 A. I do not.

24 BY MR. BERNSTEIN:

25 Q. You don't agree? Okay.

1 And then the next one, "Speaker Mesnard
2 will propose adding a House rule requiring a formal
3 behavioral code of conduct for all Members." Would you
4 agree with me, sir, that as of January 30, 2018, there
5 was no such House rule requiring formal behavioral code
6 of conduct for any members?

7 A. There was no House rule, correct.

8 Q. Okay.

9 A. Is that what you were asking a second ago
10 about whether there was a House rule requiring it?

11 Q. I'm just asking you, if you want to look at
12 the bullet point --

13 A. Yes, I've read them.

14 Q. Right. So I'm asking you, is it a fact that
15 as of January 30, 2018, there was no House rule
16 requiring a formal anti-harassment policy by -- all
17 members must abide; is that correct?

18 A. All of that is correct.

19 Q. So Mr. Shooter was found -- was thrown out on
20 some rule that didn't exist; isn't that a fact?

21 A. That is not correct.

22 MR. TULLY: Hang on. He is not going to
23 answer that.

24 MR. BERNSTEIN: He answered it. He said
25 it's not correct.

1 THE WITNESS: I answered. It's not
2 correct.

3 BY MR. BERNSTEIN:

4 Q. Okay. We are finished with that document.

5 Now, this House rule that you used --
6 withdrawn.

7 This House rule that you said was used to
8 find Representative Shooter responsible, isn't it a
9 fact that you invoked that rule retroactively?

10 MR. TULLY: Hang on. You are not
11 answering that question, both object to the form,
12 foundation; and we are not answering the question on
13 behalf of legislative immunity.

14 BY MR. BERNSTEIN:

15 Q. Isn't it a fact that the zero --

16 MS. REBHOLZ: Immunity or privilege?

17 MR. TULLY: Privilege.

18 MS. REBHOLZ: Objection.

19 BY MR. BERNSTEIN:

20 Q. Isn't it a fact that the zero tolerance policy
21 that the commission you requested -- withdrawn.

22 Isn't it a fact that the zero policy --
23 the zero tolerance policy used to throw Representative
24 Shooter out of the House did not exist at the time of
25 the alleged allegations?

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

2 BY MR. BERSTEIN:

3 Q. Isn't it a fact that as Speaker of the House,
4 you decided to create this policy, this zero tolerance
5 policy, used to throw Mr. Shooter out of the House and
6 apply it retroactively; isn't that correct?

7 MR. TULLY: Don't answer that question.
8 Asserting the privilege.

9 BY MR. BERNSTEIN:

10 Q. To your knowledge, sir, when you left the --
11 well, withdrawn.

12 You are now in the Senate, correct?

13 A. Correct.

14 Q. And that's because you term-limited out of the
15 House?

16 A. Correct.

17 Q. And so now you are going to try to -- eight
18 years you're allowed in each particular house, each
19 particular branch?

20 A. Actually, you can serve four consecutive terms
21 before you must leave, though you can serve again.

22 Q. Right. So it's two years a term, correct?

23 A. Yes, but you can serve again.

24 Q. It's two -- I promise you I'm not playing
25 games here. You are allowed four consecutive two-year

1 terms. That's eight years, right?

2 A. That's what four consecutive terms equates to.

3 Q. Correct. And then you can go to the Senate
4 for one term and then come back to the House, correct?

5 A. Sure.

6 Q. So you term-limited out and now you are in the
7 Senate?

8 A. Correct.

9 Q. Is it your intention to stay in the Senate?

10 A. At least for 2020.

11 MR. TULLY: Well, he doesn't have to
12 answer the question.

13 MR. BERNSTEIN: I'll withdraw the
14 question. I'll withdraw the question.

15 BY MR. BERNSTEIN:

16 Q. And when you left the House in -- when you
17 left the House in 2018, isn't it a fact that there was
18 still no code of conduct for House members, correct?

19 A. I believe that's correct.

20 Q. And in fact, in 2019, the Democrats have
21 voiced their strong disagreement with the fact that you
22 and your predecessor have not enacted the code of
23 conduct which you promised to. Is that a fact?

24 MR. TULLY: Don't answer the question.
25 That has absolutely nothing to do with your lawsuit.

1 I direct him not to answer.

2 MR. BERNSTEIN: It does because what
3 he -- what he said was only for Don Shooter, and he had
4 no intention of creating this code of conduct and his
5 actions speak for --

6 MR. TULLY: Go make that argument to a
7 jury some day, if you get in front of one. I don't
8 think you will.

9 MR. BERNSTEIN: Okay.

10 MS. REBHOLZ: And, I apologize, were you
11 refusing to answer on some sort of privilege?

12 MR. TULLY: Well, privilege and because
13 it's irrelevant, and it's not a factual claim that this
14 witness knows. It's an improper question, and it's for
15 harassment purposes.

16 MS. REBHOLZ: Well, "form," "foundation"
17 are the only objections. I just want to know --

18 MR. TULLY: Well, you asked me to make
19 the objection, so I'm explaining the objection to you,
20 which you can do and ask me to do, so I have.

21 MS. REBHOLZ: But the refusing to answer
22 was based on? I just want a clear record.

23 MR. TULLY: Yeah, I'm directing him not
24 to answer the question --

25 MS. REBHOLZ: Based on?

1 MR. TULLY: -- because of the harassing
2 questions. It's not a question that he's allowed to
3 ask my client. It's irrelevant to this lawsuit, and
4 it's not even a factual question that he can ask. So
5 I'm directing him not to answer.

6 BY MR. BERNSTEIN:

7 Q. So let me ask you --

8 Can you repeat the question, Miss
9 Reporter.

10 (Requested portion of record read.)

11 BY MR. BERNSTEIN:

12 Q. I'll withdraw the question.

13 While you were still Speaker of the House
14 at the time that you were removing Mr. Shooter, did you
15 indicate that you would be enacting a code of conduct
16 for the House?

17 MR. MASSEY: Form and foundation.

18 MR. TULLY: Join.

19 A. I indicated what I indicated there in the
20 press release.

21 BY MR. BERNSTEIN:

22 Q. All right. And that did not happen, correct?

23 MR. TULLY: Object to form.

24 A. So all of those are in future tense, and we
25 began the process for all of them. And eventually it

1 became sort of my successor's role to see those
2 through. That now, at this point, is his decision, but
3 in point of fact, everything that I said I would do we
4 began to do, you know, this summer and then,
5 eventually, a lame duck. And so since they wouldn't
6 have the force of law until the next legislature was
7 sworn in, it made sense to transition them to my
8 successor, which is where it is now.

9 BY MR. BERNSTEIN:

10 Q. Sir, are you familiar with the document
11 entitled Rules of the Arizona House of Representatives?

12 A. Yes.

13 Q. Can you just briefly tell me what that
14 document is?

15 A. So it's a series of rules on how the House
16 will operate and conduct itself. It covers a lot of
17 different areas from parliamentary procedures to
18 motions to even sort of, you know, ethics, for
19 instance, is there. Our ethical obligation, mostly
20 focused on financial considerations. So it outlines,
21 in short, how we are to operate.

