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JACKSONVILLE CITY COUNCIL
SPECIAL INVESTIGATORY COMMITTEE ON JEA MATTER

INTERVIEW OF
KEVIN E. HYDE

DATE TAKEN: Friday, August 21, 2020
TIME: 9:56 a.m. to 4:32 p.m.
LOCATION: Smith Hulsey & Busey
One Independent Drive
Suite 3300
Jacksonville, Florida 32202

Examination of the witness taken before:
Terrie L. Cook, RPR, CRR, FPR, and a Notary Public

Hedquist and Associates
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Jacksonville, Florida 32202
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- - -

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	- - -	
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1 STIPULATION

2 It was stipulated and agreed by and between

3 counsel for the respective parties, and the witness,

4 that the reading and signing of the interview by the

5 witness was not waived.

6 - - -

7 KEVIN E. HYDE,

8 acknowledged having been duly sworn to tell the truth

9 and testified upon his oath as follows:

10 THE WITNESS: I do.

11 DIRECT EXAMINATION

12 BY MR. BUSEY:

13 Q We're about to take a sworn statement of Kevin

14 Hyde and he has agreed to appear voluntarily without a

15 subpoena in the investigation by the Jacksonville City

16 Council Special Investigatory Committee and looking into

17 matters regarding JEA.

18 Kevin, I appreciate your coming this morning --

19 A Sure.

20 Q -- preparing.

21 MR. BUSEY: Lisa, I know that you are acting

22 pursuant to counsel for Foley & Lardner, Kevin's law

23 firm, and you're in Chicago watching and listening

24 to these proceedings. Is there anything you want to

25 say, Lisa, before we get started?

1 MS. NOLLER: Yes. Thank you, Steve. Just two

2 things. I can't hear you very well now, if you

3 could maybe move one of the microphones closer to

4 you. I can hear Kevin just fine.

5 MR. BUSEY: Okay.

6 MS. NOLLER: That's better. Thank you.

7 We are agreeing to proceed voluntarily, having

8 received a waiver of the privilege from JEA's

9 general counsel. And not just the privilege, but

10 also the process. So it's our understanding from

11 JEA that we can proceed with this process and in

12 this manner.

13 So thank you, gentlemen, for your accommodation

14 in that regard.

15 MR. BUSEY: Good.

16 Stop just for a minute.

17 (Recess taken.)

18 BY MR. BUSEY:

19 Q Kevin, thank you for coming this morning.

20 A Sure.

21 Q You're the managing partner of Foley &

22 Lardner's Jacksonville office?

23 A Correct.

24 Q And you have been so since?

25 A 2009. February 1, 2009, I think.

1 Q Wow, that's quite a tenure.

2 A Yeah. It's been fun, though.

3 Q You recall meeting in Foley & Lardner's office

4 sometime in 2017 or so with Sam Mousa and Herschel and

5 representatives of an energy company called Exelon?

6 A I'm going to turn to Lisa on that.

7 THE WITNESS: Lisa, they were asking about

8 Exelon.

9 MS. NOLLER: Oh, yeah, I was on mute. Yeah.

10 Steve, we're not -- we have not received a privilege

11 waiver from Exelon so I'm going to instruct Kevin

12 not to answer questions, other than to confirm that

13 Exelon is a client of Foley & Lardner.

14 MR. BUSEY: Okay. Well, I'm going to take -- I

15 believe I'm asking questions that are not intended

16 to elicit privileged information, but let's take it

17 one question at a time.

18 MS. NOLLER: You're not?

19 MR. BUSEY: I respect what you're saying, but

20 let's see how far we can get.

21 BY MR. BUSEY:

22 Q Do you remember my question?

23 A Yes. I remember the question.

24 Q Okay. Did you have such a meeting?

25 A Turn to Lisa.

1 MS. NOLLER: Yeah. I'm going to instruct
2 Mr. Hyde not to answer because the -- that would
3 involve work product that was performed for a client
4 of Foley & Lardner.

5 MR. BUSEY: You mean whether or not he had a
6 meeting is work product?

7 MS. NOLLER: That's correct.

8 MR. BUSEY: How does -- my question -- Sam
9 Mousa was in that meeting, is he a part of the
10 privilege?

11 MS. NOLLER: I don't know who that is.

12 THE WITNESS: Sam Mousa is the chief
13 administrative officer of the City of Jacksonville.

14 MR. BUSEY: At the time.

15 THE WITNESS: At the time he was, yes.

16 MS. NOLLER: Steve, I think the best way to
17 proceed on this is just to continue with questions
18 on other topics and at a break, I think I'm going to
19 consult with Mr. Hyde.

20 MR. BUSEY: All right. For the time being,
21 you're claiming privilege with regard to a meeting
22 that Mr. Hyde was in with Sam Mousa in 2017?

23 MS. NOLLER: I am. And we can revisit it at
24 some other point during this interview after I've
25 had an opportunity to talk to Mr. Hyde.

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1 Q And tell us who Herschel Vinyard is.

2 A At the time I believe his title was chief
3 administrative officer of JEA.

4 Q Had he been a member of your firm?

5 A Yes, he had been of counsel to Foley & Lardner
6 beginning in 2015 through April 1 of 2019.

7 Q And when he was with your firm during that
8 period, what did his practice and job responsibilities
9 involve?

10 A He had two -- two main practice areas -- pardon
11 me -- two main practice areas. First was in
12 environmental law. And then, secondly, general
13 government affairs. As you recall, Mr. Vinyard was --
14 had been, until the end of 2014, the secretary to the
15 Department of Environmental Protection for the State.
16 So subsequent practice area of environmental
17 law, but then worked government affairs, particularly
18 with the governor's office and Department of
19 Environmental Protection, after his ban ended in the
20 Department of Environmental Protection.

21 Q And when did he leave your firm?

22 A I think the day was April 1, 2019.

23 Q And do you recall when Herschel came -- I
24 assume came to you and told you that he wanted to leave
25 Foley and join the -- the JEA?

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1 BY MR. BUSEY:

2 Q I'm going to show you what we've marked as
3 Exhibit 2, which is an engagement -- oh, which is an
4 engagement letter for Foley & Lardner with the Office of
5 General Counsel of the City of Jacksonville, dated July
6 22, 2019.

7 Have you seen that letter before?

8 A Yes.

9 (Hyde's Exhibit 2 was marked for
10 identification.)

11 Q Can you generally describe what the engagement
12 was for?

13 A Foley was engaged to provide particular advice
14 with regard to some collective bargaining issues,
15 employee issues for the -- for JEA, but the retention
16 came through the Office of General Counsel. You'll also
17 see a reference to regulatory matters, securities and
18 general corporate and transactional matters.

19 Q And when was your first contact with JEA or the
20 Office of General Counsel regarding the engagement which
21 is reflected in Exhibit 2?

22 A It was in late June of 2019, I believe around
23 June 26 or so.

24 Q And what was that contact? Who contacted you?

25 A Herschel Vinyard.

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1 A Yes.

2 Q When was that conversation?

3 A Sometime in mid March because I -- and I don't
4 remember the exact date, but I recall we had
5 approximately a two-week notice period that he worked
6 through and so that would put him in March.

7 Q Tell me what you recall about the conversation.
8 Where were you when you had that conversation with
9 Herschel?

10 A Yeah, I remember very well.

11 Q I suspect you do.

12 A Herschel's office is catty-corner to mine on
13 the 15th floor and the precise reason I went into
14 Herschel's office that day was to tell him what his
15 compensation was going to be for -- we -- we have a
16 retroactive system -- for the year having just ended and
17 so --

18 Q What period?

19 A For the fiscal year just prior.

20 Q But what is the fiscal year?

21 A We go February 1 through January 31. So in
22 mid March of 2019, I was going to Mr. Vinyard's office
23 to tell him what his compensation was going to be for
24 the year just ended. And he said, I need to tell you
25 something as well, told me he had accepted a job at JEA,

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1 was going to soon be leaving. And that was the first I
 2 heard of it.

3 Q And he gave you two weeks' notice?

4 A Which is -- yeah -- customary. Yeah. He -- he
 5 would have -- he said whatever you need, but I said, you
 6 know, when -- when do you need to be at JEA and how
 7 long's it take you to fulfill client matters? And he
 8 thought two weeks would be sufficient and that's what he
 9 did.

10 Q Did he -- his compensation at JEA was public
 11 information, his -- you knew what his compensation was
 12 at Foley & Lardner, was he taking a pay cut to go to
 13 JEA?

14 A Yes, my understanding. I -- I didn't know
 15 his -- he did not tell me what his compensation was at
 16 the time of our conversation, but as you indicated,
 17 compensation for public officials is -- is -- can be
 18 known.

19 Q Did he -- did you and he talk about why he was
 20 going to JEA?

21 A Not at that time. Not really. I mean,
 22 candidly I was so shocked by it, I had to -- I left and
 23 had to go think about it for a minute. I wasn't angry,
 24 I was just shocked and surprised.

25 Q But in those circumstances, given Herschel's
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1 stature and your stature, wouldn't you think -- I mean,
 2 I would think -- I just want you to explain to me that
 3 Herschel would give you some explanation why he's
 4 leaving such a prominent position with your law firm to
 5 be an administrative officer with JEA. He must have
 6 offered you some explanation for that.

7 A The only thing -- and I'm separating
 8 conversation -- pardon me. Turn this thing off.
 9 The only thing I'm separating, Steve, is
 10 conversation that day from conversations made before he
 11 left. He -- he did indicate to me that he really
 12 enjoyed, quote, running things as he had done as a
 13 secretary with the Department of Environmental
 14 Protection. And that rather than being the advice
 15 giver, he looked forward to being back running an
 16 operation, which I understood, as chief administrative
 17 officer, is something he would be doing.

18 Q Did he tell you about any conversations he had
 19 had with Aaron Zahn that would -- regarding why he
 20 should join JEA?

21 A No.

22 Q Do you know if he had any conversations with
 23 Aaron Zahn?

24 A No.

25 Q And between the time he told you -- in March of
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1 2018, was it?

2 A '19.

3 Q '19.

4 A Yes, sir.

5 Q Between the time he told you in March of 2019
 6 that he was leaving and July -- and June 26, when you
 7 said it was the first talk about this engagement, which
 8 led to Exhibit 2, did you have any conversation with
 9 Herschel about doing work -- about Foley & Lardner doing
 10 work for JEA --

11 A Not before he called, no.

12 Q -- and about the last week in June?

13 A Yes. Correct. We had -- we had no
 14 conversations till he called me at -- in or around the
 15 last week of June.

16 Q And what did he say in that conversation?

17 A He said that -- that they were looking to
 18 engage counsel and he specifically mentioned that
 19 New York counsel had been engaged. I can't remember if
 20 at that time he mentioned Pillsbury particularly, but
 21 they were looking for, my term, local counsel to assist
 22 to work with New York counsel and then particularly on
 23 Florida-related matters.

24 Q Did he say what matters?

25 A I can't remember exactly what he said, but,
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1 obviously, it was -- there had been discussions about
 2 the state of JEA and that there was discussion about
 3 looking at various -- I think the term was scenarios
 4 that were going to be used. And so it was not specific
 5 to a sale, but I understood that that was one of the
 6 things that had been mentioned as one of the scenarios,
 7 just from general conversation and newspaper reading.

8 Q Well, there were two issues going on with JEA
 9 at the time, one was the alternative scenarios and
 10 possible sale of JEA.

11 A Uh-huh.

12 Q And the other was Aaron Zahn's desire to
 13 institute some form of long-term compensation plan that
 14 led to the PUP for JEA.

15 Did he mention which -- which or both of those
 16 projects he wanted Foley's help with?

17 A Did not mention anything about the PUP during
 18 that. It was more about the process in particular of --
 19 of the, my term, the scenario, not traditional response,
 20 I think was the phrase that was used.

21 Q So the process that -- of -- that ultimately
 22 led to the board's decision to sell JEA, that process is
 23 what you're talking about?

24 A Yes.

25 Q And what was -- what did you understand was
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1 going to be Foley & Lardner's role in that process?
 2 **A** It was -- as Herschel talked to me individually
 3 first, it was going to be -- my role was going to be in
 4 the labor relations area. We had collective bargaining
 5 agreements that were going to be coming up. I say we,
 6 JEA had collective bargaining agreements that were going
 7 to expire, I believe, at the end of September of that
 8 year and so there would be some assistance with that.

9 Just general employee matters as they arose.

10 And then he asked whether we had -- what my
 11 opinion was about whether we could serve as counsel
 12 related to procurement matters. And we have a partner,
 13 our Tallahassee office, Robert Hosay, who was the former
 14 acting secretary of DMS, Department of Management
 15 Services, and Robert has a very active procurement
 16 practice.

17 **Q** How do you spell Hosay?

18 **A** H-o-s-a-y.

19 **Q** And when you say procurement, does that mean
 20 JEA buying stuff or JEA selling stuff?

21 **A** No, it's the state procurement statutes and
 22 practices, whether -- and so it can be on either side of
 23 the transaction, the State buying things or private
 24 companies doing services on behalf of the State,
 25 anything that might fall under the general procurement
 Hedquist & Associates Reporters, Inc.

1 **Q** Before you?

2 **A** I don't think so.

3 **Q** But you -- before you were managing partner of
 4 Jacksonville?

5 **A** I -- I don't know when Chris came up to
 6 Tallahassee. Chris was the former Solicitor General of
 7 the State of Florida and he came after that stint.

8 **Q** He?

9 **A** He, Chris Kise, after he left state government
 10 as solicitor general.

11 **Q** Chris and Herschel knew each other, I
 12 assume --

13 **A** Yes.

14 **Q** -- when Herschel was the secretary?

15 **A** Yes.

16 **Q** Did Chris Kise have any role, to your
 17 knowledge, in Herschel getting the job at JEA?

18 **A** I know -- Chris has told me he talked with
 19 Herschel about the job at JEA. I don't know if Chris
 20 had any role in him getting the job, if that distinction
 21 makes sense.

22 **Q** Chris told you that he had talked --

23 **A** Talked to Herschel --

24 **Q** -- about --

25 **A** -- about going to JEA, but I don't know if
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1 statutes.

2 **Q** And so you told Herschel you could help in that
 3 regard too?

4 **A** Yes, I thought we had capabilities in that
 5 regard.

6 **Q** Any other part of the conversation you recall?

7 **A** There was mention of Chris Kise, who is another
 8 partner in Tallahassee that Herschel had worked with
 9 before, that Chris has a lot of experience working with
 10 state agencies and things like that and there might be
 11 an occasion where that was necessary. Like, public
 12 service commission, for instance. And he mentioned
 13 Chris as a possibility. Of course, Herschel knew these
 14 people.

15 **Q** Government affairs practice?

16 **A** Well, it is -- it is government affairs in
 17 part, but it is also a legal component as well, as
 18 opposed to someone who may perform purely governmental
 19 affairs with or without a law license.

20 **Q** Chris Kise is a partner in your -- in Foley &
 21 Lardner's Tallahassee office?

22 **A** Yes.

23 **Q** And has been since then when?

24 **A** I don't know when Chris actually came, but many
 25 years.

1 Chris had any role in helping him get that job.

2 **Q** What understanding do you have, if any, as to
 3 why Chris would be talking to Herschel about going to
 4 JEA?

5 **A** Chris and Herschel are friends so I'm guessing
 6 they talked on a friend basis about that.

7 To give you an example, when Herschel was the
 8 secretary of DEP, he did not permanently relocate from
 9 Jacksonville. He lived in a -- the house of Chris's
 10 father, kind of bunked with Chris's father, so they were
 11 close friends.

12 **Q** To your knowledge, did Chris Kise at that time,
 13 in '19, have a relationship or friendship with Aaron
 14 Zahn?

15 **A** I don't know.

16 **Q** Do you have any knowledge whether Chris Kise
 17 talked to Aaron Zahn about Herschel?

18 **A** I have no knowledge of that.

19 **Q** Has Chris Kise ever, within -- within the
 20 family of Foley & Lardner, ever claimed credit for
 21 placing Herschel with JEA?

22 **A** He -- he's told me that he, quote, got the job
 23 for Herschel, but I don't know what he means in -- if
 24 you know Chris, Chris -- Chris can -- I don't want to
 25 say exaggerate, but sometimes does.

1 Q You mean he may have overstated his role in
2 getting Herschel the job?

3 A That may be a fair characterization.

4 Q Did that issue ever come up in the context
5 of -- within Foley & Lardner of partners of Foley &
6 Lardner getting credit for the generation of JEA
7 business in 2019?

8 A Yes.

9 Q How did it come up?

10 A The -- it came up and I -- in conversation with
11 me, it -- it came up on a couple of occasions where when
12 any matter is originated, we have a person who's
13 designated as the principal billing partner, but that
14 does not mean they get 100 percent of the origination
15 credit. There's often sharing of credits. So Chris had
16 discussions about sharing of that credit for the JEA
17 relationship.

18 Q And the partners involved reached an agreement
19 as to how it should be shared?

20 A Yes. Uh-huh.

21 Q That's the idea?

22 A Yeah, that's the idea. Partners work it out
23 among themselves. And if they can't come to an
24 agreement, you may talk to our -- we have department
25 chairs, we have three department chairs at the firm;
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1 litigation, business law and intellectual property. And
2 if you can't come to an agreement, you would ultimately
3 go to one of those department chairs to resolve the
4 allocation.

5 Q Did you and Chris have to go to a department
6 chair to resolve the issue or did you reach an agreement
7 among yourselves?

8 A I made a proposal that there would be three
9 people who would share what we call a principal billing
10 credit. And two of us agreed, Chris did not and,
11 ultimately, we -- I asked our department chair to look
12 into the issue.

13 Q Did he -- did the department chair resolve it?

14 A Yes. Uh-huh.

15 Q And what was the resolution?

16 A I think it was essentially a one-third,
17 one-third, one-third split.

18 Q And who was the third partner?

19 A Robert Hosay.

20 Q And the reason -- Chris Kise -- did Chris Kise
21 do any work on this engagement, which is Exhibit 2?

22 A Yeah, he did. Cup- -- what I know Chris did
23 was Chris interfaced with the Florida Attorney
24 General's Office in the letter, which was ultimately
25 sent to the attorney general's office seeking an opinion
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1 on the PUP.

2 I believe Chris was also involved looking over
3 outstanding litigation issues the JEA had and I'm not
4 sure all of which ones he looked at. Chris is a
5 litigator.

6 Q And Exhibit 2, the -- on page 2, it says, The
7 engagement is limited to a not to exceed an initial
8 amount of \$250,000 --

9 A Uh-huh.

10 Q -- and that the firm agrees to notify OGC when
11 \$200,000 of the budget has been expended.

12 Did you go through that exercise and notify
13 OGC?

14 A We did informally, telling them where we were
15 at. And then in, I think, November I sent another
16 letter saying here's where we were at and then the
17 budget was increased.

18 Q Do you know ultimately to what amount?

19 A I think our -- our final bill -- our final
20 engagement, when it was fully paid -- or not fully, it
21 was paid in January of 2020, was approximately 1.2.
22 There was a substantial portion we wrote off as well.

23 Q Do you recall what that -- approximately how
24 much that was?

25 A 136,000, all related to the PUP.
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1 Q You say all related to the PUP, are you saying
2 that of the total billing of Foley & Lardner only
3 136,000 related to the PUP?

4 A Yes.

5 Q And the rest related to what?

6 A Primarily the ITN process itself, as well as
7 some corporate issues, but the ITN.

8 Q On the -- next to last page of Exhibit 2, page
9 6 of Exhibit 2, it says, The effective date of this
10 letter shall be retroactive --

11 A Uh-huh.

12 Q -- to July 1, 2019. Why was the letter dated
13 July 22 and made retroactive to July 1?

14 A What I understand occurred is that when, I
15 think, about the time frame contacted toward late July
16 and we were initially working primarily with Pillsbury.
17 And Pillsbury was the one who was helping secure all of
18 the lawyers that were going to be involved in working to
19 get the engagement letter and they were -- they had the
20 initial contact with OGC and then -- so we worked
21 through that process.

22 We ultimately -- I started working more
23 directly with OGC on that. So I think the understanding
24 was to go back to retroactive was because we had
25 already -- so it was made retroactive to July 1 to
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1 recognize the work that had previously been done.

2 Q Between July 1 and July 22?

3 A Yes.

4 Q Why did Foley & Lardner write off \$136,000
5 relating to the PUP for?

6 A Couple of reasons. One, at the time that we
7 were submitting what was our final bill, it's no secret
8 that the PUP had become incredibly unpopular, some of
9 the reason we're here today. And I -- the term that I
10 used in speaking to Lawsikia Hodges and Jon Phillips,
11 were the two people who Jason Gabriel directed me to
12 work with on our bills, was basically, my term, a busted
13 deal, just like you may have a real estate transaction
14 that doesn't get in.

15 And so I said, obviously, this is a busted
16 deal. There needs to be a discount because it's not
17 moving forward and the City -- JEA is not getting a
18 value for this -- for this work which was done.

19 Second thing is we were approaching the end of
20 our fiscal year. I had an interest in the firm getting
21 our money and I very candidly said to Lawsikia, who if
22 you recall or know Lawsikia Hodges used to be an
23 associate of Foley, she knows how things work, I said,
24 Lawsikia, I have an interest in getting our bills paid,
25 to the extent that they can, by January 31, 2020, would

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1 it assist if I just wrote off all of the PUP work? And
2 she said, It will have a -- that'll assist a lot.

3 And so working with she and Jon Phillips, we
4 went -- flyspecked our bills to remove any billing entry
5 whatsoever related to the PUP. I went through -- I did
6 an initial pass where I wrote the time off, then
7 resubmitted them. Worked with Lawsikia to answer
8 questions she or Jon Phillips may have about, you know,
9 this meeting, did you talk about the PUP? What's this
10 issue related to? So we were all comfortable that the
11 PUP had been scrubbed from any of our bills.

12 Q So it was at least your intent, purpose was to
13 make sure that you did not bill JEA for any PUP work?

14 A To remove from any bill we had already issued,
15 any -- any bill.

16 Q Yeah.

17 A The intent was, Steve, at the end of the day,
18 we could say that Foley & Lardner did not receive
19 payment for any work related to the PUP.

20 Q And to your knowledge, Mr. Powell and Lawsikia
21 agreed with that?

22 A Mr. Phillips.

23 Q Phillips, I mean.

24 A Yes, yes.

25 Q The last page of Exhibit 2 is a -- a rate

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1 schedule.

2 A Yes. Uh-huh.

3 Q Is \$765 your standard rate for Foley &
4 Lardner?

5 A That's the -- what we call a standard rate,
6 yes.

7 Q Do you have a discount rate?

8 A We have what's called floor standard -- floor
9 standard or published rates and then capital market
10 rates, if we did work in New York or something like
11 that, which is higher than that.

12 Q And is 765 an hour for you your floor or your
13 standard rate?

14 A Standard.

15 Q What's your floor rate?

16 A Currently 590.

17 Q In the right-hand column here, it says, \$650,
18 was that your floor rate at the time?

19 A No.

20 Q That's the standard rate at the time?

21 A That was -- the standard rate was 765, the
22 rate charged to JEA was a discount from the standard
23 rate.

24 Q That was just a bargain for a discount?

25 A Yes.

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1 Q And why is Christopher Kise's standard rates
2 \$975 an hour?

3 A The rates vary between lawyers based on
4 expertise or experience.

5 Q Let me show you what we marked as Exhibit 3 --

6 A Thank you.

7 (Hyde's Exhibit 3 was marked for
8 identification.)

9 Q -- which is -- has a date on the front of it,
10 January 2018, but we know that to be a typographical
11 error, it's January 2019. But my question to you is:
12 Have you seen this document before?

13 A I don't recall seeing this document. I did not
14 see it in January of 2019 either.

15 Q So you have no recollection of seeing this at
16 all?

17 A I -- I don't recall seeing it. I -- I've
18 seen -- subsequent in all this document production, I've
19 seen documents, but, no, I don't recall seeing this big
20 document. And I know I did not see it in January of
21 2019.

22 Q Or at any other time in 2019?

23 A Not that I recall, Steve.

24 Q Okay. Let me show you what we've marked as
25 Exhibit 4.

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1 A Okay.
 2 (Hyde's Exhibit 4 was marked for
 3 identification.)
 4 Q This is an e-mail from Angela Hiers to Herschel
 5 on January 15th, 2019, offering employment to Herschel.
 6 Have you ever seen this before?
 7 A Before yesterday, no.
 8 Q That is before we delivered it to you?
 9 A Yes. Correct. I've not seen this.
 10 Q Did you know at any point in time that Herschel
 11 had -- and Angela of JEA had started talking about
 12 employment as early as January of 2019?
 13 A No. First I heard of him going to work for JEA
 14 was in March of 2019.
 15 Q And until you saw this yesterday, you didn't
 16 know it had been done several months before that?
 17 A No.
 18 Q Let me show you what we've marked as Exhibit 5.
 19 Have you ever seen this before?
 20 A No.
 21 (Hyde's Exhibit 5 was marked for
 22 identification.)
 23 Q When I say this, I'm referring to an e-mail
 24 from Aaron Zahn to Herschel Vinyard, dated April 10,
 25 2019, forwarding an e-mail from Ryan Wannemacher with a
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1 spreadsheet attached to it.
 2 Have you -- have you ever seen
 3 Mr. Wannemacher's spreadsheet before?
 4 A I don't recall seeing the spreadsheet attached
 5 to Exhibit 5.
 6 Q Ever?
 7 A No.
 8 Q Show you what we marked as Exhibits 6 and 7.
 9 Exhibit 6 is entitled Compensation Program
 10 Review, Discussion Document for Compensation Committee
 11 Meeting, Prepared for JEA by Willis Towers Watson, on
 12 April 22.
 13 Exhibit 7 is the same document with the date
 14 June 18, 2019.
 15 Have you seen either one of these documents
 16 before?
 17 A I believe so. Exhibit 6, I don't specifically
 18 recall seeing. Exhibit 7, I do in preparation for the
 19 meeting we had in December of -- with Councilman Diamond
 20 and Councilman Salem.
 21 (Hyde's Exhibits 6 and 7 was marked for
 22 identification.)
 23 Q The meeting that you had with Councilman
 24 Diamond and Councilman Salem and the council on the
 25 afternoon of December 16, 2019?
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1 A Yes.
 2 Q Why had you seen this document in connection
 3 with that meeting?
 4 A I think there had been a document request
 5 prepared and JEA put together a number of documents and
 6 I believe this was included in that and I saw the final
 7 documents produced to Councilman Diamond and Councilman
 8 Salem for that meeting.
 9 Q You say a document request, request by
 10 Councilman Salem and Councilman Diamond to JEA?
 11 A Correct.
 12 Q And you saw what JEA produced and in that
 13 context, you saw Exhibit 7?
 14 A Yes, I believe I remember seeing that at that
 15 time.
 16 Q But prior to December of 2019, you had not seen
 17 it?
 18 A Not that I recall.
 19 Q Well, in your work for JEA from the end of June
 20 through the end of '19, 2019, did you see Willis Towers
 21 Watson's work product in connection with the PUP?
 22 A I don't recall specifically remember seeing it
 23 because that -- my focus was on the compliance of
 24 Florida Statutes, so I don't recall looking at a Willis
 25 Towers Watson study as it related to the PUP until we
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1 got toward the end and were going to have that meeting.
 2 The only caveat I -- I would give is that if
 3 there were -- if it were included in a board
 4 presentation or something, I -- I may have seen it in
 5 relation to that, but I -- I don't recall specifically
 6 sitting down and reading that.
 7 Q On page 9 of Exhibit 7 and Exhibit 7 is an
 8 excerpt of the entire document --
 9 MS. NOLLER: I -- Steve, my page 9 or my
 10 Exhibit 7 only goes to five pages.
 11 MR. BUSEY: There's a numbered -- this is an
 12 excerpt and the second page of the exhibit is page
 13 9. It's numbered -- numbered at the bottom.
 14 MS. NOLLER: Thank you.
 15 MR. BUSEY: Do you see it?
 16 MS. NOLLER: I see it. I see it now.
 17 BY MR. BUSEY:
 18 Q On that page, there's a statement -- and this
 19 is the Willis Towers Watson work product, Given public
 20 power utilities do not typically provide long-term
 21 incentive plans, LTI, market data is not shown for the
 22 public power peers.
 23 Were you aware in 2019 that public power
 24 utilities typically did not provide long-term incentive
 25 plans?
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1 A I remember it coming up in the context of what
2 I would call the -- the Diamond/Salem meeting, on
3 December 16th, there was a lot of discussion about that,
4 including the Willis Towers Watson study. And I recall
5 hearing about it during that time.

6 Q But prior to that time, you were unaware that
7 public power industries do not provide long-term
8 incentive?

9 A I had not looked at that issue and I had not
10 had discussion about that issue.

11 Q And, therefore, were unaware of it?

12 A Yeah, I never looked at it. I was unaware.

13 Q Well, what was -- what was Foley & Lardner's
14 involvement with the PUP plan in 2019 for which the
15 \$136,000 you wrote off? What did you do?

16 A We -- we provided advice regarding compliance
17 with Florida Statutes was our principal role.

18 Q Advice regarding whether or not the proposed
19 PUP plan was compliant with Florida law?

20 A Correct.

21 Q And you provided that advice in what time
22 frame?

23 A We provided two memos. One was in September,
24 following the September 25, thereabouts. And then we
25 were asked to review some additional questions related

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1 to various aspects of Florida law, which resulted in a
2 memo. I believe its final date was October 21 so we
3 provided a very substantive memo regarding that.

4 We also assisted in drafting a letter to the
5 Florida Attorney General's Office seeking an advisory
6 opinion on application of Florida law to the PUP.

7 And we had a draft -- we worked on a draft of a
8 letter to the Florida Commission on ethics regarding the
9 PUP and that letter was never sent.

10 Q Can you tell us why?

11 A The -- the -- the idea was that we would ask
12 the attorney general first for an opinion and,
13 obviously, if the attorney general said it was not
14 compliant, then there would be no reason to go further.
15 So that -- that was sent on October 1.

16 And then I believe it was around the first of
17 November, November 5, I recall a meeting where general
18 counsel's office said they could not move forward with
19 the PUP.

20 So the timing worked out that we hadn't
21 received an opinion from the attorney general's office
22 until the meeting on November 5 with General Counsel
23 Gabriel and he said he could not agree with the PUP
24 going forward. So at that point we considered it dead
25 and there would be no reason to ask the Florida

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1 Commission on ethics at that point.

