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1           **REPRESENTATIVE WAGLE:** Today  
2 we're going to continue our briefing on  
3 tobacco litigation. It appears the attorney  
4 general has come back to the committee.  
5 When we left yesterday, we were asking  
6 questions about the settlement. So today I  
7 think we're going to continue with questions  
8 about the settlement. General Stovall.

9           **GENERAL STOVALL:** Thank you.  
10 Actually, I'd like to be sure your committee  
11 had several things. As you can see, we've  
12 got lots of documents on the table.

13          **REPRESENTATIVE WAGLE:** Let me  
14 remind you first of all --

15          **GENERAL STOVALL:** I'm still under  
16 oath. I'm aware of that.

17          **REPRESENTATIVE WAGLE:** You may  
18 continue.

19 GENERAL STOVALL: Thank you very  
20 much. As I indicated yesterday, I wasn't  
21 sure I could be here. I chair from nine to  
22 11 today the criminal justice coordinating  
23 counsel. It was a previously scheduled  
24 meeting. The vice-chairman is the governor.  
25 Natalie Haag came in from maternity leave to  
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1 chair it so I could be with you today. I'm  
2 happy, once again, to be back. What we have  
3 are some documents. I frankly was stunned  
4 yesterday the committee had not been  
5 provided copies of the documents we had  
6 provided to the chair, so what we have done  
7 is to provide for you a complete set of the  
8 documents that we gave to the chair so we'll  
9 be able to go through those.

10 REPRESENTATIVE WAGLE: If I could  
11 respond to that. I believe we were in the  
12 process of Xeroxing the documents yesterday  
13 when we had two Xerox machines break on us.  
14 We were waiting for a repairman. Edith came  
15 in this morning at seven o'clock. I believe  
16 -- are the documents in front of every  
17 member of the committee

18 STAFF: Yes.

19 REPRESENTATIVE WAGLE: The  
20 documents are in a folder in front of you.  
21 You may continue, General Stovall.

22 GENERAL STOVALL: Thank you.  
23 What I would like to do is make sure you  
24 have a complete set of the documents. That  
25 becomes important to me really only because  
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1 of correspondence I had yesterday with  
2 Representative Jenson, the speaker. The  
3 speaker's letter is attached. We're going  
4 to distribute that. I'll ask staff to hand  
5 out things as we go. The speaker's letter  
6 was dated yesterday. He was aware certain  
7 documents had allegedly not been provided to  
8 the tax committee chair, so he  
9 hand-delivered a letter over, in fact, to  
10 me. It has four categories of documents  
11 that were alleged to him not to have been

12 provided. One of which was the signed dated  
13 copy of the contract with our tobacco  
14 counsel. Folks. That was provided to the  
15 tax chair on February the 4th of this year.  
16 That will be in a cover letter and the  
17 contract that we'll get to as we go through  
18 the documents. So I just wanted to be sure  
19 the committee has everything. I don't blame  
20 the speaker for having been agitated with me  
21 at not having provided all the documents  
22 because that's what he was apparently led to  
23 believe. Perhaps that's why he wanted  
24 someone here to be under oath because he had  
25 maybe gotten some wrong information. But I  
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1 would like to go through all that with you  
2 and be sure you know what we have and what  
3 we have actually provided to your committee  
4 chair. In addition, before we do that,  
5 there's a couple other things that has been  
6 requested. As you know, legislators can  
7 request material anonymously. That's been  
8 done. My travel vouchers for the last four  
9 years have been requested anonymously, and  
10 our staff -- actually, mine and John  
11 Campbell's as well has been requested. We  
12 have not gotten all that material together.  
13 Staff informed me yesterday some is  
14 available. While it will be provided to the  
15 legislative staff person who made the  
16 request. I thought I would short circuit  
17 that and bring it. I'm sure one of two  
18 people that requested it are probably in the  
19 room today. So let me make that available  
20 to the committee chair as well. I guess  
21 Representative Powell isn't here today.  
22 This was the other copy for him.  
23 To walk through the documents, then if  
24 we could we as you might imagine have spent  
25 an awful lot of time trying to put this