22 Q. And would sexual harassment be one of those
23 rules in there?

24 A. So that was one that we added.

25 Q. When you say "we," who is "we," sir?

1 A. The Chamber adopted that rule on that --
2 whatever, February probably, that early February time
3 frame.

4 Q. Now, forgive me, you indicated that session
5 is -- the goal is 100, but it might be 120?

6 A. What I said is the goal is 100, but there's no
7 end date that we are obligated to stop by. So it can
8 change from as short as 80-ish days like it was a few
9 years ago to this last year, it must have been 140. I
10 don't know.

11 Q. What is the session -- what is the time, the
12 months? Are we talking about January of the year to
13 December?

14 A. The only -- the only sort of formal anything
15 is that the session must begin on the second Monday of
16 January per the Constitution in Article IV and that is
17 all.

18 We then set the rules beyond that as to,
19 you know, when committees can meet and when they can
20 hear certain bills. And the goal is 100 days, but
21 there's no obligation we go less or more or stick to
22 100.

23 Q. So those 100 -- we'll use the goal of 100
24 days.

25 A. Sure.

1 Q. So those 100 days would be encompassed in one
2 calendar year?

3 A. Yes.

4 Q. Okay.

5 (Exhibit Nos. 2 and 2A marked.)

6 BY MR. BERNSTEIN:

7 Q. Okay. Have you had an opportunity to look at
8 that, sir? He has 2.

9 A. Do you want me to read it all?

10 Q. I just want you to be familiar with it. Is
11 that a document you have seen before?

12 A. It's a document I have seen before.

13 Q. And my question -- it says, "Rules of the
14 Arizona House of Representatives, 53rd Legislature,
15 2017-2018." Do you see that, sir?

16 A. I do.

17 Q. Okay. So I promise this is not a trick
18 question. I know we've had some back and forth so far,
19 but it says, "2017-2018." I got from you before that
20 the legislature session is one calendar year, so is
21 this the rule that was supposed to be for 2017 and 2018
22 or something else? I'm just trying to understand from
23 the title.

24 A. Oh, I didn't realize you didn't understand
25 that.

1 Q. I did not.

2 A. Let me explain it to you. We have annual
3 legislative sessions per the Constitution. They begin
4 on the second Monday of January. The first one is
5 going to be the first regular; the second one will be
6 the second regular. That constitutes a two-year term.
7 The rules we set, which we adopt on the first day of
8 the session -- of course, we can and often do modify
9 them during the course of the two years -- are set for
10 those two years, but they are set until you change
11 them. So they are in place, and they became the basis
12 for the rules that would be adopted the next term.

13 So these were, you know, adopted in some
14 form on the opening day of session. And then during
15 the course of the session, we probably -- in fact, I
16 know I introduced a number of rule changes myself that
17 had nothing to do with harassment or anything, so they
18 change.

19 Q. Okay. So when it says the "53rd Legislature,"
20 that would have been January of 2017 up and until
21 whenever it was finished in 2018, the two years?

22 A. Yes. That would be the two years, correct.

23 Q. So I understand, okay.

24 Now, does this -- and, again, does this
25 document have a date? I'll be honest, I've looked, and

1 I don't see a date. Does this document typically -- I
2 mean, based upon what you've seen in your years there,
3 does it typically have a date when it's approved or
4 anything like that? I want to make sure I'm not
5 missing something, so I'm not trying to trick you.

6 A. Yeah. So it's -- probably the best comparison
7 is to state law. In fact, it has that force. State
8 law gets adopted and changes as each session goes by
9 and the same with the rules. So you'd have to look at
10 the records for what the specific rule was -- or the
11 continuum of rules, what they were on a specific day
12 knowing that, of course, as laws can change, the rules
13 can change, you know, the next day.

14 So I don't know when this was -- I don't
15 know which version of the 2017-2018 rules are in front
16 of me. I'd have to read it all to know.

17 Q. Are there often various copies or various
18 copies of the rules? Meaning, they always change?

19 A. They always change?

20 Q. Do they always change? Is it typical that
21 they change?

22 A. It's typical that there are tweaks. Sometimes
23 more substantive ones like the ones I came up with even
24 before anything to do with Shooter. And then some
25 years, there are few, if any, changes. It just totally

1 depends on the legislature.

2 Q. And, again, based on your previous
3 experience -- if you can answer it, fine; if you
4 can't -- is it typical if there's a change in the
5 session, the '17 to '18 session, would that be noted in
6 the next copy or would it just be somewhere with, like,
7 the archives or someone who keeps all the votes, that
8 that's where the change would be noted?

9 A. I've never thought about it. Probably the
10 latter.

11 Q. I'm going to show you what was previously
12 marked as 2A. Just from the first page, would you
13 agree that 2A and -- 2 and 2A kind of look the same?

14 A. They seem to.

15 Q. Okay. With regards to 2A, I would draw your
16 attention to page 3, if you want to look at --

17 A. Which one on page 3?

18 Q. Well, I guess if you go to page 3 on both of
19 them. It actually comes under Rule 4 under "The
20 Speaker," F.

21 A. F, okay.

22 Q. Let me ask you this question: Is a
23 representative considered a staff member?

24 A. No.

25 Q. So would you agree with me that Rule 4F

1 where -- withdrawn.

2 Is there a difference between the two
3 versions that I sent -- that you have in front of you
4 with regards to Rule 4F?

5 A. Correct.

6 Q. And the change appears to be that "The Speaker
7 shall promulgate a written code of conduct and a
8 written harassment prevention policy applicable to
9 staff."

10 A. Correct.

11 Q. And you agree with me that that does not apply
12 to House members, correct?

13 A. It does not.

14 Q. And if you look at the last page of 2A -- I
15 think that's 2A, the one you have right there.

16 A. This is 2A, okay.

17 Q. And if you look at the one that's marked 2,
18 there's no Rule 38 in the one that's marked 2, correct?

19 A. That's correct.

20 Q. So is it fair now to say that Rule 38 is a new
21 rule?

22 A. Correct.

23 Q. And there's no indication of when that rule --
24 from the document in front of you, there's no
25 indication of when that rule came into effect, correct?

1 A. That's correct.

2 Q. You're saying that somewhere in the
3 legislature, there's -- somewhere there would be a
4 date, some official date, when -- that there was a vote
5 to put Rule 38 in, correct?

6 A. Correct.

7 Q. So now Rule 38A, "The House shall have a
8 written code of conduct applicable to members. This
9 code of conduct shall be adopted, and may be amended,
10 upon vote of majority of the members of the House."

11 A. Uh-huh.

12 Q. Am I correct that that code of conduct still
13 has not been adopted, correct?

14 A. No. That's not correct.

15 Q. That's not correct?

16 A. I'm sorry, A?

17 Q. Yes.

18 A. That's my understanding. These are the rules
19 of the House, and I'm not in the House anymore, so I
20 haven't really looked at them in a while.

21 Q. Fair enough, sir. As of -- when you left in
22 2018 as Speaker, would you agree with me that A did not
23 occur at that time?

24 A. It was not in place, correct.

25 Q. Okay. Now, "The House shall have a written

1 harassment prevention policy applicable to member
2 behavior. This policy shall be adopted, and may be
3 amended, upon the vote of majority of the members of
4 the House." Do you see that?

5 A. I do.

6 Q. To your knowledge, when did -- is that what
7 you were talking about got voted sometime in January or
8 February?

9 A. So two things, or maybe more, got voted. One,
10 the addition of Rule 38; and then, two, part B of 38
11 was already completed. So that was what was formally
12 adopted.