2 Q Let me show you what we've marked as Exhibit 9.

3 This is an e-mail from Elizabeth Columbo of Nixon
4 Peabody, dated May 20th, 2019, addressed to Ryan
5 Wannemacher and Herschel Vinyard.

6 Have you seen this document before? And it has
7 a memorandum attached to it.

8 A I believe I've seen the memo, but I have not
9 seen -- I don't -- don't recall seeing the document.

10 (Hyde's Exhibit 9 was marked for
11 identification.)

12 Q When you say "the document," you mean the
13 trans- --

14 A Excuse me, the e-mail.

15 Q The transmittal e-mail?

16 A Transmittal e-mail.

17 Q But you've seen the memorandum that's attached
18 to it?

19 A I saw the memo attached to it when I was asked
20 to interview with Assistant U.S. Attorney Duva Tysen,
21 that was the first time I saw the memo.

22 Q When was that?

23 A July 8th of 2020. Excuse me, Tysen Duva. I
24 mispronounced his name.

25 Q So I heard you, but I just want to make sure
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1 I'm clear.

2 The first time you saw this memorandum, which
3 is attached to Exhibit 9, this Nixon Peabody memorandum,
4 dated May 20th, 2019, was when you met with Tysen Duva
5 in 2020?

6 A Correct.

7 Q Prior to that time, did you know of the
8 existence of this memorandum?

9 A I had heard, after our engagement ended,
10 something related to a Nixon Peabody memo, but that's
11 all I heard.

12 Q When you say you had heard after our engagement
13 ended, what point in time was that?

14 A I'm guessing around March of this year, March
15 or April of this year.

16 Q Of --

17 A Let me -- at no time while I was working on the
18 PUP was I informed there was a Nixon Peabody memo.

19 Q That's a pretty clear answer to my question.

20 MS. NOLLER: I'm sorry, Steve?

21 MR. BUSEY: I'm sorry, Lisa?

22 MS. NOLLER: I -- you had cut out.

23 MR. BUSEY: I -- it was a -- it was a footnote.

24 I said that was a clear answer to my question.

25 MS. NOLLER: Thank you.

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1 BY MR. BUSEY:

2 Q Have you ever talked to Herschel about the
3 existence of the May 20 Nixon Peabody memorandum?

4 A He has -- he told me -- how I learned of the
5 memo, he said, I'm paraphrasing here to the best of my
6 recollection, that he had sent the Nixon Peabody memo to
7 someone in OGC and so the OGC, Office of General
8 Counsel, was aware of that.

9 Q When did Herschel tell you that?

10 A I'm thinking March or April of this year, of
11 2020.

12 Q After your engagement had ended?

13 A Correct.

14 Q Why did -- why were you -- what was the
15 circumstances of the conversation with Herschel that
16 you're referring to?

17 A Don't recall how it came up, but he --
18 obviously there was a -- a lot of -- of noise in the
19 community about this. And I think he was just blowing
20 off some steam a little bit in the sense of, you know,
21 we -- we sent this to OGC and so they had knowledge of
22 it as well. If I'm being accused of somehow hiding it,
23 I had sent this on to someone.

24 Q He -- he didn't tell you to whom he had sent
25 it?

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1 Q Was among the matters for which you were --
2 Foley & Lardner was engaged by JEA in 2019 to look at
3 whether or not JEA's proposed long-term incentive plan
4 complies with Florida law?

5 A Yes, that was part of our engagement.

6 Q Given the fact that was part of that engagement
7 and given the fact that this memorandum of May 20th
8 which was directed to Herschel addresses that issue
9 negatively, wouldn't you expect Herschel to bring it to
10 your attention when he engaged it?

11 A It would have been helpful.

12 Q Is that a yes?

13 A Yes.

14 Q Did you ask Herschel why he didn't?

15 A No.

16 Q Were you disappointed to learn that Herschel
17 had this memorandum in his back pocket when he engaged
18 it and didn't tell you about it?

19 A I didn't know whether Herschel had the memo.
20 He was telling me about it, but, yeah, I was
21 disappointed to know that there -- to later learn, after
22 we had concluded all of our work, that there had been
23 research done, legwork done already and I would liked to
24 have seen it. It would have been helpful.

25 Q Do you know how this Nixon Peabody memorandum
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1 A I don't recall him specifying to whom he sent
2 it, no.

3 Q Where did that conversation take place?

4 A I don't recall exactly. Herschel and I are
5 in a Bible study every Friday morning along with other
6 men and it may have been there, but I don't recall
7 specifically.

8 Q Have you read the memoranda?

9 A No.

10 Q Do you know what it concludes?

11 A Well, based on -- highlighted here, he says, We
12 do not believe the program to be able to clear the legal
13 hurdles under Florida law.

14 Q And the program was the PUP plan?

15 A I -- that was my understanding, but, again,
16 I've not read it. This was presented to me during my
17 prior interview and they asked me had I seen anything
18 about it. And I said I had not seen the memo. They
19 asked me to look at -- I think this opening paragraph
20 and then they said, Do you have any opinion about that?
21 And I said, I have not seen this before. And we moved
22 on.

23 Q When you say your prior interview, you're
24 talking about with feds this year?

25 A Yes, the July 8th interview.

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1 came to light in this investigation?

2 A No.

3 Q Our law firm discovered it after we had seen
4 that Nixon Peabody had done some work and we had asked
5 to see Nixon Peabody bills and we asked for memorandum
6 in that context. That's how we discovered it.

7 I'm just surprised, if you were engaged to look
8 at the proprietary of the PUP plan under Florida law,
9 that JEA didn't share this memorandum with you as a
10 predicate to that engagement, but I guess we've already
11 talked about that, haven't we?

12 A That's correct.

13 Q And you were disappointed as well?

14 A Yep.

15 Q Have you ever talked with anybody at OGC
16 regarding whether or not OGC had indeed received a
17 copy of this May 20, 2019, Nixon Peabody memorandum
18 from JEA?

19 A No.

20 Q So you -- as a matter of fact, you don't know
21 whether or not OGC has ever seen the memorandum?

22 A I don't know.

23 Q Let me show you what we've marked as Exhibit
24 10, which is a memorandum from Kort Parde, dated June
25 4th, 2019, to Lynne Rhode.

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1 Have you seen this before?

2 A Yes.

3 (Hyde's Exhibit 10 was marked for
4 identification.)

5 Q In what context?

6 A It was -- I believe prior to --

7 Q Or, excuse me, let me be more precise.

8 I referred to a transmittal e-mail and it has
9 attached to it a memorandum of the OGC from Kort Parde
10 to Lynne Rhode and I'm referring to both documents.

11 A Okay. I -- I do remember seeing this
12 memorandum and it came in the context of prior to the
13 July 23rd, 2019, board meeting. I believe this
14 memorandum -- the date of this predates that meeting.
15 And after that -- after the July 23rd meeting is when we
16 began starting in earnest to look at specific questions
17 related to the PUP.

18 And then I had heard from Lynne, and I can't
19 remember -- Lynne Rhode, can't recall if it was before
20 or after the July 23rd meeting, about a memo that had
21 looked at some of these compensation plans. I said that
22 would -- I would like to see that, you know, to get me
23 started.

24 And so I don't remember exactly when I saw the
25 memo, Steve, but that's the context in which I saw it.

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1 page, under the Answer, it says, Yes, JEA is authorized
2 to adopt bonuses or incentive programs --

3 A Uh-huh.

4 Q -- so long as the program complies with the
5 requirement of Section 215.425, Florida Statute.

6 A Correct.

7 Q Did you agree with that?

8 A Yes.

9 Q So the program is legal as long as it is
10 legal?

11 A Well, it -- 215.425 is the op- -- is the
12 operative statute that you really begin your inquiry
13 from. And so the way I interpreted this memo was the
14 board itself had the authority to enter into a plan,
15 provided the plan met the requirements of Florida law.

16 Q That's pretty much what it says, huh?

17 A Yeah.

18 Q And at the top of page 4 of the memorandum
19 attached to Exhibit 10 is a paragraph that says, The
20 only concern for JEA would be the issue with respect to
21 how to individually measure each employee's work
22 performance because the statutory language would not
23 permit a bonus based upon JEA's overall financial
24 improvement.

25 Is that your understanding of the law?

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1 Q And what did you learn from looking at the
2 memorandum at that time?

3 A Well, I think one of the things they were
4 really looking at was the authority of JEA to enter into
5 a long-term incentive plan more than -- more than the
6 specifics on the -- on the particular PUP plan itself,
7 but it was the authority of the board itself to enter
8 into a compensation plan. And then I -- as the memo
9 reflects, there was issues related to collective
10 bargaining also.

11 Q And so I think what I heard you say is that you
12 have seen this memorandum and you did see it after it
13 was drafted on June 4th, but before the July 23 board
14 meeting?

15 A I don't recall where it was in relation to the
16 July 23rd meeting. What the -- the reason I was keying
17 in on that meeting, after the board approved the -- a
18 form of the PUP plan at the July 23rd meeting, that's
19 when we began looking at specific issues that are
20 reflected later in my memos of the September and October
21 time frame.

22 And then I learned somewhere in or around that
23 time of the existence of this memo. And I said, I'd
24 like to see that.

25 Q And you see -- you see in the -- the first

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1 A I believe under 215.425, there's -- that that's
2 what it states.

3 Q And this is the purpose of the PUP plan as
4 designed by Aaron Zahn, to permit employees to -- the
5 PUP program to share in the JEA's financial
6 improvement?

7 A I believe the purpose was to provide employee
8 incentives and possibly compensation and in measure,
9 that could be their financial improvement. And I know
10 as we -- as we looked at that issue, the question -- a
11 question came up as to was there anything else that was
12 going to be used to determine how an employee would have
13 met certain goals or things like that.

14 Q But in your conversation with the JEA, wasn't
15 the idea was that they wanted employees to be able to
16 share in the increased value of JEA as a result of its
17 performance?

18 A That was going to be the measuring stick, yes.

19 Q And what I just read to you suggests that's not
20 appropriate measuring.

21 A Looking -- as you read it, as you read this
22 statement, that would -- I don't want to say it's a --
23 it's an inappropriate measurement, if it's a question of
24 what were all of the measurements that were going to be
25 used, but, yes, financial improvement, standing alone

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1 could -- could create an issue, as identified in this
2 memo.

3 Q As -- as I understand your testimony so far
4 this morning, Foley didn't begin to look at the legality
5 of the proprietary of the PUP plan until after it was
6 approved by the JEA board on July 23, 2019?

7 A We began our research into the issues
8 identified in the memo. I had seen the PUP plan very
9 generally before July 23rd, but our in-depth analysis
10 began after that meeting.

11 Q When you said that you've seen the PUP plan
12 before July 23rd, let's be more precise. I don't think
13 there was a PUP plan, literally wasn't there simply a
14 summary of what the PUP plan was intended to be?

15 A What I was talking about, the materials that
16 were presented at the board meeting for July 23rd, yes.

17 Q That was a summary, wasn't it?

18 A I believe so. I don't recall all of it. But
19 it was -- part of -- there was a resolution approving
20 the form of a long-term compensation plan, yeah.

21 Q In my recollection -- we can see it. We'll get
22 to it -- but it was -- the plan itself verbatim was not
23 there, it was a summary of the plan?

24 A I believe you're correct, Steve. We'll have to
25 look when we get to that exhibit.

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1 BY MR. BUSEY:

2 Q And when you say we have to look at it to make
3 sure we're complying with the JEA, at what point in
4 time? Was this before or after July 23?

5 A It was after.

6 Q Why would JEA ask you to look at the
7 proprietary of the plan it approved on July 23 after it
8 approved it rather than before they approved it?

9 A I don't know.

10 Q Don't you think it would have made more sense
11 to ask you before they approved it?

12 A Well, the board hadn't yet acted upon it so I
13 don't know the answer to that question.

14 Q Wasn't there action on July 23?

15 A Yeah, there was action on July 23 to approve a
16 number of things, including what was the form of a PUP
17 plan.

18 Q Let me show you what we marked as Exhibit 12.

19 A Okay. I've got a copy. It was somehow
20 attached to that. Is this it?

21 (Hyde's Exhibit 12 was marked for
22 identification.)

23 Q Yeah, the exhibit.

24 A Okay.

25 Q Which is the minutes of the JEA Compensation

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1 Q And let me show you what we've marked as
2 Exhibit 11, which is a memorandum from Lynne Rhode to
3 Kort Parde -- no, from Kort Parde and Sean Granat to
4 Lynne Rhode, dated June 17, regarding compensation
5 plans.

6 Have you seen Exhibit 11 before?

7 A I believe so, yes.

8 (Hyde's Exhibit 11 was marked for
9 identification.)

10 Q In what context?

11 A It -- it is in the same context, I think, of
12 when we began our review. I wanted to see everything --
13 all prior work which had been done, particularly by OGC,
14 on this issue.

15 Q And what was your takeaway from looking at this
16 memorandum?

17 A Same thing --

18 Q Go ahead.

19 A Well, the takeaway was we really had to grapple
20 with 215.425, the statute, to make sure that we were
21 complying with that.

22 Q And --

23 MS. NOLLER: And by "we," Kevin, you mean
24 JEA?

25 THE WITNESS: Yes, we -- we the client, JEA.

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1 Committee Meeting, on June 18th, 2019.

2 Have you seen that before?

3 A I believe in preparation of those documents to
4 be submitted for the December city council meeting to
5 Councilman Diamond and Salem, I saw it in that context.

6 Q But not before then?

7 A I don't recall seeing it before then.

8 Q And so from your prior testimony this morning,
9 may I assume that as of June 18th, 2019, you had not
10 been engaged by JEA to assist with the compensation
11 issues that are addressed in these notes?

12 A That's correct.

13 Q Let me show you what we've marked as Exhibit
14 13, which is a document with a JEA logo on it, a Morgan
15 Stanley logo on it, it says, Discussion Materials, JEA,
16 June 20th, 2019.

17 Have you seen this document before?

18 A I do not recall this document.

19 (Hyde's Exhibit 13 was marked for
20 identification.)

21 Q This was two days after the compensation
22 committee meeting on June 18th, 2019. And you see on
23 page -- what's numbered page 46, the last page of this
24 excerpt, which is Exhibit 13.

25 A Yes.

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1 Q It says -- this is Morgan Stanley, Four Pillars
2 for Successful Privatization.

3 Were you -- you weren't -- at this point in
4 time of June 20th, you were not engaged by JEA --

5 A No.

6 Q -- to address privatization issues?

7 A No, sir.

8 Q And you had nothing to do with this document?

9 A No.

10 Q Let me show you what we've marked as Exhibit
11 14A and it's a series of e-mails. The one on the bottom
12 is from you --

13 A Uh-huh.

14 (Hyde's Exhibit 14A was marked for
15 identification.)

16 Q -- dated July 3, to a number of folks in your
17 organization, Foley organization.

18 A Right.

19 Q The subject is bonus perform- -- performance --

20 A Uh-huh.

21 Q -- performance bonus agreement.

22 And you say to these folks, Does anyone have
23 time to help with drafting a performance bonus agreement
24 for employees? They want it tied to performance -- to
25 specific performance measurements of the entities. Let

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1 me know. There's some urgency in the request.

2 And, yes, I know it's July 4th weekend. I'm
3 not sure the client is aware of this.

4 A Uh-huh.

5 Q Who is "they" in the second sentence?

6 A They would be JEA. I believe the specific
7 request was coming from Herschel.

8 Q And the client, referring to the last sentence,
9 is --

10 A JEA. Yes. Uh-huh.

11 Q So tell me what caused you to send this
12 memorandum out on the afternoon of Wednesday, July 3.

13 A I believe I got a call from Herschel talking
14 about this concept of a -- of a performance bonus plan,
15 a performance bonus agreement and did I have any
16 knowledge or experience with that. And as evidenced by
17 this request, I solicited information. I did not have
18 one specifically.

19 I'm aware of the private sector context, but
20 I -- I didn't have anything so that's why I said, Has
21 anybody done any work in this area?

22 Q But what did Herschel ask you to do?

23 A I think to see if we had any examples of or
24 experience in, as I put it, their performance bonus
25 agreements.

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1 Q And what was your understanding, at the time of
2 that conversation with Herschel, what he meant by
3 performance bonus agreement?

4 A Some -- some way of providing additional
5 compensation, based on whether it be individual
6 performance or the performance of JEA as a whole, but a
7 way of additional compensation outside of the normal
8 we're establishing a base salary or an hourly rate or
9 something like that.

10 Q Was his request to you that general?

11 A I believe so.

12 Q Did he say when he needed it?

13 A I don't recall him saying specific to it, but,
14 obviously, I wrote, There's some urgency. And one thing
15 I learned pretty quickly throughout this engagement,
16 most things were treated as urgent.

17 Q But did he say when he wanted the work by?

18 A I don't recall.

19 Q And that second sentence, They want it tied to
20 specific performance measurements of the entities.

21 A Entities. Uh-huh.

22 Q What entities?

23 A I believe JEA, as a whole, and I don't recall
24 whether there was discussion about various, my term,
25 operating units within JEA.

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1 Q Do you -- do you have now, or did you then, any
2 knowledge about whether or not Pillsbury had been
3 engaged to do the same thing?

4 A I didn't have any knowledge whether they had
5 been engaged at that point or on -- on this issue, no.
6 I -- no, to answer your question.

7 Q Did you subsequently learn whether or not they
8 had been engaged?

9 A Yes.

10 Q When?

11 A Probably sometime the first or second week of
12 July, because, ultimately it -- they -- you -- I'm not
13 sure of the exact date. It had been in July because
14 the -- the draft of the performance unit plan that
15 ultimately came to be was drafted by Pillsbury. So,
16 obviously, they had been engaged, I don't know when, to
17 do that.

18 Q You don't know if it was before or after July
19 3?

20 A I don't know.

21 Q So when did you become -- was there a point in
22 time that you became aware that both you and Pillsbury
23 had been engaged to do the same thing?

24 A Well, I never viewed -- I viewed us working
25 with Pillsbury. The way -- the way the engagement was

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1 originally explained to me, that our role was going to
2 be Florida counsel, but that Pillsbury was going to be
3 the lead counsel. And so our role was to step in where
4 there are Florida-specific issues and advise on those,
5 but that Pillsbury was going to be lead counsel.

6 Q But as I read your memorandum, your e-mail of
7 July 3 to your folks, it looks like you have been given
8 the responsibility to draft the plan from the
9 beginning?

10 A Well, I was asked about it, but I was never
11 asked to draft the performance unit plan. I was asked
12 do we have experience in it, do I have any knowledge of
13 it so that generated this e-mail, me seeking out that
14 question.

15 Q Well, let me understand what you just said in
16 light of the first sentence of your e-mail, Does anyone
17 have time to help with drafting --

18 A Right.

19 Q -- a performance bonus agreement?

20 A Uh-huh.

21 Q That means writing it?

22 A That does.

23 Q That's what you're asking your people?

24 A Does anyone have time to do it and I was asking
25 was there experience in it as well as time. And we

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1 ultimately never drafted anything.

2 Q Why?

3 A I never came up with the experience or an
4 example of one to use. And then ultimately I learned
5 that Pillsbury had done one so it would have been
6 duplicative to do it.

7 Q When did you learn that Pillsbury had done
8 one?

9 A It was in or around that July 23rd meeting. I
10 can't remember on which side of the meeting it was.

11 Q Well, in response to your July 3 e-mail, which
12 was basically asking people if they had anything to do
13 over the weekend, Richard Guyer says to you, I have the
14 time, but no experience with this. That being said, I
15 think I can help, but I'd defer to the group.

16 So did Richard Guyer, who had no experience
17 with it, help draft the plan?

18 A No. Richard's a second year associate that's a
19 very good associate, always volunteers to be of
20 assistance.

21 Q But you didn't take him up on it?

22 A No.

23 Q And let me show you what we've marked as
24 Exhibit 14B, which is an e-mail chain. And at the
25 bottom, it's July 6, an e-mail from Jessica Lutrin at

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1 Pillsbury.

2 Hi, Kevin. Could you please confirm that you
3 received the Fed Ex documents?

4 A That's right.

5 (Hyde's Exhibit 14B was marked for
6 identification.)

7 Q Do you know what Fed Ex documents she's
8 referring to?

9 A It -- it could have been the PUP, Steve, as
10 well as I think there was documents related to a
11 proposed employment agreement, but it -- it could have
12 been the PUP, the initial draft. Pillsbury, and
13 particularly Jessica Lutrin, are the ones who drafted
14 the original PUP.

15 Q Would July 6th be the first time you knew
16 that?

17 A It could well be, yes.

18 Q Herschel hadn't told you that?

19 A Not that I recall.

20 Q So if Herschel called you up on Wednesday
21 before July 4th weekend and asked you if you could help
22 draft the plan, he didn't tell you that Pillsbury had
23 already been drafting it?

24 A I don't recall any discussion about telling me
25 that I was -- would be receiving some documents from

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1 Pillsbury, no.

2 Q Or telling you that Pills- -- he had already
3 asked Pillsbury to draft the PUP plan?

4 A I don't recall being told that.

5 Q And then she asks you on the 8th, have you had
6 a chance to review the documents? Had you?

7 A I suspect I had. I can't -- I don't recall
8 specifically, but typically when I received a Fed Ex, I
9 attach importance to it and I try to read it.

10 Q Let me show you what we marked as Exhibit 14C.
11 And, again, this is an e-mail chain.

12 A Uh-huh.

13 (Hyde's Exhibit 14C was marked for
14 identification.)

15 Q And I'll start at the bottom and we'll go
16 forward. Attached at the end of it is a JEA performance
17 unit plan -- excuse me, JEA performance unit agreement.

18 And that's attached to an e-mail from Kevin, again, on
19 Wednesday, July 3, at 1:00 p.m. to Belinda. Who is
20 Belinda Morgan?

21 A Belinda is one of my partners in our
22 benefits -- employee benefits practice group.

23 Q So this is the same afternoon that you wrote
24 the --

25 A Right, wrote the e-mails asking for help.

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1 Q And you wrote Belinda and said, A public agency
2 client --

3 Is that JEA?

4 A Yes.

5 Q -- wants to create a bonus program for its
6 employees. They are calling them performance units,
7 essentially a draft -- a grant of options to exercise.
8 Is this something you have drafted before or helped
9 draft? I can handle the niceties of Florida public
10 sector law, which allows employees to be paid bonuses,
11 but I need a good starting place from which to work. If
12 not you, let me know who you'd recommend. Of course,
13 the client is in a rush over July 4th weekend. Early
14 next week would be fine.

15 So you sent that to Belinda on Wednesday
16 afternoon and she responded to you that afternoon. And
17 said, Kevin, I'm happy to help and have worked on option
18 plans and incentive unit plans before, but nothing
19 similar for a public agency. To be honest, I'm not
20 exactly sure how this would work, as I wouldn't think
21 there would be any sort of stock/equity units to which
22 the plan would apply. Is this really more of a bonus
23 arrangement, but each individual gets a certain number
24 of units which determines his or her place of a bonus
25 pool? We could definitely do something like that.

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1 This is the associate you were talking about
2 earlier?

3 A Yeah. And that -- this refreshed my
4 recollection on something.

5 Q Go ahead.

6 A Okay. You see where he refers to a benefit
7 bond proposal in the second sentence?

8 Q Yes.

9 A Okay. One of the things that had been asked is
10 whether there could be the use of a bond, a municipal
11 bond, to create a -- a funding source for this type of
12 additional compensation going to employees. And so I
13 had asked Richard to do that, to look at that. And then
14 he came back with something, it was very general, almost
15 like a term sheet, and it -- it never went any further
16 than that because we ultimately concluded you couldn't
17 use a bond-type concept.

18 Q When you say he came back with something that
19 looked like a term sheet, is that the documents attached
20 at the end of Exhibit 14C?

21 A Yeah, I think this is it.

22 Q So what came of this effort?

23 A The -- on -- on the bond issue, nothing.

24 Q Is your -- is your and Belinda and Richard's
25 time over the 4th of July weekend as evidenced by these

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1 I'm also not sure how the "exercise" component
2 would apply since the arrangement would presumably be
3 subject to 457(I). As a result, participants will be
4 required to include the value of the deferred bonus and
5 income as soon as they vested in it, which would take
6 away the benefit of being able to determine when that --
7 to exercise the unit.

8 And then you responded to Belinda, on
9 Wednesday, July 3rd, at 2:40. Belinda, I'm copying
10 Richard Guyer, who has also agreed -- who has agreed to
11 take the first stab, but we would love your review and
12 input. We're trying to avoid the word "bonus," but the
13 concept is the same. Please feel free to reach out to
14 Richard in the Jacksonville office. Thanks to both of
15 you for working on this quick turnaround.

16 Why are we trying to avoid the word "bonus"?

17 A Bonuses in the public sector tend to cause
18 political controversy.

19 Q So when you say "we are trying," is that JEA?

20 A Yes.

21 Q And Belinda acknowledges your e-mail at 4:00
22 o'clock, on Wednesday, July 3.

23 And then on Sunday Richard Guyer responds to
24 both of you and says, Belinda and Kevin, please find a
25 draft of a performance unit agreement for JEA.

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1 memorandums among the time that was written off by Foley
2 & Lardner, \$136,000?

3 A I'd have to look at the time sheet. It should
4 have been. That would be the intent.

5 Q Do you know how Richard's work product attached
6 to Exhibit 14C differed in the work product ultimately
7 produced by Pillsbury?

8 A Not as we sit here. I'd have to compare the
9 two documents.

10 Q Let me show you what we've marked as 14D. And
11 this is a -- an e-mail from Belinda to you commenting on
12 Richard's draft, which we've just referred to.

13 Second paragraph says, Although the agreement
14 is styled as a grant of, quote, "performance units,"
15 closed quote, it's essentially just a way to determine a
16 cash bonus for employees. Some of the changes I've
17 suggested are to address that. Removing language more
18 usually seen with equity-related plans.

19 I also try to make it more clear where -- when
20 payment will actually be made. The agreement is
21 currently structured to be exempt from 409A as a
22 short-term deferral plan, but if there's any concern
23 that JEA might not be able to make payment as required,
24 there are ways to address that.

25 So is this a -- I take it this is a part of the

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1 effort still that didn't go anyplace?

2 A Yes.

3 (Hyde's Exhibit 14D was marked for
4 identification.)

5 Q And she says, We are removing language more
6 usually seen with equity-related plans.

7 Was this an equity related plan or not?

8 A I -- I'm not sure. It's outside my normal
9 scope of expertise. I think as they were looking at it
10 originally, it was going back to the bond proposed, but
11 I -- I'm not sure, Steve.

12 Q Well, do you recall after July the 8th what
13 was the next step or development in terms of coming up
14 with a PUP plan for consideration by the board on July
15 23?

16 A It was -- the Pillsbury draft became the
17 vehicle.

18 Q And what happened to the drafts that Foley had
19 come up with?

20 A Nothing that I'm aware of.

21 Q And in accordance with your prior testimony,
22 you assumed that the time related to those drafts had
23 been written on by Foley?

24 A Yes.

25 Q Let me show you what we've marked as Exhibit
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1 Representatives of Morgan Stanley. A number of lawyers
2 from Pillsbury. Representatives of JEA. I believe at
3 one point Michael Munz was there. And maybe Tim Baker
4 at one point.

5 MR. BUSEY: Can we go off for just a moment?

6 THE WITNESS: Sure.

7 MR. BUSEY: Let's go off the record.

8 (Recess taken.)

9 MR. BUSEY: Back on the record.

10 BY MR. BUSEY:

11 Q Exhibit 15 has on the front cover of it the
12 term Project Freebird. Do you know why that's there?

13 A That was the -- as I understood the original
14 name of this project that whatever -- what it was going
15 to be.

16 Q Well, let's be more precise. When you say
17 this project, what is your understanding of what this
18 project is?

19 A My understanding was that one of the scenarios
20 that were being considered by the board was what I think
21 ultimately came to be termed the nontraditional
22 approach, which would be some form of sale, merger, some
23 change in the corporate structure of JEA.

24 Q And why was Foley at this meeting?

25 A Primarily, again, we were going to have a
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1 15. This is a document that has J.P. Morgan, Morgan
2 Stanley internal notes at the top. And it says, Project
3 Freebird, Organizational Materials, July 2019.

4 Have you seen that document before?

5 A I believe so.

6 (Hyde's Exhibit 15 was marked for
7 identification.)

8 Q Okay. Do you recall when and where you saw
9 it?

10 A I think it was during the meetings which were
11 held at Club Continental. I see it references a time
12 period of meeting agenda of July 10th through 12th. I
13 believe that's where those meetings were held.

14 Q It is. The meetings at Club Continental.

15 A Yes.

16 Q Did you go to those meetings?

17 A Yes.

18 Q Who was there?

19 A There was 20 or 30 people so I don't remember
20 all. Let me tell you the groupings of people that were
21 there. My -- I was there on behalf of Foley. At some
22 point, but not throughout the -- every day, Robert Hosay
23 and Ben Grossman. My partner, Robert Hosay, Ben
24 Grossman, who is a senior counsel at our firm, was at
25 the meeting. You had representatives of J.P. Morgan.

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1 Florida law component. One of the first things we did
2 at that meeting was to give a primer on Florida public
3 records law and Florida Sunshine Law.

4 Q Why?

5 A Because you had a group of folks, primarily
6 those -- Pillsbury lawyers, various investment bankers
7 were not familiar with Florida's very broad open meeting
8 laws, open public record laws. But, ultimately, we had
9 also -- as I mentioned Mr. Hosay would be dealing with
10 some procurement issues and so if the project were to go
11 forward, there would be procurement issues. So he was
12 going to be advising on that as well.

13 Q So if I get it from your answer, the purpose of
14 this meeting, to your understanding, was to deal with
15 the restructuring of JEA?

16 A Yeah. Certainly that was a part of the
17 discussion, yes.

18 Q Was it the PUP plan?

19 A I don't recall whether the PUP plan was
20 specifically talked about. I talked -- I was -- I was
21 part of a smaller group that broke out and talked about
22 employee issues so I know that we talked about
23 collective bargaining and things like that.