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1 together on short notice. I'm going to ask  
2 staff to hand things out as we go. The  
3 first is going to be the correspondence with  
4 the tax committee chair. That would be the

5 letters then from Susan Wagle to us. The  
6 first was a letter January 26th relating to  
7 the hiring of private counsel saying she  
8 wanted all that information. January 31st  
9 was a letter, then, from us to her. That  
10 will be provided to you as Mary and Becky  
11 hand that around. In that January 31st  
12 letter, John Campbell, my senior deputy  
13 wrote back and said the information from the  
14 post audit was available and that apparently  
15 by phone the tax committee chair had asked  
16 to meet with John Campbell private -- well,  
17 with the vice chair I understand and perhaps  
18 the minority leader. John confirms that  
19 meeting will take place should you or your  
20 staff require additional information or  
21 assistance, please contact me. The next  
22 letter is from your tax committee chair to  
23 me dated February 2nd. First paragraph  
24 thank you for allowing John Campbell to  
25 brief the tax leadership yesterday on the  
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1 tax litigation. The next paragraph then she  
2 asks John to come back and brief you  
3 yesterday and today. You'll note it wasn't  
4 me that was asked to come, and I wasn't  
5 asked to come until Wednesday to speak after  
6 representative Powell speaks to you and to  
7 talk about the bill he proposed. As I told  
8 you yesterday, I don't intend to take a  
9 position on that bill. This letter also  
10 notes, by the way, the committee would have  
11 started at nine o'clock yesterday. The next  
12 letter is February 4th. That's from  
13 representative Wagle to us again asking for  
14 more documentation and she's very specific  
15 about that. February 4th then from us to  
16 representative Wagle. John is writing to  
17 her. He is acknowledging attending the  
18 meeting the day before to brief the tax  
19 leadership. As I understand it, he says you  
20 do not want to take advantage of my offer  
21 for either you or your staff to have  
22 complete access to the tobacco litigation  
23 files. He then goes through four categories

24 of the documents that were requested by the  
25 chair, and he respond toes to each of those  
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1 separately. He attaches to this February  
2 4th letter a signed dated copy of the  
3 contract which evidently was not provided to  
4 speaker Jenson the other day.

5 REPRESENTATIVE WAGLE: If I could  
6 interrupt you, I think the problem is that  
7 we did not receive a dated contract, and  
8 that's why the speaker sent you another  
9 letter asking for.

10 GENERAL STOVALL: Well  
11 representative it's attached to the letter  
12 of February 4th. That's attached to the  
13 documents here. It is dated and signed by  
14 all the parties. If he didn't see it that's  
15 a different issue. It was provided on  
16 February the fourth attached to your letter  
17 then is that contract. You'll see that it's  
18 got all the signatures on it. Next -- and I  
19 guess I offer that just so you understand  
20 maybe what the history of some of this is.  
21 The next bit of information then would have  
22 to be with the post audit. The post audit  
23 report we've provided to you in full because  
24 I understood yesterday from representative  
25 Jenkins question you had not been made aware  
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1 of the legislative post audit. Attached to  
2 some of the post audit will be the actual  
3 interview notes. That wouldn't have been  
4 available apparently in the actual post  
5 audit report. When John requested the  
6 information from legislative post audit,  
7 they provided the actual interview notes in  
8 addition to the published post audit report.  
9 So that's being provided, too. You may  
10 remember yesterday I quoted from those  
11 interview notes speaking both of comments  
12 that one of the Hutton brothers made as well  
13 as Mary Barrier of Morrison and Hecker. All  
14 of that post audit plus those interview nets  
15 are being provided to you now. I won't take  
16 time going through the legislative post