13 MR. BERNSTEIN: I'm sorry, Ms. Reporter,
14 can you just repeat that because I didn't hear the ...

15 (Requested portion of record read.)

16 BY MR. BERNSTEIN:

17 Q. Let me ask you this: When -- as of October
18 31, 2017, so in terms of this matter, it is after
19 Ms. Ugenti-Rita's Facebook post and before she had
20 named the allegations publicly against Mr. Shooter. I
21 think that's --

22 A. I don't know the timeline, but I'll take your
23 word for it.

24 Q. Well, put it this way: After
25 Ms. Ugenti-Rita's Facebook post and before you

1 suspended Representative Shooter from his chairmanship,
2 that occurred on November 10?

3 A. I haven't gone back to look at the calendar,
4 so are you asking me to validate the dates or what?

5 Q. Fair enough. No, no, no. I just ...

6 Can we mark this as Exhibit 3?

7 (Exhibit No. 3 marked.)

8 BY MR. BERNSTEIN:

9 Q. Sir, looking at that, this is from the Yellow
10 Sheet Report that we spoke about.

11 A. Yeah.

12 Q. Is that a picture of you?

13 A. It's not.

14 Q. It's not a picture of you, okay.

15 Did you ever contact them or take offense
16 to the fact of that picture and that statement there?

17 A. No.

18 Q. Did you ever -- did you see this on October
19 31?

20 A. Probably.

21 Q. Do you agree with the caption, "If we could
22 finally get a sexual harassment policy on paper, that
23 would be great"?

24 MR. TULLY: What relevance does this have
25 to the lawsuit between your client and --

1 MR. BERNSTEIN: Sure. It exactly goes to
2 the dark money conspiracy that Ms. Ugenti-Rita and this
3 witness and other witnesses conspired to do exactly
4 what they did to him.

5 MR. TULLY: That's sort of meaningless to
6 me. What does whether or not the House adopted a
7 policy on October 31, 2017, and his reaction to whether
8 people thought they ought to have one or not, how does
9 that --

10 MR. REBHOLZ: It's the idea that there
11 was no harassment policy before any allegations were
12 made against Shooter and that the only time a
13 harassment policy has been initiated was against
14 Shooter.

15 THE WITNESS: That's not even what the
16 caption says.

17 MS. REBHOLZ: I think he's asking general
18 questions to get to that point.

19 MR. BERNSTEIN: I'm moving on. Thanks,
20 Jen.

21 BY MR. BERNSTEIN:

22 Q. Do you know Brian Townsend?

23 A. Uh-huh.

24 Q. And who is he?

25 A. Who is he what? He's a guy.

1 Q. Who is he?

2 A. Okay. He used to work at the legislature. I
3 have no idea what he's doing now. I think he's also
4 worked for other agencies at different times.

5 Q. And is he Representative Ugenti-Rita's husband
6 now?

7 MR. TULLY: Fountain.

8 A. I don't think so.

9 BY MR. BERNSTEIN:

10 Q. Okay. Was he at the center of the allegations
11 against Ms. Ugenti-Rita?

12 MR. MASSEY: Form and foundation.

13 A. No, I don't know.

14 BY MR. BERNSTEIN:

15 Q. You don't know?

16 MR. TULLY: **Objection. And to the extent**
17 **it involves the investigation, I'm going to direct him**
18 **not to answer.**

19 A. You are welcome to restate the question.

20 BY MR. BERNSTEIN:

21 Q. To your knowledge, was Mr. Townsend
22 interviewed as part of the investigative report?

23 MR. TULLY: **Don't answer that question.**

24 MR. BERNSTEIN: **Why? It's a public**
25 **document.**

1 MR. TULLY: Why are you asking him?

2 MR. BERNSTEIN: It's a public document.

3 MR. TULLY: Then you don't need to know.
4 You know the answer.

5 MS. REBHOLZ: So you're directing him not
6 to answer? What is the --

7 MR. TULLY: It's a legislative privilege.

8 MS. REBHOLZ: Okay.

9 MR. TULLY: He's not going to answer any
10 questions regarding the investigation.

11 MR. BERNSTEIN: We can mark this as
12 Exhibit 4. So it's a public document. You won't let
13 him answer questions about a public document?

14 MR. TULLY: I'm not going to let him
15 answer any of them, so you can make your record.

16 MR. BERNSTEIN: I certainly will.

17 (Exhibit No. 4 marked.)

18 BY MR. BERNSTEIN:

19 Q. I ask you to turn to page 73.

20 A. What was the question?

21 Q. Did you turn to page 73?

22 A. I'm there.

23 Q. At the top. It says --

24 MR. MASSEY: I'm sorry, which page?

25 MR. BERNSTEIN: 73, Counsel.

1 MR. TULLY: I think it's Bates labeled
2 DS 190.

3 MS. REBHOLZ: It's page 73 of the report.

4 MR. MASSEY: Thank you.

5 BY MR. BERNSTEIN:

6 Q. The allegation says, "Ms. Ugenti-Rita engaged
7 in or facilitated unwelcomed harassing and offensive
8 communications." Do you see that?

9 A. I do.

10 Q. Do you see, (c), Mr. Townsend's response?

11 A. Yeah.

12 Q. So my question to you at this time: Did you
13 have knowledge that Mr. Townsend was involved with the
14 allegations of misconduct regarding Ms. Ugenti-Rita?

15 MR. TULLY: He's not going to answer that
16 question. We'll assert legislative privilege.

17 MR. BERNSTEIN: Okay.

18 BY MR. BERNSTEIN:

19 Q. When did you first know -- when, to your
20 recollection, did you first meet or know Mr. Townsend?

21 A. I've been -- might have been 2003, '4,
22 somewhere in there.

23 Q. And do you know Mr. Kirk Adams?

24 A. Yes.

25 Q. And who is that?

1 A. Again, a way to describe him, he was a member
2 of the House. Former Speaker, was the governor's chief
3 of staff for a while. I'm not sure now what he's
4 doing.

5 Q. In the later part of the 2017, in October or
6 November of 2017, was he, to your knowledge, the
7 governor's chief of staff?

8 A. Yes.

9 Q. Did you know that Mr. Townsend, at one point,
10 was Mr. Adam's chief of staff?

11 A. I did not.

12 Q. In and around November of 2000 -- right around
13 the time of this investigation, in or around the
14 beginning of November of 2017, do you recall
15 Mr. Shooter, as chairman of the appropriations
16 committee, indicating that he was going to issue
17 subpoenas to clean up corruption in the government?

18 A. He told me that.

19 Q. He told you that, okay.

20 MR. TULLY: You have to wait.

21 BY MR. BERNSTEIN:

22 Q. And are you familiar with a contract that the
23 State had with Periscope?

24 A. I've heard of Periscope. I don't have any
25 idea what contract they have with them off the top of

1 my head, if they have any at all.

2 Q. To your knowledge, what was -- you said you
3 heard of it. To your knowledge, if you have any
4 knowledge, what was Periscope?

5 A. I know the name Periscope. I literally know
6 nothing beyond the name Periscope.

7 Q. In and around November, October, and November
8 of 2017, did you know that Mr. Townsend was a lobbyist
9 for Periscope?

10 A. When?

11 Q. October/November of 2017.

12 A. Maybe. Honestly, I don't recall because I
13 don't want to say no.

14 Q. Sir, on behalf of your counsel, I don't want
15 you to guess. If you have an estimation, that's fine.
16 But if you don't know, I don't want you to guess. Just
17 to the best of your recollection.