24 Q Have you seen Herschel Vinyard's transcripts of
25 his interviews by OGC?

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1 A No, sir.
 2 Q Were you aware that he's had his deposition
 3 taken twice?
 4 A Yes.
 5 Q But you haven't seen the transcripts?
 6 A No.
 7 Q Did -- did -- were you aware, either -- from
 8 any source that Herschel said that he, at this meeting
 9 at Club Continental, told folks that he thought the PUP
 10 plan wasn't a good idea, it was bad?
 11 A Am I aware that he said that?
 12 Q Yes.
 13 A At that meeting?
 14 Q Yes. Did you witness him saying that?
 15 A No. No. At that meeting, I did not hear
 16 Herschel say that.
 17 Q I'm reading from a transcript of his testimony
 18 and he was asked to describe with particularity every
 19 time that he advised Mr. Zahn -- Herschel advised
 20 Mr. Zahn that the PUP wasn't prudent and should not be
 21 pursued.
 22 His answer was: So I may not be able to do it
 23 for every time, but I have been told that the very first
 24 time was at Orange Park when the PUPs were first kind of
 25 revealed or disclosed and so that would be the first

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1 time I said something. And I was informed that my
 2 response was firm or animated to Mr. Zahn.
 3 Did you witness anything like that?
 4 A No.
 5 Q Do you know Tim Baker?
 6 A Yes.
 7 Q How do you know Tim?
 8 A Just I know he's worked on a number of
 9 campaigns of candidates that I've supported, whether it
 10 be city council candidates or some state legislative
 11 candidates.
 12 Q When you say worked on campaigns, what does --
 13 what does he do for a living?
 14 A In the context that I worked with him, he was
 15 the campaign consultant or campaign manager.
 16 Q For people running for office?
 17 A For people running for office, yes.
 18 Q So what was he doing at this meeting?
 19 A I don't know what his specific role was. What
 20 I've -- at that meeting, as I came to understand it, he
 21 would have a role that if this were approved by the
 22 board and approved by the city council, ultimately it
 23 would have to go to a public referendum. And my
 24 understanding was he would work on the campaign for that
 25 public referendum.

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1 Q At whose request?
 2 A I don't know at whose request. I assume he --
 3 I -- I don't know specifically.
 4 Q Well, what was your understanding -- I mean,
 5 you were there and he was there and you know who he is.
 6 A Yeah.
 7 Q And you knew that he was going to work on the
 8 campaign, you said?
 9 A Right.
 10 Q Who told you that? Who led you to believe
 11 that?
 12 A That was my supposition because I knew the City
 13 charter required any sale or disposition of more than 10
 14 percent of the assets by the JEA ultimately had to be
 15 approved by the voters.
 16 Q That came about in 2018, didn't it?
 17 A I don't remember exactly when it came about.
 18 Q Do you remember there was a contro- -- public
 19 controversy in the City of Jacksonville in 2018 about
 20 the sale of JEA?
 21 A Yes.
 22 Q And then led to the Crescimbin committee?
 23 A Yes.
 24 Q And were you aware that the JEA board, in May
 25 of 2018, told the senior leadership team of JEA to stand

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1 down and do not pursue the privatization anymore?
 2 A I'm not aware of that.
 3 Q And that Mr. Crescimbin was one of the ones
 4 who got the -- on the ballot about requiring the charter
 5 change require public referendum in the event of a sale
 6 of the material portion of the JEA access?
 7 A I aware that John -- Councilman Crescimbin had
 8 pursued that, yes.
 9 Q Leading to the requirement that you just
 10 referred, that there had to be a public referendum in
 11 the event of a sale?
 12 A Yes.
 13 Q And your supposition why Tim Baker was at this
 14 meeting, Project Freebird, at Club Continental, on July
 15 10th, 2019, was that Tim Baker was going to handle the
 16 campaign?
 17 A Yes. Tim Baker handles campaigns. So when I
 18 see Tim Baker at a meeting, I assume there's a campaign
 19 going to occur.
 20 Q But you don't know whose campaign in this
 21 sentence?
 22 A Well, campaigns can also be referendum
 23 campaigns as well.
 24 Q So it leads to the question, who hired him?
 25 A I don't know.

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1 Q And you still don't know?

2 A No, I've not seen an engagement letter or

3 anything like that.

4 Q And you didn't ask him why he was there?

5 A No.

6 Q You didn't ask him who was paying him?

7 A No.

8 Q Why was Michael Munz there?

9 A I believe Michael was working on communication

10 aspects of if the -- if the board approved, on the July

11 23rd meeting, pursuing what has been termed the

12 nontraditional approach, I think Michael was going to

13 work on communication, how -- how that communication

14 would be rolled out, due to process --

15 Q Communication -- I didn't mean to interrupt

16 you.

17 A No. Go ahead.

18 Q Communication from whom to whom?

19 A I'm not sure exactly. I think initially it was

20 going to be communication to the employees because,

21 obviously, pursuing the nontraditional approach would be

22 a very different form of the way JEA would be organized

23 and operated.

24 Q Did you know that Tim Baker was a paid

25 consultant to Florida Power & Light's parent, NextEra,
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1 in connection with the ITN process?

2 A No.

3 Q Do you know that today? Did you ever learn

4 that?

5 A I think I heard that, like, in the news, but I

6 don't recall someone in connection with this process

7 specifically telling me that.

8 Q Do you think you learned it from news sources?

9 A I think so, yeah.

10 Q Would that seem unseemly to you, that FP&L's

11 lobbyists was at this meeting, at Club Continental, to

12 talk about the process?

13 A It would raise questions to me, yes.

14 Q And you would have asked those questions at the

15 time, had you known about them?

16 A Whether I would have directly confronted Tim

17 with that, I -- I -- I don't know. We're not close in

18 any sense, but if I were asked the question of what do

19 you think about that, yeah, then I would have raised it

20 with him.

21 Q Do you recall Tim Baker addressing the

22 attendees at the meeting?

23 A As in speaking to the entire group?

24 Q Or some significant subset of them.

25 A No, I don't recall that.
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1 Q Look at page 5.

2 A Numbered page 5?

3 Q Numbered page 5, Exhibit 15.

4 A Where are the page numbers, Steve?

5 Q In the bottom, at the middle of the bottom,

6 very faint.

7 A What's -- what's the -- my -- okay. There --

8 all right. Where it says, Potential Process Timing and

9 Milestones, that page?

10 Q Yes.

11 A Yeah. Okay.

12 Q And down at the bottom it says, J.P. Morgan and

13 Morgan Stanley will work closely with the City and its

14 advisors to tailor a process/time line that meets the

15 objectives of the City.

16 Did you -- what was your understanding of the

17 objectives of the City at this meeting at Club

18 Continental?

19 A I'm not sure Foley understood what the

20 objectives of the City were as specified. I put it all

21 in the context of if the ITN process were to go through

22 and be approved at the various steps along the way,

23 there would be a time line for what that approval

24 process would be and the timing.

25 And, ultimately, my understanding was leading
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1 to a referendum, which had it occurred would have either

2 been in August of this year, the primary that concluded

3 last week or perhaps the November general election of

4 this year.

5 Q Okay. Well, I was asking you specifically

6 about the sentence that says as to why the City was

7 there instead of JEA. Do you know whether or not --

8 A I don't know why that word was used.

9 Q The word City?

10 A Yeah, I don't know.

11 Q And you spoke of a timeline. There on the

12 right side of the same page, there's a timeline, isn't

13 there?

14 A Yes, uh-huh.

15 Q And it suggests that the -- that the purchase

16 agreement or the tendered agreement would be signed by

17 March of 2020?

18 A According to this, yes.

19 Q Do you remember that discussion at the

20 meeting?

21 A I don't recall a specific discussion on the

22 timeline. Let me give you a little context to the

23 meeting. We broke up into subgroups so I'm not saying

24 that it didn't occur. It could have occurred outside of

25 my subgroup.
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1 Q And what was your subgroup?
 2 A Mainly employee issues.
 3 Q Who chaired the meeting?
 4 A Aaron was -- no one officially chaired it, but
 5 Aaron clearly was in charge of the meeting.
 6 Q Aaron Zahn?
 7 A Yes.
 8 Q Did you know Aaron?
 9 A I had not met Aaron before this process began.
 10 Q Do I understand you to say you had not met
 11 Aaron before the Club Continental meeting on July 10th,
 12 2019?
 13 A I believe that's the first time I met him.
 14 I -- I'm -- I don't recall a specific meeting with him
 15 between June 26th and that meeting, no. But I do
 16 specifically recall him at the meeting and -- and
 17 meeting him there.
 18 Q Do you recall what he said about the purpose of
 19 the meeting?
 20 A It was to talk about how to organize and
 21 formulate a process that if the nontraditional approach
 22 were approved, how that would be carried forward.
 23 Q And when you say nontraditional approach, that
 24 was the language that was used by the principals
 25 involved in this discussion, referring generally to
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1 privatization, isn't it?
 2 A Correct. Yes.
 3 Q And privatization is a broad term to discuss
 4 the disposition of assets of JEA to some other
 5 ownership?
 6 A That would be one form of it. There were other
 7 things looked at, like, a co-op agreement or there was
 8 talk about the possibility of outside investment, but
 9 it's -- it's taking it from its currently
 10 municipally-owned utility to some other format, yes.
 11 Q You see on page 7 of Exhibit 15, there's
 12 another -- there's a chart of a timeline. Do you -- do
 13 you recall any discussion of why the timeline was
 14 designed to conclude in March of 2020?
 15 A Because I think what it was -- understanding
 16 that once there was -- or if there were a definitive
 17 agreement reached, it also then had to be approved by
 18 the city council. And what the city council would also
 19 have to do is approve a referendum process.
 20 And there's time -- it only takes a few -- up
 21 to six weeks to get a bill and then you have to get --
 22 to approve that referendum, you have to give the
 23 supervisor of election a certain amount of time to put
 24 the referendum on the ballot. So if you were looking
 25 toward an August 2020 referendum, just to get the city
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1 council approval processes done, you would have to
 2 almost go back to March.
 3 Q Do you -- do you have any knowledge of whether
 4 or not that proposed deadline for completion of the
 5 project of March 2020 ever changed?
 6 A I don't know if it changed. What I can say,
 7 Steve, is the discussion I heard about if a referendum
 8 were to be held, it was geared toward the August
 9 referendum, August 2020 referendum or -- or primary date
 10 or the November primary date.
 11 Q I'm not -- I'm not -- I don't really understand
 12 your answer to my question. There was a time
 13 subsequently, subsequent to July of 2019, which that
 14 March date was moved -- collapsed and moved forward?
 15 A Oh, okay. I know what you're referring to now.
 16 I thought you were talking about the referendum. I'm
 17 sorry.
 18 Yeah, I recall that there was an effort to --
 19 after the initial repliers responded to the ITN, an
 20 effort to accelerate the -- the review of that and,
 21 ultimately, the -- the negotiation with the successful
 22 repliers.
 23 Q Do you know why?
 24 A I don't know why specifically it was moved up.
 25 Q Do you know by whom, at whose instance?
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1 A I heard about it from Herschel, but I don't
 2 know if it was a directive he was given by Aaron or any
 3 specific people.
 4 Q You say you heard about it from Herschel --
 5 A Uh-huh.
 6 Q -- when and in what circumstance?
 7 A He -- he and I talked a lot as this process
 8 were going through, so he told me that it -- it was
 9 going to be moved up. And I can't remember if it was
 10 moving it to early January, I don't recall, but I think
 11 it was around January. And so he told me that that was
 12 the intent to happen.
 13 Q Did he tell you -- when did he tell you that?
 14 A I don't recall specifically.
 15 Q Was it before January?
 16 A Oh, yeah. Yeah.
 17 Q Did he say why it was being moved?
 18 A I don't recall him saying why he wanted it --
 19 why it was going to be moved up.
 20 Q Do you remember the mayor making announcements
 21 that he wanted to move it up?
 22 A I think so, but I can't recall for sure. You
 23 talking about, like, a public announcement?
 24 Q Yes.
 25 A Yeah, I don't recall specifically that.
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1 Q Do you recall a private announcement?
 2 A Not that he made to me.
 3 Q Look at page 13 of Exhibit 15, which is
 4 entitled Illustrative Data Room Index.
 5 Do you know what a data room is?
 6 A Yes.
 7 Q What is a data room?
 8 A Data room is an electronic repository of
 9 information that would be used by the people involved in
 10 the process. And it -- and potentially even by the
 11 people who would be replying to the ITN.
 12 Q Bidders?
 13 A Yes.
 14 Q You see this data room was -- index is
 15 approximately six pages long?
 16 A You're looking at page 13?
 17 Q Yes.
 18 A Make sure we're on the same page. My numbers
 19 are really faint, hard to read here. Okay. So here --
 20 so here.
 21 Q It goes through page 18.
 22 A Yeah. Yeah. I see what it says here.
 23 Q Do you know why this data room contains so much
 24 data?
 25 A Not specifically as to this transaction, but
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1 various corporate transactions, depending on the size
 2 and complexity, you could have any number of -- any --
 3 any amount of data. But as to why these particular
 4 items were chosen and why these are listed, no, I don't
 5 know.
 6 Q This -- this index of data room data that was
 7 prepared at least by the first week in July of 2019
 8 appears pretty extensive. Do you -- is this work of
 9 J.P. Morgan and Morgan Stanley?
 10 A As I understand it, yes.
 11 Q Do you know when they started?
 12 A No.
 13 Q Did you have anything to do with this data
 14 room?
 15 A No.
 16 Q Did you know a data room had been prepared by
 17 these same folks in 2018?
 18 A No.
 19 Q Were you aware that this effort in 2019 was a
 20 continuation of the effort in 2018?
 21 A No.
 22 Q Now, what was the takeaway of this meeting, the
 23 Club Continental meeting, in July of 2019?
 24 A That there would be additional work preparing
 25 material for the board discuss- -- presentation and
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1 board discussion would be to occur on July 23rd.
 2 Q I can't remember if I asked you this earlier,
 3 but do you remember any discussion about the PUP at this
 4 Club Continental meeting?
 5 A I believe I had discussions with Jessica Lutrin
 6 about it just generally.
 7 Q At the meeting?
 8 A Yes. It's part of our -- in my little working
 9 group of employee issues, I think Jessica sat in on some
 10 of those meetings.
 11 Q But not in the larger group discussion?
 12 A No. It -- the larger group discussion was
 13 really a kickoff and then it -- very quickly people went
 14 to their subject matter expertise.
 15 Q A kickoff of what?
 16 A You know, Aaron saying, let's all introduce
 17 ourselves. Here we are. He did talk about kind of
 18 the -- the end date of work would be July 23rd in terms
 19 of we're going to make a presentation on these various
 20 scenarios to the -- to the board on July 23rd. So
 21 there's a real short time period to get the various
 22 things done.
 23 Q And you don't recall the PUP being part of that
 24 discussion by Aaron --
 25 A No.
 Hedquist & Associates Reporters, Inc.

1 Q -- about the time frame?
 2 A No. No, I don't.
 3 Q Do you recall Alan Howard being at the
 4 meeting?
 5 A I recall Alan being there, I think, one day for
 6 a very short period of time, but I do remember seeing
 7 Alan.
 8 Q Do you know what his role was at the meeting?
 9 A No. I mean, I knew he was a board member, but
 10 I don't know what role -- I don't know why he was there
 11 and I recall, at least the time that I saw him, was very
 12 brief.
 13 Q Do you recall him speaking to the group at
 14 all?
 15 A No.
 16 Q Let me show you what we marked as Exhibit 16.
 17 Do you recognize that? It's -- it's an invoice.
 18 A I know -- I don't recognize it, per se. I know
 19 what it's related to.
 20 (Hyde's Exhibit 16 was marked for
 21 identification.)
 22 Q What is it related to?
 23 A The -- we were -- Herschel asked us to
 24 procure --
 25 Q "Us" being Foley?
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1 A "Us" being Foley, yeah.
 2 -- us to procure the Club Continental for them,
 3 you know, to hold the JEA meeting. And you'll see here
 4 this Foley & Lardner, LLP, Colleen Rodriguez, she's my
 5 assistant. Her son happens to use work for this group
 6 so she contacted him to see if they could help arrange
 7 this meeting with Club Continental, the use of this
 8 facility.

9 Q When you say "this group," you're talking about
 10 something that's called Cvent Kapow?

11 A Yes. Uh-huh.

12 Q What is the address, 3545 Pine Street?

13 A That's my --

14 Q That's your home address?

15 A That's my home address.

16 Q Good to know.

17 A Yeah. Exactly. Now it's part of the record.

18 I tell people I live behind Biscotti's, they know
 19 exactly where I live.

20 Q Why did Foley & Lardner pay for this event
 21 rather than JEA directly?

22 A Because the -- the request to hold the meeting
 23 was very quick in securing that facility. And Herschel,
 24 as I recall, said it would take too long to go through
 25 the JEA accounting procedures, so asked if we could

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1 procure it and then ultimately bill them back for it.

2 Q Was -- the 11,000, what was it for? Was it --
 3 was there overnight stays at the Club Continental?

4 A I think -- I think some people from out of town
 5 may have stayed. I'm not sure. The reason I'm hedging
 6 on that, I know rooms were secured and -- but I'm not
 7 sure all of the out-of-towners actually used those rooms
 8 because I heard about them staying in some other Orange
 9 Park hotels.

10 Q Do you remember discussing -- at the meeting,
 11 at the Club Continental meeting, employment agreements
 12 for the senior leadership team?

13 A Yes. Uh-huh.

14 Q What was the discussion?

15 A Just that there -- that there was going to be
 16 new employment agreements for -- the term was senior
 17 leadership team that would also be part of the
 18 consideration by the board.

19 Q What do you mean part of the consideration by
 20 the board?

21 A Well, when they were going -- when I say --
 22 there was a number of things going to be considered at
 23 that meeting and there was a series of --

24 Q July 23 meeting?

25 A The July 23rd meeting, yes. There was a number

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1 of resolutions which would have to be drafted for the
 2 board to consider and ultimately approve or reject. And
 3 I recall part of that being that there was going to
 4 be -- I can't remember if it was the employment
 5 agreement just for Aaron or if it was going to be for
 6 the -- the whole senior leadership team.

7 Q And what was the discussion about that?

8 A That there -- that that was going to be one the
 9 other items that would be -- need to be made ready for
 10 the board's consideration.

11 Q Employment agreement?

12 A Employment agreements, yes.

13 Q And you don't recall whether it was just Aaron
 14 or the senior -- or the senior leadership team?

15 A As I sit here, no, I don't.

16 Q Do you remember that Herschel hired a firm in
 17 Tampa --

18 A Yes.

19 Q -- to prepare those agreements?

20 A Uh-huh. Yeah.

21 Q Do you remember the name of the firm?

22 A Shane Munoz.

23 Let me give you context on that. Herschel
 24 asked -- Herschel asked whether we could do it and I
 25 said, no, I thought it would be a conflict. Even if the

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1 parties were to waive the conflict, I thought it would
 2 be a conflict.

3 I made a recommendation to Herschel that he
 4 contact a lawyer I know, a Richard McCrea, at Greenberg,
 5 very fine lawyer. Mr. McCrea declined on the basis of
 6 Greenberg, I think, had done some work for JEA.

7 Herschel asked me did I know anyone else. I
 8 asked Rich, who's an old friend, and Rich suggested
 9 Shane Munoz. I can't remember if Shane's with Ford
 10 Harrison or which firm he's with.

11 Q Do you recall any discussion at -- at Club
 12 Continental about the fact that previously the senior
 13 leadership team, apart from the CEO, had not had
 14 employment agreements?

15 A I don't recall that discussion.

16 Q Did you know that that -- whether or not that
 17 was true?

18 A I didn't know if that was true or not.

19 Q What was the conflict you were concerned about
 20 there because if you're preparing an employment
 21 agreement, your question is are you looking out after
 22 the interest of the employer or the employee?

23 A Yes. Uh-huh.

24 Q And you were representing the employer?

25 A We were representing the employer on that. But

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1 one concern I have generally because we've been asked to
 2 do this on other occasions to where -- when you're
 3 representing the -- the entity itself and, yet, you're
 4 being -- your engagement is coming through particular
 5 individuals who are now going to be negotiating for
 6 their employment -- their own employment contract, I
 7 was concerned whether it's a legal conflict or a -- or
 8 the appearance of a conflict. I was concerned about
 9 that.

10 Q Let me show you what -- let me show you what
 11 we've marked as Exhibit 17A, as an exchange of e-mails.
 12 At the bottom of the e-mail, there's an e-mail from you
 13 to Dabney Ware --

14 A Uh-huh.

15 (Hyde's Exhibit 17A was marked for
 16 identification.)

17 Q -- on Sunday, July 7th. Says, Another
 18 question: Is there anything in Florida's ethics law,
 19 particularly the ruling by the Florida Ethics
 20 Commission, that prohibits employees from essentially
 21 being given stock options to realize a benefit from an
 22 appreciation in the value of JEA --

23 A Uh-huh.

24 Q -- between now and a sale? I have a memo from
 25 the City that would be a good starting point. It

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1 discusses very well the applicable Florida statute, but
 2 does not go too far into Florida Ethics Commission
 3 cases.

4 Who is Dabney Ware?

5 A She is a -- she is of counsel to our firm,
 6 works directly with me in the labor employment group.

7 Q Were you concerned in the -- of referring to
 8 your message to Dabney about there -- a proposed plan
 9 that would give the employees the benefit of the
 10 appreciation and the value of JEA --

11 A Uh-huh.

12 Q -- between now and a sale, were you concerned
 13 that was a problem in terms of designing a plan?

14 A I thought it definitely required us to look at
 15 ethics commissions. That's why I asked her to start
 16 looking into it.

17 Q And then she said: Are you -- Dabney says, Are
 18 you thinking that this would be some form of bonus
 19 program with a payout to employees based on a sales
 20 price? Just trying to figure out what might help me
 21 narrow the search of ethics opinions.

22 And then she follows up with another e-mail on
 23 July 10th, which is the first day of the Club
 24 Continental meeting: Is there a self-dealing issue in
 25 here with executives voting on the sale that has some

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1 benefits for themselves?

2 And you responded to Dabney and said, No.

3 Is that because the board has to approve it?

4 A Yes.

5 Q And that's why you didn't think there was a
 6 self-dealing?

7 A That and I was trying to tell her that it was
 8 not the executives who would be -- who had the final
 9 approval, that it, ultimately, had to go to the board.

10 Q And let me show you what we marked as 17B,
 11 which is an e-mail from Richard Guyer to you, on July
 12 10th, at 4:00 o'clock in the afternoon.

13 He says, Kevin, you've asked for the proposed
 14 JEA employee benefit bond, the instrument outlined in
 15 the two-page term sheet, is debt or equity as a matter
 16 of law.

17 Do you know what two-page term sheet he was
 18 referring to?

19 A It was the one -- I forget which exhibit
 20 number. The earlier one that we had been referencing.

21 (Hyde's Exhibit 17B was marked for
 22 identification.)

23 Q Which was a Foley & Lardner work product?

24 A Yes.

25 Q And second paragraph says, The instrument is a
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1 contractual employee benefit in the nature of a
 2 contingent future bonus providing for a future payment
 3 to participating employees contingent upon the
 4 satisfaction of specified conditions and would not be
 5 considered debt or equity.

6 And illustration of the potential economics of
 7 the instrument is helpful to analyze whether it should
 8 be considered debt or employee compensation. I
 9 understand the city council auditor estimated the net
 10 proceeds from a sale of JEA between 1.7 billion and 5.2
 11 billion. Assuming the midpoint price of 3.4 billion,
 12 the return to the City would be a 12 percent premium
 13 over net position. Under the terms of the instrument,
 14 the employees' \$1 investment per bond would result in a
 15 \$120 payment per bond or a 12,000 percent return on
 16 investment.

17 Did you read this e-mail from Richard?

18 A I don't recall specifically reading this.

19 Q Would that be -- would what he observed there
 20 be a concern to you?

21 A Yeah, it would be. You'll notice under the
 22 subject matter, when it says update on the bond
 23 question --

24 Q Yes.

25 A -- during that time, I was talking to Chauncey
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1 Lever whether the bond could even be a vehicle to use
2 for this. And Chauncey concluded no. And so I did not
3 think about it much further after that in terms of it
4 being a bond, the bond as a vehicle for financing this.

5 Q So did your conclusion that this was not going
6 to be a bond render Richard's observations here
7 immaterial to the process?

8 A As it related to us structuring a bond, yes.

9 Q Let me show you what we've marked as Exhibit
10 17C. Have you seen this document before?

11 A I don't think so.

12 (Hyde's Exhibit 17C was marked for
13 identification.)

14 Q 17C is a spread -- excel spreadsheet showing
15 potential payouts by employee class under the
16 performance unit plan that we believe was drafted by
17 Ryan Wannemacher and what the metadata shows was last
18 modified on July 10th, 2019, which was the first date of
19 the Club Continental meeting.

20 A Uh-huh.

21 Q So my -- I heard what you just said, but I'll
22 ask you again, was -- to your recollection, was there
23 any discussion about proposed payouts of this bonus plan
24 at the Club Continental meeting?

25 A Not that I heard. And when you say proposed
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1 payouts, you mean according to this schedule and things
2 like this.

3 Q Yeah.

4 A No.

5 Q Who would get what under the plan?

6 A No, I don't.

7 Q And you don't remember seeing this document?

8 A No.

9 Q Did you know that Ryan Wannemacher had run
10 scenarios of what would be the payout under the plan --

11 A No.

12 Q -- as early as early July 2019?

13 A No.

14 Q Were you there on December 16th when --
15 Messrs. Salem and Roy asked the senior leadership team
16 if anybody had ever done a projected payout on the plan
17 in the event of a sale?

18 A I was at the meeting.

19 Q Did you hear Ryan Wannamacher's answer to that
20 question?

21 A I was at -- I don't recall it, but I was at the
22 meeting. What -- what did he say?

23 Q He said no.

24 A Okay. And you're representing that this was
25 done on July 10th?

1 Q Yes.

2 A No. I'm unaware of that.

3 Q And then you're unaware, therefore, that his
4 answer on December 16th to the city council was
5 inaccurate?

6 A I -- I don't know. I'm not disputing your
7 statements, I just don't have knowledge of them.

8 Q Did you ever see any proposed payouts under the
9 PUP plan?

10 A No.

11 Q Do you remember when -- were you at the board
12 meeting on July 23?

13 A Yes.

14 Q Remember when Kelly Flanagan asked the question
15 at the end of the discussion, the 12-minute discussion
16 about the PUP plan --

17 A Uh-huh.

18 Q -- as to whether or not anybody had ever
19 looked at what would happen with the intersection of the
20 sale process in the PUP plan?

21 A I recall that that -- she asked those
22 questions.

23 Q Do you recall what Ryan Wannemacher's answer
24 was?

25 A Not specifically.

1 Q Do you recall what anybody's answer to that
2 question was?

3 A Not specifically.

4 Q Do you recall that nobody gave an answer to
5 that question?

6 A No. I haven't -- I was at the meeting, Steve.
7 I don't recall the exchange -- I recall Kelly asking the
8 question. I don't recall the specific answer to the
9 question.

10 Q Did it occur to you that it was an
11 inappropriate question?

12 A Oh, I think the board members absolutely had
13 the right to ask that question.

14 Q The question itself, did you think it was --

15 A Yeah.

16 Q -- appropriate in the context?

17 A Absolutely.

18 Q Do you feel it got a satisfactory answer?

19 A Tell me what the answer was because I'm saying
20 I don't recall the specific answer to the question.

21 Q The answer was nobody had ever run this.
22 Nobody ever looked at the intersection of what happens
23 with the sale and the PUP plan?

24 A Oh, okay. Well, you're asking is that --

25 I'm -- I'm accepting your representation as to when

1 Exhibit 17C was made and --

2 Q What I said, more precisely, is the metadata
3 showed the last change on July 10.

4 A All right. Well, that doesn't seem to be
5 responsive to Kelly's question then.

6 Q And as you sat there on July 23, listening to
7 that discussion, you were unaware that she hadn't given
8 an adequate answer to her question?

9 A I was unaware of that. It -- it didn't strike
10 me at the time the answer was given that it was a -- an
11 incorrect or inappropriate answer because I was unaware
12 of what you -- what Exhibit 17C, the dates associated
13 with that.

14 MR. BUSEY: Terrie, would you read that answer
15 back to me, please?

16 (The following answer was read by the reporter:
17 "Answer: I was unaware of that. It -- it didn't
18 strike me at the time the answer was given that it
19 was a -- an incorrect or inappropriate answer
20 because I was unaware of what you -- what -- Exhibit
21 17C, the dates associated with that.")

22 BY MR. BUSEY:

23 Q I heard what you said, you were -- you were
24 unaware that it was an inappropriate answer.

25 But were you aware that it -- her question
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1 A I would need to see exactly what Ryan said.

2 I'm not trying to play word games here. What exactly
3 did Ryan say in response?

4 Q I'm -- more generally, I'm asking you since --
5 since July 23, has it ever occurred to you that Kelly
6 didn't get a fair answer to her question?

7 A Oh, yeah, when we think about it in
8 retrospect.

9 Q That's the question I'm asking.

10 A Oh, okay. I'm sorry. I misunderstood what
11 you're saying. Yeah, in retrospect, the thing to do
12 would be to say, Board, you're considering X, Y, Z,
13 here's what X, Y, Z will produce because it gives the
14 board, as policymakers, the full information. That's
15 what I wanted when I was sitting in the legislative
16 body.

17 Q And so what you're telling me is not at the
18 time, but subsequently, you realized that Kelly asked a
19 good question and she didn't get an adequate answer?

20 A I realized that more information could have
21 been given to Kelly to make it a more complete answer.

22 Q Could have been or should have been?

23 A Both.

24 MS. NOLLER: Steve, I don't want to take you
25 out of your rhythm here, but the nature of this back
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1 wasn't answered?

2 A I'm not quite sure what you mean by that,
3 Steve.

4 Q Well, what I'm getting to is it was a very
5 appropriate question under the circumstance.

6 A Yes.

7 Q If we do the sale and we do this PUP --

8 A Right.

9 Q -- what happens in the next three years is
10 everybody looks at what the payout's going to be to
11 the senior --

12 A Right.

13 Q -- to the senior management.

14 Did -- did it occur to you that doesn't seem
15 like a reasonable question?

16 A It did. It was a reasonable question.

17 Q And were you satisfied she got a good answer to
18 it or you're not?

19 A I don't recall the specific answer. As
20 I've -- I don't recall, as we sit here today, thinking,
21 oh, that that was an inappropriate or incomplete or
22 inaccurate answer. It was just part of the exchange
23 going on.