17 audit report, but you'll see a significant  
18 portion of it deals with the tobacco  
19 litigation, and you'll see the conclusion  
20 legislative post audit drew that there  
21 wasn't a violation of the law. The next  
22 thing -- are we okay on that? The next  
23 will be just simply the guidelines for  
24 contracts provided by the office. I don't  
25 know that you'll find this particularly  
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1 helpful, but it was provided to your tax  
2 committee chair. The next document, again,  
3 I don't know how helpful you will find it.  
4 It is dated June the 7th. It is simply the  
5 documentation of the date that John and I  
6 met in St. Louis with Attorney General Mike  
7 Moore of Mississippi and his counsel, Dick  
8 Skruggs. The next series of documents  
9 frankly that you will find most interesting  
10 I suspect. Those are the correspondence  
11 from Hutton and Hutton. There are several  
12 letters that were provided to the committee  
13 chair and that I want to be sure that you  
14 have. Again, I apologize for all the  
15 paperwork in the hustle of bustle of this.  
16 This is the only way to do it.  
17 REPRESENTATIVE WAGLE: I think  
18 that's happening now is reach member of the  
19 committee has two sets.  
20 GENERAL STOVALL: I wanted them  
21 to have my set. My set begins on March the  
22 14th with a letter from Hutton and Hutton.  
23 This is before you may remember that I had  
24 even made the decision to file the tobacco  
25 lawsuit. It looks like this. This is  
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1 signed by Andy, and he introducing himself  
2 to me talking about their work in the  
3 Castano private class, and asking for some  
4 information about that. Then behind that,  
5 you will find a document that looks like  
6 this. It's just a copy of his business card  
7 copied, and behind it are my handwritten  
8 notes from that meeting, the first and only  
9 meeting that I had with Mark and Andy

10 Hutton. You will see that it's dated April  
11 the 8th. In my handwriting which I'm not  
12 very proud of, but nonetheless I think you  
13 can figure out what I say. We talk about  
14 the litigation in general. On the second  
15 page, then, in what I've highlighted. It's  
16 not going to be highlighted in your copy,  
17 but it talks about the contingency fee of 25  
18 percent. Then there's an April 10th letter  
19 from Hutton and Hutton provided to your tax  
20 committee chair. Dear Attorney General  
21 Stovall. Mark and I would like to thank you  
22 for allowing us to meet with you. He goes  
23 on to talk about other state actions and  
24 tobacco litigation. Then there is a fax,  
25 April the 19th, 1996. It's from Hutton and  
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1 Hutton. Dear John. Please find enclosed a  
2 working draft of an attorney/client  
3 agreement. Once you have reviewed the same,  
4 please forward it to me. Behind that, then,  
5 is the one-page document, the one-page  
6 contract that I mentioned to you yesterday.  
7 You will see that there's no provision that  
8 counsel keep track of hours, and you will  
9 see what they proposed was a 25 percent  
10 contingency fee. June the 10th is another  
11 letter from Hutton and Hutton. Dear John,  
12 just for your information, when a private  
13 attorney in Kansas is responsible for  
14 recoveries of money in an, where Medicaid is  
15 reimbursed, remember, folks, this is a  
16 Medicaid reimbursement suit. There is  
17 statutory authority that the attorney's fees  
18 will be one-third for cases settled prior to  
19 trial or 40 percent when the trial is  
20 convened. And they were kind enough to send  
21 us a copy of the statute and underline on  
22 the second page the relevant part. They  
23 were still wanting at least a 25 percent  
24 contingency fee. That to my knowledge is  
25 all the correspondence that was provided  
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1 from Hutton and Hutton or to them to your  
2 tax committee chair. You will find behind