18 A. I don't remember.

19 Q. Okay. And did you know in the summer/fall of
20 2017 that, as a result of Representative Shooter's
21 efforts, that Periscope lost its state contract?

22 A. Say that again.

23 MR. MASSEY: Form, foundation.

24 BY MR. BERNSTEIN:

25 Q. Are you aware that in the summer/fall of 2017,

1 so the end of -- you know, June, July, August, into
2 September and October, somewhere in that area, that
3 Periscope, as a result of Representative Shooter's
4 efforts, Periscope lost its state contract?

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

7 MR. TULLY: Join.

8 A. I recall, sort of in the vaguest way, Shooter
9 mentioning subpoenaing and state contracts. And I
10 never really asked him about that; I know it was
11 something he was looking into. I have, at any given
12 time, lots of members looking into lots of different
13 things.

14 He may -- the reason I'm saying that,
15 maybe he said something to me about it. If so, I don't
16 recall.

17 BY MR. BERNSTEIN:

18 Q. And did you know that once Periscope lost its
19 state contract, that Mr. Townsend was fired from
20 lobbying for Periscope?

21 MR. TULLY: Object to foundation.

22 MR. MASSEY: Join.

23 A. I don't know that.

24 BY MR. BERNSTEIN:

25 Q. Prior to the investigation of

1 Ms. Ugenti-Rita's allegations of Don Shooter, were you
2 aware of the allegations against Ms. Ugenti-Rita?

3 MR. TULLY: Object to the form of that
4 question.

5 A. What does that mean?

6 BY MR. BERNSTEIN:

7 Q. Okay. Fair enough.

8 There came a time that Ms. Ugenti-Rita
9 made allegations against Don Shooter, correct?

10 A. Yes.

11 Q. And there was a time that Mr. Shooter made
12 allegations regarding the inappropriateness of
13 Ms. Ugenti-Rita, correct?

14 A. Right, yeah.

15 Q. And both of those were investigated by this
16 report that subsequently came out in January?

17 A. Yes. I told the investigators to look at both
18 sides.

19 Q. So my question is: When did you first learn
20 of the allegations against Ms. Ugenti-Rita?

21 A. You mean Shooter's allegations?

22 Q. The allegations that you submitted to be
23 investigated, yes.

24 A. When Shooter brought them up.

25 Q. To your knowledge, was it before or after you

1 suspended Mr. Shooter from his chairmanship?

2 A. Oh, I have no idea.

3 (Exhibit No. 5 marked.)

4 MR. BERNSTEIN: Do you want to take a
5 break?

6 MR. TULLY: No.

7 BY MR. BERNSTEIN:

8 Q. This is the Yellow Sheet --

9 A. Yes.

10 Q. -- dated November 8, 2017?

11 A. Yep.

12 Q. And if you turn to page 2, there's a whole
13 title that says, "Mesnard: Sexual Harassment Probe Has
14 Begun"?

15 A. Uh-huh.

16 MS. REBHOLZ: Is that a yes?

17 THE WITNESS: Yes.

18 MR. BERNSTEIN: Thank you.

19 BY MR. BERNSTEIN:

20 Q. And if you just read that to yourself, we
21 don't need to read the whole sentence. Just let me
22 know when you're finished.

23 (Exhibit No. 6 marked.)

24 A. Yes, I'm sorry.

25 BY MR. BERNSTEIN:

1 Q. And so would you agree with me, sir, that on
2 November 8, 2017, you were aware of the allegations
3 against Ms. Ugenti-Rita, correct?

4 A. Yes.

5 Q. And those -- okay.

6 Now, is it against House policies to have
7 an affair with a House staffer?

8 MR. TULLY: Object to the form of the
9 question and -- leave it at that, at least for now.

10 A. Possibly.

11 BY MR. BERNSTEIN:

12 Q. And is that why you sent it to be
13 investigated?

14 A. That was certainly part of the calculus.

15 Q. What was the other part?

16 MR. TULLY: No. He's not answering that
17 part.

18 MR. BERNSTEIN: Well, he can't answer one
19 and not the other.

20 MR. TULLY: Well, he shouldn't have
21 answered the first one.

22 MR. BERNSTEIN: Well, but he did, but he
23 did.

24 MR. TULLY: No. He told you -- no, he's
25 not going to.

1 MR. BERNSTEIN: Cavalier. So he did.

2 MR. TULLY: Yeah, yeah. That is not on
3 purpose.

4 MR. BERNSTEIN: He did answer it.

5 MR. TULLY: He's not answering any
6 questions about why he's taking actions as part of the
7 Speaker of House.

8 BY MR. BERNSTEIN:

9 Q. Is it improper for a House member to have a
10 relationship with a lobbyist?

11 MR. MASSEY: Form and foundation.

12 MR. TULLY: Join.

13 A. Probably. Depends on who you ask.

14 BY MR. BERNSTEIN:

15 Q. I'm asking you, sir, as the Speaker of the
16 House --

17 MR. MASSEY: Same objections

18 BY MR. BERNSTEIN:

19 Q. -- back when you were Speaker.

20 MR. MASSEY: Same objections.

21 A. So that was an interesting internal
22 conversation lots of people had, lots of different
23 lines in the sand as to what is or isn't.

24 The only place I came down was a member
25 of the House should not have a relationship with a

1 subordinate. That was as far as I was willing to go.

2 BY MR. BERNSTEIN:

3 Q. So a lobbyist would not be a subordinate --

4 A. Correct.

5 Q. -- because they wouldn't work for the House?

6 A. Correct.

7 Q. Have you ever requested any investigations of
8 a House member having a relationship with a lobbyist?

9 MR. TULLY: I'm not going to have him
10 answer that question.

11 MS. REBHOLZ: Based on?

12 MR. TULLY: **Legislative privilege**.

13 MS. REBHOLZ: I just want a clear record.

14 MR. TULLY: Yeah. That's fine.

15 BY MR. BERNSTEIN:

16 Q. I'm going to show you what has been marked as
17 **Exhibit 6**. That is a press release dated November 10,
18 2017, correct?

19 A. Yep.

20 Q. So we can agree that that's two days after
21 you've acknowledged having -- well, you having --
22 withdrawn.

23 We can agree that that's two days after
24 you have been quoted as knowing about the allegations
25 against Ms. Ugenti-Rita, correct?

1 A. Yes.

2 Q. And in the allegations that were alleged
3 against Mr. Shooter, to your knowledge, were there any
4 allegations of having sexual conduct -- sexual contact
5 with another individual?

6 MR. TULLY: Hang on. Can you read back
7 that question?

8 (Requested portion of record read.)

9 MR. TULLY: You don't need to answer that
10 question.

11 MR. BERNSTEIN: I'm sorry?

12 MR. TULLY: We're not going to answer
13 that question.

14 MR. BERNSTEIN: For what reason?

15 MR. TULLY: Legislative privilege.

16 MR. BERNSTEIN: Thank you.

17 BY MR. BERNSTEIN:

18 Q. And would you agree with me that the
19 allegations against Mr. Shooter basically stemmed from
20 inappropriate comments or remarks?

21 MR. MASSEY: Form and foundation.

22 MR. TULLY: Yeah, you know, I'm going to
23 direct him not to answer that question.

24 MR. BERNSTEIN: Under what?

25 MR. TULLY: Under legislative privilege.

1 MR. BERNSTEIN: Okay.

2 MR. TULLY: And it's also irrelevant to
3 this deposition. I really think you are abusing this
4 deposition, using it for the other case.

