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BEFORE THE COURT OF THE JUDICIARY
OF ALABAMA

IN THE MATTER OF)
ROY S. MOORE,)
CHIEF JUSTICE OF) CASE NO. 33
THE SUPREME COURT)
OF ALABAMA)

The above-styled cause came on to be heard before
the Court of Judiciary of Alabama at the Judicial Building,
Montgomery, Alabama, on November 12 & 13, 2003.

* * * * *

A P P E A R A N C E S

FOR THE JUDICIAL INQUIRY COMMISSION:

Hon. William Pryor; Hon. John Gibbs;
Hon. Rosa Davis; Hon. Melissa Atwood.

FOR THE RESPONDENT:

Hon. Terry Butts; Hon. Jim Wilson; Hon. Mike Jones.

* * * * *

COURT REPORTER FOR THESE PROCEEDINGS: DUB HARRIS

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1 IN CHAMBERS PROCEEDINGS

2 BY THE COURT: Okay, as we begin the
3 pretrial hearing, I'd like to set a few parameters.

4 First of all, this court intends to maintain
5 control of these proceedings. Proper courtroom decorum is
6 mandatory. There will be no behaviour like the last time
7 this court convened, without consequences --

8 BY MR. BUTTS: Judge, I object. There was
9 no improper behaviour last time, and I want the record to
10 reflect that. If there was any improper behaviour, it
11 certainly was not on counsel's part.

12 BY THE COURT: Duly noted. We are
13 absolutely resolved to give the Chief Justice a fair trial
14 in this matter. With that being said, the issues in this
15 matter are as follows and were filed in the complaint by
16 the Judicial Inquiry Commission.

17 First, whether or not the Chief Justice
18 failed to comply with the federal court injunction, and if
19 he did, whether his failure to comply with the injunction
20 is a violation of the Canons of Judicial Ethics, State of
21 Alabama.

22 At this time, we have only a few outstanding
23 motions. Respondent's motion to supplement his jury demand
24 is granted. The demand for a jury is still denied,
25 however, on the same grounds.

1 The respondent also sought to amend his
2 answer, and we will take up any discussion of that at this
3 time, if there is any discussion to be had.

4 BY MR. BUTTS: Judge, I think it speaks for
5 itself.

6 BY MR. GIBBS: Your Honor, the Judicial
7 Inquiry Commission objects to the amendment at this late
8 date. The initial order say motions are to be filed by the
9 24th of October, that responses to motions would be filed
10 by October 31. There's nothing in the supplemented answer
11 of anything that arose out of any of the discovery that was
12 given in this case, and we just feel like the supplement to
13 the answer at this time is untimely.

14 BY MR. JONES: Judge, I don't think there's
15 anything in the supplemented answer that has any prejudice
16 of any kind, as far as the Judicial Inquiry Commission.

17 And you know, answers are to be freely
18 admitted, or granted, and I don't think there's any
19 prejudice to them. I don't think it's going to make any
20 difference as to what's actually tried. But I think it's
21 more to amend the answer to properly maintain the record,
22 and that's basically why we filed the amendment. I
23 certainly don't think there's any prejudice of any kind to
24 the Judicial Inquiry Commission by allowing the amendment.
25 And you know, generally, I think under those circumstances,

1 amendments to answers are generally granted.

2 BY THE COURT: Are you alleging there's any
3 prejudice to you?

4 BY MR. GIBBS: No, sir, Your Honor. It was
5 filed the same day we filed the pretrial brief. We didn't
6 have an opportunity to address it, but I don't think we
7 would have any.

8 BY JUDGE DOBSON: I don't think it affects
9 the evidence in any way.

10 BY MR. GIBBS: We have not made any changes
11 in our plans, yet.

12 BY THE COURT: All right. Then, even though
13 you didn't request leave of the court to amend your answer,
14 we will allow it to be amended.

15 BY MR. JONES: Thank you, Your Honor.

16 BY THE COURT: We have a motion in limine
17 relating to Doctor Eidsmoe and a response from the Attorney
18 General's office on behalf of the Judicial Inquiry
19 Commission. Would the defense like to give a brief
20 argument on its motion in limine?

21 BY MR. WILSON: I will speak speak to that.
22 Doctor Eidsmoe was at best a consultant to the Chief
23 Justice's other lawyers. We take the position that he was
24 not counsel of record, in as much as his name didn't appear
25 as counsel of record on the pleadings.

1 We've interviewed him. He tells us the
2 statements he made in the subject of this issue that's been
3 brought by the Judicial Inquiry Commission were comments
4 made without the permission of the Chief Justice and
5 without permission of the attorneys of record and were
6 speculation on his part.

7 In fact, when I asked him, where did you
8 come up with this speculation? One of his answers was, I
9 may have read it in the Montgomery Advertiser. On that
10 ground, we don't feel like anything he says can be
11 contributed, or attributed to the Chief Justice, as I
12 understand which is their theory, trying to bring this
13 evidence in, so we would renew that motion in limine.

14 BY MR. GIBBS: Your Honor, the expected
15 testimony of Mr. Eidsmoe is a comment in the World Magazine
16 article, and as we argued in our motion in opposition, he
17 was appointed Deputy Attorney General to assist Chief
18 Justice Moore in the Glassroth et al litigation.

19 In their brief in the 11th Circuit, the
20 certificate of interested persons, Mr. Eidsmoe was listed
21 both as Deputy Attorney General and counsel for the
22 defendant -- excuse me, counsel for Justice Moore.

23 The rules of evidence make admissions by
24 agents admissions by parties. We gave the court the right
25 to know language about an attorney can be an agent, like in

1 this case, Mr. Eidsmoe's statement is admissible.

2 Now, what Mr. Wilson is talking about would
3 seem to be -- to go to weight, whatever weight you would
4 attach to that. However, it is clear that Mr. Eidsmoe was
5 an attorney for Chief Justice Moore, and during the course
6 of his -- and testifying about something in the course of
7 his -- of the case in which he was an attorney for Chief
8 Justice Moore, and that admission by nature should be
9 admissible. And the form we would be anticipate is the
10 World Magazine article which is a self-authenticating
11 document, is a periodical, so we feel like it would be
12 admissible and would simply go to weight.

13 BY MR. WILSON: May I be heard? We do admit
14 his name was on a list submitted to the Attorney General,
15 and the Attorney General did issue a special Attorney
16 General appointment letter. However, Judge Eidsmoe --
17 Professor Eidsmoe, I'm sorry, not judge, is not a member of
18 the Alabama Bar, and he's domiciled in Alabama, has been
19 for a substantial period of time, is a teacher at Jones Law
20 school. Under the rulings in the State Code, he's not
21 eligible for Pro Hac Vice. He discovered that -- he spoke
22 with Jack Parker, AG's staff, perhaps even the Attorney
23 General, and related this to them, and they advised him
24 that was no problem, or words to that effect. He told me
25 in testimony on the phone that he was scared of that and

1 was not sure about it. Therefore, they never executed --
2 in other words, he never followed up as a Special Deputy
3 Attorney General, and he signed no pleadings, and he was
4 very concerned about it. I feel like the Attorney General
5 probably got his name and thought he was admissible, and
6 we're not joining -- throwing any disparaging comment to
7 the Attorney General's staff. They had the name, but it's
8 clear he was not one of the key attorneys. He was outside
9 consultant at best and not authorized to speak for, nor to
10 state any strategy or any other matter like that from the
11 Chief Justice. And the Chief Justice told us in fact he
12 was not authorized.

13 BY MR. PRYOR: I did not have a conversation
14 with him. I was not aware of the conversation recounted by
15 my assistant Jack Parker with him. I would note that
16 admission to the Alabama State Bar is not necessary to
17 represent an Alabama official in a case before a federal
18 court. We often appoint Deputy Attorney Generals who are
19 admitted to practice before Alabama federal courts where
20 the lawsuit is pending, and that is all that matters.

21 BY JUDGE KENDALL: Except for the fact Mr.
22 Eidsmoe is shown as counsel of record in the 11th Circuit.
23 What is the proof that the position of the Judicial Inquiry
24 Commission as regards as his being authorized to make this
25 particular statement other than acting as counsel in

1 general?

2 BY MR. GIBBS: Your Honor, just that he is
3 an agent, and the representation that he makes in the
4 article concerned a decision that was made, and concerning
5 the 11th Circuit where he appeared, was listed as counsel
6 for Chief Justice Moore. That if -- it is a statement
7 arising out of his agency relationship with Chief Justice
8 Moore. And again, whether it's within the scope of the
9 agency, that sort of thing, it is apparent that it is -- if
10 they have testimony or something to show that it is not,
11 that would go to, I think to its weight, more than its
12 admissibility. He represents himself in that capacity,
13 makes the statement, and he has the apparent capacity.

14 BY THE COURT: He is one of the witnesses
15 you have subpoenaed to be here today; is that correct?

16 BY MR. GIBBS: Yes, sir. In all candor, we
17 anticipate simply offering the World Magazine article.
18 It's a self-authenticated document, contains an admission.

19 BY MR. JONES: Of course our response is
20 that it contains a lot of other things, too, that I think
21 there's some other quotes and some other things in there
22 that are not from Mr. Eidsmoe.

23 BY MR. PRYOR: All of which can be redacted.

24 BY MR. JONES: The article itself, as far as
25 we're concerned, is objectionable, as far as the

1 admissibility.

2 BY MR. GIBBS: We would certainly agree it's
3 limited admission, simply for admission by Professor
4 Eidsmoe. We don't intend to offer the entire article as
5 proof; simply that it contains the statement by Professor
6 Eidsmoe. And we would ask the court to accept it for that
7 limited purpose.

8 BY JUDGE DOBSON: It seems to be a dangerous
9 thing, just because a person acted in the capacity of
10 counsel in one proceeding, that whatever he says in
11 connection with an article or public statement, is an
12 admission against interests of his client, I think that's
13 taking it further.

14 BY MR. PRYOR: That's not what happened
15 here. What we have is an attorney that's listed on the
16 certificate of interested persons in the 11th Circuit
17 briefed, and his statement, his admission about a decision of
18 the Chief Justice regarding a strategy not to have a stay
19 requested of the 11th Circuit, the very court which before
20 he's listed in the certificate of interested persons as an
21 attorney to Chief Justice, I would certainly agree with you
22 that if someone is an attorney for another person, that to
23 attribute anything that attorney says about that person
24 would be a far-fetched proposition. But I don't think
25 that's what we have here.

1 BY MR. WILSON: Your Honor, he's listed
2 along with fifty other people. He was not listed on the
3 cover, and not shown as counsel of record at that time on
4 the date of the brief.

5 BY THE COURT: Has he signed any pleadings
6 whatsoever?

7 BY MR. WILSON: Not according to what he's
8 told us, and he will testify -- from what he told me, yes,
9 under oath, that he was simply a paid consultant to some TV
10 interviews, and that he was not authorized to make
11 statements, which they're trying to attribute to the
12 respondent.

13 BY MR. JONES: If I could, Your Honor.
14 Seems to me if he's here and subpoenaed in here, then all
15 they have to do is put him on the stand and ask him. They
16 ain't got to use the article. No need for the article.
17 Just ask him. If he doesn't admit it, then possibly they
18 might use it for impeachment. But I don't think it comes
19 in by itself.

20 BY MR. PRYOR: According to the rules of
21 evidence, it does.

22 BY THE COURT: Any discussion?

23 BY JUDGE DOBSON: How do you want to handle
24 this? Do you want us to make the decision before the
25 trial?

1 BY THE COURT: I think we can consult in
2 private and discuss the merits of the motion in limine, and
3 that would lead us to the stipulation of fact evidence. I
4 know that we have admissions that the Attorney General's
5 office is relying on in this capacity, and if you would
6 please state what the documents you expect to come in
7 because of --

8 BY MR. GIBBS: Other than wishing I had
9 brought my file in here, I will tell you the state, the JIC
10 doesn't anticipate calling any witnesses, based on the
11 requests for admission. We have a number of documents --
12 primarily documents setting out the course of litigation,
13 that lead to the JIC -- we have alleged that Chief Justice
14 Moore did not obey, and then statements by Chief Justice
15 Moore on August 14, and August 21, both a written statement
16 and video tape comments that Chief Justice made on those
17 two occasions. We anticipate playing the video tapes to
18 the court. The last thing would also be a transcript of
19 Chief Justice Moore's appearance before the Alabama JIC on
20 the 21st -- 22nd.

21 Now, there was one fact that was not in the
22 request for admission that I think was either a matter for
23 judicial knowledge, or maybe something we can stipulate to,
24 that's what the U. S. Supreme Court did on November 3rd
25 denying both the cert petition from the 11th Circuit and

1 the petition for mandamus.

2 BY MR. JONES: That's correct. We stipulate
3 to that.

4 BY THE COURT: All right. Be prepared to
5 put that on the record again when we get in the courtroom.

6 BY MR. WILSON: Your Honor, could I ask one
7 question? The Attorney General's office was nice enough to
8 furnish us all copies of the tapes, but the second tape --
9 whatever the highest number we got, or I got, was a bad
10 tape; do y'all have a good copy? I'm just asking, because
11 the one we had, had tracking lines in it.

12 BY MR. GIBBS: It's not a particularly good
13 copy. Yours may not be any worse than ours. We have a
14 copy that we made your copies from to play here today. It
15 is not from the news station. It was taped off the --

16 BY MR. WILSON: The one that I had, I
17 couldn't see --

18 BY JUDGE DOBSON: Is it audible?

19 BY MR. GIBBS: I believe -- yes, sir. Mr.
20 Wilson got a bad copy, but it's audible. We furnished
21 copies --

22 BY MR. JONES: Could I maybe suggest, I
23 think there's only about three of those documents, I
24 believe, and I don't have my stuff with me, but I tried to
25 go through them and see what objections we had to them, and

1 I think there's only three, if I am not badly mistaken.
2 Seems to me to make this flow better, because we've also
3 indicated we're going to introduce some documents, and if
4 you could maybe give us five minutes to get together to see
5 if there is any objection, and if there's none, then
6 we can stipulate that they're admissible. That keeps us
7 from being in the courtroom and having an argument about
8 whether it's admissible or not. I think most of ours
9 should be admissible, too. I don't think they're going to
10 object to them. So that may narrow it down to only two or
11 three things that you have to decide on the admissibility
12 of, and that may just shorten it some. That's just a
13 suggestion that would help the court.

14 BY THE COURT: Sounds like a good idea to
15 me. All right. Judge North wants to ask the Attorney
16 General's office, if we decided to grant the defendant's
17 motion in limine with regard to Doctor Eidsmoe's testimony,
18 are you prepared to call him live to testify?

19 BY MR. GIBBS: He was subpoenaed, and should
20 be here, judge. But with the understanding that I have not
21 laid eyes on him this morning, I assume we would be able to
22 call him, yes, sir.

23 BY MR. PRYOR: We will in fact call him.

24 BY THE COURT: Also, I want to remind
25 counsel that we're wired for sound. We have an additional

1 room downstairs, the cameras are activated by the
2 microphones on the podium. So if you want to be heard in
3 the courtroom and in the overflow room, please stand at the
4 podium to address the court or to take testimony.

5 BY MR. WILSON: Your Honor, would that
6 also -- if we need to make an objection, should we step up
7 to the podium?

8 BY THE COURT: As I understand it -- are
9 there microphones at counsel table?

10 BY THE CLERK OF THE COURT: I don't think
11 so, Your Honor, but I think they would be heard if they did
12 that.

13 BY THE COURT: The witness table is right in
14 front of your table, I believe.

15 BY MR. JONES: Judge, just for procedural
16 purposes, if we have objections, we're to address those to
17 you? Would that be the proper thing?

18 BY THE COURT: Yes.

19 BY JUDGE KENDALL: While we're at that,
20 let's not have interplay between counsel, like we did last
21 time. Make your objections or comments to the court.

22 BY MR. JONES: Yes, sir.

23 BY MR. WILSON: I think that was mostly with
24 the court last time.

25 BY JUDGE KENDALL: No, sir, it was not. Mr.

1 Butts was demanding stipulations from opposing counsel.

2 BY MR. WILSON: We're all friends, and we'll
3 all be very civil.

4 BY MR. BUTTS: Will you be, Judge? I would
5 like the same civility in return. Did you get that? Did
6 you get it down?

7 BY THE COURT REPORTER: Yes, Mr. Butts, I
8 did.

9 BY THE COURT: Also, I want to remind
10 counsel that generally in these type proceedings, we
11 dispose of opening statements. I doubt that in this case
12 that counsel will be willing to do that, but I will pose
13 the question to you. Do you wish to give opening
14 statements?

15 BY MR. PRYOR: I am prepared either way,
16 Your Honor.

17 BY MR. WILSON: We are, too, Your Honor.

18 BY THE COURT: Well, let's have opening
19 statements for the benefit of the court, even though we
20 have our pretrial briefs, and let's limit those to ten
21 minutes.

22 Also, if you could inform us how many
23 witnesses you expect to call. That would help with us the
24 management of time.

25 BY MR. JONES: I would anticipate the

1 possibility of calling up to four witnesses. And there
2 again, if you would just give me some leeway, I don't think
3 I would, or we would, call any more than that. But it
4 wouldn't be any more than that.

5 BY THE COURT: All right. Any other
6 questions?

7 BY MR. JONES: Just in kind of preparation
8 purposes as far as closing goes, can you give us an idea as
9 to how long you might be looking at, as far as giving us to
10 close, just so we can kind of --

11 BY JUDGE DOBSON: What do you have in mind?

12 BY MR. JONES: Well, certainly not an
13 extended period of time. We were anticipating the
14 possibility of splitting it. I just want to fit it into
15 whatever time you give us.

16 BY THE COURT: What, like thirty minutes?

17 BY MR. BUTTS: Judge, I think on our side,
18 in all candor, I think we could do it, and I think we can
19 give the court some time back. But in order not to feel
20 squeezed, if we could have forty minutes?

21 BY THE COURT: All right. Everybody all
22 right with that? Okay.

23 BY MR. GIBBS: Your Honor, just to make
24 sure, if I could ask -- I assume since we're the parties
25 with the burden of proof, we would have an opening argument

1 and rebuttal?

2 BY THE COURT: Yes.

3 BY JUDGE KENDALL: You're not anticipating
4 rebuttal in the opening statement phase?

5 BY MR. GIBBS: No, sir, just the closing.

6 BY MR. WILSON: May I ask, on opening, I
7 would estimate you would want us to follow them when we do
8 opening?

9 BY THE COURT: Yeah.

10 BY MR. BUTTS: Do y'all anticipate the same
11 length of time, or do you know?

12 BY MR. GIBBS: We don't need any more than
13 that.

14 BY MR. PRYOR: Combined, for the opening and
15 closing, it would be less than forty minutes.

16 BY THE COURT: Any other motions or anything
17 else for the court at this time?

18 BY MR. JONES: When we get through, if we
19 can come back and tell you if there's any problems with the
20 documents would be the only other thing.

21 BY THE COURT: Absolutely. All right.

22 (Brief recess)

23 BY THE COURT: All right?

24 BY MR. JONES: Judge, we have gone back over
25 the exhibits for the JIC, just a couple of issues that came

1 up. They have listed as exhibits, transcripts of telephone
2 conversations between attorneys, and I will just call it
3 the 10 Commandments case, y'all know which case I'm talking
4 about, where Judge Thompson called, got the attorneys on
5 the telephone, and they had a telephone conference, and
6 there's a transcript of that. Now, we would object to
7 that, because I don't think, number one, it's relevant.
8 But I'm not -- we're not going to object to the
9 authenticity of the transcript itself, if you understand.
10 The transcript is fine. But when it comes in, when it's
11 offered, our objection is going to be that it's not
12 relevant, okay? But it's not an objection to the
13 transcript itself. And like I said, there's two different
14 dates of those.

15 We have -- also, as they talked about
16 earlier, they had two video tapes of statements made by
17 Chief Justice Moore. They're actually tapes taken off of
18 the TV. And they contain a lot of other things, other than
19 just the statement made by Chief Justice Moore. Now, Mr.
20 Gibbs has informed me that they've got it cued so it is
21 just going to play what Justice Moore said, but the problem
22 with that, there's a lot more on the tape than that. And
23 you know, statements by reporters -- there's even some
24 things put up on the screen that he can't take off in one
25 of the tapes. And he has a statement, a typed statement

1 that the Chief Justice handed out that is basically the
2 same thing that was said on the video tape. We object to
3 those two video tapes, because they're not what they
4 purport to be. They're more than just the statement of
5 Chief Justice Moore, and we would object to them for that
6 reason.

7 BY JUDGE KENDALL: You're objecting not just
8 to the excerpt of Chief Justice Moore, but I mean you're
9 objecting just to the extraneous stuff, but also to his
10 statement on the tape?

11 BY MR. JONES: I don't think -- the actual
12 exhibit they presented to me is not just the tape of his
13 statement. And if I let that exhibit come in, the exhibit
14 comes in with all the things on that, so --

15 BY JUDGE KENDALL: I understand that. Let's
16 assume it's redacted to just what Chief Justice Moore said;
17 do you still object?

