

FREEDOM COURT REPORTING

Page 33

1 office between Mr. Medlock and his lawyers,
2 and the governor and you and some others, at
3 that point in time, had anybody ever talked
4 to Auburn about any role for the University
5 in this project?

6 A. I don't think at that point in
7 time -- This has been an evolving situation
8 as you well know. But I don't think Auburn
9 had a role -- and they may have at that
10 point in time, I just couldn't say for sure.

11 Q. There should be some documents
12 that show when all that --

13 A. There should be some documents
14 that show when things are dated.

15 Q. If you don't know when, how
16 did Auburn first get involved in all this?

17 A. I was at a cabinet retreat in
18 Auburn at the Robert Trent Jones Golf
19 Course, and the cabinet was there, and the
20 governor. And Susan Hubbard was there. And
21 this is probably sixty days into this job,
22 maybe longer. And she mentioned that she
23 was bringing Horst Schulze to Montgomery the

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FREEDOM COURT REPORTING

Page 34

1 next week to meet with David Bronner. And I
2 knew who Horst Schulze was with
3 Ritz-Carlton.

4 And I said, if y'all have time
5 -- I did not know he had any connection with
6 West Paces, really didn't know his
7 connection with Auburn, other than she had
8 told me that night he had been on their
9 board of humanities for about fifteen years.
10 So I asked if she -- they had time to come
11 by my office, let me get my parks people,
12 and Rick Lyles, and just look at the plans
13 for this design that TVS had and give us
14 some kind of advice.

15 Because, I'm going to be
16 honest with you, I was out in left field. I
17 mean, this is something I wasn't familiar
18 with. And he was probably one of the best
19 minds in the world in hotel management. And
20 so she did and he came by.

21 And he really took a lot more
22 time than I expected, a couple of hours, and
23 just broke it down in detail for Rick and

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FREEDOM COURT REPORTING

Page 35

1 for Mark and for myself. And it was -- You
2 know, I was very impressed.

3 And at a later date, I think
4 Susan -- At that time, we were -- the
5 program we were working from -- I know this
6 sounds confusing, but it had to evolve. The
7 program we were working from was to do a
8 ground lease to a developer and do RFPs.

9 And she mentioned, or somebody
10 did, it may not have been Susan, that Auburn
11 might be interested in doing this in
12 conjunction -- I didn't even know that the
13 conference center was part of their school
14 at that time.

15 Q. You're speaking of the
16 conference center over in Auburn?

17 A. In Auburn, that's correct.

18 Q. Okay.

19 A. And that's Auburn's interest.
20 And Ed Richardson had been there about two
21 weeks. And the governor called Ed to come
22 meet with the two of us, to see if Auburn
23 would be interested in taking this project

FREEDOM COURT REPORTING

Page 36

1 on, a hotel being one part of it, extension,
2 forestry, biology, there are so many schools
3 at Auburn in their schools of discipline at
4 the University that fit in with the outdoors
5 and the six thousand acres that we have
6 there; and through them and their school,
7 develop and run this hotel. And Ed was very
8 interested and later made a presentation to
9 the board of trustees, and they were
10 interested in pursuing this as well.

11 Q. When Horst Schulze came over
12 and spent the two hours with you, did he
13 meet with the governor?

14 A. Not at that time. He may have
15 previously in the day, I don't know.

16 Q. Well, he didn't know anything
17 about the project before he met with you,
18 did he?

19 A. No.

20 Q. Okay. And so he looked at the
21 TVS plans, basically?

22 A. Correct.

23 Q. And at that point, do you have

FREEDOM COURT REPORTING

Page 37

1 any kind of an estimate about what the year,
2 what month that was?

3 A. Probably I'm going to guess
4 mid-summer.

5 Q. What year?

6 A. '03.

7 Q. Would you have a calendar that
8 would show that?

9 MR. GUNTER: We provided you
10 with his calendar.

11 A. I don't -- I don't even know
12 if it was put on the calendar, because it
13 was one of those things if he had time,
14 would you bring him by here.

15 Q. So who came with him?

16 A. Susan Hubbard.

17 Q. Susan Hubbard.

18 A. Uh-huh.

19 Q. Okay. And do you know whether
20 that was before or after the meeting that we
21 had in the governor's office with
22 Mr. Medlock and his lawyers?

23 A. That I do not know. I'm

FREEDOM COURT REPORTING

1 thinking that was before, but I do not know.