5 MR. BERNSTEIN: Counsel, I'm not using it
6 for the other case.

7 MR. TULLY: Yeah. All right.

8 MR. BERNSTEIN: Ms. Ugenti-Rita has
9 alleged a conspiracy and --

10 MR. TULLY: That doesn't -- that doesn't
11 open everything about everything.

12 MR. BERNSTEIN: Well, the judge
13 apparently allowed it, so ...

14 MR. TULLY: Well, we'll see. I don't
15 think so. He prevented you from obtaining the file.

16 MR. BERNSTEIN: It was also a different
17 judge, Counsel.

18 MR. TULLY: I don't care; it's still a
19 ruling of the court.

20 MR. BERNSTEIN: It's a different judge,
21 so this judge today allowed us to go forward with these
22 questions.

23 MR. TULLY: No, he didn't.

24 MS. REBHOLZ: She.

25 MR. TULLY: She allowed you to go forward

1 with the deposition.

2 MR. BERNSTEIN: Yes, yes, yes.

3 MR. TULLY: That's something different.

4 MR. BERNSTEIN: Well, she didn't ask for
5 question-by-question. She asked for general themes,
6 just like you have been doing, which is exactly what
7 has been told to her.

8 MR. TULLY: I'm not party to that.

9 BY MR. BERNSTEIN:

10 Q. Sir, is it fair to say that on November 10,
11 2017, you elected on your own to suspend Mr. Shooter
12 from his chairmanship and did not suspend
13 Ms. Ugenti-Rita from hers, correct?

14 MR. TULLY: Object to the form.

15 A. That's correct.

16 BY MR. BERNSTEIN:

17 Q. And isn't it a fact that you did not suspend
18 Ms. Ugenti-Rita because you were working with her to
19 discredit Mr. Shooter and get him out of the House?

20 MR. MASSEY: Form and foundation.

21 MR. TULLY: I'm not going to let him
22 answer the question.

23 MR. BERNSTEIN: Counsel is laughing --
24 I'm sorry, not counsel. Just for the record, the
25 witness is laughing.

1 MR. TULLY: Counsel is laughing too.

2 MR. BERNSTEIN: He's actually turning
3 red, the witness now.

4 MR. TULLY: And the -- we're directing
5 him not to answer.

6 MS. REBHOLZ: Based on?

7 MR. BERNSTEIN: Based on what?

8 MR. TULLY: Legislative privilege.

9 MR. BERNSTEIN: Based on legislative
10 privilege?

11 MR. TULLY: Yeah.

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

14 BY MR. BERNSTEIN:

15 Q. Sir, isn't it a fact that you did not suspend
16 Ms. Ugenti-Rita because she had agreed to clear up the
17 record for you as to the leadership she had told about
18 her sexual harassment and was to distance you from that
19 statement; isn't that a fact?

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

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

24 MR. BERNSTEIN: Thank you.

25 BY MR. BERNSTEIN:

1 Q. You were asked questions previously regarding
2 Representative Rios. What is Representative Rios's
3 first name?

4 A. Rebecca.

5 Q. Did you -- and the allegations against
6 Ms. Rios was that she had inappropriate relationships
7 in the House basement with a 24-year-old staffer; is
8 that correct?

9 A. That seems like one of the rumors I heard.

10 Q. At the time that you -- well, when did you
11 hear these rumors?

12 A. So, I mean, the first would have been when I
13 was transitioning in as Speaker, as was mentioned a
14 little while ago. And then I've been hearing them ever
15 since.

16 Q. So if -- at the beginning when counsel, my
17 co-counsel, asked you questions -- I shouldn't say
18 "co-counsel." Counsel for Defendant Shooter in defense
19 of this matter asked you what, if anything, the prior
20 Speaker had told you and asked about sexual harassment
21 allegations. Do you recall telling her that nothing
22 was told to you?

23 A. Was that the question?

24 Q. Is that my question or was that her question?

25 A. Her question.

1 Q. I'm sorry, her question?

2 A. I think you've rephrased her question.

3 Q. I'll let the record -- do you recall being
4 asked a question of what Representative Gowan told you
5 in the transition and you indicated that he didn't tell
6 you anything about sexual harassment initially? Do you
7 recall? Yes or no. I mean, the record will stand --
8 the record speaks for itself.

9 A. No.

10 Q. And is it fair to say that the investigation
11 by the ethics committee and Representative Farnsworth
12 occurred in or around November/December of 2017?

13 A. Repeat that.

14 Q. The ethics committee's investigation, which
15 was chaired by Mr. Farnsworth, right?

16 A. Uh-huh.

17 Q. Yes?

18 A. Yeah.

19 Q. That was in or around the same time, November
20 or December of 2017?

21 MR. MASSEY: Object to the form and
22 foundation.

23 A. It happened sometime later, may have been
24 November, may have been December. I don't specifically
25 remember. You could just tell me probably.

1 BY MR. BERNSTEIN:

2 Q. If I tell you that there's a letter dated
3 December 6, 2017, to Representative Ray Martinez from
4 Mr. Farnsworth in which you are cc'd telling him that
5 the ethics committee is closing the matter, would that
6 refresh your recollection as to the time frame?

7 A. I think I said November or December.

8 Q. And then you weren't sure. I just want to
9 make sure. I don't want to say I'm misleading you.

10 A. Sounds like I'm right.

11 Q. Yes, you are.

12 A. Great.

13 Q. My question is: Did Ms. Rios, at that time,
14 was she a chairperson of any committee?

15 A. No.

16 Q. Did you take any interim action against
17 Ms. Rebecca Rios during the allegations of having sex
18 with a 24-year-old staffer?

19 A. No.

20 Q. You didn't feel it was necessary; is that fair
21 to say?

22 MR. TULLY: I think he answered regarding
23 the thought process regarding his actions and the
24 legislative privilege.

25 MR. BERNSTEIN: Thank you.

1 (The witness and Mr. Tully confer off the
2 record.)

3 BY MR. BERNSTEIN:

4 Q. Did the ethics committee have the ability to
5 shut down an investigation without your approval --

6 MR. MASSEY: Form.

7 BY MR. BERNSTEIN:

8 Q. -- back in December of 2017?

9 MR. MASSEY: Objection. Form and
10 foundation.

11 A. Did they have the ability to shut down an
12 investigation?

13 BY MR. BERNSTEIN:

14 Q. Yes, to shut it down. Say there's a --

15 A. The chair has the, I believe, sole discretion
16 to determine what happens once an ethics complaint is
17 filed.

18 Q. So he doesn't have to get your approval?

19 A. He does not.

20 Q. Now, did there come a time in November of
21 2018 -- sorry, November 2017 that you put together a
22 sexual harassment investigation team?

23 A. That sounds about right.

24 Q. And that was put together as a result of the
25 allegations made by Ms. Ugenti-Rita, correct?

1 A. No.

2 Q. What was the purpose of the sexual harassment
3 investigation team?

4 A. There were, at this point, a plethora of
5 allegations against Mr. Shooter, more than just
6 Ugenti-Rita, many more actually. So at that point, it
7 was going to be a much more involved process. And so
8 we began an investigation.