18 BY MR. JONES: Yes, sir, because this is
19 like right off the TV. There are things that the station
20 puts up on the screen while he's talking that I don't think
21 are admissible.

22 BY JUDGE KENDALL: Like what?

23 BY MR. JONES: Well, one of them I think
24 says Moore Defies Order. I believe that's what -- it's
25 stuck up on the screen. I don't think that's admissible

1 like that. I don't think it is. That's not just Chief
2 Justice Moore's statement. That's more than that. So I
3 don't think -- and I can't remember, I'm sorry, Your Honor,
4 I can't remember exactly which tape does that.

5 BY MR. GIBBS: The 21st, I believe.

6 BY MR. JONES: For that reason, that's
7 something you can't take out of there.

8 BY MR. GIBBS: Except the court can limit
9 the admissibility of the statement to whatever the court
10 determines is admissible on the statement, and the court
11 can consider only that portion of the statement that it
12 finds to be admissible. We would offer it, and we would
13 agree that the only admissible evidence on those tapes are
14 the words spoken by Chief Justice Moore on the video tape.
15 We would ask the court to disregard anything else that
16 appears on the screen. There's a Channel 12 bug, and a
17 couple of times, they put captions on the screen. In
18 addition, on the tape there's an intro, and it's other
19 speakers after that.

20 We would offer only that portion of the
21 statement where Chief Justice Moore is speaking himself.

22 BY JUDGE DENSON: Is there a written
23 transcript of that?

24 BY MR. GIBBS: No, sir, there's a statement
25 handed out in conjunction, and that's what Mr. Jones is

1 talking about that he doesn't object to.

2 BY MR. JONES: Your Honor, he handed out a
3 preprinted typed statement of what he was going to say.

4 Now, his exact words -- I mean he may, you
5 know, may change some of it. It's not word for word. But
6 it it is essentially the same as what was said on the
7 tape. There's no substantive difference.

8 BY MR. GIBBS: I would agree with that.
9 It's not a transcript, but it is --

10 BY MR. JONES: A statement --

11 BY JUDGE DOBSON: But there's no transcript
12 of the TV statement?

13 BY MR. JONES: No, sir.

14 BY JUDGE DOBSON: We can listen to it and
15 tell what it is.

16 BY MR. JONES: I understand you are all
17 judges, I'm just more used to practicing in court where you
18 can't unring the bell. Once they hear it, you can't unring
19 it. That's why I make that objection, because in the form
20 it's in, I don't think it's admissible. I understand what
21 you're saying. If the court tells me that's what they can
22 do, then that's what I will have to abide by.

23 BY JUDGE DOBSON: The Judicial Inquiry
24 Commission says the only reason it's offered is for us to
25 see the Chief speaking those particular words, and not for

1 any other words, or any other fliers on the picture?

2 BY MR. GIBBS: Right. The Judicial Inquiry
3 Commission would request this court not to consider
4 anything except the actual words spoken by Chief Justice
5 Moore.

6 BY JUDGE DOBSON: All right.

7 BY THE COURT: I don't see any reason why it
8 can't come in. I think the judges on this court are
9 capable of disregarding anything that is not part of the
10 statement.

11 BY MR. JONES: Yes, sir. If the court would
12 indulge me when that comes up, if I can place that on the
13 record?

14 BY THE COURT: Absolutely.

15 BY MR. JONES: I know we're running behind,
16 but I would make another suggestion, if you could give me
17 about five minutes and pre-mark the exhibits, I think that
18 maybe it would smoother. If you would give us that
19 opportunity to do that with the court reporter, and then I
20 just make that suggestion, because I feel like it makes it
21 go smoother.

22 BY THE COURT: All right. The motion in
23 limine is granted as to the article itself. If the
24 Attorney General wants to call Doctor Eidsmoe and use the
25 article, that is acceptable to the court, but the article

1 itself is not admissible.

2 BY MR. GIBBS: All right, sir. We'll make
3 that decision.

4 BY MR. JONES: I am just anticipating,
5 judge -- I don't mean to be asking so many questions, but I
6 want to be sure. If they don't put any witnesses on and
7 just submit documents, then I assume we would go directly
8 into our case?

9 BY THE COURT: Yeah.

10 BY MR. JONES: Okay.

11 BY MR. BUTTS: Judge, we would make this
12 request, too, I recognize it's about twelve after 9:00, we
13 have not had an opportunity to talk with Chief Justice
14 Moore this morning, and we need a few minutes to talk with
15 him.

16 BY THE COURT: Okay.

17 BY MR. BUTTS: Ten minutes at the most would
18 be fine.

19 BY THE COURT: Then we'll begin at 9:30.

20 BY JUDGE NORTH: Mr. Jones, you're talking
21 about -- and I'm sorry, I'm kind of foggy about the
22 relevance of something, and I thought that you were
23 introducing those.

24 BY MR. JONES: No, sir, they're going to
25 introduce -- they have offered as an exhibit telephone

1 transcripts of conversations with the attorneys in the
2 other case.

3 BY JUDGE NORTH: In the other case?

4 BY MR. JONES: Yes, sir.

5 BY THE COURT: Was that part of the request
6 for admissions?

7 BY MR. JONES: Yes, sir, we're not -- the
8 authenticity, we're not objecting to that, we're just
9 objecting to the relevance.

10 BY JUDGE DOBSON: What do you contend is the
11 relevance?

12 BY MR. GIBBS: Your Honor, this is a July
13 28th and an August 5th -- August 4th, excuse me, telephone
14 conference. The 28th, it's before the 11th Circuit issued
15 the mandate in the Glassroth case. It's discussion about
16 whether there was going to be a stay sought, and it's among
17 counsel for the parties. It's a teleconference. The
18 parties were not party to that, just the attorneys. Then
19 the mandate is issued.

20 In July, there's another conference among
21 the parties again. It's about what steps would be taken,
22 what needs to be done by the parties. And Judge Thompson
23 basically asks what needs to be done, I'm ready to rule,
24 what do you want, do I need to wait, what's going to
25 happen.

1 BY JUDGE DOBSON: So it's nothing that goes
2 into the merits of the 10 Commandments case, that's
3 something certainly this court will not do.

4 BY JUDGE NORTH: My question was, are you
5 saying the 10 Commandments case is not relevant?

6 BY MR. JONES: No, sir, what I'm saying, I
7 have an objection, because they're trying to take -- and as
8 the court stated what the issues are, they're trying to
9 take a legal discussion that was made in another case and
10 use it as proof of an ethical violation. I don't think
11 what the attorneys did in another case, a perfectly legal
12 option that someone has in another case, is relevant to
13 what he actually did, whether it's an ethical violation or
14 not. Particularly when it's nothing more than the
15 attorneys talking with the judge about what they may or may
16 not do. And you know, I would ask what relevance that is
17 as to whether he's committed an ethical violation or not.

18 BY MR. PRYOR: Part of what was alleged by
19 the Commission, there had not been a stay, and these are
20 conversations related to the timing of those events, and
21 that is a fact.

22 BY MR. JONES: In response to their request
23 for admission, we admitted there wasn't request for a stay.
24 That's an admitted fact. That was my objection, Your
25 Honor. That was my objection.

1 BY JUDGE NORTH: All right.

2 BY MR. GIBBS: The awareness of getting a
3 stay --

4 BY THE COURT: All right.

5 BY JUDGE DOBSON: Even though it's a
6 telephone conference, it was a judge's conference, just as
7 though everyone had been present in chambers?

8 BY MR. GIBBS: Yes, sir.

9 BY MR. JONES: Yes, sir.

10 BY THE COURT: All right.

11 BY JUDGE DOBSON: Thank you.

12 BY MR. BUTTS: Judge, in view of that
13 extended argument, can we start at 9:30?

14 BY THE COURT: Sure.

15 (Brief recess; open court)

16 OPEN COURT PROCEEDINGS

17 BY THE COURT: Good morning --

18 BY MR. BUTTS: Judge Thompson, Terry Butts
19 here for Chief Justice. Would it be appropriate for to you
20 lead us in a word of prayer, sir?

21 BY THE COURT: Absolutely. May we bow our
22 heads, please? We call upon the Lord to bless this court
23 proceeding, to bless all those who are involved, and keep
24 us in your ways. Amen.

25 Good morning. Sorry to keep you waiting.

1 The Court of Judiciary is convened today in the matter of
2 Roy S. Moore, Chief Justice of the Supreme Court of
3 Alabama, Case Number 33.

4 Before we commence with this trial, I would
5 like for the judges of this court to introduce themselves,
6 starting on my far left, with Judge Denson.

7 BY JUDGE DENSON: John Denson, Opelika,
8 Alabama.

9 BY JUDGE JONES: Sam Jones, Mobile, Alabama.

10 BY JUDGE NORTH: Jim North, Birmingham,
11 Alabama.

12 BY JUDGE KENDALL: Robert Kendall,
13 Mobile.

14 BY JUDGE VOWELL: Scott Vowell, Birmingham.

15 BY JUDGE DOBSON: John Dobson, Oneonta.

16 BY JUDGE MCINNISH: Sue McInnish,
17 Montgomery.

18 BY JUDGE MELTON: Billy Melton, Evergreen,
19 Alabama.

20 BY THE COURT: And I am Bill Thompson, an
21 Associate Judge on the Alabama Court of Civil Appeals, and
22 Chief Judge of the Court of judicial.

23 I was appointed by the Supreme Court of
24 Alabama to serve in this capacity, in 2000 and one. Now, I
25 would like for counsel to introduce themselves, starting

1 with the Attorney General's office, which is representing
2 the Judicial Inquiry Commission, and the State of Alabama.

3 BY MR. PRYOR: May it please the court, I am
4 William Pryor, Attorney General of Alabama.

5 BY MR. GIBBS: John Gibbs, Assistant
6 Attorney General.

7 BY MS. DAVIS: Rosa Davis, Chief Assistant
8 Attorney General.

9 BY MS ATWOOD: Melissa Atwood, Assistant
10 Attorney General.

11 BY THE COURT: And for the respondent?

12 BY MR. JONES: I'm Mike Jones, Your Honor, I
13 am from Luverne, Alabama.

14 BY MR. BUTTS: Terry Butts, Your Honor, for
15 Chief Justice Moore. Luverne, Alabama.

16 BY MR. WILSON: Jim Wilson from Montgomery,
17 Alabama, for the Chief Justice.

18 BY THE COURT: Thank you, counsel. The
19 Court of Judiciary is a constitutionally created court, the
20 sole purpose of which is to hear complaints filed by the
21 Judicial Inquiry Commission regarding judges' violations of
22 the Canons of Judicial Ethics, which have been adopted by
23 the Supreme Court of Alabama. The composition of this
24 court is constitutionally mandated. The members of this
25 court have been duly appointed and serve without

1 compensation. The matter presented before the court was
2 commenced by a filing of a complaint by the Judicial
3 Inquiry Commission, alleging that Chief Justice Moore, by
4 willfully failing to comply with an injunction issued to
5 him by the United States District Court for the Middle
6 District of Alabama, violated Canons 1, 2, 2A and 2B, of
7 the Canons of Judicial Ethics.

8 Specifically, the complaint alleges that
9 Chief Justice Moore failed to uphold the integrity and
10 independence of the judiciary, and failed to observe high
11 standards of conduct so that the integrity and independence
12 of the judiciary might be preserved as required as required
13 by Canon 1.

14 That Chief Justice Moore failed to avoid
15 impropriety and the appearance of impropriety in all his
16 actions as required by Canon 2.

17 That Chief Justice Moore failed to respect
18 and comply with the law and to conduct himself at all times
19 in a manner that promotes public confidence in the
20 integrity and in the judiciary as required by Canon 2.

21 And that he failed to avoid conduct
22 prejudicial to the administration of justice which brings
23 the judicial office into disrepute, as required by Canon 2.

24 These are issues which are properly before
25 this court. This court has neither the authority nor the

1 jurisdiction to entertain issues regarding the correctness
2 of the decision of the United States District Court
3 regarding placement of the 10 Commandments monument in the
4 rotunda of this building.

5 Earlier this morning, the court held a
6 pretrial hearing with counsel, and certain items were
7 stipulated to by the parties. I want to thank counsel for
8 both parties for their cooperation in facilitating the
9 trial in this matter. And if I could call on the Attorney
10 General's office to state for the record what facts and/or
11 evidence parties have stipulated to.

12 BY MR. GIBBS: Your Honor, in addition to
13 exhibits, the parties have agreed to a stipulation that on
14 November 3rd of this year, the United States Supreme Court
15 denied the petition for certiorari that was filed in the 10
16 Commandments litigation in federal Court. And in addition,
17 the petition for mandamus that was also filed in that court
18 was denied on that same date, I believe that's correct.

19 BY MR. JONES: That's correct, Your Honor.

20 BY THE COURT: All right.

21 BY MR. GIBBS: Did Your Honor want me to go
22 through all the -- essentially the state's exhibits
23 constitute the things that were admitted in the request for
24 admissions. At this time, would it be appropriate to do
25 that at this time? Or do you want to wait until after

1 opening statements from the parties?

2 THE COURT: Why don't we go ahead and do
3 that right now. We'll go ahead and get it on the record.

4 BY MR. GIBBS: May it please the court,
5 Judicial Inquiry Commission exhibit one is the District
6 Court judgment of the United States District Court for the
7 Middle District of Alabama. It was entered on November
8 18th of 2002, the case of Glassroth versus Moore, which I
9 think for the convenience of the court, I would refer to
10 from now as the federal litigation. That would be JIC
11 exhibit one. I understand there's no objection to Judicial
12 Inquiry Commission exhibit one?

13 BY MR. JONES: That's correct. Excuse me,
14 Your Honor, I don't know if we need to respond up here at
15 the microphone, or whether I need to respond from back
16 there?

17 BY THE COURT: That's perfectly fine. You
18 can stand right there.

19 BY MR. GIBBS: I certainly have no
20 objection.

21 BY THE COURT: All right.

22 BY MR. GIBBS: Judicial Inquiry Commission
23 exhibit two is a District Court opinion also in connection
24 with the judgment that was JIC one. JIC Number two is the
25 District Court opinion, also dated November 18th, 2002, in

1 the federal litigation.

2 BY MR. JONES: That's stipulated to, Your
3 Honor.

4 BY MR. GIBBS: Mike, I'm going to be going
5 through a bunch of these. Do you want to just --

6 BY MR. JONES: I'm coming back.

7 BY MR. GIBBS: JIC exhibit three, Your
8 Honor, is the December 19, 2002 final judgment and
9 injunction that was entered in the federal litigation.
10 That's JIC exhibit three.

11 BY MR. JONES: That is stipulated to.

12 BY MR. GIBBS: JIC exhibit four is a
13 District Court order concerning the granting of the stay
14 dated December 23, 2002, also in the federal litigation.
15 That is JIC exhibit four.

16 BY MR. JONES: That is stipulated to, Your
17 Honor. Judge, unless I say otherwise, that's an indication
18 that they're stipulated to.

19 BY THE COURT: That's understood.

20 BY MR. GIBBS: I will try to pause.

21 BY MR. JONES: That's fine.

22 BY MR. GIBBS: JIC exhibit five is the 11th
23 Circuit opinion in the federal litigation, dated -- the
24 opinion is dated July first, 2003, that is JIC exhibit
25 five.

1 JIC exhibit six is the 11th Circuit judgment
2 and entry of the mandate on July 30th, 2003, in the federal
3 litigation. That is JIC exhibit six.

4 JIC exhibit seven is a transcript of a
5 teleconference held among the attorneys and counsel in
6 federal litigation. This teleconference took place on July
7 28th, 2003. I understand counsel has an objection?

8 BY MR. JONES: Yes, sir, not to its
9 authenticity of the document, but at the time of admission,
10 we would have an objection.

11 BY THE COURT: So noted.

12 BY MR. GIBBS: Your Honor, do you want me to
13 offer it at this time or wait until -- do you want to offer
14 them now?

15 BY THE COURT: Let's wait on that.

16 BY MR. GIBBS: All right. JIC exhibit eight
17 is another transcript. This one is dated August 4th, 2003.
18 Again this is in the federal litigation, teleconference of
19 the parties. I understand counsel has the same objection
20 to JIC exhibit eight.

21 BY MR. JONES: Yes, Your Honor.

22 BY MR. GIBBS: JIC exhibit nine is the
23 District Court's final judgement and injunction entered
24 August 5th, 2003, in federal litigation. That's JIC
25 exhibit number nine.

1 JIC exhibit ten is the District Court's
2 order dated August 18th, 2003, concerning the denial of a
3 stay. That is JIC exhibit ten, and that's denial of the
4 stay in the federal litigation.

5 JIC eleven is an 11th Circuit memorandum to
6 all parties and counsel, signed by the Clerk of the 11th
7 Circuit, dated August 19th, 2003, concerning the contents
8 of the motion for a stay that was filed in the federal
9 litigation in that court. That's JIC eleven.

10 JIC twelve is the 11th Circuit's order also
11 dated August 19th, 2003, in the federal litigation. This
12 concerned the motion to recall the mandate. That's JIC
13 exhibit twelve.

14 JIC exhibit thirteen, an order entered by
15 the United States Supreme Court entitled order in pending
16 case, in the federal litigation. This order is dated
17 August 20th, 2003, and that is JIC exhibit thirteen.

18 JIC exhibit fourteen is a motion to hold
19 Chief Justice Moore in contempt that was filed in the
20 federal litigation. That motion was dated August 21, 2003.

21 JIC exhibit fifteen is a notice of filing
22 dated August 21, 2003. This was a notice of filing in the
23 federal litigation in the Middle District, also an order
24 entered by eight Associates of the Alabama Supreme Court
25 concerning movement of the monument. That is JIC exhibit

1 fifteen.

2 JIC exhibit sixteen is a written statement
3 released by Chief Justice Moore on August 14, 2003. That
4 is JIC exhibit sixteen. That concerns the injunction
5 entered by the Middle District.

6 JIC seventeen is a video tape of a statement
7 by Chief Justice Moore on August 14, 2003. JIC would offer
8 this at the appropriate time and is limited only to that
9 portion of the tape which concerns the actual words spoken
10 by Chief Justice Moore. I understand counsel has an
11 objection to that exhibit?

12 BY MR. JONES: That is correct, we'll raise
13 our objection at the time it's offered.

14 BY MR. GIBBS: That was JIC exhibit
15 seventeen.

16 JIC eighteen is a written statement of Chief
17 Justice Roy Moore, or typed statement. This is dated
18 August 21, 2003, and it concerns the order of removal and
19 the actions of the Associate Justices of the Alabama
20 Supreme Court. That is JIC exhibit eighteen.

21 JIC exhibit nineteen is a video tape that
22 contains the statement of Chief Justice Moore on August
23 21st of 2003. And I understand counsel has the same
24 objection to JIC exhibit nineteen as they did to seventeen?

25 BY MR. JONES: That's correct.

1 BY MR. GIBBS: And JIC twenty is a
2 transcript of Chief Justice Moore's appearance before the
3 Alabama Judicial Inquiry Commission on August 22, of 2003.
4 And that would be the last exhibit that the JIC would
5 offer. Everything I think has been agreed to, except the
6 two telephone conferences and two video tapes

7 BY THE COURT: Okay. Respondent?

8 BY MR. JONES: That's correct, Your Honor.

9 BY THE COURT: All right.

10 BY MR. GIBBS: Do you want --

11 BY THE COURT: Yes. If you'll inform the
12 court as to the exhibits that have been stipulated to by
13 the state.

14 BY MR. JONES: Your Honor, Moore's exhibit
15 one would be defendant's response to Court of Inquiry dated
16 August 4th, 2003, in the federal litigation.

17 BY MR. GIBBS: If I could, I would do the same
18 thing Mr. Jones did, which I wouldn't speak up unless we
19 have some problem with one of the offered exhibits.

20 BY THE COURT: Okay.

21 BY MR. JONES: Moore's two will be the oath
22 of office of Chief Justice Roy Moore to the Alabama Supreme
23 Court.

24 Moore's three will be the preamble to the
25 Constitution of Alabama.

1 Moore's four will be a copy of Code --
2 Alabama Code, 1975, section 12-2-30.

3 Moore's five will be a copy of the pamphlet,
4 Our Legal Heritage, published by the Administrative Office
5 of Courts.

6 Moore's six will be a copy of Chief Justice
7 Moore on the date of the unveiling of the 10 Commandments
8 monument.

9 BY THE COURT: Would that be a statement?

10 BY MR. JONES: Yes, sir. Just a written
11 statement.

12 BY THE COURT: Written.

13 BY MR. JONES: Yes, sir. Moore's seven will
14 be a copy of the Departments of Commerce, Justice and
15 State, Judiciary, and Related Agencies Appropriations Act
16 of 2004.

17 Moore's eight will be a copy of campaign
18 literature of Chief Justice Moore at the time he ran for
19 the Chief Justice of Alabama Supreme Court.

20 And I believe, Your Honor, that's all that
21 we had stipulated to.

22 BY MR. GIBBS: Yes, sir.

23 BY THE COURT: Thank you, counsel. That
24 should certainly facilitate the trying of this case. Are
25 there any other matters that need to be brought to the

1 attention of the court at this time?