3 till the Hutton and Hutton documents an  
4 E-mail from me of June the 28th to John  
5 Campbell. It was after the phone call that  
6 I mentioned yesterday in which Entz and  
7 Chanay indicated that they were interested  
8 in the contract. You may remember from  
9 yesterday that this call came about after we  
10 learned that national counsel would be  
11 financing, fronting the expenses, and that  
12 allowed us to have more flexibility in  
13 choosing who to hire. Prior to then, we  
14 were going to have to find a law firm that  
15 would front the expenses for us, and we were  
16 left with only Hutton and Hutton to do that.  
17 The June 28th E-mail says -- it's from me,  
18 again, to John. Jeff is very interested in  
19 getting involved with us. He understands  
20 the contract would say "whatever court  
21 awards." I told him you would tell Skruggs  
22 if they were on board. Skruggs can get  
23 ahold of him. Then this is what apparently  
24 has the chair concerned according to what  
25 I'm told the Wichita eagle says. The next  
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1 sentence is also told him, again this is me  
2 to John, also told him we had to crowdad out  
3 of arrangement/discussions with Hutton and  
4 Hutton. As we had talked yesterday, John  
5 had been continuing to talk with Hutton and  
6 Hutton in the hopes of getting them to come  
7 off of a guaranteed percent in the contract.  
8 We felt like they were our only suitors who  
9 were willing to finance the litigation, and  
10 if Kansas was going to sue tobacco, it had  
11 to be with a firm that would front the  
12 expense, because I was sure the 7 million  
13 dollars we estimated it would take would not  
14 be coming from the legislature. You can see  
15 from the rest of the E-mail, John was  
16 preparing for a motorcycle trip, and I was  
17 concerned about his wearing a helmet and  
18 that's on there as well.

19 There is an article -- we didn't copy  
20 newspaper articles, December 13th, 1998.  
21 Wichita lawyers say they tried to land



22 tobacco suit. This is an article about  
23 Hutton and Hutton. We won't be quoted in it  
24 you'll be able to see. It's based on the  
25 Wichita eagle talking about how they had  
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1 wanted to do the tobacco litigation, but the  
2 contract was not given to them. Anyone who  
3 would say Hutton and Hutton had a binding  
4 contracted with the state would not be  
5 truthful and based on other statements of  
6 Hutton and Hutton they would not say there  
7 was any binding contract with the State of  
8 Kansas. Those are the Hutton and Hutton  
9 documents.

10 REPRESENTATIVE WAGLE: General,  
11 are those all the documents you have  
12 received from Hutton and Hutton.

13 GENERAL STOVALL: They are all  
14 the ones made available to me with the  
15 exception of one John showed me last night  
16 as he found out he was going through the  
17 files as he told you yesterday he was going  
18 to do. It is one dated August 2nd.

19 MR. CAMPBELL: 17th.

20 THE SPEAKER: That.

21 GENERAL STOVALL: That in this  
22 process did not get brought over. It was a  
23 letter from either Mark or Andy enclosing  
24 the copy of an editorial or a column in the  
25 Wichita paper that Memrow (spelled  
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1 phonetically) wrote about the addictive  
2 nature of nicotine. He sent it to me. I  
3 did a handwritten note a copy will be  
4 provided to you which says something to the  
5 effect of thanks for the article. Must be  
6 really tough to quit smoking which was the  
7 gist of the column, and I said --

8 REPRESENTATIVE WAGLE: Okay. Did  
9 I not ask for all communication which would  
10 mean communication from the Huttons to you  
11 and communication from your office to the  
12 Hutton.

13 GENERAL STOVALL: Absolutely. It  
14 wasn't found until yesterday. I'm telling

15 you it was just neglected to bring over.  
16 Someone can bring over 25 copies. I had  
17 asked for it to be done and it wasn't.

18 REPRESENTATIVE WAGLE: Did you on  
19 any occasion ever send to Huttons a contract  
20 for their services to be involved in tobacco  
21 litigation.

22 GENERAL STOVALL: I don't know.

23 REPRESENTATIVE WAGLE: John if  
24 you are going to speak, would you mind going  
25 under oath first.

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1 MR. CAMPBELL: No.

2

3 JOHN CAMPBELL,  
4 called as a witness on behalf of the  
5 Committee, was sworn and testified as  
6 follows:

7

8 REPRESENTATIVE WAGLE: I just  
9 asked about if there was correspondence from  
10 the AG's office to Hutton and Hutton as a  
11 contract offered to Hutton and Hutton.