9 Q. And this sexual harassment investigation team
10 was formed in or around November 8th or 9th, correct?

11 A. The 10th, I guess. Whenever that -- well,
12 this one right here, right? Yeah, the 10th.

13 Q. You're saying the 10th?

14 A. I'm reading the press release, so it sounds
15 about right. At this point, there had been a whole
16 bunch of accusations against Mr. Shooter by more than
17 just Ms. Ugenti-Rita. So at that point, we were going
18 to involve an outside investigation.

19 Q. So I'm clear, it's your testimony as of
20 November 10, 2017, there were other individuals that
21 came forward besides Representative Ugenti-Rita?

22 A. I believe that's correct.

23 Q. And was there an acronym for this sexual
24 harassment investigation team?

25 A. Maybe.

1 Q. What was it?

2 A. Sexual -- oh, sexual harassment investigative
3 team?

4 Q. Yes. Was there an acronym used in and around
5 the House for that?

6 A. No, there was not one used by me. If other
7 people used one, they used one.

8 Q. Did you ever hear of one?

9 A. I heard of more than one actually, but, yes.

10 Q. And what did you hear?

11 A. Using the letters of the word -- the four
12 words you just said.

13 Q. You said the four words I just said, that
14 was -- it was known as the sexual harassment
15 investigation. You put that together, correct? I
16 didn't make those words up, correct?

17 A. Yes. Sexual harassment -- I didn't name
18 anything. I just assembled the team.

19 Q. What was the acronym around the Capitol for
20 this team?

21 A. One of the ones that I heard was S-H-I-T.

22 Q. SHIT, correct?

23 A. That's what that spells.

24 Q. Now, what did this sexual harassment
25 investigation team actually do, sir, in regards to this

1 investigation of Mr. Shooter?

2 MR. TULLY: He's not going to answer that
3 question. **Legislative privilege.**

4 MS. REBHOLZ: That's with regards to the
5 team before --

6 MR. TULLY: The team before, yeah. All
7 of it. He's not answering that.

8 BY MR. BERNSTEIN:

9 Q. Who were the members of this team?

10 A. So we had the general counsel of the -- of
11 both caucuses. We had the House --

12 Q. Sir, I'm going to stop you because that
13 personally doesn't help me. Do you know the names of
14 the individuals?

15 A. Yes.

16 Q. If you could do that. If you then want to
17 give their titles, that's fine, but, please, give their
18 names.

19 MR. TULLY: Let me ask my client a
20 question, first.

21 (The witness and Mr. Tully confer off the
22 record.)

23 A. Tim Fleming, Jim Drake, Josh Kredit, Rhonda
24 Barnes, Amilyn Pierce. How many am I up to?
25 Cynthia -- whatever her last name is. And then another

1 gal, I'm forgetting her name at the moment.

2 BY MR. BERNSTEIN:

3 Q. Was this gal Christine Martin?

4 A. Yes.

5 Q. And Cynthia, is her last name Aragon?

6 A. Yeah.

7 Q. So this team was put together on November 10,
8 correct?

9 A. Yes, about -- probably about then.

10 Q. And did there come a time that a law firm was
11 hired to do the investigation in this case?

12 A. I don't actually know that we would have put
13 it together that Friday, but probably soon after.

14 Q. I'm sorry, sir, put what together on what
15 Friday?

16 A. You said did the investigative team come
17 together on that Friday, on this day, November 10.

18 Q. I said the 9th; you said the 10th. So I was
19 just going by what you said, sir.

20 A. Yeah. So I don't remember if the formation --
21 I'm sure you can probably tell me, but I don't remember
22 the exact timing of the formation of the team. But it
23 would have been soon after or close to this time frame.

24 Q. Well, did there come a time that the decision
25 was made to hire an outside law firm?

1 A. Yes.

2 Q. Do you know when that was?

3 A. That was actually recommended by the team
4 itself. And I don't remember when it would have been,
5 in November.

6 Q. So if I told you it was November -- well, so
7 the team made the decision to hire this firm?

8 A. The team made that recommendation, and I
9 agreed.

10 Q. What other recommendations did the team make,
11 if any?

12 MR. TULLY: He's not going to answer that
13 question.

14 MR. BERNSTEIN: He just answered one
15 recommendation.

16 MR. TULLY: Well, he's not going to
17 answer that one.

18 MR. BERNSTEIN: Just for the record,
19 Counsel, you are picking and choosing what he can
20 answer before you are invoking legislative privilege;
21 is that the way it works?

22 MR. TULLY: No. I invoked the
23 legislative privilege at the beginning of this
24 deposition over all the comments. The problem is, I
25 can't anticipate always what his answer is going to be

1 to some of your questions. So I can't always jump out
2 in front of every one, you know, and make sure I assert
3 it, but I am asserting it to this one.

4 MR. BERNSTEIN: Counsel, it's not the
5 answer; it's the question which should invoke the
6 privilege, not the answer.

7 MR. TULLY: Well, sometimes, as you know,
8 if you practice for a few years, that's not always the
9 case.

10 MR. BERNSTEIN: Can we mark this, please.

11 (Exhibit No. 7 marked.)

12 BY MR. BERNSTEIN:

13 Q. Sir, before I ask you a question here, and I'm
14 sorry, I neglected to ask it at the beginning, is it
15 fair to say that you and I have never spoken before
16 today?

17 A. Not to my recollection.

18 Q. Okay. Do you have any reason to believe that
19 you and I have spoken before today?

20 A. No.

21 Q. To your knowledge, have you spoken with anyone
22 from my office that you believe is affiliated with me?

23 A. I have no idea what office you are, so ...

24 Q. Fair enough. And I apologize if counsel asked
25 you this, I'm not looking to repeat, did you ever speak

1 to Mr. Massey or anyone associated with his firm on
2 behalf -- representing Ms. Ugenti-Rita?

3 A. I don't know who is associated with his firm,
4 but, no, I don't believe so.

5 Q. Fair enough. Good point.

6 Have you had a conversation with anyone
7 you believe is an attorney representing
8 Ms. Ugenti-Rita?

9 A. No.

10 Q. So if you're looking at this press release,
11 can we agree that at least as of Wednesday, November
12 15, a decision had been made to hire the firm of
13 Sherman & Howard to investigate the sexual harassment
14 allegations to the legislature?

15 A. Once again, the timing is right on.

16 Q. The 15th?

17 A. Yeah.

18 Q. Okay. So it was within a couple of days of
19 the committee being formed, correct?

20 A. Yeah.

21 Q. So --

22 A. That's what I said.

23 Q. So, to your knowledge, who retained the law
24 firm, the Sherman law firm?

25 A. The House.

1 Q. Was a retainer signed, to your knowledge?

2 A. What does that mean?

3 Q. Well, you've indicated that you've been
4 involved in many lawsuits in the past. Have you ever
5 signed a retainer with a lawyer for his representation,
6 whether it's an hourly fee, whether it's a contingency?

7 A. Oh, yeah. I signed something about an hourly
8 fee, yeah.

9 Q. Okay. In this case, you're talking about with
10 the law firm, with the Sherman law firm, you signed a
11 retainer?

12 A. Actually, I may have signed it or my attorney
13 may have signed it, the House attorney. I don't
14 remember specifically. I signed a lot of things, so I
15 don't remember.

16 Q. And was it signed on behalf of you personally
17 or on behalf as you being the Speaker of the House on
18 behalf of the House of Representatives?