2 BY MR. JONES: Your Honor, am I to assume of
3 the ones we stipulated to, there's no objection to, that we
4 can go ahead and offer them at this time and they would be
5 admitted into evidence?

6 BY THE COURT: Yes.

7 BY MR. JONES: All right.

8 BY THE COURT: All right, if there's nothing
9 else that needs to be brought to the attention of the court
10 at this time, the state may begin with its opening
11 argument.

12 OPENING STATEMENTS

13 BY MR. PRYOR: May it please the court, the
14 presentation of the complaint of the Judicial Inquiry
15 Commission against Chief Justice Roy S. Moore will be
16 brief, because the material facts supporting the complaint
17 are undisputed.

18 In 2001, three attorneys filed lawsuits in
19 the United States District Court for the Middle District of
20 Alabama against Chief Justice Roy S. Moore. The plaintiffs
21 requested that the federal District Court enjoin Chief
22 Justice to remove from the rotunda of the State Judicial
23 Building a monument with a depiction of the 10
24 Commandments. Plaintiffs alleged that by placing and
25 maintaining the monument in the rotunda, Chief Justice

1 Moore violated the 1st and 14th amendments to the U. S.
2 Constitution.

3 Chief Justice Moore appeared through his
4 attorneys before the federal District Court and contested
5 the plaintiffs' complaint.

6 On November 18th, 2000 and two, the federal
7 District Court entered an injunction against Chief Justice
8 Moore to remove the monument from the public areas of the
9 State Judicial Building.

10 Chief Justice Moore appealed this decision
11 to the U. S. Court of Appeals for the 11th Circuit, and he
12 obtained from the District Court a stay of its ruling,
13 pending the appeal.

14 On July first, 2003, a three judge panel of
15 the appeals court entered an opinion affirming the decision
16 of the District Court. Chief Justice Moore did not request
17 a stay of the mandate of the appeals court. And on August
18 first, the District Court received the mandate.

19 On August 5th, the District Court enjoined
20 Chief Justice Moore to remove the monument from the rotunda
21 by no later than August 20, 2003.

22 On August 14, Chief Justice Moore announced
23 at a press conference that he had, quote, no intention of
24 removing the monument. Chief Justice Moore did not cause
25 the monument to be removed from the rotunda, even though no

1 federal court entered a stay of the injunction.

2 On August 21, the eight Associate Justices
3 of the Supreme Court of Alabama countermanded the Chief
4 Justice and ordered the manager of the State Judicial
5 Building to bring the state into compliance with the
6 injunction as soon as practicable.

7 On August 22, 2003, Chief Justice Moore
8 appeared before the Judicial Inquiry Commission and
9 testified about his decision not to remove the monument
10 from the rotunda. He testified that he would do it again.
11 These are the facts, and they are undisputed.

12 Based on these undisputed facts, the
13 Judicial Inquiry Commission charges that Chief Justice
14 Moore violated Canon 1 by failing to uphold the integrity
15 and independence of the judiciary, and by failing to
16 observe high standards of conduct so that the integrity and
17 independence of the judiciary may be preserved.

18 Canon 2, by failing to avoid impropriety and
19 the appearance of impropriety.

20 Canon 2A, by failing to respect and comply
21 with the law and by failing to conduct himself at all times
22 in a manner that promotes public confidence, the integrity
23 and impartiality of the judiciary,.

24 An finally, Canon 2B, by failing to avoid
25 conduct prejudicial to the administration of justice which

1 brings the judicial office into disrepute.

2 At the end of this proceeding, the Judicial
3 Inquiry Commission expects to ask the court to find Chief
4 Justice Moore guilty of all six charges brought against
5 him.

6 The Commission also expects to request the
7 removal of Roy S. Moore from the office of Chief Justice of
8 Alabama, based on his flagrant and totally unrepentant
9 behaviour. Thank you.

10 BY THE COURT: Thank you, Mr. Attorney
11 General. For the respondent?

12 BY MR. WILSON: May it please this Honorable
13 Court, Mr. Attorney General, staff counsel, counsel. I'm
14 Jim Wilson for the Chief Justice. We failed, Your Honors,
15 to introduce the defendant in this case, Chief Justice Roy
16 S. Moore. I think everyone knows him. We wanted to
17 introduce him for the record.

18 We come today before you on a very serious,
19 important day in history, a very important day for Roy S.
20 Moore, and a very important day to the of State of
21 Alabama. We come to present the defense of Chief Justice
22 Roy S. Moore to six charges filed by the Judicial Inquiry
23 Commission.

24 All of those charges stem from the fact
25 pattern that in reality began in 1997 when then Circuit

1 Judge Roy Moore was sitting in Gadsden, in Etowah County,
2 and had placed a carved version of the 10 Commandments on
3 the wall behind his chair and desk.

4 As you know, he was elected Chief Justice of
5 Alabama in the year 2000, campaigning as the 10
6 Commandments Judge, and overwhelmingly elected by the
7 popular vote of the state. So no one, unless they were in
8 a coma, could have been surprised when he introduced into
9 the lobby of this building, a monument that depicted those
10 same 10 Commandments, plus a number of historic sayings,
11 referencing God from our American judicial history.

12 Chief Justice Moore did this to acknowledge
13 God as the source of the moral foundation of our law in the
14 State of Alabama.

15 Chief Justice Moore did this under his
16 authority as the Chief Administrative Officer of Alabama's
17 Justice System, and in accordance with the language of the
18 Alabama State Constitution which invokes, quote, the favor
19 of Almighty God, and in conjunction with his oath of office
20 of Chief Justice, which officially ends with the words, So
21 Help Me God.

22 Now, we're going to respectfully disagree
23 with some of the facts that the Attorney General's office
24 has presented, although as to the actual chronology, we
25 agree with that, so I'm not going to go through all those

1 facts. But you know a lawsuit was filed in the federal
2 court in the Middle District of Alabama against Chief
3 Justice Moore in his official capacity. And it was also
4 filed against Mr. Rich Hobson who is the Director of the
5 Administrative Office of Courts.

6 Now, somewhere along the line, Mr. Hobson
7 was dismissed from the case.

8 The plaintiffs in that case, however, never
9 sued or attempted to sue or join the building manager who
10 was really the custodian of the monument, and that would be
11 Mr. Graham George.

12 federal Judge Myron Thompson, the District
13 Judge, found against Chief Justice Moore's position, and
14 Chief Justice Moore filed his appeal to the 11th Circuit
15 Court of Appeals in Atlanta. Judge Thompson had entered a
16 stay and that stay remained in effect until after the 11th
17 Circuit heard the case, affirmed the District Court, and
18 then sent the mandate back down to Montgomery to the
19 District Court.

20 Circuit Judge Carnes who wrote the opinion
21 from the 11th Circuit, ended his written opinion, and I
22 believe this is coming into evidence later, with the
23 following language, quote, the rule of law does require
24 that every person obey orders when all means of appealing
25 them have been exhausted. The Chief Justice of our state

1 Supreme Court, of all people, should be expected to abide
2 by that principle. We do expect that if he is unable to
3 have the District Court's order overturned through the
4 usual appellate processes, when the time comes, Chief
5 Justice Moore will obey this order, or that order. If
6 necessary, the court order will be enforced, and the rule
7 of law will prevail.

8 Now, Justice Moore's attorneys on that case
9 did not ask for another stay, because one was in effect and
10 they were taking a legal position that the federal District
11 Court did not have jurisdiction under the 10th Amendment to
12 the Constitution to order an elected state official, such
13 as Chief Justice Moore, to violate his oath of office.

14 Once the mandate came down, Judge Thompson
15 withdrew the stay and entered his injunctive order.

16 Justice Moore's attorneys then requested a
17 recall of the mandate, but as you know, the burden is high
18 once the mandate comes down, and the 11th Circuit refused,
19 or declined.

20 The attorneys then went to the Supreme
21 Court, they asked for the stay, but it was refused.

22 At the same time, or soon thereafter, they
23 filed a writ of mandamus and prohibition of the Supreme
24 Court, and as you know later, they filed a writ for
25 certiorari.

1 As you know, the deadline came and Justice
2 Moore declined to violate his oath and did not remove the
3 monument personally.

4 Even before the deadline had passed,
5 however, one of the attorney plaintiffs in the original
6 federal lawsuit filed charges with the Judicial Inquiry
7 Commission because of Justice Moore's, quote, alleged
8 intentions not to remove the monument.

9 Later those charges were amended and the
10 Judicial Inquiry Commission formally charged him, as the
11 Attorney General referred to, with six charges for
12 violations of Canons 1 and 2 respectively. Those charges
13 all stem from the same one act, or alleged nonact, and are
14 at best multiplicitious.

15 We expect the evidence to show that Chief
16 Justice Moore did not violate any of Alabama's Canons of
17 Judicial Ethics. To the contrary, Justice Moore had every
18 legal right to decline to follow what he honestly believed
19 to be an illegal order to him, as an elected state
20 official from a federal court judge in violation of the
21 10th and the 11th amendments of the U. S. Constitution.
22 And I would take this opportunity to quote Amendment 10;
23 the powers not delegated to the United States by the
24 Constitution nor prohibited by it to the states, are
25 reserved to the states respectively, or to the people. And

1 I quote, ladies and gentlemen, from an edition of the
2 Constitution that was printed in 1853. That year,
3 Jefferson Davis was Secretary of War for the federal
4 government, and that constitutional provision has not
5 changed to this date, and Roy S. Moore stood on that
6 provision.

7 As contemplated, the Court of Appeals at
8 that point in time, as pointed out by Justice Carnes, or
9 Judge Carnes, Roy Moore had not completed his appellate
10 rights. In fact, that did not happen until one week ago on
11 Monday, which I believe was the 3rd of October, when the
12 Supreme Court of the United States denied the mandamus
13 petitions and the writ for certiorari.

14 We ask you to look at charges 1 through 6,
15 and I know you will. They allege that he willfully failed
16 to comply with an existing and binding court order; yet he
17 was never charged with contempt before the federal District
18 Court process or Judge Thompson. He was never given the
19 due process which would include a trial, an opportunity for
20 appeal to the appellate processes, for his failure to have
21 done what he was ordered to do. And all this time, until
22 last Monday, he was pursuing his lawful appellate rights
23 through the federal system.

24 We respectfully submit, ladies and gentlemen
25 of the court, that his declination to violate his oath and

1 to remove the monument was not in any way a violation of
2 Alabama's Canons of Judicial Ethics.

3 Chief Justice Moore had taken a binding oath
4 under the Alabama Constitution which required him to
5 acknowledge God as the moral foundation of our justice
6 system. This he did, and continues to do so today.

7 At the conclusion of all the evidence in
8 this case, ladies and gentlemen, we expect to present
9 strong evidence of no ethical violation on behalf of Chief
10 Justice Roy Moore, and we would respectfully ask you to
11 find him not guilty, and return him to his lawful duty as
12 Chief Justice.

13 I thank you for your time and consideration.

14 BY THE COURT: Thank you, Mr. Wilson. At
15 this time, the state may proceed with its first witness.

16 BY MR. GIBBS: Your Honor, as discussed in
17 pretrial, the state does not have any live testimony to
18 present in this case. But I do need to formally offer --
19 I'm going to offer the exhibits to which there's no
20 disagreement.

21 JIC offers for admission into evidence, JIC
22 exhibits one, two, three, four, five, six, nine, ten,
23 eleven, twelve, thirteen, fourteen, fifteen, sixteen,
24 eighteen and twenty.

25 In addition, Your Honor, Judge Thompson, I

1 neglected, when we were up here talking about things that
2 were not -- than have been agreed to, there was some
3 admissions that did not refer to the authenticity or
4 admissibility of the documents, they're the answers to the
5 requests for admission. Out of an abundance of caution, if
6 I could, state those that do not concern themselves with
7 exhibits for the record.

8 The first is the answer to request for
9 admissions one, and that was on January 15th, 2001, Roy S.
10 Moore become Chief Justice of the Supreme Court of the
11 State of Alabama and has continued in that position until
12 the present. And that was paragraph one of the request for
13 admissions that was admitted.

14 Paragraph two was admitted -- admitted in
15 part and denied in part, the request for admissions was
16 that Chief Justice Moore served continuously as the
17 administrative head of the judicial system of the State of
18 Alabama from January 15th, 2001, through August 21, 2003.

19 The response to that request for admission
20 was that Chief Justice has only been disqualified from
21 serving as the judge, therefore he's still the
22 administrative head of the judicial system.

23 Next, paragraph eight of the request for
24 admissions, was before the mandate was issued in Glassroth
25 versus Moore, 335 Fed 3d, 1282, 11th Circuit, 2003, Chief

1 Justice Moore did not ask the United States Court of
2 Appeals for the 11th Circuit for a rehearing, nor did he
3 request the Court of Appeals, pursuant to Rule 41 of the
4 Federal Rules of Appellate Procedure, to stay the issuance
5 of its mandate to the District Court pending the filing of
6 a petition to the United States Supreme Court for a writ of
7 certiorari. That was admitted.

8 Paragraph fifteen, on Monday, August 18th,
9 2003, Chief Justice Moore filed a motion to recall the
10 mandate and a motion to stay for the United States Court of
11 Appeals for the 11th Circuit. That was admitted in part.
12 The answer was on August 18th, 2003, Justice Roy S. Moore
13 filed a time-sensitive motion for a stay, and this request
14 has been admitted to that extent.

15 Paragraph twenty of the request for
16 admissions, at 12:01 a.m. on August 21, 2003, the monument
17 remained in the rotunda of the Alabama Judicial Building at
18 300 Dexter Avenue, Montgomery, Alabama, in violation of the
19 order of the District Court issued to Chief Justice Moore
20 on August 5, 2003, in Glassroth versus Moore, Civil Action
21 01-T-1268-N. As of the opening of the business day on
22 August 21, 2003, the monument remained in the same position
23 in the rotunda of the Alabama Judicial Building. That was
24 admitted in part and the answer was, so much of this
25 request is admitted and states that the 10 Commandments

1 monument would remain in the rotunda of the Alabama
2 Judicial Building through the opening of the business day
3 on August 21, 2003.

4 Your Honor, I believe -- I understand we
5 have offered and the exhibits that I referred to have been
6 admitted?

7 BY THE COURT: Yes.

8 BY MR. GIBBS: At this time, the state would
9 offer JIC exhibit seven, which is the transcript of the
10 telephone conference among the lawyers in the federal
11 litigation. That transcript is dated July -- that
12 teleconference took place July 28, 2003. And JIC exhibit
13 seven is a certified copy of that transcript from the
14 Middle District of Alabama. JIC would offer that as JIC
15 exhibit seven for admission.

16 BY THE COURT: Yes?

17 BY MR. JONES: Your Honor, we would object
18 to the offering of the transcript in the sense that they're
19 using a transcript of a telephone conversation between a
20 judge and attorneys for both sides of federal litigation in
21 this proceeding that has to do with whether Justice Moore
22 has violated Judicial Canons of ethics, and we think it is
23 irrelevant what telephone conversation may have taken place
24 in that litigation, as to whether he violated a judicial
25 canon of ethics. Whatever he did by his filings is

1 obvious, and they're of record down there. But what those
2 attorneys did and what why they did them are legal
3 decisions that lawyers have to make all the time. This
4 difference in this case, they have to make on it the run as
5 they're talking to the judge on the telephone. And to take
6 that spontaneous declaration they may have had on the phone
7 and try to use it in this litigation, in this case, we
8 think is irrelevant and should not be admitted. And for
9 purposes of speeding things up, Your Honor, they have
10 another transcript of another conversation later, and the
11 objection would be the same to it.

12 BY THE COURT: All right.

13 BY MR. GIBBS: If I may respond?

14 BY THE COURT: Sure.

15 BY MR. GIBBS: Just to make it clear, the
16 relevancy of this is, the thing that's being discussed in
17 this transcript is whether or not the parties -- the Chief
18 Justice Moore was going to request a stay of the 11th
19 Circuit's decision in this case. We just heard Mr. Wilson
20 in his opening statement refer to their contention that the
21 appeal had not run its course. And yet in this particular
22 telephone conference, the discussion concerns whether or
23 not a stay was going to be sought, and since the relevance
24 is in the conference, the attorneys for Justice Moore state
25 they're aware of the rule, that Judge Thompson discusses

1 that I think twice, and while they're aware of the rule and
2 did not file a timely petition under Rule 41 of the Rules
3 of federal Appellate Procedure. So the relevance is, it
4 goes directly to the issue of whether they timely sought a
5 stay of the order that we have said -- we have alleged in
6 our complaint that he willfully disobeyed.

7 And that would also be the same for JIC
8 exhibit eight, the other transcript.

9 BY THE COURT: Yes?

10 BY MR. JONES: Two things, Your Honor.
11 Number one, in those admissions he read previously, the
12 fact that a Rule 41 stay was not sought, we admitted that.
13 That is an admitted fact. So there's no need for this
14 document. I mean, it doesn't show anything more than what
15 the admission has already done.

16 Number two is, you know, the person that is
17 charged in this litigation is Justice Moore. Why or why
18 not, attorneys may or may not, have made a decision about a
19 stay is not relevant to whether he violated Judicial Canons
20 or not. Whatever they may have said at that time, they may
21 done that for a legitimate, legal interest of their client
22 at the time in that litigation, and to take a
23 perfectly legitimate, legal decision that an attorney has
24 to make, then use it against the client in a judicial
25 ethics case, we would say is improper and irrelevant.

1 BY THE COURT: Any questions from the court?

2 BY JUDGE VOWELL: One question that I think
3 the record should reflect. You say a mere telephone
4 conversation; this was a formal conference in the U. S.
5 District Court, was it not?

6 BY MR. JONES: Your Honor, I have had the
7 opportunity to practice down there, and I don't know if I
8 call -- it was a conference that was set up by the federal
9 judge, so I'm not going to say it was a formal conference
10 in the sense -- in fact, some of that is even discussed in
11 some of these telephone conversations. But it was a
12 telephone conference that was initiated by Judge Thompson.
13 Both of these were. And there's a transcript of what was
14 said during the telephone conversations, yes, sir.

15 BY JUDGE VOWELL: So there's no dispute
16 about its authenticity and the transcript accurately
17 reflects what was said?

18 BY MR. JONES: That's correct, Your Honor.

19 BY MR. GIBBS: If I could, Your Honor, the
20 JIC exhibit seven is a certified copy from the Clerk of the
21 District Court of the Middle District of Alabama. This is
22 from the court file.

23 BY THE COURT: And I suppose eight is also?

24 BY MR. GIBBS: Yes, sir, Your Honor.

25 BY THE COURT: This is the matter we

1 discussed at pretrial conference. The objections are
2 overruled. The court will weigh the evidence accordingly.

3 BY JUDGE DENSON: May I ask a question?
4 Does that transcript reflect that the attorneys for Judge
5 Moore are going to confer with him? And does the second
6 transcript that you are going to offer show that they have
7 then discussed with him as to what they're going to do
8 about the stay?

9 BY MR. GIBBS: Judge Denson, I think in JIC
10 exhibit eight -- I'm just checking, there's a discussion,
11 talking to the client. I don't think that it occurs in JIC
12 seven, which is the earlier conversation.

13 BY JUDGE DENSON: All right.

14 BY MR. JONES: Judge Denson, If I could
15 respond to that. The first telephone conversation took
16 place because Judge Thompson was afraid that he was fixing
17 to go out of town, and that the mandate may come down from
18 the 11th Circuit while he was gone, and so they had a
19 telephone conversation.

20 Then later when the mandate actually came
21 down, they had a subsequent telephone conversation, and he
22 did have a conversation with the attorneys at that time as
23 to whether they wanted to file anything. And one of our
24 exhibits was what was in fact filed as a result of that.
25 It's not in the exhibits that the Attorney General has

1 offered. But in that telephone conversation, they said,
2 you know, we've got until 5:00 o'clock today to file
3 something, and they actually filed something, and we have
4 made that one of our exhibits.

5 BY JUDGE DENSON: All right. But the two
6 exhibits together reflect that the federal judge informed
7 Judge Moore's attorneys that if you want a stay, you have
8 to do that through Rule 41; then the second conversation
9 indicates they have until 5:00 to file it?

10 BY MR. JONES: No, sir. No, sir. That's
11 not correct. He questioned them about the availability of
12 Rule 41, and they informed him, I believe, that they don't
13 know what they're going to do. They just had gotten the
14 mandate, they had to consult with their client, and
15 apparently this was a telephone conference that was set up
16 pretty quickly, because they said we haven't had even the
17 chance to talk with our client, so we don't know what we're
18 going to do. And he said -- basically said, well, you've
19 got until 5:00 o'clock this afternoon to file something as
20 to why I shouldn't lift the stay. He didn't say anything
21 in reference to Rule 41.

22 BY MR. GIBBS: Judge Denson, I believe
23 that's correct. The discussion on the 4th was about what
24 response they wanted to make to the District Court, not
25 under Rule 41, but to the 11th Circuit, and they made a

1 response, which they asserted the District Court did not
2 have jurisdiction.