12 MR. CAMPBELL: As I told you  
13 yesterday, we're redoing the litigation file  
14 in tobacco to make it chronological. I also  
15 ran a check on our mail log. Let's see.  
16 I've got -- we've got the March 14th letter  
17 from Hutton and Hutton. You should have  
18 that. There's an April 10th letter. You've  
19 got that. I've got an April 15th, '96 fax.  
20 I have not found that yet. I've got an  
21 April 17th fax. I haven't found that.  
22 There's an April 19th fax. You should have  
23 that. There's a June 10th fax. You should  
24 have that. I've got an April 24th, May 2nd,  
25 May 30 and May 31 which I'm thinking they

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1 are probably the same documents. Hutton and  
2 Hutton would normally fax something first  
3 and then send it in writing. We're looking  
4 for that. We got -- there's also a June 3rd  
5 and a May 27th, and we've got the August 7th  
6 letter which you should have. Let's see,  
7 we've got a March 20th we've got and then we

8 had correspondence in November of '98 which  
9 you should have. I think the problem is  
10 there's twofold. We were shooting drafts  
11 back to each other, and I normally wouldn't  
12 save a contract draft, but the other and I  
13 think what might be in some of these, like I  
14 found one letter from Hutton and Hutton  
15 about Native Americans. It was about Indian  
16 tobacco lawsuits. So that was in the  
17 research file with the Indian stuff.

18 REPRESENTATIVE WAGLE: Do you  
19 recall, General Stovall or Deputy Campbell,  
20 do you recall ever sending the Huttons a  
21 contract for services.

22 MR. CAMPBELL: I'm sure -- I'm  
23 assume we changed drafts.

24 REPRESENTATIVE WAGLE: Would you  
25 mind looking at this documents, please. It  
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1 appears here is a fax from the Kansas  
2 Attorney General. Up at the top it says  
3 approved by CJS. Who would CJS be?

4 MR. CAMPBELL: Draft approved by  
5 CJS. That would be the attorney general.

6 REPRESENTATIVE WAGLE: What does  
7 that appear to be to you?

8 MR. CAMPBELL: It's a draft, it's  
9 an offering to contract.

10 REPRESENTATIVE WAGLE: And what's  
11 the date on the contract?

12 MR. CAMPBELL: 6/4/96, June 4th.

13 REPRESENTATIVE WAGLE: Is it to  
14 the Huttons?

15 MR. CAMPBELL: I'm sure it is.

16 REPRESENTATIVE WAGLE: Are they  
17 required in that draft to keep time logs?

18 MR. CAMPBELL: Well, let me see.

19 REPRESENTATIVE WAGLE: Committee,  
20 I didn't hand this out to you. This was not  
21 in the package the attorney general gave  
22 you. We did send a copy out so everybody  
23 had a copy of this.

24 GENERAL STOVALL: I take it it's  
25 not a signed contract.

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1 REPRESENTATIVE WAGLE: But wasn't  
2 a contract -- would you look at it General  
3 Stovall and see if you authorized that  
4 contract to the Hutton.

5 GENERAL STOVALL: I don't know if  
6 I can say that.

7 REPRESENTATIVE WAGLE: Does it  
8 say approval up in the corner by CJS.

9 GENERAL STOVALL: Yeah, this  
10 would have been a contract draft. Paragraph  
11 15, compensation on the foregoing  
12 contingency shall be made in accord with the  
13 particular ethical statute 1.5 and not to  
14 exceed 25 percent after the mount recovered.  
15 We were talking to them about the fees.  
16 They wouldn't sign this, though, because  
17 they wanted a guarantee.

18 REPRESENTATIVE WAGLE: So when I  
19 asked for all open records regarding your  
20 communications with any and all law firms  
21 regarding hiring of outside counsel, why was  
22 that not included in the documents.

23 GENERAL STOVALL: John's telling  
24 me you don't have it.

25 MR. CAMPBELL: You know, if we  
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1 save every draft, I mean, we'd just -- we  
2 had to move. We didn't have enough room for  
3 people.

4 GENERAL STOVALL: There is  
5 nothing ominous about it. If it was a  
6 signed contract we would have had it. It's  
7 consistent with what I told you yesterday.

8 REPRESENTATIVE WAGLE:  
9 Representative Aurand.

10 REPRESENTATIVE AURAND: I don't  
11 know how this works. Is this one of a  
12 series of several drafts that was sent to  
13 them.

14 MR. CAMPBELL: Well, I assume it  
15 was. I didn't save the drafts, I think. We  
16 got a good chronology on pre '96. We're  
17 pretty good on '96. I mean we're building a  
18 chronological file.