24 Q In retrospect, do you think it may have been
25 incomplete?

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1 and forth is reminding me that your partner, Lanny
2 Russell, and I had discussed yesterday, stipulating
3 that Foley's not waiving any form objections. We're
4 just not going to bog down the record with form
5 objections.

6 Do you agree?

7 MR. BUSEY: Yes.

8 MS. NOLLER: Thank you.

9 And that would be true from the beginning of
10 this session to the end; fair enough?

11 MR. BUSEY: Yes. Lisa, you're a very good
12 lawyer.

13 MS. NOLLER: Thank you both.

14 BY MR. BUSEY:

15 Q Let me show you what we've marked as Exhibit
16 17D. This is an e-mail exchange between you and Jessica
17 Lutrin, starting with your e-mail to Jessica of July
18 17th. And in which you say, Per Herschel, can you
19 remove the language in the retention agreement about
20 covering employees who are attorneys with the Office of
21 General Counsel, who are dedicated to JEA? This will
22 apply only to the retention agreement.

23 What retention agreement are you referring
24 to?

25 A There -- there was going to be a -- the
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1 retention agreement would be available to all employees
 2 that was going to be an inducement for them to stay --
 3 for all employees, at all levels, collective. Unionized
 4 employees, didn't matter what level. The idea was that
 5 if a sale process were going to go through, there would
 6 be a great deal of uncertainty created and people might
 7 want to leave the work force so it was designed to
 8 induce them to remain employed.

9 (Hyde's Exhibit 17D was marked for
 10 identification.)

11 Q It was designed, the --

12 A The retention agreement.

13 Q And who drafted the retention agreement?

14 A I think Jessica did.

15 Q Have you seen it at this point?

16 A I think so, yes.

17 Q And tell me what your question is here. Remove
 18 the language --

19 A Yeah.

20 Q -- from the retention agreement about covering
 21 employees who were --

22 A There were two employees who worked as
 23 attorneys for JEA, but who were OGC employees. So you
 24 had Lynne Rhode and Miriam Hill dedicated exclusively to
 25 work for JEA, but there -- they were members of the
 Hedquist & Associates Reporters, Inc.

1 Q And -- and you just mentioned retention
 2 agreement, but you're also aware there's a similar issue
 3 regarding whether or not --

4 A Yes. Uh-huh.

5 Q -- these OGC employees were to participate in
 6 the PUP?

7 A In the PUP, yes. Uh-huh.

8 Q And help me understand when you become aware of
 9 that issue and what you knew about it.

10 A On the PUP or the retention agreement?

11 Q On the PUP.

12 A I don't recall specifically when it was. I
 13 think there was just generally in or around -- you see
 14 this is July time frame, of whether those two
 15 individuals who had been dedicated from OGC to JEA could
 16 participate in any of the things that other JEA
 17 employees might receive or have an opportunity to
 18 participate in.

19 Q Do you remember at whose instance it was
 20 suggested that the OGC employees be able to
 21 participate?

22 A No. I heard about that they were originally
 23 going to be included, but I don't know who initiated
 24 that.

25 Q You don't know if it was Aaron or somebody
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1 Office of General Counsel. And so the idea was and
 2 request had been that these two employees not be subject
 3 to the retention agreement like all other JEA employees
 4 because they were actually employed by OGC.

5 Q So this exchange between you and Jessica
 6 evidenced in Exhibit 17D is not really the PUP, is it?

7 A No, this relates to the retention agreement,
 8 which is separate.

9 Q Were you aware there was a similar issue as
 10 to whether or not OGC employees would participate in
 11 the --

12 A Yes.

13 Q -- PUP?

14 A Yes, I heard discussion about that.

15 Q Where did you hear that discussion?

16 A I heard Lynne Rhode talk about it some. I
 17 believe I may have had conversations with Jason Gabriel
 18 about it. I knew it was a -- a bit of a controversy
 19 going on because you had employees who, for instance,
 20 had they been assigned to work at JAA, the Airport
 21 Authority, or the Port Authority were not going to have
 22 the same opportunity to participate in a retention
 23 agreement as the employees who were at JEA.

24 Q When you say employees, employees of OGC?

25 A Employees of OGC, attorneys of OGC, yes.

1 else?

2 A I don't.

3 Q And what did you understand about the
 4 controversy? What was the controversy about?

5 A The controversy was that just by virtue of
 6 these two attorneys having been dedicated to a
 7 particular independent authority, as opposed to any
 8 other work they may do for OGC or any other independent
 9 authority, that they were going -- others went to, that
 10 they would have the opportunity to receive something
 11 that the other OGC employees would not.

12 Q And did you ever determine in your mind whether
 13 that was appropriate or inappropriate?

14 A No, I was not asked to opine on that.

15 Q Were you aware that there was a senior -- a JEA
 16 senior leadership team meeting at the Dalton Agency
 17 sidebar on July 12th?

18 A July 12th?

19 Q Which was two days after July 10th.

20 A I don't recall, no.

21 Q Have you been to the Dalton Agency?

22 A Yeah. Uh-huh.

23 Q But you don't recall being there on the 12th?

24 A No, I don't.

25 Q Let me show you what we marked as Exhibit 20.

1 Do you recognize this document? It's entitled
 2 Resolution 2019-06?
 3 A Yes, I've seen this document.
 4 (Hyde's Exhibit 20 was marked for
 5 identification.)
 6 Q What is it?
 7 A It's a resolution that was presented to the --
 8 and are you referring to just the first two pages?
 9 Q I'm referring to the entire document that I
 10 handed you --
 11 A Okay.
 12 Q -- which has agreements attached.
 13 A Yeah, I -- I remember seeing this document as
 14 part of the July 23rd meeting.
 15 Q Part of the board materials for the July 23 JEA
 16 board meeting?
 17 A Yes. Uh-huh.
 18 Q Did you have anything to do with the
 19 preparation of this agreement?
 20 A No.
 21 Q In the first paragraph, it refers to 574 JEA
 22 employees.
 23 A Uh-huh.
 24 Q Do you know what that means?
 25 A In the discussion about the traditional
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1 response, which was continuing to operate as is, I heard
 2 discussion that if the traditional response were
 3 followed, there would have to be layoffs of a number of
 4 people and I believe the number was 574.
 5 Q Do I understand, from what you just said, that
 6 the JEA senior leadership team put to the board on July
 7 23 that if you don't sell JEA, we're going to have to
 8 lay off 574 employees?
 9 A I think more particularly what they said in
 10 this resolution, that is if you choose to follow what
 11 was the traditional approach, which they deem the
 12 scenario to, that they would have -- they would
 13 recommend to the board the termination of 574
 14 employees.
 15 Q And when you say "traditional approach," you
 16 mean don't sell?
 17 A I would say it's more not only don't sell, but
 18 just remain as is, the current operating structure,
 19 things like that.
 20 Q You think that was a part of the scare tactics
 21 of Aaron to get the JEA board to approve the
 22 privatization?
 23 A Well, I can't opine whether he was trying to
 24 use scare tactics, but, obviously, it's a fact that the
 25 board would have to consider. You're talking about, in
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1 that case, it would be -- there's roughly 2,000 plus
 2 employees and you're talking about the termination of 25
 3 percent, that's a -- that's a major change.
 4 Q Did you at the time, July of 2019, have any
 5 sense as to whether or not that was a realistic
 6 assumption?
 7 A No. I -- in terms of delving into the
 8 financials and coming up as to whether that was
 9 necessary, no.
 10 Q What about we need to lay off 25 percent of the
 11 work force --
 12 A Right. No.
 13 Q -- if you don't do what I'm asking you to do?
 14 A That's correct. Or more specifically, if
 15 you -- if you follow the traditional approach, you would
 16 have to lay off 574 people.
 17 Q Let me show you what we marked as Exhibit 21.
 18 A Thank you.
 19 (Hyde's Exhibit 21 was marked for
 20 identification.)
 21 Q Which it says on the first page, Scenario
 22 Number 3, Nontraditional Response, The Key to Removing
 23 All Constraints, JEA. And "all" is underlined.
 24 Do you remember seeing that before?
 25 A As part of the board package and part of the
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1 board presentation, yes.
 2 Q And what was your understanding of what was
 3 meant by nontraditional?
 4 A You had earlier used the word privatization
 5 to -- which it could include that it could be -- I
 6 always interpret it as being something other than its
 7 current form operating as a municipal utility; sale,
 8 merger, outside investment, co-op, something like that.
 9 Q Look at what is numbered page 9 of this
 10 excerpt, which is marked as Exhibit 21.
 11 A It's the last page, yeah.
 12 Q Yeah.
 13 A Uh-huh.
 14 Q Says, Process and Timeline for Path to
 15 Investigating a Nongovernment Structure.
 16 A Yeah.
 17 Q What does that mean, a nongovernment
 18 structure?
 19 A Not -- no longer being a municipally-owned
 20 utility. It could be an investor owned utility, it
 21 could be a co-op, but it would -- to me, I always
 22 interpreted something outside of the traditional
 23 municipally-owned utility.
 24 Q And does this page 9 of Exhibit 21 reiterate
 25 the proposed timeline of a consummation of an agreement
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1 by March of 2020?

2 A Yes. Uh-huh.

3 Q And this was presented to the board on July 23,

4 2019?

5 A I believe so.

6 Q Referring to page 8 of Exhibit 21.

7 A Okay.

8 Q Constraint Profile of Alternate Structures.

9 A Uh-huh.

10 Q Those were all alternate structures, alternate

11 to what?

12 A Alternate to the current structure being a

13 municipally-owned utility.

14 Q Status quo?

15 A Status quo, traditional. It -- the way I

16 interpret this, what he's talking about -- in the

17 presentation, as I recall, they were saying that under

18 the municipal -- municipal-owned utility, there were

19 certain constraints. If you look at an alternative

20 structure, one of the things that could be considered as

21 part of the nontraditional approach, here's whether

22 those constraints would be present or removed. So the

23 alternate is an alternate to the municipally-owned --

24 owned utility.

25 Q And this slot -- this slide, on page 8 of the

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1 21 --

2 A Uh-huh. Right.

3 Q -- suggests that the alternate structures would

4 be more better?

5 A It suggests by the -- the green check marks

6 that there are fewer constraints, yeah.

7 MR. BUSEY: How are y'all doing? Y'all want to

8 take a break and get something to eat?

9 THE WITNESS: Totally up to you.

10 MR. BUSEY: Are you comfortable bringing your

11 sandwiches back in here and eating or do you want to

12 take a break?

13 THE WITNESS: No, I'm -- let's just grab them

14 and eat.

15 MR. BUSEY: Go on. Okay. Let's do that.

16 Let's go off the record.

17 (Lunch recess taken.)

18 BY MR. BUSEY:

19 Q Let me show you what we marked as Exhibit 22.

20 Have you seen that before?

21 A Yes, it's part of the board package.

22 (Hyde's Exhibit 22 was marked for

23 identification.)

24 Q Resolution 2019-07?

25 A Yes.

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1 Q Is this the resolution authorizing the

2 privatization process?

3 A It -- it's authorizing scenario 3, which we've

4 been talking about. It's a nontraditional response,

5 which could include privatization.

6 Q And the first paragraph says, The board

7 authorizes the chief executive officer to take any and

8 all action to maximize the four core values of JEA, of

9 customer, community, environmental and financial,

10 through a competitive solicitation process regarding JEA

11 assets, including but not limited to:

12 A, issuance of a competitive solicitation

13 instrument, including but not limited to an invitation

14 to negotiate.

15 B, engaging in and undertaking a competitive

16 solicitation process.

17 And, C, engaging accountants, consultants,

18 financial advisors and legal counsel to -- to assist in

19 a competitive solicitation process.

20 What was your understanding of what was

21 approved by that paragraph?

22 A That they could start what later became known

23 as the ITN process.

24 Q Invitation to negotiate?

25 A Yes.

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1 Q Regarding what?

2 A The potential sale of JEA.

3 Q Okay. And so -- and this -- this resolution on

4 July 23, 2019, authorized the CEO to take any action to

5 maximize the four core values through a competitive

6 solicitation process.

7 What does that mean? What is competitive

8 solicitation?

9 A Well, it's -- it's -- I'm not an expert in

10 this, I'm just speaking of general knowledge. It's that

11 you could put it out to receive replies, as was done,

12 where people could make a, quote, bid on that, but it

13 would be -- rather than negotiating with a sole source,

14 you -- you would have any number of people who could

15 respond. I say people, I mean companies or entities

16 could respond as to their interest in potentially

17 acquiring JEA.

18 Q And paragraph 2 of Exhibit 22 is a list of

19 conditions that the board's imposing upon that --

20 A Yes.

21 Q -- process?

22 A Yes.

23 Q Including that there would be a net realization

24 of at least \$3 billion in value to the City of

25 Jacksonville; and, B, greater than \$400 million of value

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1 distributed to customers.

2 Did you understand what that was about?

3 A What I think I understood it was going to be,
4 I'm just using my -- my term of rebate to customers.
5 Like, if I had a -- if I had an irrigation account and I
6 had a -- an electric meter, I might get two separate
7 rebates or if I only had just electric, I'd get one
8 rebate.

9 Q Did you have any understanding of why that was
10 in the condition?

11 A Why it was placed there?

12 Q Uh-huh.

13 A No.

14 Q Did you hear any discussion about it?

15 A That I -- I heard discussion that it was
16 thought that if there were going to be this change in
17 the structure that resulted in, obviously, large
18 dollars, that the customers ought to receive some
19 benefit from that.

20 Q At that time did you have any understanding
21 that that \$400 million would be included in the
22 calculation that resulted in a larger payout to the
23 participants in the PUP?

24 A No.

25 Q Did you ever reach that understanding?

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1 A No.

2 Q Do you know who developed those conditions that
3 are in paragraph 22 of Exhibit 22 -- paragraph 2 of
4 Exhibit 22?

5 A I don't know specifically. As part of the
6 meeting at Club Continental, I heard Aaron talk about
7 that they -- he wanted to have certain -- I think the
8 word he used was cable stakes and that I don't remember
9 if all of these were mentioned, but, you know, the idea
10 was there were certain conditions that needed to be met
11 in order for a sale to occur, even apart from the
12 competitive bidding process. There had to be certain
13 benchmarks that we met at the minimum.

14 Q Were those discussed at the Club Continental
15 meeting?

16 A Yes.

17 Q You -- you've described generally what happened
18 on that July 10th meeting at Club Continental and all
19 the work that had to be done before the July 23 board
20 meeting and what it led up to and we've looked at the
21 resolutions of the July 23 board meeting.

22 What was Foley's role in all that process
23 during the month of July 2019?

24 A Tell you what I know of and then what I think
25 of some of my partners. There was -- I was looking

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1 at -- I was beginning to look at particularly collective
2 bargaining issues, given the timing that we were talking
3 about earlier.

4 Other Foley lawyers, including Robert Hosay,
5 were looking at the invitation to negotiate and what
6 that actual document and process would be.

7 Q And how did Robert's role in that regard vary
8 from what Pillsbury was doing?

9 A Roberts's role was like mine in the sense of
10 being Florida specific. And so the -- the ITN process
11 is being contemplated, always had to have a lens to make
12 sure that it met compliance with both Florida
13 procurement law and City of Jacksonville or JEA
14 procurement law.

15 Q But not principally the PUP?

16 A No. Talking about from Robert?

17 Q Yes.

18 A No. No, Robert was not --

19 Q How about anybody else at Foley & Lardner? Was
20 anybody else working on the PUP plan during this
21 process?

22 A Well, not -- I was the one working on it the
23 most. There would be times that I might ask questions.
24 I had a question at one point to Michael Kirwan about
25 things, but, no, it was principally me.

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1 Q And what were you doing regarding the PUP
2 during that time period?

3 A In which time period are we talking about?

4 Q July.

5 A Very little. Because my work really kicked off
6 once the board approved it and then we're looking at the
7 various statutory questions that had been raised.

8 Q So to your knowledge, Foley really wasn't
9 involved in working on or designing or helping advance
10 the prospect of the PUP during July of 2019?

11 A We did not draft it. I don't want to suggest,
12 Steve, I didn't see it. I think I did see it. But we
13 didn't draft it. We -- our input was limited to just an
14 overall review of Florida law and then thinking about
15 what we were going to have to look at further, but it
16 was -- it was a document prepared by Pillsbury.

17 Q And were you asked to comment on it in July of
18 2019?

19 A I think -- yeah, just -- you know, general
20 review of it, yes. Uh-huh.

21 Q Did you do that?

22 A Yes. Uh-huh.

23 Q Is that among the time that you wrote off the
24 \$136,000?

25 A It would be included in that, uh-huh.

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1 Q Surely that was the intent?
 2 A Yes. The intent of writing off the time was if
 3 it related to the PUP, we would not charge for it.
 4 Q Whenever that time was?
 5 A Whenever that time occurred, from the inception
 6 through the end of our engagement.
 7 Q Let me show you what we marked as Exhibit 25
 8 and ask you if you recognize it.
 9 (Hyde's Exhibit 25 was marked for
 10 identification.)
 11 MS. NOLLER: I'm sorry. 25?
 12 MR. BUSEY: 25.
 13 MS. NOLLER: Thank you.
 14 BY MR. BUSEY:
 15 Q Do you remember seeing this document? It's
 16 dated July 2019. It's called Total Market Compensation
 17 Strategy.
 18 A I think it was part of the overall board
 19 package presentation.
 20 Q Did Foley have anything to do with the
 21 preparation?
 22 A No.
 23 Q Do you know who did?
 24 A Not specifically.
 25 Q Page numbered 6 in this excerpt, which is
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1 Exhibit 25, is entitled Performance Unit Program.
 2 A Uh-huh.
 3 Q Do you know who wrote that?
 4 A I don't know who prepared this page.
 5 Q Not Foley?
 6 A Foley did not.
 7 Q Well, you -- and you went to the board meeting
 8 on July 23?
 9 A Yes.
 10 Q Had you read these materials before you went to
 11 the board meeting?
 12 A I -- I reviewed generally the package so I'm
 13 presuming I -- I saw this.
 14 Q You reviewed the package before the board
 15 meeting?
 16 A I believe so.
 17 Q When -- when before the board meeting?
 18 A A couple of days or so.
 19 Q You don't recall what day you received that?
 20 A No.
 21 Q Did you have any comments on this document?
 22 A Not that I recall.
 23 Q On page 7, this is numbered page 7 --
 24 A Uh-huh.
 25 Q -- the first bullet point at the bottom says,
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1 Employee PUP pool equal to 10 percent of the value
 2 created in excess of the challenge target value.
 3 The challenge and target value was \$3.39
 4 billion?
 5 A That's what it references up there under
 6 forecasted value.
 7 Q And so the idea is the PUP pool would be 10
 8 percent of the value realized in a sale in excess of
 9 \$3.39 billion?
 10 A No, it could be the sale or if the sale didn't
 11 occur and the -- the target and the -- and the value of
 12 JEA went up as well, it could occur. In other words, it
 13 was possible that if the PUP program had gone into play
 14 and JEA remained completely as is, but the target values
 15 were met, that there could be a gain from that.
 16 Q And the pool would participate in 10 percent of
 17 that gain?
 18 A Yes.
 19 Q So if it was sold during the three-year period
 20 of time for \$10 million, the PUP pool would be 10
 21 percent of the difference between 3.39 billion and \$10
 22 billion?
 23 A That was -- that was the concept in there.
 24 Q That would be a pretty rich payout, wouldn't
 25 it?
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1 A Big number.
 2 Q Did you realize that at the time?
 3 A Not at the time.
 4 Q Why? Because you just didn't focus on it?
 5 A I wasn't focusing on that. My job was to think
 6 about Florida specific laws issues.
 7 Q And looking at Florida specific law issues,
 8 would it make any difference how big the PUP pool was?
 9 A No, because you could -- if it's not compliant
 10 with Florida law, by statute it's not based on the
 11 amount realized, whether it is or is not compliant with
 12 Florida law.
 13 Q Do you remember how you received the board
 14 package when -- how it was delivered to you, what day of
 15 the week it was? Was it over the weekend? Do you
 16 remember anything about that?
 17 A I don't recall specifically. But I -- I don't
 18 remember if it was e-mailed or if someone handed me the
 19 board package. I -- I don't recall.
 20 Q Do you recall sitting down and looking at it?
 21 A I think so.
 22 Q Over the weekend?
 23 A I don't recall. It would be sometime between
 24 the 12th and the 23rd.
 25 Q Let me show you what we've marked as Exhibit
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1 26, which is Resolution 2019-10. This is a resolution
2 of the board approving the PUP plan.

3 A Right.

4 (Hyde's Exhibit 26 was marked for
5 identification.)

6 Q And the fourth whereas clause, it says, The
7 board has reviewed the summary of the terms and
8 conditions of the long-term performance unit plan, which
9 summary is attached hereto as Exhibit 1.

10 A Uh-huh.

11 Q And do you see Exhibit 1?

12 A Yes. Uh-huh.

13 Q Is that the summary that was approved by the
14 board July 23?

15 A Yes. I believe Exhibit 1 is -- as you're
16 showing me in Exhibit 26, is what the board approved
17 pursuant to its resolution.

18 Q That is that the board did not see any more
19 detail of a plan than this summary?

20 A I don't know what the board saw outside of the
21 meeting. What I -- this is what I recall being part of
22 the board package.

23 Q Are you aware of the board seeing anything --

24 A No, I'm not.

25 Q -- at any time regarding the plan other than
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1 this summary of the plan?

2 A No, I'm not.

3 Q And in the first numbered paragraph, among
4 other things in the paragraph, it says, Among the people
5 that will be participating is each actively employed
6 eligible full-time attorney from the Office of General
7 Counsel of the City of Jacksonville, who is dedicated
8 exclusively to JEA.

9 Was that a subject of discussion at the board
10 meeting?

11 A At the board meeting itself?

12 Q Yeah.

13 A Not that I recall.

14 Q Do you recall any discussion with anybody about
15 whether or not it's appropriate to have those lawyers
16 from the OGC participate in the PUP plan?

17 A What I referenced earlier, there was a
18 discussion about whether these two individuals, who are
19 OGC lawyers, whether they should be able to get a
20 benefit by virtue of them being exclusively assigned to
21 JEA that other OGC lawyers could not get.

22 Q And where and when was that conversation, if
23 you recall?

24 A I don't recall the specific time about it.

25 Q Do you remember who you had that conversation
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1 with?

2 A I remember John -- well, I remember
3 particularly hearing Lynne Rhode talk about it and
4 Herschel talk about it. And I'm trying to recall
5 whether I had a specific conversation with Jon Phillips,
6 but it was referenced, I think, from Herschel that Jon
7 Phillips had raised questions about that.

8 Q And in the summary, you see there that pool is
9 a total of 100,000 performance units?

10 A Yes.

11 Q Were you aware of that?

12 A As reflected in the document, yes. Uh-huh.

13 Q Do you recall how long the board -- how much
14 time the board devoted to discussion of Resolution
15 2019-10 at the July 23 board meeting?

16 A No, I don't recall how long. You talking about
17 specific to this resolution?

18 Q Uh-huh.

19 A No, I don't recall. We'd have to look at the
20 tape to see what time it was.

21 Q Do you happen to recall, have an impression
22 whether it was a short period of time, long period of
23 time considering the significance of the plan?

24 A I don't recall having an impression at that
25 time one way or the other.

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1 Q On the second page of the summary, there is
2 a -- a statement that says, Redemption price. And
3 there's a paragraph that describes redemption price.

4 Who drafted that, do you know?

5 A I don't know.

6 Q It wasn't Foley?

7 A No.

8 Q Do you remember any discussion of it?

9 A No.

10 Q Up to and including the July 23 board meeting,
11 do you recall anybody within JEA or its outside
12 consultants or professionals voicing any objection to
13 the PUP plan?

14 A No.

15 Q Any reservation about it?

16 A Not that I recall. Talking about prior to the
17 board meeting?

18 Q Prior to or at the board meeting.

19 A No.

20 Q Let me show you what we marked as Exhibit 28A,
21 which is an e-mail chain. Begins with an e-mail from
22 you to Michael Kirwan --

23 A Uh-huh.

24 (Hyde's Exhibit 28A was marked for
25 identification.)

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1 Q -- dated August 14th, 2019. Michael, see a
 2 draft letter regarding the performance unit plan that
 3 JEA is offering its employees. This letter, which is
 4 being revised by JEA, seeks an advisory opinion from the
 5 attorney general regarding compliance with the
 6 Florida -- with a specific Florida statute. The JEA
 7 wants to know whether any blue sky laws, paren, do we
 8 need to issue any blue sky letter, closed paren, are
 9 implemented or if this would be treated as a private
 10 placement, paren, any requirements for someone being an
 11 accredited investor, closed paren. Melissa Coffee is
 12 looking at this from a securities law standpoint.

13 Please review and let me know your thoughts. I
 14 will be out tomorrow, but hopefully on Friday, Colleen
 15 can give you the number. Jacksonville Electric
 16 Authority General Advice.

17 A Uh-huh.

18 Q And then he responds to you on August 15th.
 19 And in his response, he has a number of -- of
 20 observations.

21 What is -- what is the letter to which you're
 22 referring to that you asked him to review?

23 A It is -- we were beginning to draft -- if you
 24 look at the subject line, where it says, JEA request to
 25 Attorney General, re: Performance Plan, it was the
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1 Q Did you ever answer his question?

2 A I don't think I -- I don't know -- I don't have
 3 an e-mail responding to that. Michael and I had
 4 discussions about it.

5 Q What were those discussions?

6 A He was concern about the -- what the numbers
 7 could generate and that caused us to call Jessica
 8 Lutrin, who was the person who drafted it and said, Are
 9 we understanding this correctly?

10 Q That there would be no cap?

11 A No, just -- that there would be no cap and is
 12 -- is the formula producing the numbers that Michael had
 13 calculated it could perform -- it could produce.

14 Q What did she say?

15 A She looked at it and said that, as Michael was
 16 posing the question to her, that that was correct. And
 17 that calls in of her, I believe, to reach out to Ryan
 18 Wannemacher and ask some more questions.

19 Q That is, she acknowledged that Michael was
 20 correct that, as written, there was no cap and it could
 21 be under some circumstances very large payouts?

22 A Yes.

23 Q In and paragraph 9 of -- of Michael's
 24 observations, he says, Paragraph 16 states that the
 25 units are not incentives and are not connected to
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1 beginning of what would ultimately become the letter to
 2 the Florida Attorney General seeking advisory opinion.

3 Q And in Michael's response to you, he raises a
 4 number of observations.

5 A Uh-huh.

6 Q Number 8, Is there a cap on the unit payout?
 7 If not, it could be very expensive, which can expose the
 8 board to charges of corporate waste, et cetera.

9 What was the answer to his question, was there
 10 a cap on it?

11 A Was there a cap on it? I don't believe so
 12 because it was tied to target values.

13 Q What do you -- what do you mean when you say
 14 "because it was tied to target values"?

15 A Well, you -- you -- what I mean by that is that
 16 you could have -- I'm just going to use that as an
 17 example, not specifics. If you increased X dollars in a
 18 person -- in a formula where it applied to that, that
 19 would result in one thing. If it increased X, plus Y,
 20 that would be more, but I'm not aware if there was any
 21 cap on that under no circumstances could it exceed
 22 anything like that.

23 Q But that was the question Michael was raising?

24 A That was the question Michael was raising,
 25 yes.

1 services being rendered. If true then, what is the
 2 purpose?

3 A Uh-huh.

4 Q What was -- do you know the answer to this
 5 observation?

6 A I don't recall specifically talking to him
 7 about his question.

8 Q And do you know the answer to it, what -- what
 9 was the purpose?

10 A My understanding was it was to incentivize the
 11 employees to do their best to work to increase the value
 12 of JEA and, if so, they would have the opportunity to
 13 participate in that increase of value, but that it was a
 14 form of -- of incentive or motivation to work.

15 And also understanding that during this time,
 16 there was going to be a great deal of -- of uncertainty,
 17 that if the ITN were issued, as it -- as it was, whether
 18 employees would want to stay around.