3 BY JUDGE DENSON: Which was a ground they
4 raised in the District Court and the 11th Circuit?

5 BY MR. GIBBS: Yes, sir. And then the
6 United States Supreme Court.

7 BY JUDGE DENSON: All right.

8 BY THE COURT: Again, this court is capable
9 of giving the appropriate weight to this evidence, and
10 those objections are overruled.

11 BY MR. GIBBS: Your Honor, the next exhibit
12 to which there was not an agreement was JIC exhibit
13 seventeen, which is the video tape of Chief Justice Moore's
14 statement on August 14, 2003, and we would only offer that
15 portion of the video tape that is the actual words spoken
16 by Chief Justice Moore as we discussed in pretrial
17 conference. It's taped off the air. There are some other
18 matters before, and I believe some matters after, but we
19 would only offer that portion of the tape which is Chief
20 Justice Moore speaking.

21 BY MR. JONES: Again, Your Honor, as we
22 previously discussed back there, two of the exhibits that
23 they have already offered and admitted are written
24 statements that Justice Moore gave out on those two
25 occasions, typed statements of what his statement was going

1 to be. They were handed out ahead of time. So essentially
2 they got what was said in a written document that's already
3 been admitted.

4 Secondly, this is basically a tape off of
5 the television, and there are all sorts of things on
6 there. There are -- the newscasters, their comments about
7 what's going on. There's even some things that are put up
8 on the screen about what's going on. And our objection
9 would be, number one, they don't need it. They've got the
10 written statement.

11 Number two, it's objectionable because it
12 contains, you know, hearsay and other things that clearly
13 are not admissible in this court. And as we discussed
14 earlier, I don't think you can take those things out,
15 because some them are placed up on the screen while the
16 speech is going on. So, I don't know how you could do
17 that. And that would be the same for both video tapes,
18 Your Honor. That would be the same argument and objection
19 to the admission of both of them.

20 BY MR. GIBBS: The other video tape would be
21 JIC exhibit nineteen. And I'm not going to -- I would
22 agree with Mr. Jones. They're taped off the air, so it's
23 not -- it has a lead-in, and the events following that they
24 covered, and there's also captions that appear. But we
25 would ask the court not to consider anything except the

1 words that come out of Chief Justice Moore's mouth on this
2 video tape.

3 BY MR. JONES: And again, Your Honor, you
4 know, it would have been real easy to ask the TV station or
5 whoever to give us just that and nothing but that. But you
6 know, to submit them in their present form, we think
7 they're objectionable.

8 BY MR. GIBBS: Well, the only thing I could
9 say, it's not as easy as counsel thinks to get those
10 copies. This was the best we could do.

11 BY THE COURT: Well, this is another matter
12 we discussed in the pretrial hearing. It's my
13 understanding the statement varies somewhat, maybe not of
14 any significant --

15 BY MR. JONES: Minimal amount of variation,
16 Judge.

17 BY THE COURT: The members of the Court
18 discussed this and we agreed we would admit the tapes only
19 for the purposes of the statement, and ignore all other
20 information that might be on the tape. We will only watch
21 the statement.

22 BY MR. JONES: As I understand, then any
23 other parts of the tape wouldn't be an official part of
24 this record; is that correct?

25 BY THE COURT: Correct. That's correct.

1 BY MR. GIBBS: Your Honor, except for
2 playing the video tapes, that's the evidence that the JIC
3 has in support of its charge.

4 BY THE COURT: Okay.

5 BY MR. GIBBS: With the court's permission,
6 can we play the video tape?

7 BY THE COURT: Yes, absolutely.

8 (Video tape playing)

9 BY MR. GIBBS: Your Honor, at this time we
10 would play state's nineteen, which is the August 21, 2003,
11 statement of Chief Justice Moore.

12 BY THE COURT: Proceed.

13 (Video tape playing)

14 BY MR. PRYOR: Chief Judge, the Commission
15 rests.

16 BY THE COURT: Thank you. Before we begin
17 with the respondent's case, let's take about a fifteen
18 minute break -- yes, Mr. Jones?

19 BY MR. JONES: Just procedurally speaking,
20 Your Honor, I have a motion that I would like to file. It
21 may be more appropriate to do that now than after the
22 break, if that's all right with the court. I'll do
23 whatever the court wants me to do.

24 BY THE COURT: You may proceed.

25 BY MR. JONES: Your Honor, we would file,

1 and I assume I would file with the secretary of the court,
2 a motion for acquittal based on the failure of the Judicial
3 Inquiry Commission to meet their burden by clear and
4 convincing evidence that Justice Moore -- Chief Justice
5 Moore has violated Judicial Canons of Ethics, and this
6 motion is directed to each one of the six charges on that
7 basis. And we would file with the court and we have copies
8 for the Justices as well.

9 BY THE COURT: Thank you, Mr. Jones. If
10 there is nothing further --

11 BY MR. BUTTS: Judge, there's one further
12 thing, and I think this court knows that I have a pretty
13 aggressive personality, but I will do this civilly, but I
14 know that we're about to take a fifteen minute break, and
15 we appreciate that, we need the break before we proceed
16 with our case in chief, depending on what the ruling is by
17 this court on the motion that Mr. Jones just made. But we
18 would like to note a very strong objection into the record,
19 that we didn't take this up with you outside at the
20 pretrial conference, because frankly we were not aware of
21 it until we entered the courtroom after that pretrial
22 conference. We object to -- I assume that this chair on my
23 right is where the witness would sit?

24 BY THE COURT: Yes.

25 BY MR. BUTTS: Now, we -- in all candor,

1 we're not trying to be obstructionists, but we believe that
2 the constitution requires that the defendant has the right
3 to face his accusers and we think his accusers here -- we
4 hope it's not this court, we know it's not this court, but
5 we do know it is the Judicial Inquiry Commission right
6 here. And we would prefer, as in most courtrooms, that he
7 take the witness stand, which would be normal under all
8 other circumstances, and we simply object to this. He has
9 his back to his accusers, and instead he's looking at the
10 Court. And frankly I've never seen it done that way in any
11 other court, and we would prefer that we be allowed to put
12 our witnesses on the witness stand in normal courtroom
13 fashion.

14 BY THE COURT: Well, I think that we did
15 this to accomodate the microphones in the courtroom. If
16 it's necessary, we can probably move the table around a
17 little bit. Otherwise, I do not believe that the people
18 down in the overflow room would be able to hear the
19 testimony of the witnesses, and we have had some
20 audio/visual experts in here working on this, and certainly
21 we wouldn't want to have anybody's testimony go out of
22 here, and not be witnessed by the folks that took their
23 time to be present in the other room.

24 BY MR. BUTTS: Absolutely, absolutely, Your
25 Honor. But can we ask that whoever these audio experts are

1 to come forward and see if they can't do it where we can
2 put our witnesses on a regular witness stand?

3 BY THE COURT: I don't know that anyone is
4 present. These were not employees of the court.

5 BY MR. BUTTS: I believe that -- based on my
6 past experience in the court, we've got the technicians
7 here in the court system itself that can do that. I guess
8 I'm --

9 BY THE COURT: If you want to move the table
10 around, I don't have a problem with that. But we obviously
11 are having problems with the microphone at the podium, and
12 so we're having to -- that microphone there is going to do
13 double duty with the witness and with the lawyers. So if
14 you want to move the table around a little bit, that's
15 perfectly fine with the court.

16 BY MR. JONES: That's I would ask to do, to
17 turn it to face the witness.

18 BY THE COURT: No problem whatsoever with
19 that.

20 BY MR. WILSON: We'll get that worked out
21 during the fifteen minute recess.

22 (Off the record colloquy)

23 BY MR. BUTTS: Thank you, Judge.

24 BY THE COURT: All right. At this time,
25 we'll stand in recess until 11:00 o'clock.

1 (Brief recess)

2 BY THE COURT: This court is now in session.

3 BY MR. BUTTS: Your Honor, again, I wish
4 this court would help us and allow the Chief Justice to
5 take the witness stand here in the proper manner. I mean,
6 we strongly object to him having his back to the
7 audience -- his back to his accusers. I understand that
8 the court may want to see his demeanor, but I don't
9 understand why the court can't see his demeanor from the
10 witness chair. I mean, we really, really strongly object.
11 I don't know how strenuously to tell you that, but we think
12 it's very important that he take the stand there, and
13 accommodations be made to do that.

14 BY THE COURT: Well, that objection is noted
15 and overruled. Your motion for acquittal filed by Chief
16 Justice Moore is unanimously denied. Respondent may
17 proceed with testimony.

18 BY MR. BUTTS: Let me make sure I understand
19 this, and I would ask the court for information. I would
20 like to state for the record that what we are objecting to,
21 so that it's clear on the record, that the witness chair
22 and the witness table are sitting in the middle of the
23 floor, not in the proper courtroom setting for most
24 courtrooms, or any that I am familiar with. I would like
25 for the record to reflect that if the witness takes the

1 stand, Chief Justice Moore, that he would be sitting where
2 he cannot confront his accusers, the Judicial Inquiry
3 Commission, and instead will be sitting in the middle of
4 the courtroom floor, more or less facing the panel as if
5 it's an inquisition. And I wish to make that objection and
6 let the record show that the physical setting is in
7 violation of his due process rights -- it's a violation of
8 due process and a violation of his constitutional rights,
9 and we strongly object and we put that on the record.

10 BY THE COURT: Your objection is noted.

11 BY MR. BUTTS: Thank you.

12 BY THE COURT: Please proceed with calling
13 your first witness.

14 BY MR. JONES: Your Honor, We would call
15 Chief Justice Roy Moore.

16 BY THE COURT: Chief Justice Moore.

17 BY MR. JONES: Your Honor, just a procedural
18 matter, I want to go ahead -- it's already been admitted as
19 I think Moore's exhibit one which is the filing that we
20 referenced on August the 4th, and I just want to -- I don't
21 think I have submitted it yet, I want to submit it. I have
22 one for the clerk, then one for each of the judges in the
23 folder, if it's all right to publish it?

24 BY THE COURT: Please proceed.

25 BY MR. JONES: And I believe, Your Honor,

1 just to be sure that I don't forget at the end of the
2 testimony, I have offered I think the majority of the other
3 exhibits, and I want to be sure that they're admitted.
4 There are a couple that I have not talked about, I believe
5 I went through -- I can ask the court reporter to
6 be sure -- I think I went through exhibit seven, and I will
7 admit a couple of others.

8 BY THE COURT: All right.

9 ROY S. MOORE,
10 the witness, after having first been duly sworn to
11 speak the truth, the whole truth, and nothing but the
12 truth, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. JONES:

15 Q. This is Chief Justice Roy S. Moore; is that
16 correct?

17 A. That's correct.

18 Q. Justice Moore, how old are you?

19 A. 56.

20 Q. I knew that would loosen you up. You are
21 married?

22 A. Yes.

23 Q. And I believe your wife is right there?

24 A. My wife and my daughter are here.

25 Q. Thank you. Justice Moore, let me ask you

1 this; where were you born?

2 A. Gadsden, Alabama.

3 Q. And your family I assume lived there while
4 you were young?

5 A. My family still lives there, in and around
6 Gadsden.

7 Q. Have any brothers and sisters?

8 A. I have two brothers and two sisters. Two of
9 my brothers and one of my sisters is here.

10 Q. Are you -- where do you fit in the clan?

11 A. I am the oldest.

12 Q. Oldest of five children?

13 A. Five children.

14 Q. Your father, what did he do?

15 A. He was a construction worker when he died in
16 '68. He worked a jack hammer.

17 Q. Okay. And your mother?

18 A. My mother has always been a housewife,
19 except for a short time she worked.

20 Q. Did you live in a city setting, rural
21 setting, where did you grow up?

22 A. Mostly rurally.

23 Q. Okay. Describe the residences in general
24 that you grew up in.

25 A. Well, we moved around a lot. I mean,

1 it's -- describe one residence would be inappropriate.
2 Some had bathrooms, some didn't. Some had inside water,
3 some didn't. We just moved around quite a bit. Most -- it
4 was all rental houses.

5 Q. Did you go to school there in the schools in
6 Gadsden?

7 A. I went to Etowah High School, graduated in
8 1965.

9 Q. Did you work when you were growing up?

10 A. I worked at a Piggly Wiggly, carrying out
11 groceries.

12 Q. Okay. And what was your wage there?

13 A. Eighty-five cents an hour.

14 Q. Okay. Was there any particular reason that
15 you worked?

16 A. Well, low income, and we worked for money
17 for the family. And basically, school things.

18 Q. Okay. And I think you just testified that
19 you graduated in 1965?

20 A. Right.

21 Q. High school. What did you do after -- upon
22 graduation?

23 A. Upon graduation, I went to the United States
24 Military Academy at West Point, New York.

25 BY JUDGE DENSON: I'm having trouble hearing.

1 BY JUDGE KENDALL: Ask the witness to please
2 talk into the microphone.

3 BY MR. JONES: Yes, sir. Just do a test
4 real quick.

5 A. Testing, one, two.

6 BY MR. JONES:

7 Q. So upon graduation, you went to West Point;
8 is that correct?

9 A. Yes.

10 Q. How were you able to physically get to West
11 Point?

12 A. At that time we took a plane. I had plane
13 fare, and my father borrowed three hundred dollars to get
14 me up there.

15 Q. And that was basically for transportation to
16 get to West Point?

17 A. Right.

18 Q. When you were at West Point, did you work
19 while you were there, were you paid anything while you were
20 there?

21 A. At the United States Military Academy,
22 cadets are paid a small fee to get them -- they pay back
23 the academy for clothing and meals. And they have about
24 enough to get home and back once or twice a year.

25 Q. Did you do anything with your money, other

1 than your expenses there at West Point?

2 - A. Everything I had was sent home, if I didn't
3 spend it there.

4 Q. And you graduated from West Point when?

5 A. 1969.

6 Q. During your time there at West Point, did
7 the cadets there take an oath of any kind?

8 A. Yes. We take an oath, the same oath that's
9 taken by military officers, to defend and -- support and
10 defend the Constitution of the United States. I have taken
11 similar oaths all through my career. When you become a
12 judge or a lawyer, you take an oath to support the
13 Constitution of the United States and the Constitution of
14 the State of Alabama, or whatever state you live in. Then,
15 I took an oath as Deputy District Attorney. I have taken
16 a lot of oaths.

17 Q. Do they have a place there at West Point
18 where the oath is displayed?

19 A. They have a place called Constitution
20 Corner, which is right outside of the cadet mess, and
21 there's a replica of what the Constitution means, and the
22 oath.

23 Q. Have you been back there recently?

24 A. About three, four years ago, yes.

25 BY MR. JONES: May it please the court, may

1 I approach the witness with an exhibit?

2 BY THE COURT: Yes, you may.

3 BY MR. JONES:

4 Q. Chief Justice Moore, I want to show you what
5 I believe is marked Moore's exhibit nine and ask you if you
6 can tell me what that is?

7 A. Well, this was a picture taken by my
8 security man that went with me on a visit one time, and
9 it's loyalty to the Constitution.

10 Q. Is that taken at the Constitution Corner?

11 A. Yes.

12 Q. And does that plaque denote or set out in
13 some way the oath that you had referred to that the cadets
14 took?

15 A. It talks about your loyalty to the oath. If
16 I may read it -- it's short. It says The United States
17 boldly broke with the ancient military custom of swearing
18 loyalty to a leader. Article six required that American
19 officers thereafter swear loyalty to our basic law, the
20 Constitution.

21 While many other nations have suffered
22 military coups, the United States never has. Our American
23 Code of military obedience requires that, should orders and
24 the law ever conflict, our officers must obey the law.
25 Many other nations have adopted our principle of loyalty to

1 the basic law.

2 This nation must have military leaders of
3 principle and integrity so strong that their oaths to
4 support and defend the Constitution will unfailingly govern
5 their actions. The purpose of the United States Military
6 Academy is to provide such leaders of character.

7 Q. And does that exhibit correctly and
8 accurately depict the plaque and the things that were there
9 that day it was taken?

10 A. Yes, it does.

11 BY MR. JONES: Your Honor, we would like to
12 admit Moore's exhibit number nine.

13 BY THE COURT: Any objection?

14 BY MR. PRYOR: No, Your Honor.

15 BY THE COURT: So admitted.

16 BY MR. JONES:

17 Q. Upon your graduation from West Point, did
18 you serve in the United States Military?

19 A. Yes, I did. I served five years. I was
20 initially -- went to Airborne School in Georgia. Then I
21 was sent to Europe in Germany, where I served in two
22 locations in Germany, first as mechanized infantry,
23 battallion staff officer, then later as military police,
24 platoon leader, lieutenant. Then I was shipped to Viet Nam
25 where I served in Da Nang in 1971/72, as a Company

1 Commander Captain, United States Military Police Corps,
2 188th MP Company, 504th MP Battalion.

3 Then I came back to the states, in Kansas.
4 I was a battallion staff officer. I served in the S-3, S-4
5 and S-1 positions various times, and sometimes jointly.

6 Then I was discharged honorably after I
7 completed my term of service.

8 Then went to law school at the University of
9 Alabama School of Law in 1974.

10 Q. I want to ask you just for a second because
11 I believe you indicated that you had served in Viet Nam?

12 A. Right.

13 Q. And you served as an MP?

14 A. Right.

15 Q. And I want to ask you what your
16 responsibilities were?

17 A. We supervised the stockade at Da Nang Camp
18 Land, and basically held prisoners from around Viet Nam, in
19 our stockade, military prisoners, United States Army.

20 Q. You supervised about how many men in that
21 operation?

22 A. Close to two hundred, in one company. Then
23 there were several companies on post.

24 Q. Did they -- did your men that served under
25 you there in Viet Nam have a nickname for you?

1 A. I'm sure they did.

2 Q. Do you remember one in particular?

3 A. Well, one in particular, they called me
4 Captain America. That was --

5 Q. Is there any particular reason that they
6 called you that or that they developed that nickname?

7 BY MR. PRYOR: Your Honor --

8 A. I don't know.

9 BY MR. PRIOR: I object as to what their
10 reasons would be. I don't think that this witness can
11 testify about that.

12 A. I really can't say why they did that. I
13 used to shave my head -- in the military --

14 BY THE COURT: We'll let him proceed.

15 A. I used to shave my head, and I fought, we
16 had a lot of boxing matches, and that was very strict.

17 BY MR. JONES:

18 Q. Did have it anything to do with your
19 enforcement of regulations and things there that they had
20 to obey?

21 A. Yes.

22 Q. And did that result in some difficulties
23 between you and the men?

24 A. Well, there was a lot of problems in Viet
25 Nam at that time with drugs, race relations. There was a

1 lot of problems with -- of course, at that time of the
2 conflict, a lot of people didn't want to be in Viet Nam,
3 myself included. And they really -- you know, there was a
4 lot of people getting killed, and a lot of protests back
5 home, and it was unpopular to be a disciplinarian at that
6 time. But of course, that was my training and that's --
7 you know, what kept people alive.

8 We had one area further north where they
9 weren't disciplined, and they kept having people come in
10 and blow up the ammo dumps and kill people. And night
11 after night, they would find people on drugs on the bunker
12 line, and being military police, we had to be a little bit
13 above that in discipline. And a lot of the people that
14 were caught sleeping on bunkers were given Article 15s. If
15 they were caught with drugs --

16 Q. I understood you to say then after your
17 honorable discharge from the military, you went to law
18 school?

19 A. I went to law school.

20 Q. Where did you go to law school?

21 A. University of Alabama School of Law.

22 Q. And you graduated there, and do you remember
23 what year?

24 A. 1977.

25 Q. Upon graduation, what then did you do?

1 A. I became the first full time Deputy District
2 Attorney of Etowah County. I had worked in the District
3 Attorney's office while in law school, training. Then I
4 became full time -- first full time Deputy.

5 Q. What were your responsibilities in that --

6 A. Prosecuted all kind of cases. Murder, rape,
7 robbery, burglary, everything down to the misdemeanor
8 court.

9 Q. Public corruption, those things?

10 A. Everything. Public corruption.

11 Q. And that would have been in 1977 then that
12 you served as the Deputy District Attorney, and you served
13 in that position until approximately when, do you remember?

14 A. 1982.

15 Q. And is that when you ran for your first
16 political office?

17 A. I ran for Circuit Judge, 16th Judicial
18 Circuit in 1982.

19 Q. Okay. And you were unsuccessful in that
20 election?

21 A. Yes.

22 Q. After that election, what did you do?

23 A. I went to Australia -- I went first to
24 Texas. I took a hiatus from law, went to Texas. I worked
25 different jobs. Fought full contact karate, basically.

1 then I came back. Fought a fight in Alabama. Then I went
2 to Australia, worked for about a year, mustering cattle in
3 the outback. Just hard labor. Then came back and started
4 practicing law again in the very town where I lived.