2 MR. GUNTER: Don't guess.

3 THE WITNESS: I won't guess.

4 Q. Well, when did the proposal
5 actually -- the first proposal get
6 officially or unofficially made to Auburn?
7 When was the proposal about Auburn being
8 invited in?

9 A. Well, as I said, the initial
10 idea was presented to Dr. Richardson.

11 Q. By who?

12 A. By the governor and myself.

13 Q. Where?

14 A. At the governor's office.

15 Q. Do you remember when that was?

16 A. No. It was two or three weeks
17 after Ed Richardson was appointed to the
18 job.

19 Q. Okay.

20 A. I can correlate that whenever
21 that was.

22 Q. Okay. I believe you said he
23 expressed an interest in it?

FREEDOM COURT REPORTING

Page 39

1 A. Yes. He thought that Auburn
2 -- not only the School of Hotel and
3 Restaurant Management, but other schools
4 would be interested.

5 Q. Who was the next meeting with
6 anybody at Auburn between, that you know of,
7 in reference to this project?

8 A. We had -- He wanted to run it
9 by some of his board of trustees before we
10 went to the full board. I believe that was
11 a chairman of the board and Mr. Lowder and
12 the governor, myself. I don't remember if
13 anybody else was there or not.

14 Q. Where was this meeting?

15 A. That was at the governor's
16 office.

17 Q. Okay. And what happened next
18 after that, in reference to this project,
19 with Auburn?

20 A. They seemed very -- They were
21 very interested in it and wanted me to
22 present it to the full board of trustees to
23 see what their interest would be in pursuing

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FREEDOM COURT REPORTING

Page 40

1 this.

2 Q. Did you make a presentation to
3 the full board?

4 A. Yes, sir, I did.

5 Q. Okay. Where was that?

6 A. That was at Auburn.

7 Q. Do you know when that was?

8 A. I'm sorry, I don't.

9 Q. But it would be on the records
10 of the board?

11 A. It should be.

12 Q. Should be. When was the
13 proposal, if you know, signed?

14 A. Proposal?

15 Q. I mean, the first
16 understanding, memorandum, or agreement,
17 whatever you --

18 A. I don't know the dates. But
19 it would -- I don't even know if that has
20 been consummated. I know the governor and I
21 signed off on our part of the memorandum of
22 understanding and it was presented to
23 Auburn. But it would be dated. I don't

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FREEDOM COURT REPORTING

Page 41

1 know --

2 Q. Did you sign it and the
3 governor sign it before the Auburn board
4 approved it?

5 A. No. It took months to work
6 out the MOU after Auburn approved proceeding
7 with it.

8 Q. So you're quite sure that
9 neither you nor the governor --

10 A. Are you talking about
11 approving the MOU or the project?

12 Q. Approving the MOU.

13 A. I do not know when it was
14 presented to the -- Auburn's board for their
15 approval. I would assume that, yeah, we
16 signed off on it before it was presented to
17 that board, but I don't have any way of
18 knowing that.

19 Q. Did you sign the document that
20 was drawn up before it was presented to the
21 board?

22 A. Presenting it to the board is
23 what I don't know. I know I signed the

FREEDOM COURT REPORTING

Page 42

1 document, but whether it had already been
2 presented or we signed it and it was
3 presented, I do not know that.

4 Q. Okay. What -- This project
5 that you were presenting to Auburn, it was
6 for a four-diamond hotel, wasn't it?

7 A. There had to be some standard,
8 whether it was four diamond, four star,
9 whatever those two different ratings are.
10 We wanted a standard that would be
11 maintained therefore ensuring that
12 maintenance on the hotel and it would be
13 upgraded throughout the term of the lease.
14 It would not be allowed to deteriorate and
15 not be repaired. So we had to hang
16 something there that is a marker that's
17 accepted nationally and internationally of a
18 grade of a hotel.

19 Q. So the answer to the question
20 is what?

21 A. It would be yes.

22 (Whereupon, Plaintiff's

23 Exhibit No. 2 was marked

FREEDOM COURT REPORTING

Page 50

1 would have had to be a vote of each city for
2 them to be able to do that. But they were
3 both very interested, and we left it open
4 since the seventy-million-dollar bond issue
5 failed, it is open for their participation.

6 Q. Well, now, at least as of June
7 12, 2004, you're still talking about them
8 participating in that partnership with the
9 seventy million plus, the two cities, aren't
10 you?