19 Q But you -- I think you just said it gives the
 20 employees incentive to stick around because if the value
 21 of JEA went up --

22 A There would be an upside --

23 Q To the employee?

24 A Yes. Uh-huh.

25 Q To your knowledge, was a -- prior to the cap --

1 PUP being cancelled, was a cap ever put in place?
 2 A I'm not aware of any.
 3 Q Do you remember any discussion among JEA
 4 leadership about whether or not there should be a cap?
 5 A Not that I was involved in.
 6 Q Did you ever raise with JEA leadership
 7 Michael's question about shouldn't there be a cap?
 8 A I don't -- when we -- I know we had a
 9 discussion with Ryan Wannemacher, we, being myself and
 10 Michael Kirwan and Jessica Lutrin, and I don't recall
 11 specifically whether the cap was discussed during that
 12 time.
 13 Q When you say you recall a discussion among you,
 14 Michael, Jessica and Ryan, what was that discussion
 15 about?
 16 A It was -- Michael had done some, what I would
 17 call, backing out the calculations and wanted to
 18 understand whether the formula, as he understood it,
 19 could produce what he had calculated.
 20 Q All right. Well, Exhibit 28A that I just
 21 showed you is Michael's response to you, was at 2:45 in
 22 the afternoon, on the 15th of August.
 23 A Uh-huh.
 24 Q Now, I'm going to show you Exhibit 28B, which
 25 is from Michael a little over an hour later, at 3:45 --
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1 A Uh-huh.
 2 (Hyde's Exhibit 28B was marked for
 3 identification.)
 4 Q -- on Thursday, August 15th.
 5 A Right.
 6 Q And it says, Kevin, this letter, which letter
 7 is that?
 8 A This -- again, this is a draft letter to Ashley
 9 Moody.
 10 Q It's actually a draft letter to the Attorney
 11 General?
 12 A Attorney General, yeah. Uh-huh.
 13 Q It's much better than the initial draft.
 14 Although, I have not reviewed exhibits that are
 15 referenced to the attached -- that are referenced to be
 16 attached to the letter. A few thoughts from my earlier
 17 e-mail are still germane.
 18 A Uh-huh.
 19 Q And in the third paragraph, The argument that
 20 the units are not compensation rings a bit hollow.
 21 Do you know what argument that he's referring
 22 to?
 23 A Not specifically.
 24 Q It would seem that the argument can be
 25 strengthened by actually making the units look like
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1 securities. Have the proceeds actually be used with
 2 funding a specific purpose. I'm sure there are lots of
 3 potential purposes. Have the program to be set up as an
 4 annual program, not a one-time event. If the sale does
 5 not occur, then the participants still earn what the
 6 plan provides and the program can continue into the
 7 future.
 8 4, My earlier comment about a cap on unit
 9 payouts is hopefully in the plan document that is an
 10 exhibit.
 11 But his -- his earlier comment about a cap upon
 12 plan payouts was not in the plan document, was it?
 13 A No.
 14 Q Did you do anything in response to his comment
 15 here to -- to address that issue with JEA leadership?
 16 A Not that I recall.
 17 Q Why not?
 18 A I don't remember.
 19 Q Did you think it was a good point for Michael
 20 to raise it?
 21 A I respect Michael's opinion.
 22 Q Michael's a good lawyer.
 23 A He is a good lawyer.
 24 Q He came from Smith Hulsey.
 25 A We've had him longer, but -- I mean, I -- I
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1 don't recall specifically what I've done, but he is a
 2 good lawyer and I respect his opinion.
 3 Q But why didn't -- why wasn't there any
 4 follow-up on his repeated questions of why isn't there a
 5 cap?
 6 A I don't know.
 7 Q Do you recall anybody saying that there should
 8 not be a cap?
 9 A No.
 10 Q You don't recall any discussion one way or the
 11 other?
 12 A No.
 13 Q Michael's repeated observations just went
 14 unanswered?
 15 A I don't have -- I did not respond to Michael's
 16 particular questions on that.
 17 Q Nor did anybody else, to your knowledge?
 18 A To my knowledge, no.
 19 Q Why didn't you?
 20 A I'm not sure. But as we sit here, I -- I don't
 21 know.
 22 Q It seems like an appropriate observation,
 23 doesn't it?
 24 A It does.
 25 Q Let me show you what we've marked as Exhibit
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1 28C. Again, this is an e-mail chain.
 2 A Uh-huh.
 3 (Hyde's Exhibit 28C was marked for
 4 identification.)
 5 Q And it starts with an e-mail from Lynne Rhode
 6 to Jessica. Do you know what Lynne's referring to in
 7 her e-mail to Jessica that's dated August 16th, at
 8 10:02?
 9 A The one from Lynne to Jessica?
 10 Q Yes.
 11 A At the bottom of that page? Okay.
 12 Q It wasn't clear to me from reading it. I'm
 13 just curious if you know what she's talking about.
 14 A I -- I think -- I'm -- I'm -- I'm just
 15 interpreting what I read here, but I -- I believe it was
 16 who would make the determination -- or, first of all,
 17 who would be the administrator and what -- what would
 18 the authority of the administrator be to determine the
 19 number of units each individual participant would
 20 receive.
 21 Q I take it you haven't seen this e-mail before?
 22 A No. I'm not on the e-mail.
 23 Q Right. And you see that in the parameters that
 24 are numbered at the bottom of the first page of 28C,
 25 there's 11 parameters and number 4 is 100 percent of the
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1 100,000 PU available shall be allocated.
 2 Were you aware that all 100,000 units were
 3 going to be allocated?
 4 A I had heard discussion that the intent was to
 5 allocate 100,000 units, but then I had heard discussion
 6 about various tranches leading up to that.
 7 Q And did you know whether or not all 100,000
 8 units was contemplated ultimately to be allocated or
 9 not --
 10 A I don't --
 11 Q -- regardless of the tranches?
 12 A I don't know.
 13 Q And number 7, The allocation for the chief
 14 executive officer shall be, bracket, percent, closed
 15 bracket, of the total 1,000 performance units.
 16 Do you know what that refers to?
 17 A No. As I read it, it looks like it -- it would
 18 be a calculation of how to determine what really the
 19 number of PUPs that a CEO could receive.
 20 Q Who would -- do you have an understanding of
 21 who would make that determination of how much -- how
 22 many units the CEO would receive?
 23 A I think the administrator ultimately did, but
 24 I don't know anything about how it would be determined
 25 what percent the CEO or any other employee would
 Hedquist & Associates Reporters, Inc.

1 receive.
 2 Q As it was written, did the CEO have authority
 3 over that?
 4 A Where are you referring to?
 5 Q In the PUP plan, the summary.
 6 A Well, the reference that you have here in the
 7 first paragraph, on the first page of 28C, it does -- it
 8 does reference a CEO.
 9 Q And I recog- -- I'm aware of the fact that you
 10 haven't seen this document --
 11 A Yeah. Uh-huh.
 12 Q -- before and was not -- that you're not a
 13 party to it, but what knowledge do you have about who
 14 was going to allocate the 100,000 PUP units?
 15 A It -- it was my understanding that Aaron Zahn
 16 would make the allocations for -- and what I'm
 17 hesitating on is I don't know if it would be recommended
 18 to others to ultimately decide or whether it was his
 19 authority to decide.
 20 Q You just don't recall?
 21 A No.
 22 Q And you don't --
 23 A But I had heard discussions that Aaron would
 24 make the initial -- at least the initial recommendation
 25 as to what it would be.
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1 Q Do you recall what conversations with whom
 2 you're referring to?
 3 A I -- I had heard Ryan Wannemacher say that
 4 because I had asked Ryan just informally one day, you
 5 know, is there a schedule or how are these going to be
 6 allocated? And he said, Aaron has it in his mind how he
 7 wants to allocate them.
 8 Q Let me show you what we've marked as Exhibit 29
 9 and ask if you've seen this before. And it's -- it's
 10 entitled Draft 08-16-19.
 11 A I don't recall seeing this.
 12 (Hyde's Exhibit 29 was marked for
 13 identification.)
 14 Q Let me show you what we've marked as Exhibit
 15 30. It's another e-mail exchange. At the bottom is a
 16 Kevin Hyde e-mail of August 19th to Jessica Lutrin.
 17 A Uh-huh.
 18 (Hyde's Exhibit 30 was marked for
 19 identification.)
 20 Q Jessica, we are arranging a meeting with the
 21 Florida Attorney General's Office to discuss the PUP.
 22 Can you send me all the documents you have related to
 23 it?
 24 A Uh-huh.
 25 Q Had you made arrangements with a meeting with
 Hedquist & Associates Reporters, Inc.

1 Ashley Moody?

2 **A** It was -- I had not personally. Chris Kise had
3 spoken to and reached out to Richard Martin. I think
4 his -- would that be the attorney general? And tried to
5 arrange a meeting. We never met with General Moody
6 herself.

7 **Q** Well, what happened to the -- you sent a letter
8 to the attorney general, right?

9 **A** Yes.

10 **Q** And what happened to it?

11 **A** It was never responded to.

12 **Q** Do you know why?

13 **A** I think the reason why, just from a matter of
14 timing, that after November 5, I had considered that the
15 PUP was not going to move forward and I recall speaking
16 to Chris Kise, saying, We need to notify the attorney
17 general's office that this is not going to go forward so
18 that they wouldn't waste time opining on something that
19 wasn't going to happen.

20 **Q** And what made you realize on November 5 the PUP
21 was not going forward?

22 **A** I had a meeting with Jason Gabriel, Lawsikia
23 Hodges, Herschel, Aaron, myself and I can't remember if
24 there was anyone else there. And we were debating the
25 legal issues and Jason just said, I can't get

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1 will go up by \$50,000 so the total payout is
2 (\$5 billion), 5 billion in parentheses.

3 Formula simply says divide the 15 billion by
4 the 3 billion, which should say the 15 billion is
5 reduced by 3 billion before being divided by the 3
6 billion in order to reflect the true increase in
7 percentage value. If that were done, the total -- and
8 he's referring to the total payout -- would be 4
9 billion.

10 And then he responded again on -- later that
11 day to you, JEA's net position is 2.755 billion based on
12 the latest financial statement on their website. So,
13 for example, in prior e-mail is darn close.

14 Do you remember receiving this e-mail from
15 Kevin?

16 **A** From Michael?

17 **Q** I mean, from Michael.

18 **A** I don't remember it specifically, but,
19 obviously, I did receive it.

20 **Q** Well, on its face it's fairly alarming, isn't
21 it?

22 **A** Yes. Uh-huh.

23 **Q** So wouldn't you remember receiving it?

24 **A** I'm -- I'm answering your question. I don't
25 specifically recall receiving this, but I'm sure I did.

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1 comfortable with this. And I know if the City of
2 Jacksonville, the Office of the General Counsel,
3 including the general counsel, is not comfortable with
4 something, it's not going move forward.

5 **Q** Do you have some experience with it?

6 **A** Yes, uh-huh. I've been on both ends of a
7 binding legal opinion.

8 **Q** Let me show you what we've marked as Exhibit
9 31A, which is an e-mail exchange. At the bottom is
10 Michael Kirwan to you, dated August 22, 2019.

11 **A** Yep. Uh-huh.

12 (Hyde's Exhibit 31A was marked for
13 identification.)

14 **Q** And the subject is Trouble. This is why we are
15 lawyers and not accountants.

16 And the first sentence says, Could be -- the
17 total could be 5 billion. We missed the math by two
18 decimals.

19 Assume the current value is 3 billion. In the
20 last year, value is still 3 billion, plus deal
21 consideration of 12 billion for a total of 15 billion.

22 15 billion divided by 3 billion is 500 percent.
23 Formula pays \$100 for each 1 percent. 500 times 100
24 equals 50,000.

25 There are 100,000 units being issued so each

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1 **Q** Okay. Did -- and did it ever -- do you recall
2 it ever being -- coming to your mind that the payout
3 under this PUP plan -- and when I say did it ever come
4 to your mind, I'm talking about in August or
5 September --

6 **A** Uh-huh.

7 **Q** -- of '19, 2019 -- did it ever come to your
8 attention that there could be an extraordinarily large
9 payout under the PUP plan as structured?

10 **A** Obviously, I've received the e-mail and I'm
11 pretty sure I probably read it, even though I don't
12 recall it today. My focus was on looking at the
13 particular aspects under Florida law.

14 **Q** So you're saying it's not within your provants
15 that we worry about there would be a \$5 billion payout
16 to the senior leadership team of the JEA?

17 **A** I'm saying what I was focused on was the
18 specific legal questions I had been asked to look at.

19 **Q** But respectfully, Kevin, you're a former
20 president of city council of Jacksonville.

21 **A** Uh-huh. Yes.

22 **Q** You're a senior partner of a prominent law
23 firm.

24 **A** Uh-huh.

25 **Q** You were hired as a fairly prominent lawyer of

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1 this community to help JEA through this process. And in
 2 that role, as a counselor and a person of some stature
 3 and respect, if you saw the senior leadership team was
 4 going to make \$5 billion personally out of this deal
 5 you're working on, wouldn't that cause you a concern?
 6 **A** It did and I told them I thought it was a bad
 7 idea to move forward with the PUP.
 8 **Q** Ha. Now, we're getting somewhere. To whom did
 9 you say that?
 10 **A** To Herschel Vinyard and Melissa Dykes.
 11 **Q** When did you say that?
 12 **A** I don't recall specifically. I think it was
 13 probably more in the September time frame, things like
 14 that, but I specifically told them, Melissa, by phone,
 15 and Herschel on more than one occasion, that I thought
 16 it was a very bad idea politically to do this. That's
 17 irrespective of any -- whether it's legal to do it. I
 18 thought we'd kill the deal.
 19 **Q** And when you say "to do this," tell me what
 20 you're -- precisely you're referring to as this.
 21 **A** To have any form of the PUP program.
 22 **Q** At all or as a part of the sale process?
 23 **A** At all. Because it was -- the individuals
 24 would be receiving a portion of the sale proceeds,
 25 whatever the amount is, that would otherwise go to the
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1 City.
 2 **Q** Okay. That is the participants in the plan --
 3 **A** Yes.
 4 **Q** -- which in terms of numbers, the largest piece
 5 of which would be the senior leadership team of JEA --
 6 **A** Uh-huh.
 7 **Q** -- would be putting in their pockets money,
 8 which otherwise should go to the City?
 9 **A** That was my concern.
 10 **Q** And you said that --
 11 **A** Yes.
 12 **Q** -- to Herschel --
 13 **A** And Melissa.
 14 **Q** -- and Melissa?
 15 **A** Yes.
 16 **Q** You recall a conversation on the telephone with
 17 Melissa in which you said that?
 18 **A** Yes. Uh-huh.
 19 **Q** When was that?
 20 **A** I did -- I don't recall the specific time.
 21 September, October-ish time frame.
 22 **Q** Can you put it in the context with other
 23 discussions about the sale and the plan? Was it before
 24 you wrote the letter to the attorney general?
 25 **A** I think it was in or around that time.
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1 **Q** And what did Melissa say to you in response?
 2 **A** She told me she had similar concerns.
 3 **Q** And you were as blunt with her as you just were
 4 with me?
 5 **A** Yes. What I specifically recall saying to her
 6 was, Melissa, I'm speaking to you not as your lawyer,
 7 but as a former city councilman and citizen. I think
 8 this is a bad idea and the city council was going to
 9 have a hard time approving this. This will kill your
 10 deal. And the deal I'm talking about is the entire
 11 process.
 12 **Q** That is, the sale process?
 13 **A** The sale process, yes.
 14 **Q** And what you're saying is having this PUP tied
 15 to the sale process is going to kill the sale process?
 16 **A** Yes. Because ultimately it had to go to the
 17 city council for approval, the sale process. Before it
 18 could even move to referendum, it was my opinion,
 19 political opinion, just Joe Q citizen opinion, that was
 20 going to make it very difficult, if not impossible, for
 21 the city council to approve the sale process.
 22 **Q** And I asked you what was her response and you
 23 said she had a similar concern.
 24 **A** Yes. Uh-huh.
 25 **Q** So where does that take the two of you?
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1 **A** We both expressed our concern to one another.
 2 What she did with it, I'm not sure.
 3 **Q** And what did you do with it?
 4 **A** I told the two people that I -- that -- on the
 5 senior leadership team that I worked closely with, the
 6 CAO and I think her title was COO at the time, my
 7 concerns.
 8 **Q** Well, you and Herschel are not only long-term
 9 partners, but good friends?
 10 **A** Yes. Uh-huh.
 11 **Q** And you probably saw and talked to him a lot
 12 during this time frame?
 13 **A** Yes.
 14 **Q** Probably most every day?
 15 **A** Well, maybe not every day, but very
 16 frequently.
 17 **Q** And you voiced that concern to him --
 18 **A** Yes.
 19 **Q** -- repeatedly?
 20 **A** Yes.
 21 **Q** In this time frame of August, September or so
 22 of '19?
 23 **A** Probably more September or October-ish.
 24 **Q** Okay.
 25 **A** And in particular, as the city council process
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1 was going through, there was increased frustration from
 2 the city council about the flow of information back from
 3 JEA. And I told them that frustration they're feeling
 4 with this, with -- with that flow of information and
 5 this particular plan is going to make it very hard for
 6 them to ultimately vote for the sale process because
 7 they were getting frustrated.

8 Q City council was getting frustrated?

9 A City council was getting frustrated.

10 Q And when you say the flow of information, tell
 11 me what you're talking about.

12 A Well, there was a lot of concern about the ITN
 13 process and how it was going to go through and whether,
 14 for instance, individual members of the city council
 15 could either be on the negotiating team or receive
 16 copies of the bids when they were going to be open or
 17 something like that, which the city council's role was
 18 going to be approved, whatever competitive contract was
 19 issued, if any at all. They wanted to be involved
 20 earlier on and more in the process. I knew they were
 21 getting frustrated.

22 Q They being the city council?

23 A They being varying city council members, not
 24 all, but various ones. So they were feeling like they
 25 were being kept out of the process.

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1 Q Is it fair to say that the concern that you
 2 were feeling that you expressed to Melissa was a concern
 3 on the part of the city council that this whole deal was
 4 less than transparent?

5 A I don't know if it was less than transparent.
 6 It was the fact that they were feeling as if they
 7 weren't involved as much as they wanted to be at -- at
 8 a given time, but they were clearly frustrated.

9 Q And -- and you told Melissa you thought this
 10 was a bad idea, you thought it would kill the whole
 11 deal. Melissa said she had similar concerns. And that
 12 was the end of the conversation?

13 A Yes. Uh-huh.

14 Q No discussion between the two of you, well,
 15 maybe we should talk to Aaron?

16 A No.

17 Q No discussion between the two of you, maybe we
 18 should talk to the board about this?

19 A No.

20 Q You just went home?

21 A Ultimately at the end of the day, I did. I
 22 felt that I had told the individuals that I worked with
 23 the most. In this case, Melissa and Herschel, senior
 24 executives, members of the senior leadership team. And,
 25 remember, I'm not expressing a legal opinion here, which

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1 was my role as a lawyer, I'm expressing just this as
 2 Kevin, as a citizen of Jacksonville and someone who has
 3 been in the public process.

4 Q And you said you -- you said this to Herschel
 5 repeatedly?

6 A Yes. Uh-huh.

7 Q How many times would you say?

8 A At least five to ten. He knew my opinion on
 9 this.

10 Q And what did he say in response?

11 A I believe at one time he said he -- he agreed
 12 that it was a problem, but that Aaron really wanted
 13 this.

14 Q When you say "this," what are you referring
 15 to?

16 A The PUP plan.

17 Q Do you know why Aaron really wanted it?

18 A No.

19 Q Can you surmise why he really wanted it if the
 20 payout was going to be \$5 billion to the SLT?

21 A That would be a fair assumption.

22 Q Would it be a fair assumption why Herschel
 23 might have left your employ and gone to work for JEA?

24 A I don't know.

25 Q You never had that conversation with him?

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1 A No.

2 Q You took -- you told me he took a pay cut to go
 3 from Foley to JEA.

4 A Uh-huh. Yes. Uh-huh.

5 Q Do you know if Herschel was aware, when he
 6 accepted the job with JEA, that Aaron had this plan for
 7 executive compensation?

8 A I don't know that.

9 Q You never had that discussion with Herschel?

10 A No.

11 Q Herschel never told you that Aaron promised me
 12 that if I came over there, I'd get to participate in
 13 this and make millions of dollars in three years?

14 A No.

15 Q I asked you this question, I don't really
 16 recall your answer. What did Herschel say in response
 17 to your repeated concerns that this was a bad deal?

18 A I'm generalizing his response, I think he
 19 agreed.

20 Q Oh, you said, but Aaron really wants this?

21 A But Aaron really wants it. Uh-huh.

22 Q Do you know if he said to Aaron, this is a bad
 23 deal, we shouldn't do this?

24 A I don't know if he specifically told that to
 25 Aaron.

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1 Q You have no knowledge of that?
 2 A I do not.
 3 Q Are you aware of anybody ever telling Aaron
 4 that this was a bad deal --
 5 A No.
 6 Q -- the PUP plan --
 7 A No.
 8 Q -- or tying the PUP plan to the sale?
 9 A No.
 10 Q If you were CEO and you had --
 11 A Uh-huh.
 12 Q -- advisors and lieutenants around you who felt
 13 that way, wouldn't you want them to tell you?
 14 A Yes.
 15 Q Do you have any idea why nobody spoke up to
 16 Aaron?
 17 A I don't know if they did or did not.
 18 Q But you're not aware of it?
 19 A I'm not aware of whether --
 20 Q You're among those consultants and you didn't?
 21 A I did not.
 22 Q You were satisfied by speaking to the chief
 23 operating officer and chief administrative officer?
 24 A Yes. I had very few personal conversations
 25 with Aaron.

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1 or shouldn't have, but in terms of the legal review I
 2 was doing, the amount was not the issue in question.
 3 Q Even if it rose to a level of waste?
 4 A That would be a question of how you
 5 characterize whether it was a waste.
 6 Q Well, Michael Kirwan used that term, didn't
 7 he?
 8 A I don't believe -- I can't remember, you know.
 9 That -- that was his observation. Uh-huh.
 10 MS. NOLLER: He said, Can expose the board
 11 to charges of corporate waste, et cetera. Exhibit
 12 28A.
 13 Q And we were just talking about 31A, Michael
 14 Kirwan's August 22 e-mail --
 15 A Uh-huh.
 16 Q -- which he says that his -- that based on the
 17 latest financial statement, the prior e-mail is darn
 18 close. And the prior e-mails which he said -- is an
 19 e-mail in which Michael says the total -- the payout
 20 could be 5 billion, that was on 8/22.
 21 On 8/23, let me show you Exhibit 31B. It's an
 22 e-mail from you to --
 23 A Uh-huh.
 24 (Hyde's Exhibit 31B was marked for
 25 identification.)

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1 Q But he was the man in charge?
 2 A He was. Yes. Uh-huh.
 3 Q Subject to the board?
 4 A Yes. Uh-huh.
 5 Q When did you form your opinion that this was a
 6 bad deal that shouldn't be pursued?
 7 A Again, I think around that -- that September,
 8 October, November's time frame. Primarily because I was
 9 beginning to see the city council's reaction to the
 10 whole process and I knew that this could become a
 11 lightning rod in a process that was otherwise being
 12 looked upon with disfavor.
 13 Q I got that.
 14 A Yeah.
 15 Q That's your political astuteness.
 16 A Uh-huh.
 17 Q But what about the fact that it could be an
 18 extraordinarily and an inappropriate large payout to
 19 SLT --
 20 A Uh-huh.
 21 Q -- you didn't do anything about that?
 22 A No.
 23 Q Shouldn't you?
 24 A My job again, Steve, was as a legal advisor on
 25 specific questions. So we can debate whether I should

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1 Q -- Michael.
 2 A Right.
 3 Q This is the very next day.
 4 A Uh-huh.
 5 Q In which you say, Herschel suggested that we
 6 not have any more e-mails about the PUPs since it is a
 7 potential public record. Just call Jessica or others as
 8 needed.
 9 A Uh-huh.
 10 Q So did Herschel say something to you between
 11 August 22 and August 23 that led you to send 31B to
 12 Michael?
 13 A He, obviously, did because I reference Herschel
 14 suggested.
 15 Q Do you recall the conversation?
 16 A I don't recall the specific conversation.
 17 Q But wouldn't that -- wouldn't that suggest that
 18 Herschel became aware of Michael Kirwan's observation
 19 the preceding day, on August 22?
 20 A It could suggest that. Uh-huh.
 21 Q And if Herschel became aware of it, would -- is
 22 it because you told him?
 23 A I don't recall telling him. Remember, I --
 24 Michael could have told him. I don't know how Herschel
 25 became aware of that.

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1 Q Do you know if Michael was in contact with
 2 Herschel?
 3 A Michael certainly knew Herschel.
 4 Q Well --
 5 A Whether he was in contact with him on this
 6 issue, I don't know.
 7 Q But you -- you don't have -- you don't have a
 8 recollection --
 9 A I don't have a specific recollection of what
 10 caused me to write that e-mail.
 11 Q But you would agree with me what appears here
 12 is that Michael made this observation to you that it
 13 could be a \$5 million payout and you knew Michael was
 14 concerned about the absence of a cap. And the very next
 15 day you write Michael and say stop putting this in
 16 writing.
 17 A Yes. Uh-huh.
 18 Q So that would suggest some communication
 19 between you and Herschel in between?
 20 A As I indicated, I agree with that suggestion.
 21 Uh-huh.
 22 Q Are you aware of members of the senior
 23 leadership team or its outside advisors or consultants
 24 in connection with the ITN process using forms of
 25 communication that were coded or not discernible?

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1 A No.
 2 Q Like, disappearing text messages?
 3 A No.
 4 Q Have you seen any -- any evidence of that in
 5 your communications with JEA --
 6 A No.
 7 Q -- management?
 8 Apparently up until August 23, you and your
 9 folks were pretty comfortable writing e-mails to each
 10 other?
 11 A Yeah. Uh-huh.
 12 Q And let me show you what we've marked as 31C.
 13 (Hyde's Exhibit 31C was marked for
 14 identification.)
 15 MR. BUSEY: Let's stop, go off the record here
 16 for a minute.
 17 (Recess taken.)
 18 BY MR. BUSEY:
 19 Q Did I hand you Exhibit 31C?
 20 A Yes. I have it, Steve.
 21 MS. NOLLER: What number? I'm sorry. 31?
 22 THE WITNESS: 31C.
 23 MS. NOLLER: Yep. Got it. Thank you.
 24 BY MR. BUSEY:
 25 Q Which is another e-mail exchange. And at the

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1 bottom of it, there's an e-mail from Jessica to Ryan
 2 Wannemacher.
 3 It says, Ryan, I hope you are well. I just
 4 spoke with Michael Kirwan at Foley and based on his
 5 calculations -- this is August 23, which is the same day
 6 we were just talking about -- based on his calculations,
 7 the PUP formula is spitting out much larger numbers than
 8 we anticipated.
 9 Do you have any PUP formula calculations that
 10 you could please share with us? It would be helpful to
 11 see your calculations, even if rough, so that we can
 12 reconcile the calculations to the formula and adjust the
 13 formula in the PUP, if necessary.
 14 And Jessica says -- oh, Ryan says, Jessica,
 15 thanks for following up. I agree that it makes sense to
 16 clarify that the contribution to the City should not
 17 include the debt payoff, it should be any amounts after
 18 payment of the debt.
 19 Were you copied, Kevin, on the -- Jessica's
 20 e-mail of Friday, March -- August 23, at 10:00 o'clock,
 21 to Ryan? You can't tell from this -- you can't tell
 22 from this e-mail chain.
 23 A That's what I'm looking at, Steve. I -- I
 24 don't know. I -- I am on the one above, on August 23,
 25 at 11:21.

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1 Q Uh-huh. That's what makes me think you were,
 2 but I'm not sure.
 3 A Yeah. I don't know just from reading this.
 4 Q But it's apparent here that Jessica is telling
 5 Ryan Wannemacher, the chief financial officer, that
 6 Michael Kirwan is concerned about the size of the
 7 payouts.
 8 A Uh-huh.
 9 Q Are you aware of Ryan or JEA doing anything at
 10 all in response to that communication?
 11 A No. Other -- other than there is a -- proposed
 12 edits to the definition of current year value.
 13 Q Which does what?
 14 A It was -- it was a recalcula- -- current year
 15 value, as I understand it, was one of the -- I'm going
 16 to show my ignorance in math -- one of the pieces of the
 17 formula for determining a payout.
 18 Q And are you saying there was a change made in
 19 that? Is that what you just said?
 20 A I'm just referencing what's reflected in -- in
 21 the e-mail of August 23, at 11:21 a.m. And it says, I
 22 discussed with Ryan and Michael, below are the proposed
 23 edits to the definition of current year value. But
 24 beyond that, I don't know what occurred.
 25 Q How -- how could they change the current year

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1 value description of -- that was -- that was approved by
2 the board at the July 23 meeting in the summary of the
3 plan?

4 A I don't know, Steve.

5 Q Are you aware of the board ever making that
6 change?

7 A By board action?

8 Q Yeah.

9 A No.

10 Q Let me show you what we marked as Exhibit 32
11 and ask if you recognize it.

12 A I have seen many forms of this, yes.
13 (Hyde's Exhibit 32 was marked for
14 identification.)

15 Q This is a document entitled JEA Long-Term
16 Performance Unit Plan. It's not dated.

17 And you say you've seen many versions of this,
18 in what form?

19 A Well, as is -- there were red lined -- or there
20 were changes to the document throughout, so I -- what
21 I'm looking at, I'm familiar with its form. I'm not
22 sure if this is the final version, but I don't have a
23 reason to say it's not either.

24 Q What do you mean when you say final?

25 A Final meaning the last -- the last version
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1 form of this with the letter to the attorney general so
2 it had to be before then.

3 Q Do you know who drafted 32?

4 A I believe Jessica Lutrin at Pillsbury.

5 Q Do you know why the board materials included
6 only a summary and not the full document?

7 A No.

8 Q Among the potential answers to that question
9 was the full document had not been written as of July
10 23, 2019.

11 Do you know one way or the other whether that's
12 true or not?

13 A I don't -- I don't know.

14 Q Let me show you what we marked as Exhibit 34.

15 This is a memorandum from you to Lawsikia and Jason
16 Gabriel, dated September 25, 2019. I take it you've
17 seen this before?

18 A Yes. Uh-huh.

19 (Hyde's Exhibit 34 was marked for
20 identification.)

21 Q Why did you write this memorandum in
22 September?

23 A It was at the request of, I think, primarily
24 Lynne Rhode. I see I've copied her. Because there were
25 a number of questions which had been posed to us, which
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1 for which there were no other additions or revisions
2 made, not final in the sense of enacted or anything
3 like that.

4 Q This document that I've shown you, 32, to your
5 knowledge, was not in existence as of July 23, 2019?

6 A I don't think so.

7 Q Wasn't part of the board materials, was it?

8 A Yeah. I don't believe it was part of the board
9 materials.

10 Q And what --

11 A What you showed me earlier in the exhibit with
12 the summary, that was what was with the board materials,
13 as I recall.

14 Q That's my recollection as well. And,
15 therefore, I'm asking you when did this document come
16 into existence?

17 A I -- I don't know. I didn't draft this
18 document.

19 Q I'm sorry. What did you say?

20 A I did not draft this document.

21 Q Have you seen it before?

22 A Yes.

23 Q But you don't remember when you saw it?

24 A Yeah. I believe if we look at the October 1,
25 2019, letter to the attorney general, that we included a
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1 I answered, in the various pieces -- various parts of
2 the memo. One --

3 Q Okay.

4 A -- two, three -- actually, four sections.

5 These have been various questions that had been posed to
6 us.

7 Q By?

8 A I think primarily Lynne. And I don't know if
9 Lynne was collecting questions from others, but she was
10 the one with whom I was working.

11 Q And the purpose of the memoranda, I take it
12 from what you just said, is to articulate to OGC why
13 you, Foley, thought that the PUP complied with Florida
14 law?

15 A We were -- these were the questions which had
16 been asked of us, specific to Florida law and we were
17 responding to those.

18 Q And did you address in this memorandum the
19 issue about the untapped extraordinary large potential
20 payouts under the PUP plan that had been identified by
21 Michael Kirwan?