5 Q. And do you remember what year that was?

6 A. 1984.

7 Q. And how long were you in private practice?

8 A. I was in private practice for approximately
9 eight years. I did general practice. I was -- I had
10 already prosecuted in court as a prosecutor, then I became
11 -- I did some defense work, criminal defense. I also did
12 some plaintiff civil work, plaintiff's work, and also civil
13 defense work. I also worked in the bankruptcy court a
14 little, and also federal district court.

15 Q. And I will ask this question the way I
16 assume that my wife would probably want it asked. Shortly
17 after you came back, you made one of the best decisions you
18 ever made; is that correct?

19 A. Yes.

20 Q. And that was?

21 A. Well, I met my wife in 1984, late in that
22 year, I think, and then we were married in 1985.

23 Q. Okay. And did you run for another public
24 office?

25 A. 1986, I ran for District Attorney of Etowah

1 County.

2 Q. Okay. Were you successful in that?

3 A. No. Barely lost, but no.

4 Q. And you continued in private practice then
5 there?

6 A. Yes.

7 Q. In Gadsden, until --

8 A. 1992, I was appointed as Circuit Judge, at
9 the death of another judge.

10 Q. And who appointed you?

11 A. Governor Guy Hunt.

12 Q. And after your appointment in 1992, did you
13 run for re-election?

14 A. I did, in 1994.

15 Q. And --

16 A. Sworn in by Governor Fob James.

17 Q. You were re-elected at that time?

18 A. Right.

19 Q. Did you remain a Circuit Judge then until
20 your election to the office that you currently hold?

21 A. Yes, sir, 2000. I completed the full term
22 as a Circuit Judge --

23 Q. The term was up, you ran for this office?

24 A. I ran for this office.

25 Q. And that was in the fall of 2000?

1 A. Right.

2 Q. Now, during the time that you were a Circuit
3 Judge there in Etowah County, did a dispute arise as to the
4 display of the 10 Commandments in your courtroom?

5 A. Yes, and as to prayer in court. It had --
6 historically in Etowah County, from the very time that I
7 had begun practicing law, and many years before that, they
8 would invite pastors in to open the jury session with a
9 prayer at the beginning of the jury week, and it was an
10 invitation by the judge presiding at the time. I continued
11 that practice, and also displayed a small plaque of the 10
12 Commandments above my bench. And then I was -- I think the
13 ACLU sent a court reporter in -- excuse me, a court
14 reporter in to record the prayer, and thereafter, there was
15 communications back and forth between ACLU threatening to
16 bring suit if I didn't remove the 10 Commandments and stop
17 the prayer. I said I wouldn't do that. And after I was
18 elected, they brought suit.

19 Q. Let me ask you this, I want to ask you just
20 for clarification purposes, the plaque of the 10
21 Commandments that hung in your courtroom, where did that
22 come from?

23 A. I made the plaque by hand in 1980, and
24 displayed it in the District Attorney's office where I was
25 working, and the private law office that I later had of my

1 own.

2 Q. So you had displayed that plaque, that
3 monument in your office in whatever position you had held
4 up until this time it came to be a dispute as a Circuit
5 Judge?

6 A. I did. It's in my office now here.

7 Q. Was there any particular reason that you
8 took the 10 Commandments with you when you become a Circuit
9 Judge?

10 A. Well, initially, when I become a Circuit
11 Judge, I was -- I had to decorate the courtroom. There was
12 only a picture of the judge in there, who is deceased.
13 There was no decorations at all. The flag had 48 stars.
14 It was -- just needed updating and needed some decoration.
15 I thought nothing could be more fitting than the 10
16 Commandments as historic. And then later I got other
17 pictures of Washington. A picture of Lincoln -- I think of
18 the Magna Charta -- I'm sorry, the Mayflower Compact. And
19 the Declaration of Independence.

20 Q. Now, as a result of the hanging of the 10
21 Commandments there in your courtroom, was there a lawsuit
22 filed?

23 A. There was a lawsuit filed in 1997.

24 Q. By who?

25 A. By the American Free Thought Association,

1 being represented by the ACLU. That went to federal
2 District Court, Northern Division, Judge Propst.

3 Q. And what was the disposition of that lawsuit?

4 A. Judge Propst dismissed it for lack of
5 standing of the plaintiffs.

6 Q. Okay. Was there also another lawsuit filed
7 on your behalf -- on behalf of the State of Alabama?

8 A. There was a lawsuit filed by the Governor,
9 then Governor Fob James, against the ACLU and myself as
10 parties, and we cross-claimed. I cross-claimed against the
11 ACLU, they cross-claimed against me. And that went to
12 state court. It was removed from state court to the
13 federal district court in Montgomery, Judge Albritton.
14 Judge Albritton returned the case back to state court.
15 Judge Price entered his order, and we took that appeal to
16 the Alabama Supreme Court.

17 Q. And what was the disposition there?

18 A. Disposition, they dismissed it for lack of
19 justiciable controversy.

20 Q. And do you remember who represented the
21 State of Alabama in that proceeding?

22 A. I believe Attorney General Pryor.

23 Q. Shortly after these lawsuits, and I believe
24 you said it was in 1995 that they were filed, somewhere in
25 that time frame, were you investigated by the Judicial

1 Inquiry Commission?

2 A. I was investigated by the Judicial Inquiry
3 Commission for about three or four years. It began when I
4 learned that they had entered my bank and had seized all my
5 personal banking records and told the people at the bank
6 not to let me know about it. Somebody did let me know
7 about it, and I was furious. I asked the Judicial Inquiry
8 Commission to tell me why I was being investigated; they
9 refused for a number of years. I found out from various
10 lawyers that they had sent around investigators questioning
11 lawyers in my jurisdiction about anything I might have done
12 wrong. They proceeded to do one thing after another. One
13 time they sent a subpoena to a television station for a
14 speech I had made when the president of the Judicial
15 Inquiry Commission was present at the speech, and it was
16 supposed to be confidential. Sending a subpoena to a
17 public television station wasn't very confidential any
18 more. And they still wouldn't tell me what I was charged
19 with. So I entered and filed a suit against the Judicial
20 Inquiry Commission before the Alabama Supreme Court.

21 At that time, shortly after that, I was
22 investigated by the Ethics Commission of the State of
23 Alabama, and they appointed -- Attorney General Pryor
24 recused at that time, and they appointed St. Clair County
25 District Attorney Van Davis as the prosecutor. I was

1 investigated about the defense fund at that time. Van
2 Davis looked at all the records, found there no
3 discrepancies, came back and reported that. The case was
4 dismissed, the ethics case. Then we found out that the
5 person who had filed this ethics case was from northern
6 Alabama, I did not know him. He was an ex-mayor of a
7 little town and was upset at Southern Baptists for
8 objecting to gambling in his jurisdiction, and he thought
9 it was suitable to sue me for it, or a complaint about my
10 activities, so --

11 Q. What about the suit that you filed against
12 the Judicial Inquiry Commission, what was the disposition
13 of it?

14 A. Well, eventually, it was dismissed as moot.
15 They said they were no longer investigating. So --

16 Q. No formal charges were ever brought against
17 you?

18 A. No, and I never got to prove the charges
19 that I had against them for an unlawful investigation.

20 Q. Now, as part of your campaign for Chief
21 Justice of the Alabama Supreme Court, did you develop any
22 type of platform or issue that you were basing your
23 campaign on?

24 A. Yes. I basically ran the whole campaign on
25 restoring the moral foundation of law. And we had one

1 little campaign hand-out throughout the entire campaign,
2 whether it was in the primary or the general election, and
3 you have that in your hand.

4 BY MR. JONES: May I approach, Your Honor?

5 BY THE COURT: Yes.

6 A. This is the only campaign literataure really
7 we had. I know doesn't sound like a lot, but basically it
8 listed things that I had said and others had said, and
9 support, and basically the name.

10 BY MR. JONES:

11 Q. And on the front of that brochure, and
12 that's Moore's exhibit number eight, on the front of that
13 brochure, what does it say?

14 A. Upholding the moral foundation of law.

15 BY MR. JONES: We would like to move to
16 admit Moore's exhibit number eight.

17 BY THE COURT: I think it's already
18 admitted.

19 BY MR. JONES: Okay. I also have copies.

20 BY THE COURT: Thank you.

21 BY MR. JONES: And I'd like to ask those be
22 published to the judges, if they could.

23 BY MR. JONES:

24 Q. Justice Moore, when that booklet says
25 upholding the moral foundation of law, can you tell me what

1 that meant to you?

2 A. Well, law has a moral foundation. That
3 foundation comes from acknowledgement of the God of the
4 bible, and without an acknowledgement of God, you could
5 have no moral foundation. And basically, it was a
6 reference to the God of the 10 Commandments, and the laws
7 contained therein.

8 Q. When you were successfully elected and then
9 sworn in, did you take an oath?

10 A. I did.

11 Q. I show you what's been marked as Moore's
12 exhibit number two, ask you to identify that for me?

13 A. That's a copy of the oath that I took right
14 here where I am standing. In fact, I was standing right
15 there, given by Perry Hooper on January 15th, 2001. I, Roy
16 S. Moore, do solemnly swear that I will support the
17 Constitution of the United States and the Constitution of
18 the State of Alabama, so long as I continue a citizen
19 thereof, and that I will faithfully and honestly discharge
20 the duties of the office of Chief Justice of the Alabama
21 Supreme Court, upon which I am about to enter, to the best
22 of my ability, so help me God.

23 Q. And when you took that oath, did you place
24 your hand on anything?

25 A. I placed on it the bible, one of which is

1 laying on the table.

2 BY MR. JONES: Your Honor, we would like to
3 admit Moore's exhibit number two.

4 BY THE COURT: Admitted.

5 BY MR. JONES:

6 Q. When you took that oath, when you took the
7 oath of office as Chief Justice of the Alabama Supreme
8 Court, did you consider what was required of you by the
9 United States Constitution and the Constitution of the
10 State of Alabama?

11 A. Yes.

12 Q. And what did you consider that to be?

13 A. Well, to uphold both the Constitution of the
14 United States, and the Constitution of State of Alabama.

15 Q. Showing you what's been marked Moore's
16 exhibit number three, ask you if you recognize what that
17 is?

18 A. That's the preamble to the Alabama
19 Constitution.

20 Q. Would you read that for me, please?

21 A. We, the people of the State of Alabama, in
22 order to establish justice and insure domestic tranquility,
23 and secure the blessing of libery to oursleves and our
24 posterity, invoking the favor and guidance of Almighty God,
25 do ordain and establish the following Constitution and form

1 of government for the State of Alabama.

2 BY MR. JONES: And I have copies, Your Honor,
3 I'm going to give them to the clerk again.

4 BY MR. JONES:

5 Q. Are you aware, Chief Justice Moore, of the
6 responsibilities and duties placed on the Chief Justice of
7 the Alabama Supreme Court by the Code of Alabama?

8 A. Yes, sir.

9 Q. I show you what's been marked Moore's
10 exhibit number four and ask you if you can identify that
11 for me?

12 A. This is a copy of 12-2-30, powers and duties
13 as to supervision and administration of courts generally.

14 Q. And that is Section 12-2-30 of the Alabama
15 Code?

16 A. Right.

17 Q. And are there responsibilities there as far
18 as what the Chief Justice is to do?

19 A. Yes, as far as appointing judges and so
20 forth, yes.

21 Q. I specifically point out to you Sections
22 seven and eight and ask you if you can tell me what your
23 responsibilities are under those two sections?

24 A. Well, under seven, it's to take affirmative
25 and appropriate action to correct or alleviate any

1 condition or situation adversely affecting the
2 administration of justice within the state.

3 And eight is to take any such other further
4 or additional action as may be necessary for the orderly
5 administration of justice -- it says within the state, I
6 believe -- whether or not enumerated in this Section or
7 elsewhere.

8 Q. And you're aware of both the
9 responsibilities you had under the Constitution and that
10 Code section at the time you took office as Chief Justice?

11 A. Well, as chief administrative officer of the
12 justice system, I think the beginning of that says that --
13 or somewhere in here, it says I will be the head
14 administrative officer of the justice system.

15 Q. After you became Chief Justice, did you
16 develop a booklet to help educate the citizens of Alabama
17 on the moral foundations of law?

18 A. I did.

19 Q. I show you what's been marked as Moore's
20 exhibit number five and you if that's that booklet?

21 A. This is the booklet. Our Legal Heritage.

22 Q. Can you tell me generally what it contains?

23 A. Basically contains the Constitution of the
24 United States, the Declaration of Independence, a foreword
25 that I wrote about what was in the book, and a portion of

1 Blackstone's commentaries, and the reasons they were
2 important to our country.

3 Q. Okay. And did you see that development of
4 that booklet as a part of the responsibilities we have
5 outlined here already?

6 A. It's a duty of all judges to teach the law.
7 The law is the Constitution, and the Declaration, which is
8 our organic law under the United States Code, annotated,
9 and the connection between them and the words in them, can
10 only be understood in context of history and what they
11 wrote them from.

12 BY MR. JONES: Your Honor, we want to admit
13 that. I apologize, I don't have sufficient copies for all
14 of the judges, but I do have several, and I would just like
15 to give them to the clerk.

16 BY THE COURT: They have already been
17 admitted.

18 BY MR. JONES:

19 Q. Now, shortly after you become Chief Justice
20 of the State of Alabama, did you begin doing anything else
21 in anticipation of your responsibilities as Chief Justice,
22 and also as a result of the basis of your campaign for that
23 office?

24 A. Well, immediately upon being elected, I
25 began to formulate plans to display the 10 Commandments as

1 the moral foundation of our law in the Alabama Judicial
2 Building.

3 Q. And how long did that take, that development
4 of that monument?

5 A. It took about eight months.

6 Q. And what went on during that eight months?

7 A. During that eight months, basically we were
8 trying to get a stone, and I was designing the monument and
9 what would go on the monument to reflect the
10 acknowledgement of God by our forefathers and its
11 relativity -- why it was relative to our Constitution and
12 the Constitution of the United States.

13 Q. Can you just briefly describe the monument
14 as it was ultimately done.

15 A. Well, it's about three feet by four feet.
16 It weighed five thousand, two hundred eighty pounds. The
17 top was engraved with the 10 Commandments, out of
18 Deuteronomy. The front had an inset -- all four sides had
19 an inset of laws. For example, the front was laws of
20 nature and nature's God out of the Declaration of
21 Independence, which is the organic law of our country. On
22 the right side was In God We Trust, which is our national
23 motto.

24 The back said so help me God, which is the
25 basis of all oaths, taken from the Judiciary Act of 1789.

1 On the left side was One Nation Under God,
2 from the pledge of allegiance of 1954, which is also a
3 national law.

4 On the top and bottom of each inset are
5 quotes by people such as Thomas Jefferson, James Madison,
6 George Washington, first Chief Justice John Jay, the
7 Alabama Constitution preamble, the National Anthem, a quote
8 from the legislative history of the Act in 1954, and on the
9 front was a quote from Sir William Blackstone and George
10 Mason, the father of our Bill of Rights. The quote from
11 Blackstone was relative to the laws of nature and nature's
12 God, of course fit the inset.

13 James Wilson was on there also, was a
14 Justice of the United States Supreme Court, one of the
15 first signers of the Declaration and the Constitution,
16 which said human law must rest its authority ultimately
17 upon that law which is divine.

18 Q. Did you consider the development and
19 placement of that monument in furtherance of your duties
20 that we have outlined in the Constitution and the Code of
21 Alabama?

22 A. Absolutely.

23 Q. And also in fulfillment of the promise you
24 had made to the people of Alabama when you were running for
25 that office?

1 A. Yes, but also in conformity with the
2 Alabama Constitution, it says our justice system is
3 established invoking the favor and guidance of Almighty
4 God.

5 Q. Do you remember when you actually placed the
6 monument here in the rotunda of this building?

7 A. July 31st, 2001.

8 Q. Okay. And the next day, August first, you
9 made a speech unveiling the monument?

10 A. Right.

11 Q. I show you what's been marked as Moore's
12 exhibit six, ask you if you can identify that for me?

13 A. Yes, these appear to be the words I used at
14 the unveiling of the monument.

15 Q. A copy of the speech you made at that time?

16 A. Yes.

17 BY MR. JONES: We would like to
18 introduce that, and again we have copies.

19 BY THE COURT: That's been stipulated
20 to, we will consider them admitted.

21 BY MR. JONES:

22 Q. As a result of the placement of that
23 monument here in the rotunda of the Supreme Court Building,
24 were there federal lawsuits filed against you?

25 A. There were.

1 Q. And those were here in the federal District
2 Court?

3 A. Yes.

4 Q. And they were tried, and Judge Thompson
5 ruled against you?

6 A. Yes.

7 Q. And you then appealed those to the 11th
8 Circuit?

9 A. I did.

10 Q. They in fact entered an opinion; do you
11 remember when that was, the 11th Circuit?

12 A. I think it was July first, 2003. I have a
13 copy of the opinion -- yeah, here it is. I have a copy of
14 the 11th Circuit opinion here.

15 Q. Will you refer to the last page of that
16 opinion?

17 A. Yes.

18 Q. I believe it's the last paragraph of that
19 opinion. Was there anything in there that you read in that
20 opinion, after it was entered, that directed your further
21 actions in regards to this litigation?

22 A. Well, the preceding paragraphs are very
23 instructive, talk about disobedience of the federal court
24 and the rule of law. It says that the rule of law does
25 require that every person obey judicial orders when all

1 available means of appealing them have been exhausted. The
2 Chief Justice of the state Supreme Court of all people
3 should be expected to abide by that principle. We do
4 expect that if he is unable to have the District Court's
5 order overturned through the usual appellate processes,
6 when the time comes, Chief Justice Moore will obey that
7 order. If necessary, the court order will be enforced.
8 The rule of law will prevail.

9 Q. What did you understand that to mean?

10 A. Exactly what it said, that when I exhausted
11 all appellate remedies, that I have to obey the federal
12 court order that had been entered.

13 Q. And by all appellate remedies, what did you
14 understand that to mean?

15 A. I took that to mean the appeal up to the
16 Supreme Court, application for writ of certiorari, then that
17 appeal to the Supreme Court, as well as appeal to the --

18 Q. Now, this complaint and the charges against
19 you make reference to there being no application for a Rule
20 41 stay in that proceeding?

21 A. No.

22 Q. And there was not one made, was there?

23 A. No.

24 Q. Do you know who made that decision not to
25 seek that?

1 A. Well, the attorneys that we discussed this
2 with. My attorneys discussed it, that there was no -- we
3 understood what the 11th Circuit said about the underlying
4 issue in the case, and it seemed to pave the way for us to
5 petition the United States Supreme Court for a writ of
6 certiorari to further review those issues, and to leave in
7 place the status quo, i.e., that the monument would stay,
8 because it clearly said that I would be expected to obey
9 judicial orders when all available means of appealing had
10 been exhausted, and specifically with the District Court's
11 order, that if I was unable to have the District Court's
12 order overturned through the usual appellate process, when
13 the time comes, Chief Justice Moore will obey that order.

14 Q. Now, ultimately, Judge Thompson lifted the
15 stay and entered an order requiring that the monument be
16 moved; is that correct?

17 A. He did.

18 Q. And do you remember who that order was
19 directed to or who it was served upon?

20 A. It was served upon the other eight Associate
21 Justices of the Alabama Supreme Court, upon the Governor,
22 the Attorney General, the Clerk of the Court, and I think
23 perhaps the Administrative Office of Courts, Rich Hobson,
24 Director.

25 Q. Do you remember the date that the order

1 stated that monument was to be moved by?

2 A. I think it was to be moved by August 20.

3 Q. And did you move the monument by August
4 20th?

5 A. No.

6 Q. And why didn't you move the monument?

7 A. It would violate my conscience, violate my
8 oath of office, violate the 10th Amendment of the United
9 States Constitution, as well as violate the 1st Amendment.
10 It would violate every rule of law that we were sworn to
11 uphold. The rule of law being that which is contained in
12 the Constitutions, clearly stated and are of clear import,
13 clear meaning.

14 Q. The monument was ultimately moved?

15 A. Yes.

16 Q. And do you remember how that came about?

17 A. I think the other Associate Justices had it
18 moved after I was taken out of office -- or after a
19 complaint was filed with the Judicial Inquiry Commission,
20 and I was disqualified from acting as the judge.

21 Q. Now, do you remember making a statement, and
22 I think you probably saw it played in here, on August 14th,
23 2000 and three?

24 A. Yes, I made that statement. I would make it
25 again. It's exactly what I felt then, and what I feel now.

1 Q. Did you at any time in that statement say
2 that you would defy Judge Thompson?

3 A. No.

4 Q. Did you know that an ethics complaint was
5 filed against you that day?

6 A. I can't say what day. I think it was that
7 day.

8 Q. Shortly after that, you appeared in front of
9 the Judicial Inquiry Commission, did you not?

10 A. Right -- now, I did say I will not move the
11 monument, that this I could not do. I did not say I would
12 defy. I did not use those words, but I did say I would not
13 move the monument.

14 Q. You appeared in front of the Judicial
15 Inquiry Commission shortly after that?

16 A. Right.

17 Q. Do you remember what date that was,
18 approximately? And I will represent to you it was August
19 22, if y'all don't mind my stating that fact to him?