19 MR. MASSEY: Form and foundation.

20 A. Definitely the Speaker.

21 BY MR. BERNSTEIN:

22 Q. Okay. So is it fair to say, sir, that the
23 House of Representatives retained this law firm to
24 conduct an investigation?

25 A. Yeah. I think that's what I said.

1 Q. Okay. And would you agree with me at the time
2 that the law firm was retained, Mr. Shooter was an
3 active member of the House of Representatives?

4 A. Yeah.

5 Q. So Mr. Shooter would be one -- would be a
6 client of this law firm at the time of this
7 investigation, correct?

8 MR. MASSEY: Form and foundation.

9 MR. TULLY: Join.

10 A. No.

11 BY MR. BERNSTEIN:

12 Q. No, he's not? He wouldn't be a client?

13 A. He is not.

14 Q. Who -- to your knowledge, who is the client of
15 the law firm for this investigation?

16 A. The House.

17 Q. The House. The House an entity, sir, correct?

18 A. That's right.

19 MR. TULLY: You know ...

20 MR. BERNSTEIN: Right. We'll move on.

21 BY MR. BERNSTEIN:

22 Q. Did you play any role in directing this
23 investigation to the Sherman & Howard law firm, the
24 Sherman law firm?

25 MR. TULLY: I'll direct him not to answer

1 that, legislative.

2 BY MR. BERNSTEIN:

3 Q. As you sit here today, do you know how much
4 money was paid to the Sherman law firm of the Arizona
5 taxpayers' money for this investigation?

6 MR. TULLY: I direct him not to answer
7 that question.

8 BY MR. BERNSTEIN:

9 Q. Did you authorize payment to Mr. Shooter,
10 Ms. Rios, and Ms. Ugenti-Rita for their legal fees?

11 A. Yes.

12 Q. Was that equal amounts to each of them, to
13 your knowledge?

14 A. I had set a bar that was to be roughly equal
15 for everybody with some wiggle room, but, yeah, it was
16 roughly set forth. In other words, I set parameters.
17 They may not have used them all up, but I set
18 parameters.

19 Q. When you say "roughly equal," sir, what did
20 you mean by that? Did some have more than others?

21 A. Probably.

22 Q. And why would one have more -- why would one
23 be afforded more money than the others?

24 MR. TULLY: He's not going to answer that
25 question on behalf of legislative privilege.

1 MR. BERNSTEIN: But the other three or
2 four he just did is okay?

3 BY MR. BERNSTEIN:

4 Q. So, now, did you approve the -- did they have
5 to send you -- did they have to send receipts or
6 payments to you to get paid?

7 A. They would send them probably to the House
8 attorney.

9 Q. And did you have to okay them?

10 A. Yes.

11 Q. Do you recall okaying payments for legal fees
12 to Representative Rios, Shooter, and Ugenti-Rita in
13 this case?

14 A. Yes.

15 Q. Do you remember how much you okayed for each
16 of them?

17 A. I don't.

18 Q. Do you know what the most was of any of them?

19 A. I don't.

20 Q. Do you know what the least was for any of
21 them?

22 A. No.

23 MR. BERNSTEIN: Can we -- it is really,
24 really hot in here. Can we take a two-minute break,
25 please?

1 (Recess taken from 3:34 p.m. to 3:49
2 p.m.)

3 BY MR. BERNSTEIN:

4 Q. Do you know what day -- withdrawn.

5 During the investigation being conducted
6 by the Sherman law firm, did you receive updates from
7 the firm regarding the investigation?

8 MR. TULLY: Don't answer that question.
9 Attorney-client privilege as well as the legislative
10 privilege.

11 BY MR. BERNSTEIN:

12 Q. Did you review drafts of the -- withdrawn.

13 To your knowledge, were there drafts of
14 the report prior to it being provided to Representative
15 Shooter?

16 MR. TULLY: Don't answer the question.

17 MS. REBHOLZ: On the basis of?

18 MR. TULLY: The same privileges.

19 MS. REBHOLZ: I'm not trying to be
20 annoying; I'm just trying to make a record.

21 MR. TULLY: No, that's fine.

22 BY MR. BERNSTEIN:

23 Q. Prior -- did there come a time that you're
24 familiar that Representative Shooter -- I need to take
25 one break.

1 (Discussion off the record.)

2 (Requested portion of record read.)

3 BY MR. BERNSTEIN:

4 Q. You have in front of you the investigative
5 report; we looked at page 73 before.

6 A. Sure.

7 Q. If you go back to 73.

8 A. Okay.

9 Q. Does it mention -- they don't mention
10 individual names. They say interviewee 2 and 3?

11 A. 2 and 3, yeah.

12 Q. Correct?

13 A. Yeah.

14 Q. And did there come a time prior to January 30,
15 2018, that you personally learned the identity of
16 interviewee 2 and 3?

17 MR. TULLY: He's not going to answer that
18 question on the basis of legislative privilege and
19 attorney-client privilege.

20 BY MR. BERNSTEIN:

21 Q. If I make the representation to you that -- I
22 think it's interviewee 2 was a female who alleged she
23 was sexually harassed by Ms. Ugenti-Rita, did you ever
24 personally speak to that individual?

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

1 question on the basis of legislative privilege.

2 MR. BERNSTEIN: Well, the legislative
3 privilege is waived because he's on record in the
4 public saying that he's spoken with that individual.

5 Do you need me to show you that press release where
6 he's indicated that he's spoken with that individual?

7 MR. TULLY: I'm not waiving the
8 privilege. I'm not having him answer.

9 MR. BERNSTEIN: Just so I'm clear, so the
10 record is clear, if I show you the document where your
11 client --

12 MR. TULLY: Won't make a difference.

13 MR. BERNSTEIN: Where your client states
14 that he has spoken with that individual, you are still
15 not going to let him answer questions here today about
16 his conversations with that person?

17 MR. TULLY: Correct.

18 MR. BERNSTEIN: Okay. Under legislative
19 privilege?

20 MR. TULLY: Correct.

21 MR. BERNSTEIN: Can we just mark this?

22 (Exhibit No. 8 marked.)

23 BY MR. BERNSTEIN:

24 Q. Sir, do you remember -- well, withdrawn.

25 Do you recall if you were asked

1 previously if Representative Shooter was given a time
2 frame in which to review the report and make comment?

3 A. Repeat that.

4 Q. I'll just ask the question. To your
5 knowledge, was Representative Shooter given a time
6 period in which to review the report and to submit
7 comment?

8 A. I believe so. That's what I said.

9 Q. And, in fact, I want you to read that e-mail
10 to yourself. Just let me know when you're finished.

11 A. Okay.

12 Q. Are you finished?

13 A. I am.

14 Q. And Craig Morgan, is that the attorney who was
15 conducting the investigation?

16 A. Correct.

17 Q. And Dan Pasternak, P-A-S-T-E-R-N-A-K, to your
18 knowledge, was that Mr. Shooter's attorney at the time?

19 A. It -- probably.

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

21 A. I don't know.

22 Q. Do you see it's a cc to Lindsay Hesketh?

23 A. Yes. That's Craig -- I believe that's Craig's
24 associate.

25 Q. And it says, "Dan, in case we do not see or

1 speak to each other today, I write to let you know that
2 if your client desires to submit a written response to
3 the Report, the Speaker," that would be you, correct,
4 sir?

5 A. That's correct.

6 Q. "Asks that (1) the response be submitted in 5
7 business days (excluding today), and (2) be sent to
8 Mr. Tim Fleming at the House." Do you see that?