19 GENERAL STOVALL: Folks. This

20 was four years ago, and we didn't contract  
21 with them, so what we may not have kept  
22 shouldn't be considered incriminating. We  
23 have given you what John has been able to  
24 find. He may not be the most meticulous  
25 recordkeeper in the world. He is probably  
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1 as frustrated by the documents not being in  
2 order as I am, but there's nothing ominous  
3 about that.

4 REPRESENTATIVE AURAND: I guess  
5 that's my only interest. It seems to me the  
6 big point or whatever seems to be the timing  
7 and who got the job and when all this  
8 happened. This was the beginning of June.  
9 I just kind of wondered do you have kind of  
10 just a ballpark idea that there was the  
11 first draft or several drafts or when the  
12 last one might have went to them. You'd say  
13 several drafts.

14 MR. CAMPBELL: Oh, yeah. Oh,  
15 yeah.

16 REPRESENTATIVE AURAND: Do you  
17 think this was toward the end of those.

18 MR. CAMPBELL: I really don't  
19 know. It looks like -- you know, with a  
20 different type and all that, it looks like  
21 we've gone through a couple of things here.

22 REPRESENTATIVE AURAND: When you  
23 sent these at any time on a draft and they  
24 would agree in theory to what the draft  
25 said, is sending them a draft is that

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1 similar to saying we will go ahead and take  
2 you if you accept this.

3 MR. CAMPBELL: Well, contracts  
4 offered, acceptance, consideration. I guess  
5 technically the first offer came from them,  
6 their letter of engagement. That was not  
7 accepted. We countered, I'm sure more than  
8 once. To the best of my knowledge -- forgot  
9 that. They felt that if you didn't have a  
10 fixed percent, you didn't have a contract.  
11 And I would say, no, I've got to put a cap  
12 on this thing. I don't want to put the cap

13 on money, because I don't know what they are  
14 going to make and I don't know how long it's  
15 going to take. And I didn't want to give  
16 the tobacco companies an incentive to stall  
17 this thing. That's why I never liked the  
18 monetary cap.

19 REPRESENTATIVE AURAND: As you  
20 worked through these different draft copies,  
21 were there other things you agreed on and  
22 this was kind of still out toward the last?  
23 Were you gaining ground, I guess.

24 GENERAL STOVALL: We would have  
25 never gained ground representative on the  
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1 most important issue which was something  
2 other than a guaranteed percent.

3 REPRESENTATIVE AURAND: I  
4 understand. I didn't know if there might  
5 have been several other things that maybe --  
6 that's one piece.

7 GENERAL STOVALL: Fronting  
8 expenses we agreed on. They were going to  
9 fronted expenses and we agreed upon that.  
10 The most important component was not having  
11 a fixed percent in the contract. There  
12 never was an agreement. I'm confident if  
13 Hutton and Hutton's come in and tell you  
14 that as well. They told post audit in '97  
15 if there wasn't a guaranteed percent in the  
16 contract, they felt like it wasn't a  
17 contract.

18 REPRESENTATIVE AURAND: That's  
19 where I guess I'm getting at this one, I  
20 don't know, E-mail or memo to John about  
21 crowdfunding out. In the negotiations when  
22 you negotiate with someone, once you learned  
23 there was going to be national counsel front  
24 the money, did you then go back to Huttons  
25 and say we have an offer now for someone  
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1 else to front the money, we've got --  
2 basically, we've got a chip. What will you  
3 do now in your 25 percent.

4 MR. CAMPBELL: I should say the  
5 General did direct me to tell them the news.

6 I did put that off. Two reasons. One, I  
7 didn't want tobacco to know we had Dick  
8 Skruggs. I'm in no way implying the Huttons  
9 would have gone out and told them. Is there  
10 a community and word gets out pretty quick.  
11 I didn't want tobacco to know, and also I  
12 wanted to see what kind of draft they came  
13 up with.