20 BY MR. PRIOR: Okay.

21 A. Okay.

22 BY MR. JONES:

23 Q. Do you remember your appearance there, and
24 they have entered a transcript of what I think you said on
25 that day, and it's here in the record for the justices to

1 read.

2 A. Sure.

3 Q. You were disqualified from serving as the
4 judge as of that date; is that correct?

5 A. Well, when they forwarded the complaint, if
6 that's the date they forwarded the complaint.

7 Q. And if they forwarded it that date, you were
8 disqualified from acting as the judge?

9 A. Yes.

10 Q. And you have been so disqualified until
11 today?

12 A. Yes.

13 Q. You still have been receiving your pay?

14 A. Yes.

15 Q. Your state pay for Chief Justice, but you've
16 not been able to perform the duties of Chief Justice?

17 A. Right.

18 Q. Now, Chief Justice Moore, were you aware of
19 and have you looked at the complaint that has been filed
20 against you?

21 A. Yes.

22 Q. Today?

23 A. Yes.

24 Q. And you're aware of the six charges that
25 they have brought against you?

1 A. Yes.

2 Q. Okay. And I would specifically direct you
3 to some of those charges, specifically the first charge
4 that you failed to obey an order, and therefore affecting
5 the integrity and independence of the judiciary?

6 A. Yes.

7 Q. Are you aware of that charge?

8 A. Yes.

9 Q. Have you done anything in your opinion and
10 belief to affect the integrity and independence of the
11 judiciary?

12 A. Yes, I think that the acknowledgement of God
13 does both of that. The charges -- let me just say as I
14 understand the charges, there's charge one and charge two
15 of Canon 1. Charge three of Canon 2. And charge four,
16 five of Canon 2A. And charge six out of Canon 2B. But
17 every charge relates to the same actions that I did not
18 comply with the order of the District Judge.

19 Canon 1, for example says uphold the
20 integrity and independence of the judiciary.

21 And charge 2 is failure to observe high
22 standards of conduct so that the integrity and independence
23 of the judiciary is preserved.

24 Now, by acknowledging God, we definitely
25 uphold the integrity of the judicial branch. The very

1 Canons of Ethics which are brought against me are based
2 upon an acknowledgement of God. And it's very clear from
3 our history in this state -- the Canons, for example, the
4 opening paragraph of those Canons I have here says -- I had
5 it here -- here it is.

6 The opening preamble to the Code of Ethics
7 says the first legal ethics code in the United States was
8 formulated and adopted by the Alabama State Bar in 1887.
9 It was later adopted with only minor changes by Georgia,
10 Virginia, Michigan, Colorado, North Carolina, Wisconsin,
11 West Virginia, Maryland, Kentucky and Missouri, between
12 1887 and 1906, and finally by the American Bar Association
13 in 1908. And the Supreme Court of Alabama accordingly
14 adopts the following Canons as the code for judges and
15 declaration that the people of State of Alabama have a
16 right to expect of them.

17 Now, I think Alabama can be very proud of
18 the Code of Judicial Ethics, which all the states
19 followed. But you've got to understand, as I said in the
20 video, God is the basis of our law and of our government,
21 and indeed, the basis of the preamble. And if you will
22 turn to the -- there was a Law Review article in the Jones
23 Law Review, which addressed the Code of Ethics, and that
24 was the first significant contribution of Thomas Goode
25 Jones, from which we get Jones Law School, that he

1 formulated this code of ethics. He was also president of
2 the Alabama Bar Association in 1901. I believe the lady
3 here, the assistant curator of the Alabama Supreme Court,
4 state law library, said that Thomas Jones, being interested
5 in the welfare of lawyers and the judicial branch, and he
6 formulated these ethical standards. He kept a copy of 1854
7 Essay on Professional Ethics by a man by the name of George
8 Sharswood. And also A Course of Legal Studies by David
9 Hoffman in 1917, and 1836, his Resolution of Professional
10 Department.

11 These things were -- both Hoffman and
12 Sharswood were very religious men. Hoffman and Sharswood
13 relied heavily on scriptural teachings and moral principles
14 as a basis for their work. Sharswood, for his part,
15 believed that laws and principles were laid down by a
16 supreme being. Both men believed that the Book of Proverbs
17 was a source of ethical principles for lawyers.

18 Now, this is a statement made in this Law
19 Review by none other than former Alabama Supreme Court
20 Justice Alva Maddox. Justice Maddox of course was most
21 recent -- recent departure, only recently departed the
22 Alabama Supreme Court where he served over twenty-seven,
23 nearly thirty years. And Justice Sharswood -- I'm sorry,
24 Justice Maddox is the one that said both Hoffman and
25 Sharswood relied heavily on scriptural teachings and moral

1 principles as a basis for their work. And he believed,
2 Sharswood, that law was derived from principles laid down
3 by a supreme being.

4 So you can see that this code of ethics
5 which extends all across the United States now originally
6 adopted from Alabama, even adopted by the American Bar
7 Association with slight modifications, originated from an
8 acknowledgement that it was God who was the source of our
9 ethics. And to acknowledge God cannot be a violation of
10 the canon of ethics, it's the very thing that supports the
11 integrity of an ethical code. Without that, there's no
12 basis.

13 Q. As a Deputy District Attorney and a
14 Circuit Judge and in private practice, and now as the
15 Supreme Court of State of Alabama, have you always
16 maintained high standards of conduct?

17 A. Yes.

18 Q. Have you ever been charged, prior to this,
19 by the Judicial Inquiry Commission, formally charged?

20 A. No. No. Not -- no.

21 Q. Have you ever encouraged anyone to violate a
22 court order?

23 A. No.

24 Q. Have you ever encouraged anyone to disobey a
25 court order?

1 A. No.

2 Q. Do you believe, Chief Justice, that what you
3 have done is a fulfillment of what you told the Alabama
4 people you would do when you ran for this office?

5 A. It's not only a fulfillment of what I told
6 the people of Alabama I would do by upholding the moral
7 foundation of law, it was the duty which I came into as
8 Chief Justice, to uphold the Alabama Constitution and the
9 Constitution of the United States, both of which
10 acknowledge God.

11 Q. Do you believe what you've done and what
12 you're charged with, do you believe that has brought the
13 judicial office into disrepute in anyway?

14 A. On the contrary. What I have done has
15 brought the judicial office into a position of high respect
16 and confidence. I mean, the only thing is that when people
17 take office, they should do what they said they were going
18 to do. Not change.

19 Q. Do you intend as Chief Justice of the
20 Alabama Supreme Court, if you are allowed to return to that
21 office, to continue to uphold your oath that you stated you
22 would do and have done?

23 A. Absolutely, to include the acknowledgement
24 of God.

25 Q. Let me ask you this, Chief Justice, were you

1 ever held in contempt by Judge Thompson?

2 A. No.

3 Q. Were you ever taken before any kind of
4 hearing to hold you in contempt?

5 A. No.

6 Q. Was there ever any formal process started to
7 hold you in contempt, other than that motion that was
8 filed?

9 A. I think the motion is the only thing, and
10 they withdrew the motion, plaintiffs did.

11 Q. Are you aware of a law that was enacted
12 regarding the enforcement of Judge Thompson's order?

13 A. You mean by the United States Congress?

14 Q. Yes.

15 A. There was a resolution, or a bill -- I guess
16 it was a bill.

17 Q. I show you what's been marked as Moore's
18 exhibit number seven?

19 A. Yes.

20 Q. It is denoted as the Departments of
21 Commerce, Justice and State, the Judiciary and Related
22 Agencies Appropriations Act, 2000 and four, and I direct
23 you to section 808 of that and ask you you read that for
24 me.

25 A. Says section 808, none of the funds

1 appropriated in this Act may be used to enforce the
2 judgment of the United States Court of Appeals for the 11th
3 Circuit in Glassroth versus Moore, decided July first,
4 2003. Or Glassroth versus Moore, 229 F. Supp. 2d 1067,
5 Middle District of Alabama, 2002.

6 BY MR. JONES: Again, I believe that's been
7 admitted. I would like to publish copies of that if that's
8 fine, your Honor.

9 BY THE COURT: Yes.

10 BY MR. JONES: Your Honor, I don't know what
11 your wishes are wish as far as time goes, this is a good --
12 I don't have much more, this would be a good stopping point
13 if the court intends to break for lunch and give me a
14 chance, it might help me expedite whatever else I have to
15 do to wind it up.

16 BY THE COURT: I think the court would
17 prefer that we just continue.

18 BY MR. JONES: That's fine. I didn't know
19 if the court planned to break or not.

20 BY THE COURT: Well, we did, but I think
21 with where we are in the testimony, I think it would be
22 better if we proceed.

23 BY MR. JONES: Yes, sir.

24 BY MR. JONES:

25 Q. Chief Justice, do you wish to return as your

1 duties as Chief Justice of the Alabama Supreme Court?

2 A. Absolutely.

3 BY MR. JONES: Your Honor, if I could have
4 just one second to confer?

5 BY THE COURT: Yes.

6 BY MR. BUTTS: Maybe more like two minutes,
7 judge.

8 BY THE COURT: That's fine.

9 (Brief pause)

10 BY MR. JONES: Your Honor, that's all I have
11 at this time of Chief Justice Moore. Judge, if you would
12 answer the Attorney General's or his office's questions,
13 please.

14 BY THE COURT: Thank you, Mr. Jones. I
15 think this is probably a good place to break. We'll break
16 for lunch. This court will stand in recess until 1:30.

17 (Noon recess)

18 BY THE COURT: All right.

19 BY MR. PRYOR: Your Honor, I'd like to have
20 one housecleaning measure taken care of?

21 BY THE COURT: Okay.

22 BY MR. PRYOR: The last exhibit that the
23 Chief Justice offered is a House appropriations bill that
24 is now pending in the U. S. Senate. I just wanted the
25 record to accurately reflect that that is a bill, an

1 appropriations bill that passed the House. It has not
2 passed the Senate, has not become law. We don't object to
3 its admission, we just wanted the court to be aware of its
4 exact status.

5 BY THE COURT: I don't think that microphone
6 is on.

7 BY MR. PRYOR: Do I need to repeat it?

8 BY THE COURT: Do you agree with that?

9 BY MR. JONES: Yes, sir. I can verify it's
10 passed in the House, so that's fine with me.

11 BY THE COURT: All right.

12 BY MR. JONES: One other thing, Your Honor,
13 I had some more copies of these, that's an exhibit we
14 already entered and that just makes copies for everybody.

15 BY THE COURT: That's fine. We would have
16 the witness to return to the stand.

17 BY MR. JONES: He's on his way back, Your
18 Honor -- there he is.

19 BY THE COURT: You may proceed with your
20 questions.

21 CROSS EXAMINATION

22 BY MR. PRYOR:

23 Q. Good afternoon, Mr. Chief Justice.

24 A. Good afternoon, Mr. Attorney General.

25 Q. Mr. Chief Justice, I believe you testified

1 on direct examination that you did not remove the monument
2 because to do so would require you to violate the 1st
3 Amendment, your oath of office, and the 10th Amendment?

4 A. Yes, sir.

5 Q. While the Glassroth case was pending in the
6 federal courts, after you were sued in the United States
7 District Court for the Middle District of Alabama, you had
8 attorneys represent you in that court; isn't that right?

9 A. Yes.

10 Q. Do you recall that they presented argument
11 on your behalf in those courts?

12 A. Yes.

13 Q. One of the arguments that they made on your
14 behalf was that the monument was not a law, respecting an
15 establishment of religion, in violation of the First
16 Amendment; isn't that right?

17 A. Yes, sir.

18 Q. You made that argument in the District
19 Court, didn't you?

20 A. Yes.

21 Q. And you made it in the 11th Circuit, didn't
22 you?

23 A. Yes.

24 Q. And you made that argument in the Supreme
25 Court of the United States, didn't you?

1 A. We submitted it on --

2 Q. Right?

3 A. We asked for petition of writ of certiorari
4 on other grounds -- in other words, on the Lemon test, but
5 that was an argument that would have been made.

6 Q. You asked the Supreme Court of the United
7 States to hear your case and to hear that argument; isn't
8 that right?

9 A. Yes.

10 Q. The District Court disagreed with your
11 argument; isn't that right?

12 A. Yes.

13 Q. And the 11th Circuit disagreed with your
14 argument?

15 A. Yes.

16 Q. And the Supreme Court of the United States
17 decided not to hear your case; isn't that right?

18 A. Yes.

19 Q. You also presented an argument to the
20 District Court about your oath; didn't you?

21 A. Yes.

22 Q. And you presented that argument in the 11th
23 Circuit, didn't you?

24 A. I did.

25 Q. And in your petition to the Supreme Court of

1 the United States, you asked them to hear that argument,
2 didn't you?

3 A. Yes.

4 Q. And each of those -- well, let me start
5 first. The District Court disagreed with that argument;
6 isn't that right?

7 A. Yes.

8 Q. And the 11th Circuit disagreed with that
9 argument?

10 A. yes.

11 Q. And the Supreme Court of the United States
12 decide not to hear your case?

13 A. Yes.

14 Q. Finally, as to your argument that the
15 injunction violated the 10th Amendment, you presented that
16 argument in the District Court, didn't you?

17 A. Yes.

18 Q. And you presented it in the 11th Circuit,
19 didn't you?

20 A. We did.

21 Q. And it was one of the points that you made
22 in your petition to the Supreme Court of United States when
23 you asked them to hear your case, wasn't it?

24 A. For the writ of mandamus, yes.

25 Q. And the District Court disagreed with your

1 argument; isn't that right?

2 A. Yes.

3 Q. And the 11th Circuit disagreed with the

4 argument; isn't that right?

5 A. Yes.

6 Q. And the United States Supreme Court decided

7 not to hear your opinion?

8 A. It did, yes.

9 Q. Now, earlier you also testified, I believe,
10 that when the mandate was returned to the District Court,
11 that it was your understanding that you should pursue the
12 appellate process, and the District Court should not enter
13 an injunction; isn't that right?

14 A. Well -- repeat that again, please.

15 Q. It was your understanding when the mandate
16 came back to the District Court?

17 A. Okay.

18 Q. That you were to pursue your appellate
19 process and the District Court was not to enter an
20 injunction of the kind that it entered on August 5th; isn't
21 that right?

22 A. Well, the District Court had already entered
23 an injunction, but they stayed the injunction, and there
24 was a stay in effect when the mandate came down.

25 Q. But you didn't think that the District Court

1 should enter the injunction that it did on August 5th?

2 A. And not lift the stay, right. I did not
3 think that they should have lifted the stay to impose the
4 injunction after the mandate came down.

5 Q. You asked, though, after the August 5th
6 injunction was entered by the District Court, you asked the
7 District Court to stay that injunction, didn't you?

8 A. After the August 5th --

9 Q. Yes.

10 A. -- Came down?

11 Q. Yes.

12 A. No, no. The District Court asked us if we
13 had an objection and we registered an objection. I believe
14 that's what you're talking about. Maybe I'm confused, but
15 after the mandate came down, the District Court, on --

16 BY MR. PRYOR: May I approach the witness,
17 Your Honor?

18 BY THE COURT: Yes.

19 BY MR. PRYOR:

20 Q. I would like to show you, Mr. Chief Justice,
21 what has already been admitted into evidence as JIC exhibit
22 number two, the order of the United States District Court
23 of the Middle District of Alabama, dated the 18th of August
24 2003?

25 A. Right.

1 Q. And if you would like, take a moment to look
2 at it. Does that appear to be an order denying a request
3 by you to stay the injunction of August 5th?

4 A. Okay. Okay. Sure, this is the motion to
5 stay. Okay, I've got my times crossed out. I thought you
6 were talking about after the mandate, and about the
7 conference the court had -- this is the motion to stay,
8 correct.

9 Q. And the District Court denied your motion to
10 stay the August 5th injunction?

11 A. Yes, they did. Then it went to the 11th
12 Circuit, they denied it. Then the United States Supreme
13 Court refused to stay the mandate.

14 Q. Well, they actually denied an application for
15 a stay --

16 A. Automatically.

17 Q. -- Of the injunction?

18 A. Yes.

19 Q. On August 20th?

20 A. Yes. August 20th, the very day it was
21 originally set, I understand what you're talking about.

22 - Q. Right. The deadline set by the August 5th
23 injunction?

24 A. Sure. I was speaking earlier about the
25 August 4th conference call. I thought that's what you were

1 talking about.

2 Q. Mr. Chief Justice, you stand by your
3 testimony of August 22nd of this year before the Judicial
4 Inquiry Commission that you would do it again, don't you?

5 A. I would do everything that I have done
6 again, yes. I mean, what I have done is comply with the
7 law. If that's -- I see what you're talking about when I
8 said I would do it again, I'm not --

9 Q. Well, as you know, we admitted into evidence
10 the transcript of your testimony, I just -- the shorthand
11 reference, I just want to know whether you stand by that
12 testimony of that today?

13 A. I stand by that testimony of that today, and
14 I have not reviewed it, but --

15 Q. Okay. Well, if you would like to review it,
16 you can.

17 A. If I may?

18 Q. Sure.

19 A. So that we'll know what you're -- here it
20 is. Is this the whole thing?

21 BY MR. JONES: That's the paragraph, that's
22 the paragraph where the phrase he has just referred to came
23 from.

24 A. Okay, this is --

25 BY MR. PRYOR:

1 Q. Here's the entire transcript.

2 A. Okay. If it's possible for me to read this?

3 Q. Sure.

4 A. May I read the whole thing?

5 Q. Certainly.

6 A. Okay, because I think it's important to
7 know what -- when I said I would do it again -- Chief
8 Justice Moore, we welcome you here. We know that these
9 have been busy times time for you, and we appreciate your
10 presence here today --

11 Q. Do you want to read the entire transcript?
12 I don't mind you reading it, Mr. Chief Justice, but I would
13 ask that you just read it to yourself to speed things
14 along.

15 BY THE COURT: The transcript has already
16 been stipulated to. It's already in evidence.

17 A. No, I didn't want to read the whole
18 transcript. I wanted to read what I said. This is the
19 whole transcript of what Mr. Jauregui said, so --

20 BY MR. PRYOR:

21 Q. Okay.

22 A. If I may read this paragraph. I am
23 upholding my oath. I have nothing to apologize for. I am
24 upholding the 1st Amendmen, and I am upholding the
25 Constitution of Alabama. And when we are too ashamed to

1 acknowledge God, when we let a federal judge come in and
2 tell us and call it the rule of law, that we can't
3 acknowledge God as the justice system says we must -- as
4 the Constitution says we must, then we've got a problem.

5 I did what I did all the way through, not
6 from what you read in the papers, not from what you imagine
7 about politics or religion or forcing my beliefs on
8 somebody else. I did what I did because I upheld my oath.
9 And that's what I did. So I have no apologies for it. I
10 would do it again. I didn't say I would defy the court
11 order. I said I wouldn't move the monument. And I didn't
12 move the monument, which you can take that as you will.

13 But, you know, I think you have to have
14 respect for the Court; but I also have respect enough for
15 the Court to tell them when they have no jurisdiction in
16 this matter under the 10th Amendment to the United States
17 Constitution, which declares that the powers not delegated
18 to the United States by the Constitution nor prohibited by
19 it to the states are reserved for the states, respectively
20 or to the people. In other words, the establishment of the
21 justice system doesn't belong with the federal government
22 in Alabama.

23 But in any event, I respect you guys and
24 ladies. And that's my statement. And if you have no
25 questions, or if you have a question, I'll be glad to

1 answer it. And that was it.

2 Q. And you stand by that testimony?

3 A. Yes, sir.

4 Q. And your understanding is that the federal
5 court ordered that you could not acknowledge God; isn't
6 that right?

7 A. Yes.

8 Q. And if you resume your duties as Chief
9 Justice after this proceeding, you will continue to
10 acknowledge God as you have testified that you would today,
11 no matter what any other official says?

12 A. Absolutely. Without -- if I can clarify
13 that. Without an acknowledgement of God, I cannot do my
14 duty. I must acknowledge God. It says so in the
15 Constitution of Alabama. It says so in the 1st Amendmen to
16 the United States Constitution. It says so in everything
17 I've read. So --

18 Q. Well, the only point I'm trying to clarify,
19 Mr. Chief Justice, is not why, but only that in fact if you
20 do resume your duties as Chief Justice, you would continue
21 to do that without regard to what any other official says;
22 isn't that right?

23 A. Well, I would do the same thing this court
24 did in starting with the prayer. That's an acknowledgement
25 of God. I would do the same that Justices do when they

1 place their hand on the bible and say So Help Me God. It's
2 the acknowledgement of God.

3 The Alabama Supreme Court opens with God
4 save this state and this Honorable Court. It's an
5 acknowledgement of God, in my opinion, which I have written
6 many opinions, acknowledging God as a moral source of our
7 law. I think you must.

8 Q. You bring up opinions, sometimes you have
9 written dissenting opinions, haven't you?

10 A. Yes.

11 Q. And sometimes you have been the only member
12 of the Supreme Court of Alabama to write a dissenting
13 opinion?

14 A. Absolutely. Many times there's only one
15 dissenting in all the court, and many times one judge will
16 dissent when the others don't.