9 A. I do.

10 Q. So would you agree with me on January 30,
11 2018, Mr. Morgan provided Mr. Shooter with five
12 business days in which to respond to the report as per
13 your direction, correct?

14 A. Uh-huh.

15 MR. TULLY: Hang on. Hang on. You need
16 to wait and answer verbally as well. I assert the
17 attorney-client privilege for that answer.

18 MR. BERNSTEIN: The attorney-client
19 privilege in an e-mail that was already sent to
20 someone?

21 BY MR. BERNSTEIN:

22 Q. So would you agree with me that January 30,
23 2018, was a Tuesday? And I'm saying that just because
24 it's based -- it says that on the caption, sir, right?

25 A. Yep.

1 Q. So when it says "not excluding" -- the
2 response is due within five business days excluding
3 today, correct?

4 A. That's what the e-mail says.

5 Q. So we are excluding January 30, correct?

6 A. That's what the e-mail says.

7 Q. So five business days would be Wednesday, the
8 31st; Thursday, the 1st; Friday, the 2nd; and then
9 Saturday/Sunday was the 3rd and 4th is not included
10 because we are just doing business days, correct,
11 according to the e-mail?

12 A. Presumably, correct.

13 Q. And business day 4 would be February 4th and
14 business day 5 would be February 6th, correct?

15 A. That would be five business days.

16 Q. So according to your attorney or the attorney
17 on behalf of the House of Representatives, Don Shooter
18 had until February 6 in which to submit a response to
19 the 75-page report, correct?

20 MR. TULLY: Object to form and
21 foundation.

22 MR. MASSEY: I'll join in that.

23 BY MR. BERNSTEIN:

24 Q. You can answer, sir.

25 A. Yes. He can submit a response within five

1 business days.

2 Q. And, in fact -- sir, isn't it a fact that you
3 completely disregarded this e-mail and went to the
4 House and got a vote to expel Mr. Shooter on Thursday,
5 February 1, two days after he received this report;
6 isn't that correct, sir?

7 MR. TULLY: Hang on. Object to the form
8 and foundation. And I'm also going to assert the
9 legislative privilege.

10 MR. BERNSTEIN: Well, the legislative
11 privilege as to the fact that he expelled him on
12 February 1?

13 MR. TULLY: Why don't you ask him that
14 question instead of making a statement about what you
15 believe the facts are, a loaded question about the
16 facts? You want to ask when he moved? You know when
17 he moved.

18 MR. BERNSTEIN: That's form and
19 foundation. I'll be able to take -- I'll take my
20 chances in front of the judge on form and foundation.
21 Are you directing him not to answer my question because
22 of executive privilege? Legislative privilege?

23 MR. TULLY: Yeah.

24 MR. BERNSTEIN: Okay.

25 BY MR. BERNSTEIN:

1 Q. So, sir, would you agree with me -- to your
2 knowledge, do you know when you moved -- that you took
3 a vote in the House to expel Don Shooter?

4 MR. TULLY: Object to the form of the
5 question. And it's -- the question is compounded. You
6 said "moved" and you said "voted," those are two
7 different things.

8 MR. BERNSTEIN: Sure.

9 BY MR. BERNSTEIN:

10 Q. How did Don Shooter get expelled from the
11 House of Representatives?

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

14 A. How?

15 BY MR. BERNSTEIN:

16 Q. Yes.

17 A. Two-thirds -- more than two-thirds of the
18 House voted to expel him.

19 Q. How did the vote come to be?

20 A. As with --

21 MR. TULLY: Well, I'm going to object to
22 that question and direct him not to answer on the basis
23 of the legislative privilege.

24 BY MR. BERNSTEIN:

25 Q. Let me ask you this: On Exhibit 8, you

1 authorized Mr. Shooter to have five business days to
2 respond to the report, correct?

3 MR. TULLY: Object to form, foundation,
4 and direct him not to answer on the basis of
5 legislative and the attorney-client privilege.

6 A. I have to go now. So if you want to stay, I
7 will be here and try to make it less than an hour.

8 MR. BERNSTEIN: I'm sorry, quite
9 honestly, you were served a subpoena at 1:30; and my
10 understanding, depositions are four hours long in the
11 state of Arizona. We were not contacted to change the
12 time. We were not contacted about any break. And so
13 if you want to leave and -- leave, you can leave, but
14 I'm not agreeing to you leaving now.

15 THE WITNESS: So I'm not leaving? I
16 would like a break. Are you not going to give me a
17 break?

18 MR. BERNSTEIN: No, I'm not giving you a
19 break for an hour.

20 MR. MASSEY: I'm not interested in
21 sitting around here for an hour. I think it's
22 reasonable that the witness request a break --

23 MR. BERNSTEIN: So do I.

24 MR. MASSEY: -- to handle a business
25 thing for an hour, and we can just reconfirm (verbatim)

1 the deposition at a later date.

2 MS. REBHOLZ: And can I just make a
3 record that you were, at some point, contacted about
4 moving your deposition to the afternoon and nothing was
5 mentioned about having a 4:00 meeting. Is that a fair
6 statement?

7 THE WITNESS: Nobody told me the timeline
8 of a deposition. I've never done one before, so I
9 agreed to the 1:30, sure.

10 MS. REBHOLZ: That's all. Thank you. I
11 just want it on the record. That's fine.

12 MR. BERNSTEIN: Counsel, if your client
13 is amenable to coming here tomorrow before I fly back
14 to New York, I'll be happy to continue my questioning
15 tomorrow afternoon. But besides that --

16 MR. TULLY: Let's go off the record and
17 we can -- I can talk to him about it. He's got to get
18 on the phone call right now. I don't know how I'm
19 going to do that.

20 THE WITNESS: I can come back tomorrow.

21 (4:00 p.m.)

22

23

JAVAN MESNARD

24

25

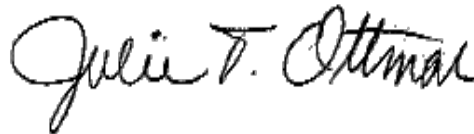
1 STATE OF ARIZONA)
2) ss.
3 COUNTY OF MARICOPA)

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

12 I CERTIFY that I am in no way related to any of
13 the parties hereto nor am I in any way interested in
14 the outcome hereof.

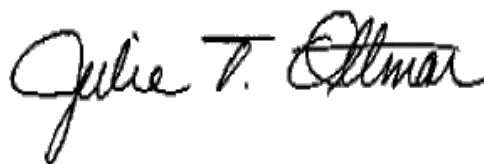
15 [X] Review and signature was requested.
16 [] Review and signature was waived.
17 [] Review and signature not required/requested.

18 I CERTIFY that I have complied with the ethical
19 obligations set forth in ACJA 7-206(F)(3) and ACJA
20 7-206(J)(1)(g)(1) and (2). Dated at Phoenix, Arizona,
21 this 18th day of November, 2019.

22 

23 _____
24 Julie T. Ottmar, RPR
25 Arizona Certified Reporter No. 50084

26 I CERTIFY that OTTMAR & ASSOCIATES, INC., has
27 complied with the ethical obligations set forth in ACJA
28 7-206 (J)(1)(g)(1) through (6).

29 

30 _____
31 OTTMAR & ASSOCIATES, INC.
32 AZ Registered Reporting Firm No. R1008