22 A No.

23 Q Why not?

24 A It wasn't specific to the questions which we --
25 we had been asked to opine on.
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1 Q But you were aware that as it existed at the
2 point in time you wrote this memorandum, there was a
3 potential under the plan for unconscionably large
4 payouts to senior management?
5 A And I expressed my concerns about that to
6 Melissa and Herschel.
7 Q But not in this memorandum?
8 A But not in this memorandum.
9 Q Did you express those concerns to Jason?
10 A I don't think so.
11 Q To Lawsikia?
12 A No.
13 Q To Lynne?
14 A I don't recall whether I spoke to Lynne. I
15 have specific recollection speaking to Melissa and
16 Herschel about it.
17 Q And you've told me about those conversations?
18 A Yes, sir.
19 Q And having had them, you let it go and didn't
20 pursue it; is that right?
21 A I advised my client who I -- my client contacts
22 who I dealt with, senior leadership team members of my
23 opinion on the subject. And I felt that I -- I had
24 expressed my opinion.
25 Q OGC engaged you, didn't they?
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1 A Yes.
2 Q Didn't you feel like you should have said
3 something to Jason about that, about there's something
4 terribly wrong with this PUP plan and the potential
5 payout?
6 A All of my interactions with Jason and Lawsikia
7 were dealing around particular issues related to the
8 Florida statutes.
9 Q It sort of suggested you had blinders on?
10 A That's your characterization.
11 Q It was.
12 A Yeah.
13 Q Not yours?
14 A No.
15 Q Let me show you what we've marked as Exhibit
16 36. This is an e-mail from you to Lynne Rhode.
17 A Yes.
18 (Hyde's Exhibit 36 was marked for
19 identification.)
20 Q Dated October 3, 2019. And you're apparently
21 forwarding by this e-mail a copy of a letter that Foley
22 had delivered to -- or they -- the OGC had delivered to
23 the attorney general.
24 A Uh-huh.
25 Q And -- and was this the letter that you said
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1 that you told OGC you couldn't get a response to because
2 the JEA had decided to terminate --
3 A Yes.
4 Q -- the plan?
5 A Yeah. This -- this was the letter which was
6 delivered to the attorney general's office. I don't see
7 the attachments to it, but this is the letter.
8 Q Had you made a similar request to the state
9 ethics commission?
10 A We had planned to, but it was never actually
11 delivered.
12 Q It was never actually delivered to?
13 A The Florida Commission on Ethics.
14 Q Was it drafted?
15 A Yes.
16 Q Why wasn't it delivered?
17 A As I explained earlier, what we intended to do
18 was to get the opinion of the attorney general to see
19 whether they would even issue an advisory opinion. If
20 they had said it could not proceed, there was -- there
21 was no reason to go to the Florida Commission on Ethics
22 because we would -- we, meaning it could not have
23 proceeded on that basis.
24 So the thought was it was most important to get
25 it from the attorney general's office on the issues we
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1 raised in that letter. If there was a favorable
2 determination that it could proceed, then we would ask
3 the commission on ethics.
4 Q To your knowledge, did anybody associated with
5 the City of Jacksonville or JEA or Foley have any
6 discussion with anybody at the state ethics commission
7 about the issue?
8 A Not that I can recall. And the only thing I
9 can speak to is my knowledge as to Foley. And no one
10 from the City told me they had reached out to the ethics
11 commission.
12 Q You're not aware of any discussions between
13 Carla Miller and the ethics commission?
14 A No.
15 Q Let me show you what we've marked as Exhibit
16 37, which is a chain of e-mails, which has attached to
17 it non-disclosure agreements.
18 And it's an e-mail from Ted Powers to an awful
19 lot of folks, including you --
20 A Yep. Uh-huh.
21 (Hyde's Exhibit 37 was marked for
22 identification.)
23 Q -- Kevin.
24 Please confirm that you are signed off on the
25 letter by no later than 6:00 p.m. eastern standard time.
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1 And then another one up top, attached to the final
 2 version, is the NDA.
 3 Have you seen this before?
 4 A I believe I've seen it, Steve. This -- Ted
 5 Powers was someone at Pillsbury who was working on the
 6 ITN side, which I really wasn't involved in. So,
 7 obviously, I'm copied on this, but I don't recall
 8 reviewing this or responding to this.
 9 Q When you -- when you said on the ITN side,
 10 which I wasn't involved with, help me understand that.
 11 A What I --
 12 Q You personally or Foley?
 13 A Me personally. Me personally.
 14 Q Foley was involved?
 15 A Yes. Yeah. Uh-huh.
 16 Q Okay. In the e-mail dated October the 7th, at
 17 8:25 p.m., it says, Attached are revised drafts of the
 18 NDA --
 19 A Uh-huh.
 20 Q -- paren, one for all bidders, other than FP&L
 21 and one for FP&L, closed paren, reflecting our
 22 discussion.
 23 Do you know why there are two nondisclosure
 24 agreements involved?
 25 A I do not know.

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1 Q And you just weren't a part of this
 2 discussion?
 3 A No. I did not get involved in the procurement
 4 piece part of the ITN.
 5 Q You mean the privatization piece?
 6 A The official term as approved by the board is
 7 ITN.
 8 Q The official term as approved by the board, the
 9 board of JEA?
 10 A If you look at the invitation to negotiate
 11 we -- which was issued, I believe, August 27th or
 12 thereabout, that's what it's called, ITN. Now, did it
 13 have the effect if it had gone through privatization,
 14 you're correct. But I'm using the term that was
 15 actually issued.
 16 Q Well, the -- the invitation to negotiate led to
 17 negotiations in Atlanta towards privatization, didn't
 18 it?
 19 A I wasn't involved in the negotiations, but
 20 you're correct. It could have led to potentially
 21 privatization.
 22 Q Well, you're aware that there were negotiations
 23 in Atlanta?
 24 A I'm aware there were meetings in Atlanta, yes.
 25 I was not part of the negotiating team or advising the

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1 negotiating team.
 2 Q But you heard them referred to as negotiation?
 3 A Yes.
 4 Q Let me show you what we marked as Exhibit 38.
 5 A Uh-huh.
 6 (Hyde's Exhibit 38 was marked for
 7 identification.)
 8 Q This is a letter agreement between ADP and JEA,
 9 dated October the 11th, 2019 --
 10 A Uh-huh.
 11 Q -- signed by Jonathan Kendrick, on October the
 12 11th, 2019.
 13 Have you ever seen this before?
 14 A No.
 15 Q Are you aware that in October of 2019 that the
 16 senior leadership team of JEA approached ADP and asked
 17 about ADP adopting the payroll processing or some subset
 18 of JEA employees?
 19 A No.
 20 Q Have you ever heard about that initiative?
 21 A No.
 22 Q Well, I just want to make sure that you don't
 23 have any idea what I'm talking about.
 24 A No, I don't.
 25 Q Okay. Let me show you what we marked as

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1 Exhibit 39. And it starts with an e-mail from you to
 2 Michael Kirwan, dated October 17th.
 3 Michael, the JEA continues to work on the PUP.
 4 You edited a section last week dealing with the idea of
 5 some having confidential information while some others
 6 would not.
 7 JEA has decided now to delay offering the PUPs
 8 to individual participants from November to December of
 9 this year. Some members of the senior executive team
 10 will be on the actual negotiating team. The GC now
 11 questions whether they will now be in a position of
 12 greater information than other participants, like, rank
 13 and file employees and whether this alters any of our
 14 analyses. I can resend the memo, if you'd like. She
 15 had two thoughts.
 16 Whose the "she" you're referring to?
 17 A I believe it was Lynne Rhode.
 18 (Hyde's Exhibit 39 was marked for
 19 identification.)
 20 Q Is it -- and that -- that's referring to the
 21 same person as the GC?
 22 A Yes. When I talked to the GC, the G- -- I
 23 deemed Lynne Rhode to be the GC of JEA.
 24 Q Okay. And you're -- you put questions to
 25 Michael -- she had two thoughts.

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1 Number 1, requiring those who will be on the
2 negotiation team are designated as a subject matter
3 expert to enroll or decline to enroll earlier than when
4 PUPs are offered to anybody else. The idea is that they
5 would not yet be in possession of confidential
6 information from the negotiations.

7 2, requiring that those that will be on the
8 negotiating team, most of whom are senior executives, to
9 participate in the PUP on a mandatory basis or they
10 could not use any confidential information to their
11 advantage because they, otherwise, have to participate.

12 Do you think either of these ideas makes sense
13 to help alleviate the risk? Any other ideas?

14 A Uh-huh.

15 Q Michael says to you in response, on the 17th of
16 October, One alternative would be to grant the PUPs to
17 everyone in the form of profit sharing so there's no
18 investment decision. It could be considered a bonus.
19 If you go down this path, Pillsbury will need to figure
20 out whether the grant is in the money now and be taxable
21 to recipients, the same question that exists that I
22 raised earlier with you.

23 I think number 2 is not a good idea. Political
24 opponents would have a field day with that despite the
25 intention behind it.

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1 was four or five questions answered. This is greatly
2 expanded and it's in response to additional questions
3 which had been asked of us.

4 Q By -- by whom?

5 A Either Lynne or Herschel or members of the
6 Office of General Counsel.

7 Q Questions regarding what?

8 A The various questions that I have addressed
9 point by point in here.

10 Q As to whether or not the PUP complies with
11 Florida law?

12 A Yeah. On the -- each of these issues is
13 dealing specifically with a particular piece of Florida
14 law. And so people would ask what about -- have you
15 considered X and Y and Z? And so the way the memo is
16 laid out, it's a question and answer based on the
17 questions we had received and the answers I gave.

18 Q And did this memorandum lead to a meeting among
19 you and Lawsikia and Jason?

20 A Yes, it did.

21 Q You told me about it earlier?

22 A The November 5 meeting, yes.

23 Q This led to the November 5 meeting?

24 A Yes.

25 Q And what was the purpose of the November 5

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1 What was the purpose of this exchange?

2 A Well, if we look at the bottom, it -- it was --
3 I was talking about the GC had questioned about if a
4 person were going to make a decision as to whether to
5 participate in the PUP was a person who was potentially
6 going to be on a negotiating team, would they have
7 superior information, such that they could make their
8 investment decision as opposed to someone who did not
9 have that same level of information.

10 So the purpose was to say does that create a
11 conflict issue? Does it create someone having better
12 information than others? And, if so, how do you handle
13 that, if there were going to be people who, on the
14 negotiating team, who were also potential PUP
15 participants?

16 Q Again, if you look at Exhibit 40 --

17 A Uh-huh.

18 (Hyde's Exhibit 40 was marked for
19 identification.)

20 Q -- it's another memorandum from you --

21 A Uh-huh. Yeah.

22 Q -- to Lawsikia and Jason, dated -- this one is
23 October 21.

24 What was the reason for this memorandum?

25 A If you go back to the September 25 memo, there
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1 meeting?

2 A The purpose of the November 5 meeting was to
3 have a discussion among all of the people who had been
4 involved in looking at these legal issues to see if we
5 could come to some resolution, particularly with regard
6 to whether the Office of the General Counsel could
7 ultimately sign off on or give approval to moving
8 forward with the PUP.

9 And so we thought rather than exchanging
10 further memorandum and in looking at questions, we had
11 to just sit down and have a discussion among the lawyers
12 about that issue. And that's what was done.

13 Q And who was in the meeting?

14 A Myself, Herschel, Lawsikia, Jason Gabriel,
15 Aaron Zahn for part of the meeting, he stepped out at
16 one point. Those were the -- those were the ones I
17 remember. There might have been someone else.

18 Q And, again, fair to say that the general
19 purpose of the meeting was to discuss whether or not the
20 proposed plan was compliant with Florida law?

21 A Yes. Uh-huh. And -- and City of Jacksonville
22 Charter also.

23 Q And Aaron Zahn was there for a portion of the
24 meeting?

25 A Yes. Uh-huh.

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1 Q Did you, in that context, tell Aaron you
2 thought the plan was a bad idea?
3 A No, this -- we were discussing the legal issues
4 at this -- at that meeting. And Jason was expressing
5 that he could not get comfortable even -- even with the
6 analysis that we had provided. And there was no
7 disagreement with our analysis, but he simply said, I
8 can't get comfortable with this such that I can approve
9 this moving forward.

10 Q Did he say why he couldn't get comfortable with
11 it?

12 A I think the -- couple of reasons, as I recall.
13 Number one, he hadn't seen anything like it and there
14 was a phrase that it was -- what had been proposed was
15 novel, but maybe too novel. And so just the discomfort
16 with moving forward with something he hadn't earlier
17 seen. And he still had the notion of -- of that it was
18 akin to a stock option plan or something like that. And
19 he said, I've just never seen that in the public sector.
20 I don't know how it can work.

21 Q Is it fair to say the reason he had that notion
22 is because it appears as if you're giving the employees
23 a piece of the action in the incremental additional
24 value of JEA --

25 A He.

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1 that.

2 Q You don't recall Aaron saying, Jason, you're an
3 idiot?

4 A Oh, no. No. No, clearly -- Aaron -- Aaron,
5 you could tell, wanted it to move forward, but it was
6 prior -- Aaron was -- he wasn't a bystander, but this
7 was a conversation primarily among lawyers talking about
8 the legal issues and talking about the charter or the
9 statutes and things like that.

10 But Aaron clearly heard Jason's discomfort and,
11 ultimately, Jason saying, I'm not -- I'm not prepared to
12 move forward.

13 Q Given the totality of this conversation so far
14 today, Kevin, if you had had a bunch of lawyers, pretty
15 senior lawyers sitting in that room talking about
16 whether or not this plan should go forward, isn't not
17 mentioning a potential \$5 billion payout to the senior
18 executives sort of like the elephant in the room?

19 A Well, it -- it could be. But you had a more
20 fundamental question of whether it's a dollar or X,
21 whether it could go forward.

22 Q Well, whether it's -- it's a novel idea or it's
23 a too novel idea, if you're going to put \$5 billion in
24 public money in the senior executive's pocket, that
25 seems inherently like a bad idea?

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1 Q -- upon -- upon a transportation action, that
2 it could be, like, giving them a piece of the equity?
3 A It only wasn't upon whether a transaction would
4 occur, but you're correct, that it was based on an
5 increase in the value of JEA, yes.

6 Q And it would be like giving the employees a
7 piece of the equity?

8 A A piece of the increased value, yes. Uh-huh.

9 Q And I'm trying to characterize Jason's concerns
10 he expressed to you.

11 A Yes. That's a fair way to characterize the
12 concern. It was a very good discussion of -- among
13 lawyers having an honest debate about these issues.

14 Q Did you hear any conversation directly between
15 Jason and Aaron Zahn on that issue or related issues?

16 A Well, Aaron was certainly in the room for --
17 for that conversation.

18 Q When Jason said what he said?

19 A Yeah.

20 Q He wasn't comfortable?

21 A Yeah.

22 Q Did Aaron respond?

23 A I don't recall him necessarily responding. I
24 think -- I think at one time that they may have stepped
25 out and had a private conversation, but I don't recall

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1 A Steve, I'm not disagreeing with you. I'm
2 telling you what I recall of the legal issues that we
3 were discussing.

4 Q Gets us back to the term of blinders.

5 A Again, that's your characterization. My job
6 was to look at the legal issues. And I did express my
7 discomfort to our client's senior executives.

8 Q Melissa and Herschel Vinyard?

9 A Melissa and Herschel.

10 Q I said that deliberately.

11 A I know you said that deliberately and I'm going
12 to respond deliberately.

13 Q Okay.

14 A I'm sure you've represented clients who were
15 also your friends and your judgment wasn't clouded by
16 that friendship. And I don't want any suggestion that
17 my judgment in this was clouded by my friendship with
18 Herschel. I gave -- I provided my advice based on my
19 interpretation and reading of the law.

20 Q I think your judgment, as you expressed it to
21 Herschel, was not in any way colored. Well, the
22 question I'm raising is why it would go over Herschel's
23 head because Herschel was your friend and you knew
24 something was wrong here, why didn't you go over his
25 head and say, okay, well, I said it to Melissa and --

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1 A I -- I expressed it to the two people in senior
 2 leadership positions with whom I regularly worked.
 3 Q Are you aware of the Rule of Professional
 4 Conduct and the Florida Bar of Rules of Professional
 5 Conduct relating to a lawyer's duties to an
 6 organization?
 7 A I have not studied that rule recently.
 8 MS. NOLLER: Steve, I'm sorry. Relating to
 9 what? You're getting quiet again.
 10 MR. BUSEY: I don't often get accused of that.
 11 My question was the Rule of Professional
 12 Conduct and the Florida Bar's Rules of Professional
 13 Conduct that relate to a lawyer's duties to the
 14 organization when he represents an organization.
 15 There is a specific rule. I think Kevin just said
 16 he hasn't studied it recently.
 17 MS. NOLLER: Okay.
 18 BY MR. BUSEY:
 19 Q It -- the rule generally -- in layman's terms
 20 says if you see something wrong within an organization,
 21 you have a duty to go all the way to the top. And if
 22 you're unsuccessful after going all the way to the top,
 23 then you have to leave.
 24 But you didn't go all the way to the top with
 25 your discomfort of this plan, did you?
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1 A I went to not Aaron Zahn, but I went to two
 2 members of the senior leadership team.
 3 Q And not to the board?
 4 A I did not go to the board.
 5 Q And you were at the board meeting on
 6 July 23?
 7 A Yes.
 8 Q Let me show you what we've marked as Exhibit
 9 41. And this is an e-mail exchange between Herschel --
 10 A Uh-huh.
 11 (Hyde's Exhibit 41 was marked for
 12 identification.)
 13 Q -- and Lynne Rhode. And below it, there's an
 14 e-mail from Heather Reber, dated October 31, 2019, to
 15 Ryan Wannemacher, Sherry Hall, Herschel Vinyard and
 16 members of the city council auditor's office.
 17 A Uh-huh.
 18 Q And in her e-mail, Heather says, Ryan, Sherry
 19 and Herschel, thank you all for coming over to meet with
 20 us today to discuss the performance unit plan. Attached
 21 are our additional questions. Also included on the
 22 attachment are our initial concerns regarding the
 23 performance unit plan.
 24 And then at the top of Exhibit 41, Herschel
 25 forwards this to Lynne Rhode. Have you seen this
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1 document before?
 2 A I think I have in preparing the documents for
 3 the December meeting with Councilman Diamond and
 4 Councilman Salem.
 5 Q December 16th?
 6 A Yes. Uh-huh.
 7 Q Was that the -- to your knowledge, that was the
 8 first time you saw them?
 9 A Yes.
 10 Q And do you see among the concerns from the city
 11 council's auditors office expressed on October 31 was
 12 that there's no -- number 1, there's no cap to the value
 13 of a performance unit?
 14 A I see that. It's written, yes.
 15 Q This was a concern apparently from this e-mail
 16 exchange that was expressed to Herschel by the city
 17 council's auditors office on December 31, which was
 18 before your November 5 meeting with Jason?
 19 A Yes. Uh-huh.
 20 Q And did Herschel mention to you that the city
 21 council's auditors had these concerns at that meeting on
 22 November 5?
 23 A I don't recall whether he specifically
 24 mentioned them.
 25 Q And the second concern listed by the city
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1 council's auditors office is value of performance unit
 2 can be significantly impacted by a recapitalization
 3 event, base rate changes, accounting changes, which are
 4 generally not tied to employee performance.
 5 Were you aware of that concern about the PUP
 6 plan?
 7 A Well, I'm aware that they raised this issue and
 8 I saw this. I don't know exactly when I became aware of
 9 it.
 10 Q And the -- number 8 concern on her list was
 11 select --
 12 A Uh-huh.
 13 Q -- general -- select Office of General Counsel
 14 employees are allowed to participate in the plan.
 15 We discussed that earlier?
 16 A Yes.
 17 Q That didn't raise a concern with you as to why
 18 some OGC members should participate?
 19 A It raised a concern to me to the extent that
 20 the general counsel needed to make that decision as to
 21 whether they would or would not be allowed to
 22 participate in that. But I viewed that more in the
 23 nature of just like other employees of JEA could have
 24 participated in the PUP plan if it ever went through,
 25 do you consider those two lawyers members of -- members
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1 of OGC or do you remember them full-time employees of
 2 JEA?
 3 Q Did you ever get a -- get an idea as to whose
 4 idea that was to include the OGC members assigned to JEA
 5 in the eligible group of employees?
 6 A No. Who originated the idea?
 7 Q Yeah.
 8 A No.
 9 Q Came from Lynne or Aaron or whoever?
 10 A I don't know, Steve.
 11 Q You never asked?
 12 A No.
 13 Q And what -- I get from what you're telling me
 14 is that although Herschel received these concerns from
 15 the auditor's office on October 31, he did not raise
 16 them in the meeting you participated in with him on
 17 November 5?
 18 A I don't remember discussion saying here's the
 19 various concerns raised by the council auditor's office.
 20 The distinction I'm drawing is I don't -- he may have
 21 talked about some of the issues, but I don't recall it
 22 on the basis of what the council auditor has raised.
 23 Q Let me show you what we marked as Exhibit 42.
 24 A Uh-huh.
 25 (Hyde's Exhibit 42 was marked for
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1 identification.)
 2 Q And it's an e-mail from Ryan Wannemacher to
 3 Herschel and folks in the auditor's office.
 4 And it says, All, we have decided not to move
 5 forward with the implementation of performance units at
 6 this time.
 7 Please see the attached letter from Aaron.
 8 And Ryan's e-mail is dated November 13, 2019.
 9 And it has attached to it a letter from Aaron to Jason
 10 Gabriel, dated November 12, which said that the JEA
 11 leadership in consultation with the chair of the board
 12 and OGC has decided to postpone indefinitely the
 13 implementation of the plan, which is defined as the JEA
 14 Long-Term Performance Unit Plan.
 15 Did you ever see this document before?
 16 A In preparation for the December 16th meeting, I
 17 saw it.
 18 Q And you knew about it prior to that time? You
 19 knew that the --
 20 A I knew the plan is -- the decision had been
 21 made to not go forward with the plan.
 22 Q And what was your understanding of why JEA made
 23 the decision?
 24 A Because OGC could not get comfortable moving
 25 forward.

1 Q That was the reason?
 2 A Yes.
 3 Q That was on November 13th.
 4 On November 22, Jonathan Kendrick, who was the
 5 chief human resources officer at the time, notified ADP
 6 to -- to disregard the letter from Jason, which I showed
 7 you earlier, you said you had never seen?
 8 A Correct.
 9 Q I take it you were unaware that a week after
 10 the JEA decided not to go forward with the PUP, they
 11 pulled their ADP initiative?
 12 A I was unaware of that.
 13 Q You were unaware of both the initiative and the
 14 fact that --
 15 A Yes.
 16 Q -- JEA reneged on it?
 17 A Yes. I am unaware that those two events that
 18 you described occurred.
 19 Q Let me show you what -- at that point in time,
 20 when they decided to -- when JEA decided not to go
 21 forward with the PUP plan, were you aware of any
 22 conversation of whether or not that was an interim or a
 23 final decision?
 24 A I interpreted it as being a final decision.
 25 Q And did you have any understanding at that
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1 point, in the second week of November, as to what the
 2 impact of that decision would be on the sale process?
 3 A No. I had no understanding one way or the
 4 other whether it would or would not impact the sales
 5 process.
 6 Q Let me show you what we marked as 43B, which is
 7 an e-mail chain --
 8 A Uh-huh.
 9 (Hyde's Exhibit 43B was marked for
 10 identification.)
 11 MS. NOLLER: Sorry. 42B?
 12 MR. BUSEY: 43B.
 13 MS. NOLLER: Thank you.
 14 BY MR. BUSEY:
 15 Q -- which starts at the bottom with an e-mail
 16 from Gardner Davis to Robert Hosay --
 17 A Uh-huh.
 18 Q -- in your office and a copy to you of November
 19 23, Saturday morning, at 7:30. Boy, Gardner's an early
 20 riser.
 21 A Yeah.
 22 Q And he says, Robert, to keep you in the loop,
 23 yesterday morning, on two hours' notice, I was invited
 24 to JEA to call about draft purchase agreement. I may
 25 have made them mad because I suggested a couple of times

1 that perhaps they wanted to ask me the questions for
 2 Foley and then I would drop off for sake of being
 3 efficient.
 4 I didn't understand that paragraph. Do you
 5 have any idea what he's saying?
 6 A Yeah. What it is is Gardner was handling pure
 7 corporate issues. Robert was handling procurement
 8 issues. And so there would be these group calls. And
 9 so depending on what topic was being discussed, Gardner
 10 would drop in and out of the call, whereas Pillsbury
 11 tended to have the entire team on for the entire call
 12 and we thought that was inefficient.
 13 Q That's why Pillsbury billed 10 million and you
 14 only billed 1 million?
 15 A Possibly. And you know --
 16 Q Shows what good stewards you are.
 17 A Trying to be and writing off a lot of time.
 18 Q 10 percent.
 19 And the next paragraph, For what it's worth --
 20 this is Gardner writing -- JEA senior management does
 21 not appear to be listening --
 22 A Where are you reading, Steve? I'm sorry.
 23 Q The second paragraph --
 24 A Oh, I see it. I see. I see. I see. Okay.
 25 Q -- under Gardner's e-mail.

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1 For what it's worth, JEA senior management does
 2 not appear to be listening to guidance from its
 3 professionals and the other professionals, paren, not
 4 me, closed paren, are reluctant to suggest that they
 5 have more expertise than the client.
 6 This sounds like Gardner, correct?
 7 A Uh-huh.
 8 Q I spoke up on a couple of points to be told
 9 that I did not know what I was talking about.
 10 Parenthesis, the senior bankers knew I was right, closed
 11 parenthesis. I'm pretty certain that time will prove me
 12 right. Biggest example, JEA wants the buyer to pay JEA
 13 a reverse break-up fee of 5 percent of the gross price,
 14 paren, \$375 million, closed paren, if the voters fail to
 15 approve the sale referendum.
 16 Do you know what Gardner's talking about
 17 there?
 18 A I wasn't involved in the conversation so I can
 19 only infer it from here.
 20 Q Why -- have you ever had any conversation with
 21 Gardner about the fact that JEA wanted a reverse
 22 break-up fee?
 23 A I don't recall that specifically. I know that
 24 Gardner was frustrated that he would raise things that
 25 he thought were very good points, as he's indicated

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1 here, they weren't being followed.
 2 Q Well, you know what a break-up fee is, right?
 3 A Yeah. Uh-huh.
 4 Q Can you describe it just generically?
 5 A Yeah, parties to a transaction go down, very
 6 far down the path and for whatever reason they decide to
 7 part ways, it's a way to -- one party pays the other,
 8 basically, for the time and effort which has gone into
 9 that process. It's a -- it's an inducement for the
 10 parties to complete the transaction to avoid one party
 11 having to pay a break-up fee.
 12 Q And so JEA's management was suggesting in this
 13 call that Gardner participated in, that in the event
 14 that this transaction went forward and a contract was
 15 signed and the city council approved it and the voters
 16 said no and the transaction didn't happen, that JEA
 17 would pay the successful bidder \$375 million?
 18 A No. JEA wants the buyer to pay to JEA a
 19 break-up -- a reverse break-up fee.
 20 Q Wants the buyer, who would agree to the
 21 transaction, but the citizens said no, pay to JEA a \$375
 22 million fee?
 23 A Yeah.
 24 Q Why should a buyer be penalized if the voters
 25 said no?

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1 A I don't know. I don't know, but that's what
 2 Gardner's talking about here.
 3 Q That is --
 4 A That he didn't think that was an idea that
 5 would fly.
 6 Q And Hosay writes back on November 23 --
 7 A Uh-huh.
 8 Q -- at 8:19 in the morning.
 9 Thanks for the update. I appreciate your
 10 getting involved and adding value. There are a lot of
 11 balls in the air and pressure is on these folks. Keep
 12 up the good work and advising based on your knowledge,
 13 experience and insight.
 14 That's a pat on the back for Gardner.
 15 And then Gardner writes another e-mail, on --
 16 at 1:00 o'clock that afternoon, to Robert and to you.
 17 Saying -- saying, Pressure is on these folks is
 18 a total understatement.
 19 I was on a call with two rational men Friday
 20 afternoon, the president of Jacksonville University and
 21 the Chair of Baptist Hospital board. They were talking
 22 about the need for a grand jury in light of whatever you
 23 call the executive bonus plan.
 24 FYI, given the values discussed on my two calls
 25 by investment bankers, I suspect the plan payout would

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1 approach a billion dollars. In private company context,
 2 board would lose shareholder suit alleging bad faith
 3 approving the plan, or worse, a bad-faith claim is not
 4 subject to indemnification by the company - personal
 5 liability - worst possible outcome in corporate law.
 6 Also FYI, the paper had a story about how the
 7 JEA board cancelled November meeting for light agenda.
 8 Were you aware that the JEA board cancelled
 9 this November meeting?
 10 A I was aware of the meeting being cancelled, but
 11 I don't know why it was cancelled.
 12 Q The next paragraph, I believe JEA board has
 13 similar fiduciary duties to the board of a public
 14 company when considering the sale of a company,
 15 so-called Revlon duties.
 16 In a private company context, the board
 17 receives repeated briefings from counsel about fiduciary
 18 duties. I think that would be advisable here.
 19 One of the hallmarks of a good sale process
 20 under Revlon is the board meets very often to receive
 21 reports to be actively engaged. A private company sale
 22 can involve 30 or more meetings. It's much more
 23 difficult for shareholder plaintiff to overcome
 24 presumption board made correct decision when the
 25 directors are fully informed and engaged.

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1 The reasons for the sale -- for sale appear
 2 extremely compelling, best market in the past 100 years.
 3 Huge windfall. Value on sale far exceeds value as a
 4 publicly-owned utility, but I think JEA is botching the
 5 process and PR.
 6 The president of JU and the Chair of Baptist
 7 Hospital would immediately understand the sale is a no
 8 brainer, if they understood economics.
 9 Just saying, but I do not know anything about
 10 the political world.
 11 And you responded that afternoon. In fact,
 12 three minutes later, after reading Gardner's e-mail.
 13 I advised them months ago that the PUP was an
 14 incredibly bad idea and would kill the whole deal.
 15 That was a pretty quick response within three
 16 minutes after reading Gardner's e-mail.
 17 A I carry lots of devices.
 18 Q Sitting around on a Saturday afternoon?
 19 A Yeah, I respond quickly.
 20 Q And Gardner says in response to your e-mail --
 21 but when you said I advised them months ago, is that the
 22 personal -- personal conversation you told me about?
 23 A Yeah, conversations that I've told you about.
 24 Q Nothing else?
 25 A Yeah.