14 REPRESENTATIVE AURAND: What kind  
15 of what, what kind of draft?

16 MR. CAMPBELL: Ness Motley and  
17 Chanay, Entz and Chanay were working on a  
18 draft. I was, too. We were there. I  
19 wanted to see what they came up with. I had  
20 a pretty good idea from the Chicago meeting  
21 in May what they tried -- were going to try  
22 to do. I wanted to see it first. And I did  
23 put off till the 7th calling Andy.

24 REPRESENTATIVE AURAND: The 7th  
25 of August.

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1 REPRESENTATIVE AURAND: Of  
2 August.

3 MR. CAMPBELL: I did put off in  
4 July calling them. I don't want to say I  
5 never talked to them in that time frame.  
6 Tell them we're out.

7 REPRESENTATIVE AURAND: Was it  
8 yesterday you said August 1st was kind of  
9 when you hired.

10 GENERAL STOVALL: They started  
11 working in July. Once we had national  
12 counsel that was willing to front expenses  
13 and we had Dick Skruggs who was the premiere  
14 states Medicaid recoupment tobacco lawyer,  
15 we didn't need Hutton and Hutton. That was  
16 at tracks in the beginning of Hutton and  
17 Hutton, they were the only one prior to  
18 Skruggs to front expenses. Once we had  
19 national counsel to do that, we didn't need  
20 Hutton and Hutton to front the local  
21 expenses.

22 REPRESENTATIVE AURAND: I guess  
23 that's the part I don't understand. If they  
24 fronted that and for whatever reason you've

25 been working with Hutton and Hutton  
0027

1 exchanging drafts and trying to get  
2 something with them. Now you have basically  
3 a bargaining chip to go back to Hutton and  
4 Hutton who I presume -- I don't know  
5 anything about lawyers, have a good  
6 reputation to go back to them and say, look,  
7 now we have another offer fronting legal  
8 expenses, what will you do for us now.

9       GENERAL STOVALL: You know why, I  
10 was tired of messing around with them. They  
11 weren't coming off of that guaranteed  
12 percent in the contract. Every meeting we'd  
13 had with them, every conversation John had  
14 had with them indicated they were stuck on  
15 that percent. I had no reason to believe  
16 they weren't going to come off of it. We  
17 didn't have time to waste. The tobacco  
18 companies were suing attorneys general  
19 around the country in a preemptive strike to  
20 get to court before attorneys general did.  
21 I did not wanted that to happen. We wanted  
22 to get to court. We had the No. 1 national  
23 counsel in the counsel. That's who I wanted  
24 all along. They were fronting expenses.  
25 They wouldn't take a guaranteed expense. I  
0028

1 had the sweetheart deal I wanted for the  
2 State of Kansas.

3       REPRESENTATIVE AURAND: With that  
4 national counsel that you had and then how  
5 that ties back into choosing your state  
6 counsel, I guess I miss how getting them on  
7 the national level throws out Hutton and  
8 Hutton on the state level and brings Entz  
9 and Chanay on the state level.

10       GENERAL STOVALL: Hutton and  
11 Hutton wanted to take the leadership roll in  
12 litigation. They wanted to be the national  
13 counsel for Kansas. They wanted to put  
14 together a consortium of law firms to put  
15 their money together to pool to cover the  
16 expenses. That's what they wanted to do and  
17 to be the lead counsel. They didn't want to



18 be second dog, if you will, to Dick Skruggs.  
19 Additionally, Skruggs and that group of  
20 folks were not interested in working with  
21 Castano lawyers that had done that class  
22 action. And so because of our national  
23 counsel wasn't interested in working with  
24 that particular firm, it was an easy call in  
25 my mind. I simply made the judgment that I  
0029

1 wanted to go with somebody who was going to  
2 give us the best deal possible and whom I  
3 trusted. I make these decision about who to  
4 hire law firms all the time.