17 Q. And if you write a dissenting opinion and
18 the other eight Associate Justices have another opinion,
19 when a case returns to the Circuit Court, which opinion is
20 the Circuit Judge supposed to follow?

21 A. The court of majority.

22 BY MR. PRYOR: Thank you, those are all my
23 questions.

24 BY THE COURT: Thank you, Mr. Attorney
25 General. Respondent?

1 BY MR. BUTTS: Wait a minute.

2 BY MR. JONES: Nothing further.

3 BY THE COURT: Thank you.

4 BY MR. JONES: From the Chief Justice.

5 BY THE COURT: He may step down. Any
6 members of the Court have any questions?

7 BY JUDGE VOWELL: I have a question. Mr.
8 Chief Justice, I'm afraid that there's some part of your
9 testimony that I don't quite understand. You say that you
10 don't intend to violate the court order; is that correct?

11 A. Sir, say that again, please?

12 BY JUDGE VOWELL: Well, let me state it more
13 clearly. If you were returned to your office, would you
14 follow the injunction which is a final injunction issued by
15 the United States District Court?

16 A. The injunction was to move the monument.
17 The monument has been moved. You can't follow something
18 that's already been done.

19 BY JUDGE VOWELL: If you were returned,
20 what, sir, would you do you with the monument?

21 A. Well, I certainly wouldn't leave it in a
22 closet shrouded from view of the public. I certainly
23 wouldn't hide the word of God. It's an acknowledgement of
24 God. Exactly what I would do with it, I haven't decided.

25 BY JUDGE VOWELL: If you were --

1 A. But it wouldn't stay in the monument -- the
2 closet. I would assure you that.

3 BY JUDGE VOWELL: Would you put back in the
4 rotunda from which it was removed?

5 A. I haven't decided what I would do with it.

6 BY JUDGE VOWELL: Well, I think you should
7 let us know that. It seems to me a very important issue as
8 to whether if you were returned to office, you would obey
9 the court order to remove it?

10 A. Of course, obedience of the court order was
11 to remove it from where it was. It has been removed.
12 There would be nothing to obey. Now what would I do with
13 the monument, I haven't even thought about it, frankly,
14 except I would not leave it in a closet. I have not
15 entered any ideas in my mind as to where I would put it or
16 what I would do with it.

17 BY JUDGE VOWELL: I see.

18 A. But I would not leave it where it is, sir.

19 BY JUDGE VOWELL: All right. Thank you,
20 sir.

21 BY THE COURT: Any additional questions from
22 the court? Thank you, Mr. Chief Justice.

23 A. Thank you.

24 BY THE COURT: Respondent may call its next
25 witness.

1 BY MR. JONES: That's all we have, Your
2 Honor. We rest.

3 BY THE COURT: Okay. Any rebuttal?

4 BY MR. GIBBS: No, sir, Your Honor.

5 BY THE COURT: All right, then we may
6 proceed with closing arguments.

7 CLOSING ARGUMENTS

8 BY MR. GIBBS: May it please the court. In
9 this case, the facts of what happened here are clear. In
10 this case, Chief Justice Roy Moore participated in lengthy
11 litigation in the United States District Court for the
12 Middle District of Alabama, in the 11th Circuit, and sought
13 review in the United States Supreme Court, on an issue
14 involving the 10 Commandments monument in the rotunda of
15 this building. He litigated, he raised all the claims that
16 he had to raise, and he lost. The exhibits that we have
17 presented in evidence here show that the judgment of the
18 District Court, at the various times, the injunction,
19 careful consideration given to the arguments raised by
20 Chief Justice Moore, the 11th Circuit, the considerations
21 they gave to these arguments, and then the United States
22 Supreme Court's refusal to hear the case.

23 It is clear when the case came back to the
24 Middle District in August of this year, and the injunction
25 was entered, at that point, Chief Justice began -- Chief

1 Justice Moore began to violate the Canons of Judicial
2 Ethics. You have only to look at his statements of August
3 14 of this year. I am reading from page four.

4 As Chief Justice of the State of Alabama, it
5 is my duty to administer the justice system of our state,
6 not to destroy it. I have no intention of removing the
7 monument of the 10 Commandments and the moral foundation of
8 our law. To do so would in effect result in the
9 disestablishment of our system of justice in the state.
10 This I cannot and will not do.

11 This is the statement, the type statement
12 that was -- that he issued on August 14. You saw the
13 taped statement, the tape of the statement that he gave in
14 which he said the same thing. So on August 14 of this
15 year, Chief Justice Moore publicly, vehemently stated that
16 he had no intention whatsoever of obeying a court order, a
17 court order entered in the case where he had been a
18 litigant, had had the opportunity to raise each and every
19 claim that he wanted to raise, where he was -- his case was
20 considered not just by one judge in the Middle District,
21 but by three judges of the 11th Circuit, and then the
22 United States Supreme Court decided they did not think the
23 case was worthy of consideration. On August 14, he made a
24 public statement that he would not follow the law.

25 Then when the deadline from the injunction

1 entered by the Middle District came and went on August 20th
2 of this year, the Chief Justice did not do what he had been
3 ordered to do, in a lawful, valid, unstayed injunction.

4 He, on the 21st, made another statement.
5 You saw that statement. The JIC exhibit nineteen, his
6 written statement, or typed statement of August 21st again
7 shows his refusal, that his refusal was deliberate, that he
8 had no intention, had never had any intention of complying
9 with the order of the Middle District to remove the
10 monument. And that intent is supported by his actions, or
11 rather his lack of actions, because the day to remove the
12 monument came and went, and it remained unmoved.

13 There was a suggestion in opening statement
14 about how Chief Justice Moore was never found in contempt
15 of court. That was through no action taken by Chief
16 Justice Moore. In its order, the Middle District talked
17 about imposing fines in a geometric progression on the
18 State of Alabama, and in order to avoid that, not Chief
19 Justice Moore, but the other Justices on the Alabama
20 Supreme Court acted to prevent a contempt filing. But it
21 is clear, even absent a contempt filing, Chief Justice
22 Moore never did anything to come into compliance with that
23 court order. The fact that he was not found in contempt is
24 not relevant here, because by his actions, Chief Justice
25 Moore displayed that he had no intention of ever complying

1 court. So the question then becomes, are the charges in
2 this case, the six violations, the first is a violation of
3 Canon 2A, which requires the judge to respect and comply
4 with the law. It's clear that Chief Justice Moore did not
5 respect and comply with the law in this case.

6 The second violation that's alleged is a
7 violation of Canon 1, which requires that a judge uphold
8 the integrity and independence of the judiciary. This,
9 like the remaining charges of the Canon violations in this
10 case, concern -- Chief Justice Moore's actions did not
11 occur in a vacuum. Chief Justice Moore's actions in
12 refusing to comply with the law do set an example. They do
13 have an effect on the public. His defiance, his refusal to
14 follow the court order in this case was very public. And
15 that public refusal to follow a court order undercuts the
16 entire working of the judicial system. It undercuts the
17 ability of the courts to do business. If the court's order
18 is not an obligation but a matter of choice -- I appeared
19 in front of a judge once and I had the lack of wisdom at
20 some point to take issue with one of his rulings after he
21 had ruled, he informed me rather quickly that, well, Mr.
22 Gibbs, it's a ruling, not a negotiation. Now, this is an
23 order, not a negotiation. When a court issues an order to
24 a litigant, that litigant must do as he is told, unless he
25 can obtain relief by appeal. And that's what Chief Justice

1 Moore tried to do in this case. He was unsuccessful. But
2 a losing litigant must obey an order of the court. When
3 you have an example, a Chief Justice of the judiciary
4 system, the head of the judicial system who is not obliged
5 to follow a court order, but can choose, it's optional
6 whether to obey a court order or not, then what message
7 does that send to the public, to other litigants, to people
8 who rely on the judicial system for relief? Well, the
9 message it sends is, well, if you don't like the court
10 order, you don't have to follow it. Now, that absolutely
11 undercuts the integrity and independence of the judiciary.
12 It absolutely violates the Canon 1 requirement that a judge
13 must observe high standards of conduct so that the
14 integrity and independence of the judiciary might be
15 preserved as charged in the complaint.

16 And the fourth violation that Canon 2
17 requires a judge avoid impropriety or the appearance of
18 impropriety in all of his activities. The Canon 2A
19 requirement that a judge conduct himself at all times in a
20 manner that promotes public confidence in the integrity and
21 impartiality of the judiciary.

22 And the last is the Canon 2 violation that
23 the judge avoid conduct prejudicial to the administration
24 of justice which brings the judicial office into disrepute.

25 I submit to you that all of those Canons,

1 all those Canons were violated by Chief Justice Moore's
2 actions in this case, because Chief Justice Moore's actions
3 in this case undercut the ability of the judicial system to
4 do its work by issuing orders, and expecting those orders
5 to be followed, not by the losing litigant. If that
6 conduct -- if conduct that says that an order is an option,
7 it's not an order, it's not binding, is the rule, then it
8 will have disastrous effects on the judicial system as a
9 whole. And it is that, the failure to comply with the law
10 as is required by the Canons, and the devastating effect
11 that this example that the highest official, the highest
12 official in the judicial system, it is that example that
13 violates -- that shows the violation of these other
14 Canons.

15 Again, what happened here, what happened
16 here is clear. Chief Justice Moore had a full and fair
17 opportunity to litigate the issues in this case, just like
18 many other litigants. Just like many other litigants, he
19 lost. Maybe he was right, maybe he was wrong, but he had
20 a trial. He had an opportunity to get reviewed, and he
21 lost. A losing litigant doesn't have a choice about
22 following a court order. That order is binding. Chief
23 Justice Moore attempted to get relief from the order. He
24 was unsuccessful. In order to comply with the law, in
25 order to comply with the Canons of Judicial Ethics, he had

1 no choice but to follow the order. And when he chose not
2 to follow the order, then he violated the Canons of
3 Judicial Ethics. And for that, this court must hold him
4 accountable, and should find that he has violated the
5 Canons as charged in the complaint in this case. Thank
6 you.

7 BY THE COURT: Thank you, Mr. Gibbs.
8 Respondent.

9 BY MR. JONES: May it please the court,
10 Chief Justice Moore, Attorney General Pryor, my fellow
11 counsel. As I look around, I have to wonder, amongst all
12 these bright and learned attorneys, what a lawyer from the
13 brier patch down in Luverne is doing here. It's
14 overwhelming. But I can say this, God has chosen this time
15 and this place so that we can save our country and save our
16 courts for our children.

17 Now, I would like to take credit for that,
18 but I must give credit to that to the speaker who said
19 that, and that was Attorney General Bill Pryor on April 13,
20 1977 (sic) at a Save The 10 Commandments rally.

21 (Audience applauding)

22 BY THE COURT: Please refrain from clapping
23 or making any other gestures. You may proceed.

24 BY MR. WILSON: Thank you, Your Honor. I do
25 agree that this is the time now, you know, it's hard for an

1 attorney like me to make a closing without telling a story,
2 so there's a story that I think is very appropriate here.

3 There was a story of the man who was a
4 tightrope walker, and he decided he was going to walk a
5 tightrope between two tall buildings, and of court it was
6 publicized that he was going to do this. When he got
7 there, there was a crowd. So he climbs up on the
8 building, and as he gets to the top of the building, the
9 crowd is down there, he looks down at the crowd, and he
10 says do you believe that I can walk across this tightrope?
11 Do you believe I can do it? The crowd yells, we believe.
12 You can do it. So he gets on the tightrope and he walks
13 across to the other side.

14 When he gets to the other side, he looks
15 down and he says, how many of you believe that I can ride a
16 bicycle across this tightrope? Of course the crowd goes
17 wild. They say we believe. You can do it. So he gets on
18 his bicycle, and he goes back across to the other side.

19 He gets to the other side, he looks down at
20 the crowd. He says, how many of you believe that I can go
21 across this tightrope in a wheelbarrow? Of course they all
22 say we believe. We believe. You can do it. And he says,
23 okay, which one of you wants to get in the wheelbarrow?

24 Now, I say that because of this, we're here
25 day on a very important issue, but let me say this, as I

1 look and see things across this state, when we run for
2 political office, we prominently display what church we go
3 to, or how many years we taught Sunday School. We
4 prominently display that on our literature.

5 When we're elected to office, we take an
6 oath, even as judges here on this court took, that says you
7 will fulfill your duties, So Help me God. When we take
8 that oath, we place our hand on a bible. Not any other
9 document. A bible.

10 When our courts begin, just like we did
11 today, they begin it with prayer. Not just this court, but
12 the court that I am honored to serve in Crenshaw County
13 does it every time.

14 When our Legislature begins, they begin
15 their legislative session with a prayer.

16 Every year, every year, our appellate courts
17 attend a church service called the Red Mass, asking for the
18 blessing of God on the court.

19 Our currency prominently states, In God We
20 Trust.

21 The United States Supreme Court, when they
22 begin their sessions, they say, God Save The United States
23 and this Honorable Court.

24 Our pledge of allegiance, and I have to
25 admit, you know, I didn't always know how to say the

1 pledge. When I first joined the Rotary Club in Luverne,
2 when I was a much younger person, a very nice fellow by the
3 name of Ed Turner took me aside, and explained to me how
4 you say the pledge of allegiance. He said look, you don't
5 ever say it any other way but one nation under God. He
6 said because you don't ever want to separate God from the
7 nation. The Luverne Rotary Club still says the pledge that
8 way today. We said it that way last Monday.

9 So we're here today standing on the ground,
10 looking up, looking up, and the question is, who's going to
11 get in the wheelbarrow? And we're here because somebody
12 finally got in the wheelbarrow. Chief Justice Moore
13 finally got in the wheelbarrow. That's what he has done.

14 Now, counsel for the Judicial Inquiry
15 Commission has characterized what he's done as supporting
16 anarchy, a license for anybody that wants to, to go out and
17 disobey an order. And you have read the trial briefs and
18 what they said today, but we have cited in our trial brief
19 an article by Mr. Tuomala, and I hope that I pronounce it
20 correctly, that's how I think it is, and there -- I want to
21 refer to it quickly, he quotes in there, Brigadier General
22 Paul K. Van Reifer and it's an address he made upon
23 assuming command of the 2nd Marine Division. You see, just
24 like what we have just heard, the military, above
25 everybody, depends on what? Orders. You can't think of an

1 institution in our society that is more dependent on orders
2 than the military. This is what the Brigadier General
3 said, he said for most of us, these four values, Faith,
4 Family, Constitution and Corps, will normally be in balance
5 and we need make no decision in regard to their
6 priorities. Occasionally, however, conflicts can arise.
7 If it does, use the order in which I have presented them to
8 make a judgment. For example, if our Corps asks you to do
9 something that would violate your oath to support and
10 defend the Constitution, don't do it.

11 Or, if the nation asks you to act in a
12 manner which violates your faith, don't do it. Those who
13 live by faith, remember family and friends, defend our
14 nation, and honor the Corps, will be a source of pride to
15 all who stand in and behind them on the frontiers of
16 freedom.

17 The same applies here. The same applies
18 here. There will not be anarchy. There won't be this mass
19 refusal to obey court orders. That won't happen. In fact,
20 I would suggest that possibly, possibly, there may even be
21 more respect for the judiciary because of a man with
22 conviction and conscience that finally got in the
23 wheelbarrow.

24 Now, counsel for the Judicial Inquiry
25 Commission have basically said there's no other remedy for

1 what the Chief Justice has done, other than removal. As I
2 read their trial brief and have heard their arguments here
3 today, as I understand it, they think that's the only
4 appropriate remedy. They have cited you a number of cases
5 in their trial brief, a number of cases. I have made
6 copies of those cases, five of them, five of them, and I
7 would ask you to you please read those cases. Please read
8 those cases and see what they have cited to you, and the
9 conduct that took place in those cases, and compare those,
10 if you would, to the case that's before you today. Now,
11 they may correct me, and I'm sure they will if I'm wrong,
12 but I have not found a single case where a judge was
13 disciplined for disobeying a single court order. Not one.
14 And they haven't cited you one. The difference between
15 this case and those cases is substantial. Substantial.
16 Please read those cases. There's not any dishonesty here.
17 There's not any neglect of duties here. None of the things
18 that these other judges had in their cases. There's been
19 no history of disciplinary proceedings. Nothing like
20 that. This is a totally different and separate case.

21 And if the court would indulge me, I know we
22 don't have the opportunity, as is the procedure of this
23 court, to come back after your finding and give you any
24 evidence in mitigation or otherwise of whatever you may do,
25 but I do want to point out to you a couple of cases that

1 have come directly from this court.

2 I believe the last judge that was removed by
3 the Court of Judiciary was in 1999. That case involved a
4 judge who did several things, and I would just list them
5 for you. He made incorrect statements to
6 investigators. He presented a false, worthless and
7 misleading deposit slip to state examiners to try to cover
8 a twenty-three thousand dollar charge-back they had made to
9 him. He cashed eight personal checks from funds in his own
10 office that turned out that his checks were returned
11 because they were insufficient, and he did not pay those
12 checks until three years later, when the examiners found it
13 and brought to his attention. The judge also failed to
14 properly maintain his office. And once that was brought to
15 his attention, he made absolutely no effort whatsoever to
16 correct those deficiencies.

17 Now, that judge was the last judge that was
18 removed from office, and even with those facts, the court
19 was not unanimous that that judge be removed.

20 I would also point out one other case, Court
21 of Judiciary Case Number 26. In that case, a judge was
22 charged with inappropriately touching females under the age
23 of 21, under his jurisdiction as a District Judge. He was
24 also accused of inappropriately touching females over the
25 age of 21 that were employees in the courthouse. Those

1 were the charges against him.

2 He was found to have violated Canons 1, 2,
3 2A and 3A. That was the finding of the court. His
4 punishment was suspension without pay for six months. That
5 was what his punishment was by the court.

6 Your Honors, we believe Justice Moore has
7 not violated the Judicial Canons of Ethics. He's been
8 suspended, disqualified from his office for almost 90 days
9 now. We would ask Your Honors to please let him go back to
10 the position that he was elected to do.

11 At this time, I would call on Justice Butts
12 to finalize our closing.

13 BY THE COURT: Thank you, Mr. Jones.

14 BY MR. BUTTS: Your Honors, Chief Justice
15 Moore, Attorney General Pryor, fellow counsel. You know,
16 so many times in this life, we just seem to be completely
17 lost. Is this of those times? After this verdict, when
18 you are alone with your thoughts, can you answer and be
19 satisfied with your answer to such questions as, did I
20 serve my God today? Did I do the right thing today? How
21 will history view my actions? You may be sure history will
22 judge us all. You may be assured that, as President
23 Kennedy once wrote, only the very courageous will be able
24 to keep alive the spirit of individualism and dissent which
25 gave birth to this nation, nourished it as an infant, and

1 carried it through its severest test to the attainment of
2 its maturity.

3 Throughout history, there are many examples
4 of courage, or as Ernest Hemingway liked to call it, grace
5 under pressure. You need look no further than the story
6 of Senator Edmond Ross of Kansas who was elected as a
7 radical to the U. S. Senate, and when the impeachment of
8 Andrew Johnson occurred after he succeeded President
9 Lincoln after his assassination. Edmond Ross was the one
10 senator that kept Andrew Johnson from being removed from
11 office. Senator Ross was quoted as saying, prior to
12 casting his vote, I looked down into my open grave. Yet,
13 Senator Ross is given a place of honor in standing alone
14 with his convictions and with his conscience in doing the
15 right thing.

16 So how do you judge Roy Moore? You cannot
17 doubt his courage. You cannot doubt his love of God. You
18 cannot doubt his love of country. You cannot doubt his
19 love of family. You cannot doubt his faithfulness to his
20 oath of office. So how did we arrive here at this moment
21 of time? The Judicial Inquiry Commission pursued Roy Moore
22 for ten years until they finally ran him to ground with
23 charges he faces today. The Attorney General would have
24 you believe that this is only a simple issue, that an order
25 was given by a man, a federal judge, to move a granite

1 monument from public view. The Attorney General would say
2 to you that the rule of law requires you to obey that
3 order. If you believe the Attorney General in that
4 argument, then this case can go no further. You will then
5 have convicted Roy Moore. At that time, the only thing
6 left for you to do is decide his punishment. But if you
7 are true to yourselves, you will examine Roy Moore the
8 man and examine Roy Moore the public official. Keep in
9 mind as you examine Roy Moore, his actions that led him
10 here today are not only the results of his beliefs, but
11 also directly the results of actions by federal Judge Myron
12 Thompson. Please also bear in mind that Judge Thompson
13 made the statement that he, Judge Thompson, cannot define
14 religion, that in fact, it would be dangerous to define
15 it. What led us here today is simple; how can an
16 individual that cannot define religion hold that Roy Moore
17 is guilty of the establishment of religion. If Roy Moore
18 is being true to his oath, how can he be guilty of any
19 ethical violation?