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1 Q And Gardner responds to your e-mail and says,
 2 Pig versus hogs.
 3 Do you know that story?
 4 A Versus hogs. Oh, yeah.
 5 Q What's the story?
 6 A Pigs get fat and hogs get slaughtered. Have
 7 you not heard that phrase?
 8 Q I am. I'm from Jacksonville.
 9 A I think that's what Gardner was referring to.
 10 Q But in this instance, in Gardner's analogy, he
 11 was the pig and who is the hog?
 12 A I don't know.
 13 Q But don't you think that's the JEA management
 14 he's characterizing as hogs?
 15 A Possible. Uh-huh.
 16 Q Let me show you what we marked as Exhibit 44.
 17 This is a letter from Aaron, dated December 6th, to Roy
 18 Diamond and Ron Salem, regarding the -- the JEA
 19 Long-Term Performance Unit Plan.
 20 I understand the frustration that's being
 21 expressed concerning the previously contemplated plan
 22 and on behalf of JEA. Please know that we welcome the
 23 full and entirely thorough review that you are
 24 requesting in your December 5 letter.
 25 There's a been tremendous amount of

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1 information, some factual and some inaccurate,
 2 surrounding the plan ever since JEA announced its
 3 cancellation. It is my hope that an open and honest and
 4 detailed fact-finding review on the inception and
 5 discussion of the plan will not only provide clarity to
 6 both you and the colleagues on the Jacksonville City
 7 Council, but also help us to identify our own lessons
 8 learned from this matter.
 9 Please know that I've instructed our senior
 10 leadership team, special counsel to JEA, along with the
 11 support of our entire JEA staff and our outside
 12 consultants to provide you with any and all information
 13 you need for this process. You will -- we will be
 14 available for all question and answer sessions in
 15 addition to the documentation you request.
 16 We have previously made available in a
 17 proactive matter the information around the plan,
 18 parenthesis, which is anticipated to be cancelled at the
 19 December 17 JEA board meeting.
 20 Did you know that that was going to be
 21 cancelled at the December 17th board meeting?
 22 A I -- I believe so. My understanding, it was --
 23 it was not going to be -- it was not going to move
 24 forward and so you needed to have a board action to
 25 overturn the prior resolution, the one that was from 7-

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1 -- 7/23/19.
 2 (Hyde's Exhibit 44 was marked for
 3 identification.)
 4 Q Let me show you what we marked as Exhibit 45.
 5 This is an e-mail from you to Lynne Rhode, dated
 6 December 10th, 2019.
 7 A Uh-huh. Yeah. Uh-huh.
 8 (Hyde's Exhibit 45 was marked for
 9 identification.)
 10 Q And you say, Please see attached. And what's
 11 attached is an executive summary?
 12 A Correct. Yeah.
 13 Q Of what?
 14 A Councilman Diamond wrote a letter, I believe
 15 it was dated December 5th, requesting some information.
 16 JEA put that together, as well as I looked at the
 17 document request as well to see if we had any
 18 responsive documents. It was a pretty healthy stack of
 19 documents.
 20 And I suggested and Lynne agreed that it would
 21 be helpful to have an executive summary just to outline
 22 almost chronologically the plan so as to give the folks
 23 in this case, Councilman Diamond and Councilman Salem
 24 and other council members, just some context. So that
 25 was the executive summary. And it was attached to the
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1 notebook that was given to those individuals in the
 2 front.
 3 Q On December 16th or thereabouts?
 4 A I think -- I think I met with Councilman
 5 Diamond and gave him a copy of the notebook around
 6 December 11th. The letter that Councilman Diamond sent,
 7 dated December 5th, had a request by date and I believe
 8 it was around the 11th.
 9 Q Let me show you what we marked as Exhibit 46A.
 10 A Uh-huh.
 11 (Hyde's Exhibit 46A was marked for
 12 identification.)
 13 Q Let me -- let me go back to what you just told
 14 me. The -- what -- what was your involvement in helping
 15 JEA's senior management respond to the inquiry by
 16 Councilmen Diamond and Salem?
 17 A I looked through our records to see what
 18 documents we had that would be responsive to his
 19 request, provided those to JEA. And I provided the
 20 executive summary, I think it was a draft, Lynne edited
 21 it as well, but I -- I did the initial draft. And then
 22 I met with Councilman Diamond prior to the meeting. I
 23 think -- I think it was around December 11th that I met
 24 with Councilman Diamond.
 25 Q Prior to the December 16th meeting?
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1 A Yes, prior to the December 16th meeting.
 2 Q And what was your role in -- in that discourse?
 3 Were you representing the JEA in responding to the city
 4 council?
 5 A Yes. They had -- the city council had
 6 requested of JEA information on a matter for which I had
 7 been counsel.
 8 Q While you've been among many counsel?
 9 A Exactly. Uh-huh.
 10 Q Well, why did they pick you to help them
 11 respond to the council's request?
 12 A Because the inquiry was mainly related to the
 13 PUP plan.
 14 Q And that's what Foley was engaged to do?
 15 A Among other things, yes.
 16 Q As opposed to Pillsbury?
 17 A No. I was the one local and so it made sense
 18 for me to put together the information. And I know
 19 Councilman Diamond so I went and said --
 20 Q And you have some familiarity with the city
 21 council?
 22 A Some familiarity. About eight years of
 23 familiarity, yes. And so it made sense for me to help
 24 assist with that. And I provided the information to
 25 Councilman Diamond and asked him if he had any questions
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1 in advance. He flipped through the notebook and said
 2 no. Then we all met together on December 16th.
 3 Q Where he had some questions?
 4 A And he had some questions and they were
 5 good questions. I told him, after the meeting, that
 6 I thought he and the others had asked very fair
 7 questions.
 8 Q Did I show you 46A?
 9 A Yeah, I have it in my hand.
 10 Q That was an exchange between you and --
 11 A Uh-huh.
 12 Q -- Robert Bernstein on December 23. What was
 13 that about?
 14 A It was how long it would take to get a private
 15 letter ruling, if they were going to be going forward
 16 with any kind of deferred compensation plan.
 17 Q Why would you be talking about that on the
 18 December 23 meeting?
 19 A I don't remember what caused this to come up,
 20 but, obviously, I was asked to find out how long it
 21 would take.
 22 Q Basically, Bob tell you -- told you it'd take
 23 too long?
 24 A Took a long time, yeah. Uh-huh.
 25 Q Let me show you what we marked as 46B. Again,
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1 it's an exchange of e-mails. I'll start at the bottom.
 2 Bottom e-mail is David Cook forwarded, to people who are
 3 not identified on here, a news article in
 4 Jacksonville.com.
 5 You responded on December 27th, at 5:40,
 6 saying, I can't open the article. Who is she referring
 7 to as the mayoral official?
 8 And David Cook wrote in response, Burch.
 9 And says -- says, Carla Miller said meeting in
 10 Atlanta violated the Sunshine law, but JEA's law firm
 11 said it did not.
 12 And then you wrote at 6:19, that day, December
 13 27th, she is the deputy CAO.
 14 Who's the "she" referred to there?
 15 A I think Stephanie Burch.
 16 (Hyde's Exhibit 46B was marked for
 17 identification.)
 18 Q She's the deputy chief administrator officer --
 19 A Uh-huh.
 20 Q -- of the City, not JEA, right?
 21 A Correct.
 22 Q And was not -- was not in negotiating team?
 23 A Should be probably was not a negotiating team
 24 member.
 25 Q Okay. Carla does not understand the interplay
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1 of procurement and Sunshine?
 2 A Right. Uh-huh.
 3 Q Really? Carla doesn't understand the interplay
 4 between --
 5 A My concern was, and this was based on
 6 conversations with my partner, Robert Hosay, who deals
 7 with procurement issues at the state level all the time,
 8 there are -- there are times in the procurement code
 9 that allows things to operate what would be deemed
 10 outside the Sunshine, in the -- in the state procurement
 11 code.
 12 Q How about the cone of silence?
 13 A Cone of silence is just a phrase that was
 14 used -- that is used, but that emanates from the
 15 procurement code.
 16 Q And David Cook responds on December 27th, From
 17 the article, sure seems she was in the lead. Unclear if
 18 the numbers being suggested were over and above the
 19 debt.
 20 They make a big point that the mayor's staff
 21 had joined the process in early December, about a week
 22 or so before the mayor issued his hurry up, end of
 23 January deadline.
 24 Do you know what David Cook's referring to when
 25 he says the mayor issued his hurry up, end of January
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1 deadline?
 2 A I think it's what you were referring earlier,
 3 which was the mayor had encouraged, directed, however
 4 you phrased it, that the process be accelerated.
 5 Q Were you aware that that happened, the mayor
 6 had done that?
 7 A I think so.
 8 Q Did you understand why the mayor had done
 9 that?
 10 A We've already talked about that. No, I don't
 11 know.
 12 Q I mean, this was a JEA process, not a City of
 13 Jacksonville process, right?
 14 A That's correct, but the mayor -- the mayor said
 15 he wanted the process to be completed quicker.
 16 Q And do you understand what authority he had to
 17 make that determination? He wasn't leading the sale
 18 process, was he?
 19 A Well, he wasn't leading the sale process. I
 20 don't know what technical authority he has, but the
 21 mayor, in our consolidated form of government, has a lot
 22 of authority in nearly all matters.
 23 Q At least influence?
 24 A Certainly influence.
 25 Q And you responded to David on December 27th, at
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1 7:53 p.m.
 2 A Uh-huh.
 3 Q All of this Merrill involvement by either his
 4 staff is due to Carline Miller saying that no JEA
 5 employee could be on the negotiating team.
 6 A Right.
 7 Q What does Merrill refer to?
 8 A That's a -- that's a -- when you dictate --
 9 it's mayoral. It should read m-a-y-o-r-a-l, not Merrill
 10 Lynch.
 11 Q Ah.
 12 A I'm sure I was dictating a text. Same thing,
 13 Carline should be Carla Miller.
 14 Q Carla Miller.
 15 A And it should be no JEA, not -- not spelled
 16 with a name.
 17 Q So all of this mayoral involvement by either
 18 his staff --
 19 A Right.
 20 Q -- by either his staff --
 21 A By -- let me explain what this was about.
 22 Carla had raised questions --
 23 Q This was about 8:00 o'clock at night.
 24 A So.
 25 Q Go ahead.
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1 A I'm sure you have lawyers that work late too.
 2 Carla has raised questions as to whether a
 3 member of JEA, an employee of JEA could be on the
 4 negotiating team. And had suggested that that issue
 5 could be resolved by having members outside of JEA
 6 employees, whether they be in the mayor's office or
 7 somewhere else, to be negotiating team members.
 8 And so had Carla not raised that issue, I think
 9 that JEA would have had just JEA employees be the ones
 10 serving as negotiators.
 11 Q That's where they were headed until Carla did
 12 something?
 13 A Right. Uh-huh.
 14 Q But I didn't understand, All of this mayoral
 15 involvement by either his staff.
 16 What does that mean, "by either his staff"?
 17 A Well, I mean, I don't think the Mayor was going
 18 to be on the negotiating team, but Stephanie Burch, who
 19 is a member of his staff, was then going to be on the
 20 negotiating team.
 21 Q Okay. I see. And then David Cook wrote at
 22 8:02, in response to you, The optics were too bad in
 23 light of the attempt to have the PUP plan.
 24 And at 8:13, you responded to David and you
 25 said, I told them the PUP would kill the whole deal.

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1 Sorry I was correct.
 2 A Uh-huh.
 3 Q When you said, "I told them," tell me who them
 4 is and when did you tell them.
 5 A Same conversation we've earlier had, Melissa
 6 Dykes and Herschel Vinyard, as I've earlier testified.
 7 Q So that's what you're referring to --
 8 A Yes.
 9 Q -- by those conversations?
 10 A Yeah.
 11 Q And then David Cook responded to you at 8:38
 12 that evening, on December 27th, We discussed it as soon
 13 as we learned about it. They will try and take cover
 14 and claim consultants came up with it, but they had to
 15 know about the crazy payouts upon sale. Mayor or folks
 16 in his staff had to know or should have known.
 17 While crazy -- while on crazy fees, I hope they
 18 subpoena Sam Mousa's arrangement with NextEra.
 19 And I'm assuming that's referring to the fact
 20 that Sam Mousa was a paid consultant to NextEra?
 21 A I'm assuming so.
 22 Q The City waived conflict issues at the same
 23 time as hired him as a consultant. The Tim Baker thing
 24 is outrageous. Taken as a whole, the Mayor only cared
 25 about getting JEA sold and didn't care that his self

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1 appointed team at JEA and his political consultants were
 2 all going to make outlandish sums at the expense of the
 3 citizens.
 4 He's getting pretty outspoken here.
 5 A David is outspoken.
 6 Q The Mayor is pretty smart and looks like they
 7 thought they could ram this through the city council and
 8 then campaign with the promise of \$1,000 to each account
 9 holder and it would pass.
 10 The Mayor is pretty smart and looks like they
 11 thought, who's the "they" you think he's referring to?
 12 A I'm assuming the Mayor and his senior staff,
 13 whoever would have been involved in the process.
 14 Q Brian and Tim?
 15 A Well, certainly Brian was at the time either
 16 CAO or chief of staff so I certainly think it would
 17 include him, not sure about Tim. I know that Tim had
 18 been involved with his campaigns.
 19 Q In the mayor's campaigns?
 20 A Yes.
 21 Q And was at the Club Continental?
 22 A He was for a portion of that meeting, yeah.
 23 Q Do you think that's a fair -- in your
 24 experience, do you think that's a fair characterization
 25 that that's where the Mayor was coming from, was they

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1 thought that they could get this through the city
 2 council and then with an inducement of \$1,000 to each
 3 account holder, that they could campaign to get it
 4 passed?
 5 A I think the mayor was confident in his ability
 6 to persuade the city council to at least approve a
 7 referendum, which is what -- they had to approve the
 8 sale and they had to the approve the referendum. And
 9 that what we talked about earlier, the rebate money,
 10 yeah, that's a factor that a voter would consider.
 11 Q The PR -- I keep reading, The PR folks and
 12 consultants should be identified and called to task for
 13 horrible game plan.
 14 Are the PR folks the Dalton Agency, do you
 15 know? Is that who he was referring to?
 16 A No, there were -- I don't know if there's
 17 others, but they are a PR agency that worked on this
 18 process.
 19 Q The Dalton Agency?
 20 A Michael Munz specifically, yeah.
 21 Q Whoever prepared the JEA response to assure
 22 taxpayers that the PUP would be paid by the buyer so
 23 don't worry about -- so don't worry should be identified
 24 and never have another governmental contract. Simply a
 25 deliberate attempt to talk down to the citizens.

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1 This was going to be a tough sell, but JEA
2 should have done all of the community/church meetings to
3 try and develop support beforehand and at least listen
4 to folks and get their message out there.

5 I'd like to know who came up with the \$1,000
6 payment plan and whether this was discussed with certain
7 community leaders in the low income areas.

8 Completely soiled this opportunity for a long
9 time due to greed and arrogance.

10 Best, David.

11 Do you agree with David's observations?

12 A Generally, yes. Uh-huh.

13 Q And to whom do you subscribe the greed and
14 arrogance that David was talking about, the JEA
15 management, the mayoral staff, who?

16 A I would probably say JEA management at that
17 point.

18 Q Principally Aaron --

19 A Yeah.

20 Q -- and his folks?

21 A Yeah. Yes.

22 Q Would you include Herschel in that?

23 A Herschel was a member of the senior leadership
24 team, yes. I'm not going to ascribe that motive to him,
25 but he was a member of the senior leadership team.

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1 Q Well, you've known Herschel a long time and
2 you're a good friend of his.

3 A Yes. Uh-huh.

4 Q As I am.

5 A Uh-huh.

6 Q Were you disappointed in his role in this?

7 A That's a tough question in terms of -- of
8 disappointment. My opinion of Herschel's integrity
9 hasn't changed. My opinion of Herschel's abilities
10 haven't changed, no.

11 So I was disappointed that -- I was
12 disappointed in lots of the process. And I don't know
13 all that Herschel did or did not do within this process,
14 but certainly he was part of the senior leadership team
15 in a process that failed miserably.

16 Q And was poorly conceived?

17 A Yeah. Depends on what we say about poorly
18 conceived. In the sense of getting to the question of
19 what -- of whether JEA should be sold and what that
20 could do for the City, that's a question that when I was
21 on the city council was being debated.

22 Q It's been debated for 50 years --

23 A Yeah. Exactly.

24 Q -- consolidating.

25 A So I don't know if it's -- it depends on what

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1 portion was poorly conceived. Was the PUP plan poorly
2 conceived as a component of this? Yes.

3 Q Well, so let's take that discussion a little
4 bit further. What you're suggesting is that there could
5 be a reasonable debate in the community about whether or
6 not to sell JEA?

7 A Oh, absolutely, yes.

8 Q And reasonable people could differ about that?

9 A Absolutely.

10 Q And at some point that could be fairly debated
11 in the community and even voted on by the council or the
12 citizens?

13 A Uh-huh. Yes.

14 Q And so you don't fault the mayor or the JEA for
15 at least putting it on the table for consideration?

16 A No, I don't.

17 Q But based on what we've been through so far
18 today, it looks like the process was not as transparent
19 as it should have been and it was more truncated than it
20 should have been, don't you agree?

21 A I agree with that. I contrast, Steve, for
22 instance, to The Better Jacksonville Plan, which was, as
23 we all in this room know, was us voting to increase our
24 taxes on ourself. And I'm convinced that the only
25 reason that passed was because a compelling case was

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1 made as to the reason for -- the need for the additional
2 revenue and its uses. And because of that, people could
3 get behind that. That was a very open, transparent
4 process and campaign.

5 Q Just like a half cent for the school board?

6 A Just like a half cent for the school board,
7 absolutely. Yeah. Uh-huh.

8 Q But 13 minutes at the end of the July 23 board
9 meeting to consider the PUP plan with inaccurate data
10 provided to the board before that meeting probably was
11 not as it should have been?

12 A Certainly was not as much as it could have
13 been.

14 Q Should have been?

15 A Sir, I think the results could have been very
16 different had there been more discussion about it, more
17 understanding about it as the process went through.

18 Q Do you think that it's fair that Aaron was
19 trying to limit transparency in getting it through the
20 board with as little notice as possible?

21 A I'm not sure what you mean was it fair. Do I
22 agree with that characterization?

23 Q Yes.

24 A I don't know if I do for -- for this reason. I
25 don't know what forms of communication Aaron has with

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1 his particular board members. And so whether he had
2 briefed them in advance or I -- I don't know that.

3 Q Well, you saw Kelly Flanagan make public
4 statements subsequently that she didn't feel like she
5 was adequately briefed.

6 A I heard those statements, yes. That's why I
7 said I don't know what his relationship with -- and
8 communication with the board members were.

9 Q And you've seen this board package that went to
10 the July 23 board meeting?

11 A Yes, I have. Uh-huh.

12 Q Approximately how many pages was it?

13 A 345 or something like that.

14 Q Okay. And you're aware -- the reports were
15 pretty public to the board, maybe a day or two before
16 the meeting?

17 A Yes. Uh-huh. It's a lot of information to
18 digest in advance.

19 Q On a very complex subject?

20 A Not only complex, but a very important
21 subject.

22 Q Which had been limited discussion in front of
23 the board about previously to July 23?

24 A I'm sorry.

25 Q Which had been limited discussion with the
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1 board prior to July 23rd?

2 A I'm not sure of all the discussion prior to
3 that, but I'll accept your characterization.

4 MS. NOLLER: Steve, we've been going a little
5 over two hours, would you be amenable to a short
6 break?

7 MR. BUSEY: Yes, ma'am.
8 (Recess taken.)

9 BY MR. BUSEY:

10 Q I'm showing Kevin Exhibit 47, which is an
11 e-mail -- which is a memorandum to the file, dated July
12 22, 2019, from Lawsikia, Lynne Rhode and Jason Gabriel.

13 Have you -- have you seen this before?

14 A I don't think so.

15 (Hyde's Exhibit 47 was marked for
16 identification.)

17 Q It's the day before the July 23 JEA board
18 meeting we've been talking about. It's a memorandum to
19 the file by OGC. Re line says, Strategic Planning
20 Actions Taken, JEA Board, Based on Scenario Based
21 Planning. Options Presented by the JEA Senior
22 Leadership Team. That's a handful.

23 A Uh-huh.

24 Q And the footnote to this memorandum says,
25 Office of General Counsel engaged and relied on various
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1 outside specialized counsel to assist JEA in the
2 preparation of the resolutions and underlying documents
3 required for each option presented by the senior
4 leadership team.

5 Accordingly, the scope of this memorandum does
6 not address the legality of the underlying documents
7 drafted to implement such resolutions, as such legality
8 has been confirmed -- confirmed and will continue to be
9 developed by approved special counsel to JEA appointed
10 and supervised by the Office of General Counsel pursuant
11 to the course of action approved by the JEA board.

12 Now, again, I think you just said you've never
13 seen this before?

14 A I don't recall seeing this.

15 Q This -- this appears to me, I'm just reading
16 it, that OGC is attempting to say that we have a pass
17 on the legality of the memoranda that are going to be
18 presented to the board on July 23 and we're relying --
19 we're -- OGC is relying on outside counsel to
20 determine.

21 Is that how you read that --

22 A Yes.

23 Q -- footnote?

24 A Yes.

25 Q And you -- I take it, you said you haven't seen
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1 this before, you haven't had any discussion with either
2 Lawsikia, Lynne or Jason why they would memorialize on
3 the eve of the July 23 board meeting that the OGC had
4 not passed on any of the resolutions?

5 A I have not had those discussions.

6 MR. BUSEY: Off the record.

7 (Off-the-record discussion.)

8 BY MR. BUSEY:

9 Q Let me show you what we've marked as Exhibit
10 68.

11 A Uh-huh.

12 (Hyde's Exhibit 68 was marked for
13 identification.)

14 Q And this is one of the documents that I
15 referred to you just earlier that we just received --

16 A Yeah. Uh-huh.

17 Q -- from OGC today, that's why it's the
18 numbering on it.

19 A Sure.

20 Q Do you know, Kevin, why OGC had this document,
21 68, which is a letterhead -- a letter, dated October 23,
22 2019, and it was not among the documents you produced to
23 us in response to our request for documents prepared for
24 this interview?

25 A No. I'm -- I'm familiar with this document so
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1 I -- I don't know the specific answer. Maybe we thought
2 in going through it, it wasn't responsive to one of the
3 requests. I can certainly explain it.

4 MS. NOLLER: And, actually, Steve, what -- what
5 you guys had told me was 68 is not a multi-page
6 document. It's a one page e-mail that you guys just
7 sent me.

8 MR. BUSEY: Well, then we're not communicating
9 because I'm looking at a three-page letter, an
10 engagement letter between The Southern Group and
11 Foley & Lardner, dated October 3, 2019.

12 MS. NOLLER: Ah, I have it as 67. I apologize.
13 I must have misheard Kevin earlier, Kevin Blodgett.
14 I'm with you.

15 BY MR. BUSEY:

16 Q All right. And either, Lisa or Kevin, I'm just
17 trying to find out how come we got stuff from OGC
18 through Nelson Mullins that we didn't get directly from
19 you. And I sincerely doubt, Kevin, if you did the
20 document search, so I'm just trying to figure out where
21 the disconnect is.

22 A I don't know.

23 Q Who did you rely on to do the document search?

24 A Primarily my legal assistants. I was involved,
25 but my paralegal, Susan Coleman.

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1 responsive, but I think you can take issue on
2 whether this particular letter is responsive. We're
3 happy to talk about it, we're not hiding from it,
4 but I think it's -- it's a debatable question
5 whether it's responsive.

6 BY MR. BUSEY:

7 Q Exhibit 68 is a letter from you, Kevin, to Deno
8 Hicks at The Southern Group, dated October 3, 2019.
9 Apparently Foley is engaging The Southern Group pursuant
10 to this letter.

11 A Yes.

12 Q To do what?

13 A It -- they were going to provide services,
14 primarily city council relations.

15 Q Primarily what?

16 A What I've put in here, governmental and public
17 affairs, but primarily interaction with the city council
18 lobbying.

19 Q Well, I'm reading the first sentence. I am
20 writing to confirm that you and The Southern Group have
21 been retained on behalf of JEA --

22 A Yes.

23 Q -- for the purpose of assisting Foley & Lardner
24 in providing governmental and public affair services
25 related to the ITN issued by JEA on August 2.

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1 Q Okay. We've gotten a lot of it and there's
2 just a lot of stuff that Nelson Mullins apparently
3 received from Foley weeks ago, gave it to OGC and we're
4 just now getting it and it was not provided to us by
5 your office in response to our questions. And it
6 appears to be a disparity behind there and I just -- you
7 can't explain it without going through at this point?

8 A No.

9 Q All right. Well, let's look at what we --

10 MS. NOLLER: Which -- Steve?

11 MR. BUSEY: Yes, ma'am.

12 MS. NOLLER: Which request from Lanny
13 Russell's August 7th letter are you contending that
14 this would be responsive to? Just so we can follow
15 up, please.

16 MR. RUSSELL: Sure, Lisa. This is Lanny. It's
17 specifically covered by the documents relating to
18 the Foley's bills. This -- the cost of Southern
19 Group was passed through on the Foley bills to JEA.

20 MR. BUSEY: Well, let's -- let's go ahead and
21 talk about it.

22 MS. NOLLER: Well, we produced -- well, we
23 produced the invoices and that's what's called for
24 by your letter. I don't think we -- well, we did
25 not mean to withhold something that wasn't

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1 A Right.

2 Q So was the engagement limited to the ITN
3 process?

4 A Yes, yes. When I said it was going to be city
5 council lobbying, it was related to the ITN process
6 issued by JEA because, again, ultimately this would have
7 had to go to the city council.

8 Q So you're telling me that the purpose of
9 Foley's engagement with The Southern Group was to get
10 Southern Group's assistance in getting this ITN process
11 through city council?

12 A That would be part of their governmental
13 affairs work, yes.

14 Q Their, who's their?

15 A They being Southern -- Southern Group.

16 Q Why is Foley hiring The Southern Group for that
17 rather than JEA?

18 A I can't remember if it was Sherry Hall or Carey
19 Stewart asked us to do -- to do the engagement. They
20 have used apparently other times that they have used
21 their counsel to employ --

22 Q Wait a minute, I lost the pronouns. They used
23 their counsel?

24 A They -- JEA has used its counsel to procure the
25 services of other consultants.

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1 Q Well, yeah, we've seen that with McKinsey in
2 this case. Pillsbury --

3 MS. NOLLER: I'm sorry, what?

4 Q We've seen that with McKinsey in this case.
5 Pillsbury hired McKinsey. Were you aware of that? Is
6 that what you're referring to?

7 A I wasn't -- no, I wasn't aware -- I wasn't
8 referring to that specifically. I don't know how
9 McKinsey was specifically retained.

10 Q Why didn't you just tell JEA to go hire them
11 yourself? Why do you need us to do this? I don't
12 understand why Foley's involved.

13 A I've -- we've done that representing other
14 public agencies. I ask whether it met their procurement
15 code for us to do this and they said it did and so we
16 made -- we did the arrangement and then we terminated
17 this about a week later.

18 Q When you say "we terminated this"?

19 A The arrangement was terminated.

20 Q Foley --

21 A Foley and Deno of -- Deno Hicks, who is the
22 local manager of The Southern Group, term- -- terminated
23 the relationship.

24 Q About a week later, October the 11th of so?

25 A Yeah. Uh-huh. They had done -- the engagement
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1 was to go back, notice he says effective date of the
2 engagement is July 23rd. So I don't want to suggest it
3 had only been for a week. I'm saying between October
4 3rd and I think October 11th was when the engagement was
5 terminated.

6 Q So why did it take six months -- excuse me, 60
7 days for Foley to engage The Southern Group if they had
8 been rendering services since July 23?

9 A Because we were trying to get an engagement
10 letter and I was delayed in doing it to them. We were
11 engaged in a lot of other things.

12 Q We, Foley?

13 A We, Foley engaged in a lot of other things
14 related to the ITN, so it was a delay on my part.

15 Q And then why was your relation- -- Foley's
16 relationship with Southern Group terminated merely a
17 week later?

18 A I think it was at the request of Deno Hicks
19 that it be terminated, the entire relationship be
20 terminated. I think some questions had arisen as to how
21 the procurement could come about and so it was
22 terminated.

23 Q I'll show you what we marked as 67. Is that
24 the termination --

25 A Uh-huh.

1 (Hyde's Exhibit 67 was marked for
2 identification.)

3 Q -- you're referring to?

4 A Yes. Uh-huh.

5 Q You said there had been some questions about
6 how this has come about, what are you referring to?

7 A How the -- how the engagement of Deno -- I keep
8 saying Deno, I associated him with The Southern Group --
9 how The Southern Group had been engaged to do work with
10 JEA.

11 And I -- what I'm trying to remember right now
12 is how this timing worked with the issues that later
13 arose about the land deal that Deno Hicks had with Aaron
14 Zahn. So I don't -- I don't know how the -- how the
15 timing of that worked. I just remember that Deno
16 called -- or not called, he e-mailed and said, We're
17 going to terminate this contract.

18 Q You remember the conversation?

19 A Well, here's the e-mail.

20 Q You said you remember that Deno called, that's
21 why I --

22 A I can't remember if he called or he e-mailed,
23 but remember getting communication that it was going to
24 be terminated.

25 Q And you don't recall whether that termination
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1 on or about October the 11th was before or after it hit
2 the fan that Deno was in bed with Aaron?

3 A I don't remember exactly when that was.

4 Q So if you don't remember when that was, then
5 wouldn't it seem strange to you if you -- if you had
6 heard that news, that a week after you had entered this
7 engagement with Deno, that he just simply cancelled it
8 without telling you why?

9 A Well, what I'm saying, Steve, is I don't
10 remember exactly when the newspaper began reporting
11 this -- this business argument Deno Hicks had with Aaron
12 Zahn. It's likely to be in around this time. I'm
13 saying, as I sit here today, I don't remember when that
14 is or when that was.

15 Q I hear you. And I'm saying, if you hadn't
16 heard of it, this would be a pretty strange thing,
17 wouldn't it, if you hadn't heard about that?

18 A Probably so.

19 Q Suggests that you probably had heard about it?

20 A Yeah. I'm just not going to say I know with
21 specificity the exact date I heard about the land
22 business arrangement between the two.

23 Q I understand. That's the value of cross
24 examination.

25 And looking at Exhibit 67 --

1 A Uh-huh.
2 Q -- the termination of your arrangement with
3 Southern Group was at least by October the 11th?

4 A Yes.

5 Q Let me show you what we marked as Exhibit 48,
6 which is a composite of invoices from The Southern Group
7 to Foley & Lardner.