11 A. I am here, at that point in
12 time.

13 Q. Okay. Where it says: Barnett
14 Lawley, paragraph four, read that paragraph
15 into the -- that sentence into the Record.

16 A. Barnett Lawley, State
17 Commissioner, Conservation and Natural
18 Resources, presented a proposal to trustees.
19 He claimed that if the State built a hotel
20 on its own, the law would require it be run
21 by the State.

22 Q. Read the next paragraph.

23 A. If the State leased directly

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FREEDOM COURT REPORTING

Page 51

1 to a developer, it would have to request
2 proposals and accept the best dollar bid.
3 Involving Auburn allows the parties to
4 negotiate with more flexibility. The
5 private developer's chief concern would be
6 making money. Whereas, Auburn and the State
7 can take into consideration education and
8 environmental values.

9 Q. All right. Now, they are
10 quoting you, or paraphrasing you, from a
11 presentation that you made to the Auburn
12 trustees in this article, aren't they?

13 A. That's -- Apparently that's
14 where that's from.

15 Q. Did the meeting of the
16 trustees where you made that proposal, was
17 that an open, public meeting?

18 A. Yes, sir.

19 Q. Did you tell the trustees that
20 if the State builds on its own, the law
21 would require it to be run by the State?

22 A. That's correct.

23 Q. But if somehow it got leased

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FREEDOM COURT REPORTING

Page 52

1 through Auburn, you think that wouldn't be
2 -- that requirement wouldn't be in effect?

3 A. That's right. Other
4 considerations would be made.

5 Q. All right. You're further
6 saying -- In addition to that Constitutional
7 amendment, there are several statutes, the
8 Concessionaire Statute, are you familiar
9 with that?

10 A. To a degree.

11 Q. What about the bid laws, is
12 that a separate statute from the
13 Concessionaire Statute?

14 A. Build law?

15 Q. Yes, State Bid Law.

16 A. I would think it would be
17 separate.

18 Q. Are you familiar generally
19 with that?

20 A. Yes.

21 Q. You know there is one?

22 A. Oh, yeah.

23 Q. So read that paragraph

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FREEDOM COURT REPORTING

Page 53

1 beginning with: If the State.

2 A. Okay. Do you want me to read
3 it out loud?

4 Q. Yes, please.

5 A. The State --

6 Q. You've already read it, I
7 think.

8 A. Yeah, I have.

9 Q. You read that just awhile ago,
10 didn't you?

11 A. I did.

12 Q. I won't make you read it
13 again.

14 A. That's all right.

15 Q. Now, in other words, did you
16 tell the Board that if the State leased it
17 directly, they'd have to request proposals
18 and accept the best dollar bid but involving
19 Auburn would allow the parties to negotiate
20 with more flexibility?

21 A. I don't remember. This is a
22 quote. I mean, I don't remember saying it.

23 Q. How does bringing Auburn into

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FREEDOM COURT REPORTING

Page 54

1 it get around the bid law?

2 A. I don't think it gets around
3 it.

4 MR. REID: Object to the form.

5 Q. What was your answer?

6 A. I can't tell you that.

7 Q. So you don't know how bringing
8 Auburn into it would get around the bid law?

9 A. I don't think that it would
10 personally. But --

11 Q. Okay. What about the
12 Concessionaire Law?

13 A. I don't think there's --

14 MR. REID: Same objection to
15 the get-around phrase. I don't think he
16 testified to that. I object to the form of
17 it.

18 Q. How many different times did
19 you go before the Auburn board with
20 reference to this project?

21 A. That was the only one.

22 Q. Only one, okay.

23 Let's switch over to this bond

FREEDOM COURT REPORTING

Page 63

1 property?

2 A. As far as title to the Parks
3 Division, it's my understanding from
4 Mr. Gunter and other attorneys that it was
5 not.

6 Q. All right. When you say that
7 part of the property development is not
8 using proceeds of a bond issue, what do you
9 mean by that?

10 A. The part of the development
11 where the hotel, where Auburn's lease would
12 be, there would be no bond proceeds used in
13 that facility.

14 Q. Well, there have already been
15 bond proceeds used for it, hasn't there, out
16 of that hundred and four million dollars, to
17 pay TVS, among other payments?

18 A. That was -- There were some
19 work that TVS had done, architectural work
20 for the rendering that I described to you
21 earlier about the hotel, that was combined
22 with some other work that TVS did, like the
23 pavilion at the other end of the State Park,

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FREEDOM COURT REPORTING

Page 64

1 on the Orange Beach end of the beach, that
2 was paid, and has been repaid to the bond
3 fund.