20 Chief Justice Moore's defense is quite
21 simple. One, the order of federal judge Myron Thompson was
22 unlawful, because it placed Chief Justice Moore in a
23 position of violating his oath, or ultimately risk being
24 held in contempt of court.

25 Two, Chief Justice Moore's oath under the

1 Constitution requires him to acknowledge God and the moral
2 foundation of our law. Adherence to his oath placed him at
3 odds with the injunction of federal judge Myron Thompson.
4 Justice Moore's oath is to the Constitution, not to any
5 man.

6 To the prosecution's way of thinking, a
7 federal judge has issued a lawful order to remove a display
8 of the 10 Commandments, because it violates the
9 establishment of religion clause of the Constitution.

10 By the prosecution's thinking, since a
11 federal judge issued an order, then it must be a lawful
12 order to remove the monument display.

13 The problem with the prosecution's thinking
14 and those that agree with them, is simply that they have
15 entered into and share a belief that the opinion of judges
16 about the meaning of the Constitution and not the
17 Constitution itself, is the law of the land. As a result,
18 if you believe that way, then the prosecution believes that
19 one's oath of office is an allegiance to the judiciary,
20 rather than to the Constitution.

21 This subjective interpretation of oaths by
22 the prosecution changes the oath from one of allegiance to
23 the law, to an oath of allegiance to an office holder, in
24 this case, a federal judge. Roy Moore took an oath that,
25 quote, I will support the Constitution of the United States

1 and the Constitution of the State of Alabama, so long as I
2 continue to be a citizen thereof, and that I will
3 faithfully and honestly discharge the duties upon which I
4 am about to enter, to the best of my ability, so help me
5 God.

6 As Professor Jeffery Tuomala has so stated,
7 there's an essential difference between an oath promising
8 to support the Constitution and an oath of allegiance to a
9 person or persons.

10 For example, compare the military oath of
11 enlistment that a subject of the Queen of England, where
12 they have the oath of enlistment, with what the oath of
13 enlistment that a citizen of the United States swears, upon
14 military service. A Canadian, for example, states I do
15 swear that I will be faithful and bear true allegiance to
16 her majesty Queen Elizabeth, the second, Queen of Canada,
17 her heirs and successors, according to law, so help me God.

18 An American, on the other hand, says I do
19 swear that I will support and defend the Constitution of
20 the United States against all enemies, foreign and
21 domestic, that I will bear true faith and allegiance to the
22 same, and I will obey the orders of the President of the
23 United States and the orders of the officers appointed over
24 me, according to regulations and the Uniform Code of
25 Military Justice, so help me God.

1 The point is that a servant or subject of
2 Canada or England has no duty of individual judgment.
3 Their oath is to the Queen herself. So that in that
4 stance, one can more easily justify compliance with an
5 unlawful order of the Queen that is contrary to conscience
6 and law, because the oath is one of allegiance to the
7 Queen, and not to the law. What makes this so striking and
8 instructive is that the prosecution has been quoted as
9 saying that the 10 Commandments is the cornerstone of
10 American law. The key to understanding the prosecution's
11 stance is they believe that courts make laws, and by
12 extension, that the official's oath of office is one of
13 allegiance to the judiciary, and not to the Constitution
14 itself.

15 The basis of the six charges against the
16 Chief Justice is not that he violated the 1st or 14th
17 Amendments of the United States Constitution, or of any law
18 enacted pursuant thereto, but rather that he failed to
19 comply with an existing and binding court order directed at
20 him. All six charges are basically the same. What is
21 important to keep in mind is, that the essence of the
22 charge is a violation of the court order. The charge is
23 failure to comply with a court order. The mistake that has
24 been made here is simply that the Judicial Inquiry
25 Commission equated a court order with law. Failure to

1 comply with an order is illegal, only if the order is
2 itself illegal -- I'm sorry, failure to comply with an
3 order is illegal, only if the order itself is legal. Just
4 as a conviction for violating a law is valid only if that
5 law is valid. Every eighteen year old soldier, sailor,
6 airman and marine who has ever worn a uniform, understands
7 the difference between a lawful order and an unlawful
8 order. He or she knows that they may not be convicted
9 under the Uniform Code of Military Justice for failure to
10 obey an unlawful order. The difference between the
11 Attorney General and the Chief Justice does not appear to
12 be in their understanding of the 1st Amendment, it appears
13 to be primarily a difference in their view of a law-making
14 power of court and the meaning of the oath.

15 Chief Justice Moore's position is that he
16 has sworn an oath to uphold and defend the United States
17 Constitution and the Constitution of the State of Alabama.
18 In partially fulfilling his duty, the Chief Justice placed
19 a monument memorializing the moral foundation of American
20 law in the rotunda of the Alabama Judicial Building.

21 Additionally, several provisions of the
22 Alabama Constitution acknowledge the law of God as the
23 foundation of law in Alabama. The Constitution begins with
24 these words in the preamble, in order to establish justice
25 and ensure domestic tranquility and secure the blessings of

1 liberty to ourselves and to our posterity, invoking the
2 favor of Almighty God, do ordain and establish the
3 following Constitution; all men are equally free and
4 independent, they are endowed by their creator with certain
5 inalienable rights, so help me, God.

6 By constitutional provision, the statute,
7 the Chief Justice is the head of the judicial system in
8 Alabama. It is his duty to make sure that judicial
9 personnel have a proper understanding of the law, and that
10 they administer justice properly. The Canons of Judicial
11 Ethics under which the Chief Justice is being prosecuted
12 place additional duties on all judges to properly
13 administer the law.

14 For example, all judges are supposed to
15 participate in establishing, maintaining and enforcing high
16 standards of conduct. Judges are encouraged to speak,
17 write, lecture, teach and participate in other activities
18 concerning the law and the legal system, and the
19 administration of justice.

20 The purpose of ethical conduct is not simply
21 to ensure that justice will be done in individual cases but
22 that the public will be assured of what they have a right
23 to expect.

24 In short, the posting of the 10 Commandments
25 provides the standards of personal conduct for judges and

1 court personnel, the basis for law, and the assurance to
2 the public of the integrity of the system and of the rule
3 of law. Thus, the Chief Justice has a duty to expound the
4 law, as does every lawyer in the State of Alabama. The
5 foundation of the civil law is that standard of justice
6 which is summarized in the 10 Commandments. That
7 foundation is expressly recognized in the Alabama
8 Constitution. When a federal court tells a Chief Justice
9 that he may not perform his duties as required by law, it
10 is the federal District Court judge who is violating the
11 law, not the Chief Justice.

12 It is ironic that the very concerns that
13 Chief Justice Moore addressed with the monument, ignorance
14 and disdain for the moral foundation of our laws, oaths and
15 national creeds, are the very conditions that have led to
16 the charges against him. How ironic. Chief Justice Moore
17 is a graduate of the United States Military Academy at West
18 Point. He is a veteran of a war in Viet Nam. He
19 understands the difference between a lawful order and an
20 unlawful order. He knows why it was unlawful, during the
21 Viet Nam war, for Lieutenant Rusty Calley to shoot unarmed
22 women and children, even if he was so ordered by his
23 superiors. He understands the nature of his oath of
24 office. It is an oath sworn before God and man to the
25 Constitution.

1 Failure to acknowledge God actually
2 undermines the very Canons upon which Chief Justice Moore
3 is being tried. The Canons of Judicial Ethics, please
4 note, the primary purpose of the Canons is to protect the
5 public rather than to discipline an individual judge.
6 Propriety is often in the eye of the beholder. A given
7 individual will find conduct to be within or beyond the
8 bounds of propriety to the extent that the person comports
9 with that individual's own highly subjective views of
10 propriety. The appearance of impropriety standards should
11 freely applied. Indeed, lack of specificity as to what
12 conduct makes a judge vulnerable to a charge of appearance
13 of impropriety, raises serious due process concerns. To
14 allow disciplinary proceedings to evaluate judicial
15 decisions could force judges into ill-defined and
16 standardless lines of propriety and impropriety. Holding
17 such a sword over a judge's head would have a tendency to
18 chill his independence. A judge would have to be as
19 concerned with what is proper in the eye of the
20 disciplinary commission as with what is the just decision.

21 Let me read you one quick quote from a
22 gentlemen I admire. Mr. Doug Phillips has said this more
23 eloquently than I can say it. The American legal
24 establishment has strange priorities. No where is this
25 more evident than in the way covenant-keepers and

1 James W. Grimes of Iowa is. Senator Grimes was one of the
2 senators that voted against the impeachment of Andrew
3 Johnson. Right before his death, he wrote these words; I
4 shall ever thank God that in that troubled hour of trial,
5 when many privately confessed that they had sacrificed
6 their judgement and their conscience at the behest of party
7 newspapers and party hate, I had the courage to be true to
8 my oath and to my conscience. Perhaps I did wrong not to
9 commit perjury by order of a party, but I cannot see it
10 that way. I became a judge, acting on my own
11 responsibility and accountability, only to my own
12 conscience and my maker, and no power could force me to
13 decide on such a case contrary to my convictions, whether
14 that party was composed of my friends or my enemies.

15 And so to the Court of Judiciary, we have
16 done all we know that we can do to impress upon you that
17 the Chief Justice, being true to his oath, has not
18 committed any ethical violations. As Mr. Jones pointed out
19 to you, the judges that have been tried by this panel, from
20 judges charged with sexual misconduct to only receive six
21 months in suspension, cannot be compared with the Chief
22 Justice, who has done nothing morally wrong. He's done
23 nothing legally wrong. He obeyed his oath. He was true to
24 his God and to his oath of office. Please be careful how
25 we judge Roy Moore today. As we turn Chief Roy Moore over

1 to this panel's judgment, remember the words of Harper Lee
2 in To Kill A Mockingbird; the one thing that doesn't abide
3 by the majority rule is a person's conscience.

4 For the respect of all Alabama citizens, for
5 the respect of this country, for the respect of God and all
6 that is righteous, find Chief Justice Roy Moore not guilty
7 and restore him to the people of Alabama as Chief Justice.
8 Thank you.

9 (Audience applauding)

10 BY THE COURT: Please, no applause. Mr.
11 Attorney General.

12 BY MR. PRYOR: May it please the Court, Mr.
13 Chief Justice, learned co-counsel. This case presents an
14 all or nothing proposition. Either the Judicial Inquiry
15 Commission is right, and Chief Justice Moore is guilty and
16 must be removed. Or, Chief Justice Moore is right and must
17 be exonerated. There is no middle ground.

18 My learned opposing counsel has invited you
19 to read the cases that we have cited the court. He has
20 stated that none of those cases involved a judge who
21 refused to obey a single court order. I, too, invite you
22 to read those cases, for none of them involve the highest
23 judicial officer of a state refusing to comply with a
24 federal injunction entered by a federal District Court,
25 affirmed by three judges of the U. S. Court of Appeals,

1 and where the judge had an opportunity and did ask for
2 stays from that District Court, stays from the 11th
3 Circuit, and a stay from the Supreme Court of the United
4 States, all of which were denied. None of those cases
5 involve the highest judicial officer of a state in that
6 context, then coming before the Commission and saying, I
7 would do it again.

8 The stakes here are high, because this case
9 raises a fundamental question. What does it mean to have a
10 government of laws and not of men? The resolution of this
11 case will answer that question for three groups of
12 Alabamians;

13 First, an answer must be provided to every
14 judge in Alabama, because the judiciary is an independent,
15 although imperfect branch of our government. It is staffed
16 by hundreds of trained lawyers who serve the public by
17 administering justice. When an Alabama judge is presented
18 with a controversy that poses a difficult legal problem,
19 the judge must evaluate the law and the facts carefully,
20 and then provide his best judgment, subject to the review
21 of other judges. A trial judge can be reversed on appeal.
22 An appeal judge or justice can be on the losing side of a
23 divided panel. In our system, a judge must respect and
24 follow the final decisions of other judges, even when he's
25 convinced they're wrong. A trial judge with more years of

1 experience, and perhaps better judgement than any appellate
2 judge, for example, must follow an order reversing the
3 decision of the trial judge. The answer this court must
4 provide to every judge in Alabama is that no judge is above
5 the law.

6 Second, an answer must be provided to every
7 public official in Alabama. When we think of the rule of
8 law, one group of public officials immediately comes to
9 mind, police officers. Thousands of police officers each
10 day enforce the law in the communities of our state. Each
11 officer takes an oath to uphold the Constitution. Consider
12 a police officer who concludes after careful study of that
13 Constitution, and the history of the Constitution which he
14 has sworn to uphold, that the Supreme Court of the United
15 States was wrong in its decision of *Miranda versus Arizona*.
16 The police officer finds himself in agreement with many
17 judges, law professors and prosecutors, that the 5th
18 Amendments and the 6th Amendments to the Constitution were
19 not intended to require a police officer to warn a person
20 under arrest that he has a right to remain silent and he
21 has a right to an attorney. Should that police officer
22 follow his own view of the Constitution? Or should the
23 officer respect the decision of the Supreme Court and warn
24 an arrestee that he has right to remain silent. Should the
25 police officer follow his own view of the Constitution in

1 the hopes that the unwarned arrestee will confess to the
2 crime? Should the officer risk that the courts will throw
3 out the confession and allow a murderer or a rapist to go
4 free because the police officer followed his own view of
5 the Constitution, and failed to warn the arrestee? The
6 answer this court must provide to every public official,
7 including every police officer, is that no official is
8 above the law.

9 Finally, this court must provide an answer
10 to every citizen who depends on the rule of law to protect
11 our freedom. Each year, the courts of Alabama hear and
12 decide disputes between thousands of citizens.

13 Fathers and mothers allow courts to decide
14 the custody of their children.

15 Both the wealthiest chief executive officer
16 and the shareholders of a corporation allow the courts to
17 determine whether the CEO cheated the shareholders.

18 A permanently disfigured and disabled worker
19 and the most powerful corporation allow the courts to
20 decide whether the company owes the worker any compensation
21 for his injury.

22 Every one of these citizens, and thousands
23 more who come before the courts, must know that the final
24 orders of the courts will decide their disputes, even if
25 that citizen disagrees with that order. Someone has to

1 lose, and virtually always, the losing litigant thinks he
2 was right and the court was wrong. This court must provide
3 the answer that no citizen, whether rich or poor, powerful
4 or weak, is above the law.

5 As I mentioned a moment ago, the judicial
6 branch of our government, both our federal government and
7 our state government, as human institutions, are
8 imperfect. They sometimes make mistakes. Even terrible
9 ones. We correct some of those mistakes on appeal.
10 Sometimes the appeals court, even the Supreme Court gets it
11 wrong, too. Fortunately, our Constitution gives us
12 remedies.

13 I stand by my remarks from 1997 that we're
14 called by God to do what is right. But we're called to
15 exercise our Constitutional rights in fulfilling his will.

16 We can elect lawmakers, legislators, to
17 change the law. We can elect presidents to appoint judges
18 faithful to the law. We, the people, can even amend the
19 Constitution itself. That is what our nation did when it
20 abolished slavery with the 13th Amendment, which overruled
21 the abominable decision of the Supreme Court in Dred Scott
22 versus Sanford. But the refusal of a party to comply with
23 a court order, whether the court order is right or wrong,
24 is not a remedy provided by the Constitution.

25 Because Chief Justice Roy Moore, despite his

1 special responsibility as the highest judicial officer of
2 our state, placed himself above the law, by refusing to
3 abide by a final injunction entered against him, and by
4 urging the public through the news media to support him,
5 and because he is totally unrepentant, this court
6 regrettably must remove Roy Moore from the office of Chief
7 Justice of Alabama. The rule of law upon which our freedom
8 depends, whether a judge, a police officer, or a citizen,
9 demands no less. Thank you.

10 BY THE COURT: Thank you, Mr. Attorney
11 General. I'd like to thank counsel for their handling of
12 this matter. Everyone has performed quite admirably. I
13 want to thank all the people here in the rotunda for being
14 a participant in the judicial process.

15 The evidence having been heard in this
16 matter, this court will recess at this time -- Mr. Jones,
17 would you like to be heard?

18 BY MR. JONES: I just wanted to be sure I
19 handed you those cases, Your Honor, before you leave.

20 BY THE COURT: Okay, we'll make sure that
21 happens. We'll recess at this time, and we will also
22 attempt to do our best to give you sufficient notice when
23 this courts' ruling has been made, to allow sufficient time
24 to return to this rotunda -- to this courtroom, excuse me.

25 At this time, unless there's anything

1 further from the members of this court, this court stands
2 in recess, and we will be releasing our decision on this
3 case as efficiently and as expediently as possible. Thank
4 you.

5 (Court in recess)

6 (Overnight recess)

7 THURSDAY, NOVEMBER 13, 2003, PROCEEDINGS

8 BY THE COURT: Good morning. As Chief Judge
9 of the Alabama Court of Judiciary, it is my duty to report
10 to you the decision of the court. The complete final
11 judgment of this court will be released following the
12 synopsis of this judgment. As a reminder, please remember
13 that no judge on this court may comment on this case.

14 The Court of Judiciary is a constitutionally
15 created court. The sole function of which is to convene to
16 hear allegations of judicial misconduct. The case
17 currently before the court was commenced by the filing of a
18 complaint by the Judicial Inquiry Commission alleging that
19 Roy S. Moore, as Chief Justice of the Supreme Court of
20 Alabama, willfully failed to comply with an injunction
21 issued to him by the United States District Court for the
22 Middle District of Alabama, thereby violating Canons 1, 2,
23 2A and 2B, of the Canons of Judicial Ethics.

24 Specifically, the complaint alleges that
25 Chief Justice Moore failed to uphold the integrity and

1 independence of the judiciary, and failed to observe high
2 standards of conduct so that the integrity and independence
3 of the judiciary might be preserved as required by Canon 1.

4 That Chief Justice Moore failed to avoid
5 impropriety and the appearance of impropriety in all of his
6 activities as required by Canon 2.

7 That Chief Justice Moore failed to respect
8 and comply with the law and to conduct himself at all times
9 in a manner that promotes public confidence and the
10 integrity and impartiality of the judiciary as required by
11 Canon 2.

12 And that he failed to avoid conduct
13 prejudicial to the the administration of justice which
14 brings the judicial office into disrepute.

15 These are the issues which are properly
16 before this court. This court has neither the authority
17 nor the jurisdiction to decide the correctness of the
18 decisions of the United States District Court or the United
19 States Court of Appeals for the 11th Circuit.

20 All of the members of this court, after
21 serious consideration of the evidence and testimony
22 presented at this trial, find by clear and convincing
23 evidence that Roy S. Moore, while in his role of Chief
24 Justice of the Supreme Court of Alabama, did wilfully and
25 publicly defy a federal court order directed to him.

1 In the American system of justice, the
2 courts are open to all of the citizens of this country. A
3 dissatisfied litigant has the opportunity to appeal an
4 unfavorable ruling. When that person's legal remedies have
5 been exhausted, then the rule of law dictates that that
6 person follow the order of the court.

7 In this case, the Chief Justice exhausted
8 all of his legal remedies and was unsuccessful in his
9 attempts to stay the injunction issued by the federal
10 District Court. In defying that court's order, the Chief
11 Justice placed himself above the law.

12 To quote the Supreme Court of the United
13 States, no man in this country is so high that he is above
14 the law. All the officers of the government, from the
15 highest to the lowest, are creatures of the law and are
16 bound to obey it.

17 This court finds by unanimous decision and
18 by clear and convincing evidence that Roy S. Moore, in
19 willfully and publicly defying the valid court order from
20 the federal court, violated Canons 1, 2, 2A and 2B of the
21 Canons of Judicial Ethics as indicated in the complaint of
22 the Judicial Inquiry Commission.

23 During the trial of this matter, Chief
24 Justice maintained his defiance, testifying that he stood
25 by an earlier statement given to him -- given by him to the

1 Judicial Inquiry Commission, in which he stated in part, I
2 did what I did because I upheld my oath, and that's what I
3 did. So I have no apologies for it. I would do it again.
4 The Chief Justice showed no signs of contrition for his
5 actions.

6 Because of the magnitude of the decision
7 with regard to sanctions for the Chief Justice's violation
8 of the Canons of Judicial Ethics was a difficult one for
9 this court to make, finding no other viable alternatives,
10 this court hereby orders that Roy S. Moore be removed from
11 his position as Chief Justice of the Supreme Court of
12 Alabama. This court is now adjourned.

13 (Court adjourned)

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1 C E R T I F I C A T E

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3 STATE OF ALABAMA X

4 MONTGOMERY COUNTY X

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6 I, DUB HARRIS, Special Roving Court Reporter
7 of the 15th Judicial Circuit for the State of Alabama,
8 Montgomery, Alabama, do hereby certify as follows:

9 THAT I reported in shorthand the foregoing
10 proceedings in the foregoing styled cause at the time and
11 place stated heretofore;

12 THAT I later reduced my shorthand notes to
13 computer-aided transcription, and the foregoing pages
14 contain a full, true and correct transcript of the
15 proceedings and testimony as herein set out;

16 THAT I am neither of kin nor of counsel to
17 the parties to said cause, nor in any manner interested in
18 the results thereof.

19 DONE this 21st day of November, 2003.

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DUB HARRIS, REPORTER

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