8 A Uh-huh. Uh-huh.

9 (Hyde's Exhibit 48 was marked for
10 identification.)

11 Q And the first page is for professional services
12 rendered in July. And the second page is for
13 professionals services rendered in August. The third
14 page is professional services rendered in September.

15 And the fourth page is professional services rendered in
16 October. September and August and October are all the
17 same amount, \$7500 a month.

18 A Right.

19 Q If you terminated them on October 11th, why are
20 you paying them -- or did you pay them for the entire
21 month of October?

22 A I -- I don't know if they were paid. My guess,
23 that's all this is, is it was a retainer agreement and
24 so they probably billed on the 1st of the month, prior
25 to the time that it was -- it was terminated. For

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1 instance, if you look here on the last page, it says,
2 Invoice Date, 10/1, so they're billing for the whole
3 month, 7500 for the month and showing it's not due till
4 10/31.

5 Q And what did The Southern Group do for you --
6 for Foley --

7 A It's --

8 Q -- in July, August and September and October --
9 well, September, that justified \$7500 a month during
10 that time frame?

11 A It said they were retained on behalf of JEA for
12 assisting us. And I -- I don't know exactly all that
13 they did. The main thing that I would have looked for
14 them to do was to assist with city council
15 relationships.

16 Q Well, you were on the scene, did they do that
17 during the time frame?

18 A I don't know exactly all that they did.

19 Q And they didn't break their services down any
20 more further than that?

21 A No, it was a flat fee retainer.

22 Q Good work, if you can get it.

23 A It is.

24 Q Let me show you what we've marked as Exhibit
25 49. And this is an engagement letter between J.P.

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1 Morgan and JEA, dated July 24th, 2019. This is the day
2 after the June 23 board meeting. It is 12 pages long,
3 single spaced, small print.

4 Have you seen this before?

5 A No.

6 (Hyde's Exhibit 49 was marked for
7 identification.)

8 Q Had you ever -- you've never seen it?

9 A No.

10 Q Do you have any -- J.P. Morgan, were they at
11 the Club Continental meeting on July 10th?

12 A Representatives of J.P. Morgan were.

13 Q Not Mr. Morgan himself?

14 A No.

15 Q Do you think that this 12-page engagement
16 letter was written between July 23 and July 24?

17 A I have no idea. My guess is, no, but I'm not
18 going to opine on something that I don't have knowledge
19 of.

20 Q And you don't know why it was not executed
21 until after the board meeting?

22 A I do not.

23 Q Were you aware that the board authorized the
24 JEA senior leadership team on July 23 to hire
25 professionals?

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1 A There were -- one of the resolutions you
2 showed me, it talked about hiring consultants and
3 professionals, yes.

4 Q So do we take from that that the board wasn't
5 authorized to hire consultants and professionals prior
6 to July 23 for the ITN process?

7 A I have to look at the resolution board, but
8 the resolution, I think, did authorize that to be done
9 so that's a fair assumption, as to a reason for waiting
10 until July 24th.

11 Q Even though J.P. Morgan and Morgan Stanley were
12 working prior to July 24th?

13 A Yes.

14 Q Let me show you what we marked as Exhibit 51.
15 Have you seen this document before?

16 A I'm not sure. I don't remember the substance
17 of this document.

18 (Hyde's Exhibit 51 was marked for
19 identification.)

20 Q The document is entitled Project Scampi,
21 Organizational Materials, July 31, 2019. And it says on
22 the front page, J.P. Morgan and Morgan Stanley.

23 A Uh-huh.

24 Q And the second page of the document says, July
25 31 Work in Session, Logistics and Attendees.

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1 Did you go to a July 31 work in session?
 2 A I'm listed as -- I don't recall specifically,
 3 but it -- I do recall a meeting in our office where
 4 various of the advisors were there and so it's
 5 possible.
 6 Q Well, you said --
 7 A I -- I -- let me clarify. I participated in
 8 very few of the meetings dealing with the actual ITN
 9 process. I was dealing with the labor issues primarily,
 10 including doing collective bargaining in or around this
 11 time.
 12 So I -- I don't want to say, Steve, that I
 13 guaranteed I was or was not there. I -- I don't recall.
 14 I see that I'm listed and I recall that there were
 15 meetings in our offices, but as it related to the ITN, I
 16 was kind of the relationship partner, but not intimately
 17 involved in the -- the specific issues dealing with the
 18 ITN.
 19 Q And who's Benjamin Grossman?
 20 A He is a sen- -- what we call senior counsel in
 21 our Tallahassee office, works very closely with Robert
 22 Hosay.
 23 Q And how come Chris Kise is not on this list, on
 24 page 2 of Exhibit 51?
 25 A Chris was not involved in any meaningful way
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1 in the ITN process. The other reason --
 2 THE WITNESS: Let's go off the record for just
 3 a second.
 4 (Off-the-record discussion.)
 5 BY MR. BUSEY:
 6 Q Looking at the page 3 of Exhibit 51, there's a
 7 section that says, Key Consideration Questions. And in
 8 the bullet points among key considerations, there's four
 9 that say, Does JEA have the support of city council, the
 10 Jacksonville mayor and other local leadership?
 11 Another one says, Some of the board materials
 12 paint a negative picture of JEA. Would I want to get
 13 involved?
 14 The other one says, Is the clear buyer for JEA
 15 NextEra?
 16 And another one says: What will be different
 17 about this process compared to 2018?
 18 Do you remember the discussion of those
 19 points?
 20 A No. And I -- as you're going over these
 21 points, I -- I don't recall reading this document.
 22 Q But this document appears, just from looking
 23 at it, to be a planning session for how we're going to
 24 get the ITN process done after it was approved on July
 25 23?

1 A That's the way I interpret it.
 2 Q Show you what we've marked as Exhibit 52.
 3 (Hyde's Exhibit 52 was marked for
 4 identification.)
 5 MS. NOLLER: 52?
 6 THE WITNESS: Yeah, 5-2.
 7 MS. NOLLER: Thank you.
 8 BY MR. BUSEY:
 9 Q All right. This is entitled Overview of
 10 Competitive Bid Process --
 11 A Uh-huh.
 12 Q -- JEA. And right here on the front cover, it
 13 says, Kevin Hyde, Foley & Lardner.
 14 A Yeah. Uh-huh.
 15 Q So have you seen this document before?
 16 A I believe so, yeah.
 17 Q It's refreshing. And what's the purpose of the
 18 document?
 19 A It was to -- to distill into one place how this
 20 process -- how the ITN process could go about. So it
 21 was intended to -- could be used as presentation to a
 22 board or others to just kind of explain how the process
 23 worked.
 24 And so one of the reasons that I'm on there is
 25 because I'm local, whereas Robert and Ben were not, and
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1 I had more experience going out to, whether it be city
 2 council or board meetings, to talk about in public
 3 settings, make presentations.
 4 The main thing this was doing was to kind of
 5 set forth a time line.
 6 Q For whose benefit?
 7 A I -- I think primarily the city council going
 8 on. There was a meeting -- I can't remember if it was a
 9 committee meeting or maybe the whole city council, but
 10 they want to really understand how the process was going
 11 to work and I spoke at that meeting.
 12 Q Did you prepare this document?
 13 A I saw it, but I did not do the initial work. I
 14 think it was probably Ben Grossman.
 15 Q Well, the graphics suggest that it's done
 16 within JEA --
 17 A Well --
 18 Q -- is there a lot of other JEA graphics
 19 which --
 20 A It is. I mean, JEA ultimately produced the
 21 document, but I think Ben did probably a lot of the
 22 initial drafting of it. But, yeah, it's -- it's -- has
 23 the JEA logo, was in remarks.
 24 Q The pages of Exhibit 52 are not numbered, but I
 25 want you to look at the eighth page in, which is titled

1 this --

2 A Okay.

3 Q Keep going.

4 A Got it.

5 Q Got it?

6 A Yep. Uh-huh.

7 Q And the page is titled How the -- How is the
8 Integrity of the ITN Process Ensured.

9 And the first paragraph says, Cone of silence,
10 prohibition of ex-parte communication between potential
11 bidders and JEA and its representatives.

12 Did you participate in any discussions at all
13 regarding the cone of silence and who were or were not
14 representatives of JEA?

15 A I participated in discussions related to the
16 cone of silence. I don't know if it was specific as to
17 the question you just asked. But one of the questions
18 that -- that came up, I recall, with city council
19 members is what involvement could they have? How did
20 the cone of silence apply to them, if at all?

21 Q And what was the answer to that question?

22 A That in order to ensure the integrity of the
23 process, it should be very limited as to who could
24 participate in the process and what information could
25 flow out from that process.

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1 A Say to anyone. Could be news media, say it in
2 a public meeting. The analogy that I would give and the
3 way I always thought about it was when I was on city
4 council and we were considering land use matters, you
5 had to be very careful about what you said outside of
6 the City meeting or while something was in a quasi
7 judicial proceeding.

8 I think that's what Jason's talking about here
9 because, ultimately, the city council was the approving
10 authority on this ITN.

11 Q Well, let me show you what we've marked as
12 Exhibit 54, which is a document entitled JEA Invitation
13 to Negotiate, 127-19, for Strategic Alternatives.

14 A Uh-huh.

15 (Hyde's Exhibit 54 was marked for
16 identification.)

17 Q This is the invitation dated August 2, 2019 --

18 A Okay.

19 Q -- to which you previously referred.

20 A Right. It's a portion of it it looks like.

21 Q This is an excerpt, you're right.

22 A Yes. Uh-huh.

23 Q And I'm referring to the third page of the
24 excerpt, which is numbered page 29.

25 A Uh-huh.

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1 Q Let me show you what we've marked as Exhibit
2 53. And it's -- and it's a memorandum from Jason
3 Gabriel to council members, dated September 24th, 2019,
4 explaining the cone of silence.

5 A Okay.

6 (Hyde's Exhibit 53 was marked for
7 identification.)

8 Q Have you seen this before?

9 A I don't believe so.

10 Q Lock back on page -- on Exhibit 53, Jason is
11 explaining in the memorandum the cone of silence.

12 A Uh-huh.

13 Q And in the second paragraph, under Roman
14 numeral II, he says, There are two essential ITN
15 communication restrictions during the cone of silence
16 period. 1, communications with vendors or respondents
17 to the ITN; and, 2, communications regarding the merits
18 of the ITN terms.

19 When -- when he says, "2, communications
20 regarding the merits of the ITN terms," do you know
21 who -- communications with whom he's referring?

22 A I think, as explained on the next page, he's
23 really talking about what -- what could council members
24 say while the ITN process was going on.

25 Q Say to whom?

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1 Q And it talks about the limitations on
2 communications in part 2.11.

3 A Yes, I see that.

4 Q And it says, Ex-Parte communication strictly
5 prohibited. Ex-party communication is defined as any
6 inappropriate communication concerning the ITN between a
7 firm submitting a reply and a JEA representative.

8 Now, do you know how a JEA representative is
9 defined? This is a communication between a bidder and a
10 JEA representative, right?

11 A Yes. This is limited to that instance. And,
12 no, I don't know how limited they are defining
13 representatives, JEA representatives.

14 Q But you do see that it's communication between
15 the bidder and a representative --

16 A Yes. Uh-huh.

17 Q -- not between a city council person and a
18 media person?

19 A This document is addressing a different issue
20 than Jason's prior memo.

21 Q Okay. Help me clear it up.

22 A Okay. Notice that Exhibit 53 is specifically
23 addressed to city council members and what their role is
24 and what their communication can be. And he addresses
25 in paragraph 2, the communication with vendors and

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1 representatives, but this is specifically directed as to
2 what can a city council member say and do during this
3 process?

4 Whereas, Exhibit 54 is talking about contact
5 because notice on the first page, it says, to all
6 qualified and interested parties and talks about is
7 pleased to present this opportunity described herein,
8 which is the ITN.

9 So I interpret this, and I believe it's
10 directed toward those who may seek to reply to the ITN.
11 So it's different audiences.

12 Q So you think 54 is directed to bidders?

13 A Yes. Yeah.

14 Q So let me show you what we've marked as Exhibit
15 55. Have you seen this before? It's a JEA Procurement
16 Department Bid Section, Addendum Number 2 to I27-19.

17 A I've not seen this.

18 (Hyde's Exhibit 55 was marked for
19 identification.)

20 Q And the addendum is a clarification of Section
21 2.11, which we've just referred to.

22 A Uh-huh.

23 Q And the first sentence says, Ex-Parte

24 communication is strictly prohibited. Ex-parte

25 communication is any communication concerning this ITN

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1 during the time period beginning when the ITN was
2 released on August 2 through the time of an award
3 regarding the solicitation, between a firm or other
4 agency submitting the bid and any JEA board member
5 employee, agent or representatives.

6 So that's the communication -- this is -- the
7 JEA is talking now. This is communication between the
8 bidder and a JEA representative, right?

9 A Yes.

10 Q And the next sentence goes on, it says,
11 Defines JEA representative, includes the mayor and City
12 of Jacksonville council members and their immediate
13 staff.

14 But still that's a communication between the
15 bidder and any of those people, isn't it?

16 A Yes.

17 Q That doesn't -- that prohibit any of the JEA
18 representatives from talking to their wives?

19 A No, no.

20 Q So it's communication between a bidder and
21 JEA --

22 A Yes.

23 Q -- or JEA representative?

24 A Yes.

25 Q Okay. Well, you said the council member

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1 couldn't talk to the media, that would be different
2 communication?

3 A No. Steve, what I'm saying is that these --

4 Jason's memo, Exhibit 54, was to say to the council
5 member, here are the parameters of your communication.
6 And that question had arisen as could they talk to the
7 media.

8 And the example I gave you on land use is that
9 you always had to be very careful as it didn't look like
10 you prejudged your opinion and what was always used in
11 prejudging your opinion is statements made to the media
12 so that was the caution.

13 Exhibit 54 and Exhibit 55 are saying to those
14 who would reply, don't be talking to these JEA
15 representatives. And in particular 55 is saying that
16 includes the mayor, his immediate staff and members of
17 the city council.

18 Q Okay. Okay. That doesn't -- that's
19 communications between the bidders and those folks?

20 A Yes.

21 Q And the whole idea in the procurement context
22 is you have a bidding process. You don't want to have
23 bidders learn about other bidders' stuff?

24 A Or influence the people while the bid process
25 is going on.

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1 Q All right. Do you know the -- what was the
2 impetus for Exhibit 55?

3 A No.

4 Q And you were unaware of it prior to me showing
5 it to you?

6 A Yes.

7 Q Let me show you what we've marked as 59.
8 (Hyde's Exhibit 59 was marked for

9 identification.)

10 MS. NOLLER: 5-9?

11 MR. BUSEY: 5-9.

12 THE WITNESS: Yes.

13 MS. NOLLER: Thank you.

14 BY MR. BUSEY:

15 Q Do you recognize that? The -- it's the
16 letterhead of Office of General Counsel.

17 A Uh-huh.

18 Q And it's a letter to the board of commission on
19 ethics?

20 A I'm familiar with the topic. I don't know if
21 I've ever seen the actual document. And the topic was
22 who could serve as a negotiation team member. I did not
23 draft this.

24 Q Did it go to the ethics commission, to your
25 knowledge?

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1 A I -- I don't know.
 2 Q And the questions to the commission are posed
 3 on the top of page 5. Do you know if the commission
 4 ever responded to this?
 5 A I don't know.
 6 Q Do you know whether the request that we marked
 7 as Exhibit 59 was ever withdrawn by the City before it
 8 was responded to by the commission?
 9 A I don't know.
 10 Q Let me show you what we marked as Exhibit 60.
 11 6-0.
 12 A Uh-huh.
 13 (Hyde's Exhibit 60 was marked for
 14 identification.)
 15 Q This is Foley's bill to JEA --
 16 A Uh-huh.
 17 Q -- for the period of July and August --
 18 A Right.
 19 Q -- or a portion of August?
 20 A Uh-huh.
 21 Q Did you see this bill before it went out?
 22 A Yeah, I would see the bills. And it looks when
 23 this date was issued, this would be prior to me issuing
 24 revised bills, removing information, if any, related to
 25 the PUP.

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1 Q And the revised bills simply eliminated the
 2 entries related to the PUP?
 3 A Related entries altogether.
 4 Q And so if you looked at the revised bill, you
 5 could not see what had been eliminated?
 6 A It's not a strike through or anything like
 7 that. Just would -- the entry was removed.
 8 Q So the answer to my question is yes?
 9 A Yes.
 10 Q Look at page 4 of Exhibit 60.
 11 A Okay.
 12 Q And specifically with the entries in July 10th,
 13 who is CWL?
 14 A Chauncey Lever.
 15 Q And his first parenthetical after -- at the
 16 beginning of his entry is transfer to new JEA.
 17 What does that mean?
 18 A I don't know what that means. It's probably
 19 we're setting up a new matter. What Chauncey may have
 20 done, I'm just speculating, you could enter time into
 21 the system with -- that had not yet been assigned a
 22 number and you would put a paren like that, just says,
 23 when the bill is generated, transfer that to time out to
 24 the -- to the JEA billing number.
 25 Q So it could be the time -- at the time Chauncey

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1 recorded his time, he didn't know what the billing
 2 number was?
 3 A Exactly. I -- I do that. If I don't know what
 4 the billing number is, I'll make myself a note and then
 5 when I see the pro forma, I then transfer it.
 6 Q And you see the previous entry, July 10th, BJG,
 7 who is that?
 8 A Benjamin Grossman, Tallahassee.
 9 Q And he makes reference to Project Freebird.
 10 Do you know where the term Freebird or Scampi
 11 came from?
 12 A I don't specifically. I think Freebird came
 13 from Lynyrd Skynyrd connotation and Scampi came from
 14 Jumbo Shrimp, but --
 15 Q That's speculation on your part or anybody ever
 16 tell you that?
 17 A No, it's speculation.
 18 Q You never had a conversation with anybody at
 19 JEA as to why and who selected those names?
 20 A No.
 21 Q You're smiling. So I take it it's just as a
 22 matter of amusement to you?
 23 A Well, it's amusing because I wasn't involved
 24 and I find it kind of humorous because you name projects
 25 like that, but I know it's done, but --

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1 Q But you didn't know why it was done in this
 2 instance?
 3 A No.
 4 Q I mean, typically the reason that transactional
 5 lawyers name a project like that in an emanate world is
 6 because they're trying to put a code name on it to keep
 7 it from being well-known; isn't that right?
 8 A That's one of the reasons it could be done.
 9 Q Uh-huh. And was that a reason it was done in
 10 this instance?
 11 A I don't know.
 12 Q An idea to make it less transparent?
 13 A I don't know, Steve. You've asked me do I know
 14 how it was named and I don't know.
 15 Q On July 10th, you had an entry of 7.9 hours?
 16 A Uh-huh. Yep. Uh-huh.
 17 Q That was your Club Continental meeting?
 18 A Yes.
 19 Q And your line entry of that is attend
 20 meeting with officials and advisors to discuss employee
 21 issues.
 22 A Right.
 23 Q In my world, I get criticized for that limited
 24 entry for eight hours of time. I'm curious as to why
 25 you weren't more descriptive.

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1 A We differ in how we write time entries.
 2 Q That's an okay time entry from your point of
 3 view in describing what you did for eight hours --
 4 A Yeah.
 5 Q -- talk about employee issues?
 6 A Yes.
 7 Q Do you think that's fairly descriptive of what
 8 you did for eight hours?
 9 A Yes, I do. Because I know what we did that
 10 day. We sat around, talking about primarily how --
 11 what's the impact going to be on collective bargaining
 12 which was going to be coming up and then the retention
 13 agreement.
 14 Q And you did the same thing again for seven
 15 hours the next day?
 16 A Yeah.
 17 Q And what did -- who is RHH?
 18 A Robert Hosay.
 19 Q And his time entry was prepare and attend
 20 offsite meetings, eight hours.
 21 A Uh-huh.
 22 Q Is that an adequate time description for \$5,000
 23 of time to go to a meeting?
 24 A It depends on the -- when the bill was reviewed
 25 by the client, they accepted it.

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1 Q How come they don't accept ours like that?
 2 MR. BUSEY: Sean, will you share that?
 3 A Peggy may be a harder grader.
 4 Q You have a time entry on July 17th for \$1800.
 5 A Uh-huh.
 6 Q Telephone conference with Jason Gabriel
 7 regarding employment agreements.
 8 A Uh-huh.
 9 Q What employment agreements?
 10 A I think it was related to the -- the senior
 11 leadership team employment agreements.
 12 Q And your bill for July and part of August was
 13 about a quarter of a million dollars.
 14 A Yes, a lot of work was performed.
 15 Q Doing what?
 16 A It's described in the --
 17 Q But it was largely ITN or the PUP?
 18 A Oh, it was largely ITN. I've already told you
 19 what we had charged and written off for the PUP.
 20 Q And I'm going to show you what we marked as
 21 Exhibit 61. If you look at the last page, I'm just
 22 interested on your hourly rates. Your hourly rate is
 23 \$650 an hour?
 24 A Yes.

(Hyde's Exhibit 61 was marked for
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1 identification.)
 2 Q And Michael Kirwan's is \$800 an hour?
 3 A Yes.
 4 Q Why is he so much more than you? Isn't it
 5 obvious you're more senior of a lawyer than he is?
 6 A If anything, by a year maybe or something like
 7 that. Michael works in very specialized areas of
 8 securities. And, unfortunately, labor lawyers aren't
 9 valued on a rate basis as much as a securities lawyer.
 10 Q Michael was the one that was complaining that
 11 the payout was not capped?
 12 A Correct. He wrote those e-mails.
 13 Q So that may be conservative, \$800 an hour.
 14 So without going through the balance of your
 15 bills, you -- Foley billed something in the neighborhood
 16 of \$1.2 million for its time from beginning of July
 17 through --
 18 A Probably our last entry was late December.
 19 Q -- December?
 20 A Yeah.
 21 Q And with the exception of \$136,000 that you
 22 said was attributable to the PUP, the balance of those
 23 fees were relating to the ITN?
 24 A Not only the ITN. For instance, I spent lot of
 25 time -- my personal time doing collective bargaining. I

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1 spent a lot of time drafting the pension legislation and
 2 working with the auditors -- or the actuaries on that so
 3 there were other issues than just the ITN.
 4 Q And you gave up your time on the PUP because,
 5 as you described it, it was a busted deal?
 6 A Yes.
 7 Q The ITN was a busted deal too, wasn't it?
 8 A The decision was made not to pursue going
 9 forward.
 10 Q On both?
 11 A Yes. Uh-huh.
 12 Q The PUP?
 13 A Right.
 14 Q And the ITN?
 15 A Yep.
 16 Q So my question was: The ITN was a busted deal
 17 as well as the PUP, wasn't it?
 18 A In the sense it didn't go forward, yes.
 19 Uh-huh.
 20 Q So how does that distinguish -- how do you
 21 distinguish between the two, that you will not charge at
 22 all for your busted deal on the PUP, but you're going to
 23 charge 100 percent for your busted deal on the ITN?
 24 A Because, A, as the billing partner and as the
 25 one who primarily performed the work, I could make that

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1 personal decision to delete my time and it was largely
 2 my time. I'm not going --
 3 Q The PUP time?
 4 A The PUP time. I'm not going to do that for all
 5 of my partners. The work was done. Whether the process
 6 completed it or not is another issue, but the work was
 7 done.
 8 Q So I --
 9 A I made the business decision to write off the
 10 PUP time at the request of and in conjunction with the
 11 Office of General Counsel. It was a fair request and I
 12 agreed to it.
 13 Q And it was easier for you to agree to that than
 14 to agree to write off the time for the ITN?
 15 A Yes.
 16 Q Because it was your time?
 17 A Yes. Uh-huh.
 18 Q Did the Office of General Counsel ask you to
 19 write off any time related to the busted ITN?
 20 A I don't recall any specific time entries that
 21 they asked us to write off.
 22 Q Or any time at all?
 23 A Right. And the reason I'm hesitating is there
 24 may have been -- when I reviewed the bills, I may have
 25 revised a time down in some areas, but, no, I don't

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1 remember Office of General Counsel specifically asking
 2 me to write off time on any particular matters, other
 3 than the PUP.
 4 MR. BUSEY: Okay. Off the record.
 5 (Recess taken.)
 6 BY MR. BUSEY:
 7 Q Kevin, I asked you earlier about communications
 8 with JEA.
 9 A Uh-huh.
 10 Q In the form of communications, we've seen
 11 e-mails. Did you communicate with JEA through text
 12 messages at all or any of the consultants or
 13 professionals?
 14 A Certainly not the consultants or professionals.
 15 And I -- I -- I'm -- I don't remember any specific text.
 16 When I was in public office, I kind of adopted a rule of
 17 not using text for communications so I think I applied
 18 that to JEA as well.
 19 Q Are you aware of any Foley lawyer discussing
 20 JEA privatization or recapitalization with any members
 21 of the mayor's administration?
 22 A I don't have knowledge of that.
 23 Q Either Sam Mousa or Brian Hughes?
 24 A You're talking about --
 25 MS. NOLLER: Can you repeat -- can you --

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1 sorry, Steve, you're cutting out again.
 2 Q Even Brian Hughes or Sam Mousa?
 3 A Talking about this ITN process?
 4 Q Yes.
 5 A I'm not aware of any of that.
 6 Q In your judgment, did the PUP that was
 7 presented to the JEA board on July 23, 2019, satisfy
 8 the requirement of Section 215.425 of the Florida
 9 statutes?
 10 A Let me clarify what you're saying. Is you're
 11 talking about the summary plan which was presented or
 12 the -- as ultimately developed?
 13 Q If -- if the answer to the question makes a
 14 difference, then both.
 15 A It's -- what I would say is it's -- my opinion
 16 is thoroughly discussed in my memo, particularly the
 17 October 21 memo.
 18 Q So is that a yes?
 19 A Yes.
 20 Q Are you aware of you or any Foley Lardner --
 21 Foley & Lardner lawyer discussing the ITN process or the
 22 PUP with any member of the JEA board?
 23 A I'm not aware of that.
 24 Q In the November 5 meeting that you've described
 25 to us with you and members of OGC --

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1 A Uh-huh.
 2 Q -- I'm informed that Jason asked folks in the
 3 room if anybody had run the numbers of what a payout
 4 would look like under the PUP plan.
 5 Do you remember that -- him asking that
 6 question?
 7 A I don't remember him asking that question.
 8 Q Do you -- do you remember anybody answering
 9 that question?
 10 A No, because I don't remember the question being
 11 asked.
 12 Q When you say you don't remember the question
 13 being asked, could it have been asked and you don't
 14 remember --
 15 A Yes.
 16 Q -- or you remember that it hasn't been -- it
 17 wasn't asked?
 18 A No, it could have been asked. I'm saying, I
 19 don't recall it being asked.
 20 MR. BUSEY: All right. We're done. Thank you
 21 very much.
 22 THE WITNESS: Thank you so much. Appreciate
 23 it, guys.
 24 MS. NOLLER: Steve?
 25 MR. BUSEY: Yes, ma'am.

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1 MS. NOLLER: Steve, I just have two quick
 2 things. One, we'll reserve signature, please.
 3 MR. BUSEY: Okay.
 4 MS. NOLLER: And, second, you had mentioned or
 5 referred to a Florida ethics statute and
 6 characterized it as -- as requiring a duty for Kevin
 7 to have elevated his concerns that he expressed to
 8 certain members of the senior leadership team.
 9 And I've reviewed Rule 4-1.13, organization as
 10 a client, and I think it's fair to say that the rule
 11 says, quote, The lawyer shall proceed as is
 12 reasonably necessary in the best interest of the
 13 organization, end quote.
 14 And the comment says that, It is up to the
 15 discretion of the lawyer, i.e., Kevin here and it
 16 may be necessary to elevate, but he does not have a
 17 duty to do so.
 18 And given the nature of your questions, I
 19 thought it was important to clarify that for the
 20 record. So thank you.
 21 MR. BUSEY: Thanks for coming.
 22 THE WITNESS: Thank you. Absolutely. Have a
 23 great weekend.
 24 (Witness excused.)
 25 (The interview was concluded at 4:32 p.m.)
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1 CERTIFICATE OF OATH
 2 STATE OF FLORIDA)
 3 COUNTY OF DUVAL)
 4
 5 I, Terrie L. Cook, RPR, CRR, FPR, Notary
 6 Public, State of Florida, certify that KEVIN E. HYDE,
 7 personally appeared before me on August 21, 2020, and
 8 was duly sworn.
 9
 10 WITNESS my hand and official seal on
 11 September 4, 2020, Jacksonville, Duval County, Florida.
 12
 13
 14
 15
 16
 17
 18
 19 Terrie L. Cook, RPR, CRR, FPR
 20 Notary Public-State of Florida
 21
 22
 23
 24
 25
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1 REPORTER'S CERTIFICATE
 2
 3 STATE OF FLORIDA
 4 COUNTY OF DUVAL
 5
 6 I, Terrie L. Cook, RPR, CRR, FPR, certify that I
 7 was authorized to and did stenographically report the
 8 interview of KEVIN E. HYDE; that a review of the
 9 transcript was requested; and that the foregoing
 10 transcript, pages 1 through 249 is a true record of my
 11 stenographic notes.
 12
 13 I further certify that I am not a relative,
 14 employee, attorney, or counsel of any of the parties,
 15 nor am I a relative or employee of any of the parties'
 16 attorney or counsel connected with the action, nor am I
 17 financially interested in the action.
 18
 19 DATED on September 4, 2020.
 20
 21
 22
 23 _____
 24 Terrie L. Cook, RPR, CRR, FPR
 25
 Hedquist & Associates Reporters, Inc.

1 E R R A T A S H E E T
 2 DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES
 3 In Re: JACKSONVILLE CITY COUNCIL
 4 SPECIAL INVESTIGATORY COMMITTEE ON JEA MATTER
 5 INTERVIEW OF KEVIN E. HYDE
 6 TAKEN - August 21, 2020
 7 PAGE NUMBER LINE NUMBER CHANGE/REASON
 8 _____
 9 _____
 10 _____
 11 _____
 12 _____
 13 _____
 14 _____
 15 _____
 16
 17
 18
 19
 20 under penalties of perjury, I declare that I have read
 21 the foregoing document and that the facts stated in it
 22 are true.
 23 _____
 24 Date KEVIN E. HYDE
 25
 Hedquist & Associates Reporters, Inc.

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