4 Q. That was paid for out of State
5 -- the bond issue of the hundred and ten --
6 hundred and four million of which went to
7 the parks. That money was paid out of that
8 fund, wasn't it?

9 A. Part of the money was paid.
10 It's since been repaid because that --

11 Q. I'm not talking about being
12 repaid.

13 A. Yeah.

14 Q. I'm talking about when it was
15 originally paid, if you know, yes or no?

16 A. That contract was before me,
17 Mr. Baxley.

18 MR. GUNTER: Just answer his
19 question.

20 A. I don't know.

21 Q. You don't know whether that
22 bond money was used to pay TVS to design
23 this hotel?

FREEDOM COURT REPORTING

Page 76

1 Q. You said his claims were
2 totally untrue. Does that mean all of them
3 were untrue?

4 A. I've got to read back at what
5 his claims are, Bill.

6 That it mandates that it be
7 operated by the Department of Conservation.

8 Q. So you say that where
9 Mr. Grimsley says that the amendment
10 mandates it be operated by the Department of
11 Conservation, that's totally untrue -- or
12 that's untrue?

13 A. No. I'm not saying that's
14 untrue, but I'm saying in this regard of 8.9
15 million of bond issue money being spent that
16 would create that situation is untrue.

17 Q. Do you say that any of the
18 bond money was spent?

19 MR. GUNTER: That's been asked
20 and answered.

21 A. We've already said that.

22 MR. GUNTER: Objection.
23 That's been asked and answered.

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FREEDOM COURT REPORTING

Page 77

1 Q. How much do you contend has
2 been spent of the bond proceeds on this --
3 any project involving a five-star --
4 four-star or four-diamond hotel down there?

5 A. After we audited, our
6 accountants went through and pulled those
7 invoices of money that had been spent on
8 this hotel and project, it's around 1.8
9 million that was spent on the hotel part.

10 Q. Did that include the money for
11 the Benchmark people?

12 A. I could not tell you that.

13 Q. Okay. Well, what other part
14 of Mr. Grimsley's claims do you say are
15 untrue. You say they're, quote, totally
16 untrue.

17 A. Well, that's -- That's mainly
18 the only paragraph that he's making a claim,
19 isn't it?

20 Q. All right. The next sentence,
21 is there anything else you can tell us now
22 on the Record of Mr. Grimsley's claims that
23 you say are untrue?

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FREEDOM COURT REPORTING

Page 94

1 into the Record.

2 A. Okay. Conservation
3 Commissioner Barnett Lawley told the
4 commission that removing state bond proceeds
5 from the project would strengthen the
6 State's position. The 1.8 million will come
7 out of tax revenue recently received by the
8 department.

9 Q. Strengthen the position in
10 what?

11 A. I don't know what the
12 reference is being made to. It could be to
13 the case, it could be to what I just told
14 you as far as position of improvements at
15 the park.

16 Q. Okay. Read the first sentence
17 -- paragraph.

18 A. The State Conservation
19 Department is repaying 1.8 million to the
20 State Bonding Authority in hopes of
21 strengthening the department's position in
22 litigation challenging development of the
23 resort at Gulf State Park.

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FREEDOM COURT REPORTING

Page 95

1 Q. Did you tell the commission
2 that was a reason to repay this?

3 A. This is what it is. That is
4 certainly one of the reasons.

5 Q. Did you tell them any other
6 reason other than that?

7 A. Not that they wouldn't have
8 already been aware of.

9 Q. So --

10 A. That the money goes back into
11 the bond to be respent at that park.

12 Q. Now, you came in, I think
13 we've already established, January 21st of
14 --

15 A. '03.

16 Q. -- '03. Now, as late as
17 nearly a year later, December, you were
18 still talking about getting fifty million
19 dollars from bonds to be issued by the Gulf
20 State Park Authority, weren't you?

21 A. I don't know the dates. I
22 certainly didn't come in and can a program
23 that people had been working on.

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FREEDOM COURT REPORTING

Page 114

1 you -- Did they quote you correctly on that?

2 A. Yes, sir.

3 Q. You believe that, don't you?

4 A. Yes, I do.

5 Q. Even though you lease it to
6 Auburn and they sublease it out to somebody,
7 it would still remain public property?

8 A. I don't consider that
9 park land, if it's leased to Auburn.

10 Q. So if it's leased to Auburn,
11 you don't consider it park land anymore?

12 A. Not where the hotel is. All
13 the land around it is park land, even the
14 land in front of it.

15 Q. The land where the hotel is,
16 you wouldn't consider it to be part of park
17 land anymore?

18 A. No, I wouldn't.

19 Q. Could citizens of the State of
20 Alabama that weren't staying in the hotel go
21 out there and use that beach?

22 A. Absolutely.

23 Q. Could they park in the parking

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FREEDOM COURT REPORTING

Page 117

1 sir.

2 Q. Okay. What about -- What does
3 this statement mean, it says: The
4 facilities will be built at the site of the
5 current Gulf State Park Lodge and would be
6 restricted to the area that is already
7 developed or paved, is that still the plan?

8 A. It would be built inside the
9 old footprint. There is no plan, that is
10 the proposal.

11 Q. Okay. So it's still proposed
12 that it will be built where the old
13 development was built or paved?

14 A. Right. Inside that compound.

15 Q. Okay. And nothing -- Still
16 the proposal is not to get outside of what
17 was already built on or paved?

18 A. The footprint, uh-huh.

19 Q. You need to speak up.

20 A. Yes, sir. That's right.

21 Q. Okay. And it says on the
22 back: The hotel developer would lease the
23 ground underneath the hotel from the State.

FREEDOM COURT REPORTING

Page 118

1 Do you see that?

2 A. This probably is before Auburn
3 was involved.

4 Q. Okay. What's the date of
5 this?

6 A. It's '04, I think you said.

7 Q. April 1, '04?

8 A. Right.

9 Q. So that wasn't an April Fool's
10 joke, was it?

11 A. That was going to be my next
12 comment. But, no, it was not an April
13 Fool's joke.

14 Q. At that time you were planning
15 on leasing it to the developer from the
16 State?

17 A. The first proposal we had
18 worked from and were talking about was to
19 lease it to individual developers. Like I
20 said, this thing has evolved and it is still
21 evolving. We haven't reached a conclusion
22 exactly what that final outcome will be.

23 Q. Now, you've got an opinion

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FREEDOM COURT REPORTING

Page 189

1 A. Why?

2 Q. What's the difference in this
3 financing and Auburn's financing?

4 A. Okay. Let me make sure I
5 understand the question. We're -- In both
6 scenarios we're talking about a developer
7 coming in and building; is that right?

8 Q. Yes.

9 A. Okay. I still say Auburn can
10 do a better job because, you know, if we ran
11 it through this department, which it's just
12 not designed to run something of that
13 magnitude, State Personnel System, State
14 Purchasing is not designed.

15 Q. Is Auburn going to run this
16 facility?

17 A. Through their school, yes.

18 Q. But they are going to hire
19 someone with expertise to actually manage
20 it?

21 A. Well, they have that -- They
22 do that now in the conference center in
23 Auburn. I don't know how the school is set

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FREEDOM COURT REPORTING

Page 190

1 up.

2 Q. The conference center -- But
3 the conference in Auburn was not a park
4 before they did that.

5 A. No, it's not a park.

6 Q. So I'm trying to draw that
7 distinction here. We didn't have the
8 competing for the -- have this project that
9 we possibly would here.

10 A. I still haven't gotten your
11 question.

12 Q. Is your main reason for saying
13 Auburn should do it would be that the park
14 just simply doesn't have the ability to do
15 this, the Park System?

16 A. I'd say that's right.

17 Q. That could not be developed
18 within the State?

19 And I guess I go on to what
20 Mr. Baxley earlier mentioned, maybe on a
21 less -- you know, smaller footprint, so to
22 speak?

23 A. Well, I think it's operation

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FREEDOM COURT REPORTING

Page 195

1 the same amount.

2 Q. Well, if you had a percentage
3 land lease and it was a flop, you'd wind up
4 without --

5 A. Either way. If they couldn't
6 pay you, you wouldn't have any.

7 MR. JUNKIN: I don't have
8 anything further.

9 MR. BAXLEY: I've got one
10 brief point. Might take three or four
11 questions.

12 EXAMINATION CONTINUED

13 BY MR. BAXLEY:

14 Q. Commissioner, why do you think
15 that State employees can't operate this
16 hotel, as it's proposed?

17 A. I don't think I said they
18 couldn't. I said within the personnel
19 system to hire those jobs you'd have to have
20 on this scale, your client can tell you,
21 this takes special people to get conventions
22 in there and to plan it and to do it.

23 There's no incentives. And one of the main

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