5 REPRESENTATIVE AURAND: So with  
6 the relationship from the national counsel  
7 back to the state, they played a large part  
8 in deciding who --

9 GENERAL STOVALL: Absolutely.

10 REPRESENTATIVE AURAND: Who you  
11 hired. They wouldn't work with Castano  
12 group lawyers.

13 GENERAL STOVALL: They didn't  
14 want to work with the particular firm in  
15 Wichita. There's a particular division in  
16 the bar of various kinds of lawyers.  
17 Skruggs and Ness Motley -- Ron Motley tends  
18 to be quite a plaintiff's lawyer. He and  
19 Skruggs had come to an understanding over  
20 this. You would ordinarily put, I think,  
21 Motley and I know this is far afield from  
22 what you guys want to be. There is  
23 particular intricacies involved in all  
24 litigation but certainly tobacco litigation.  
25 It just wasn't going to work to have the  
0030

1 Wichita firm we've spoken of be contracting  
2 with us and have Dick Skruggs as well.

3 REPRESENTATIVE AURAND: So the  
4 Wichita firm wasn't interested. They said  
5 we're not going to work as an underling to  
6 federal counsel.

7 GENERAL STOVALL: I didn't ask  
8 them that. They had always made -- in the  
9 one conversation I had with them, they made  
10 it obvious to me they wanted to be the lead

11 attorneys, and they wanted to put the other  
12 law firms together. I think their one-page  
13 contract suggests that as well, that they  
14 would be lead counsel.

15 REPRESENTATIVE AURAND: Thank  
16 you.

17 REPRESENTATIVE WAGLE: General  
18 Stovall, can you explain why you were in  
19 contract negotiations with Hutton and Hutton  
20 and in those contracts you offered them you  
21 required them to keep time records and then  
22 in the contract that you settled with Entz  
23 and Chanay, there was a specific clause to  
24 not keep time records.

25 GENERAL STOVALL: I think I  
0031

1 described that yesterday. The national law  
2 firms of Ness Motley out of North Carolina  
3 or South Carolina and the one out of  
4 Mississippi are traditional plaintiff firms  
5 and they do not keep hours. They insisted  
6 that there not be a provision in the  
7 contract that required that. Because they  
8 were getting paid on contingency it didn't  
9 matter to us whether or not they kept hours.  
10 Our standard toys require lawyers to keep  
11 hours because we tend to bill -- or they  
12 tend to bill us on an hourly rate. It's  
13 important. I suspect it was a standard  
14 provision in the contract. John can perhaps  
15 address if it came from some other purpose.

16 REPRESENTATIVE WAGLE: Is it  
17 standard most law firms keep track of hours  
18 on any case no matter what it is.

19 GENERAL STOVALL: No it's not.  
20 Ness Motley and Dick Skruggs firms do not  
21 keep track of any hours. They have no  
22 mechanism to keep track of hours. The  
23 number of hours doesn't mattered when you  
24 get paid not by the hours work but by the  
25 results achieved.

0032

1 REPRESENTATIVE WAGLE: Okay. And  
2 so it appears from what we have sitting here  
3 this morning, you offered Hutton and Hutton

4 a contract where they fronted the expenses  
5 and they had to keep track of hours.

6 GENERAL STOVALL: And they would.

7 REPRESENTATIVE WAGLE: You were  
8 in negotiation. Then it appears within a  
9 matter of days you turned around and offered  
10 a contract to your old law firm where they  
11 don't have to keep track of hours and where  
12 they don't have to front expenses. Is that  
13 not a sweetheart deal?

14 GENERAL STOVALL: The  
15 sweetheart deal for the State of Kansas is  
16 we are paying not one dime for having the  
17 privilege of collecting 1.6 billion dollars  
18 the lawyers are being paid out of big  
19 tobacco one and a half percent. If I would  
20 have signed the contract you seem to think  
21 is the deal of the century, it would have  
22 committed us to 25 percent of the tobacco  
23 recovery to Hutton and Hutton. That would  
24 be approximately 400 million dollars. I  
25 don't think they would be willing or

0033

1 probably any law firm willing to walk away  
2 from 400 million dollars for 1 and a half  
3 percent or 27 million dollars. I did the  
4 sweetheart deal I believed was in the best  
5 interest of the State of Kansas. I did in  
6 August of 1996 and I still believe that.

7 REPRESENTATIVE WAGLE: Did you  
8 ever offer Hutton and Hutton a contract for  
9 the same amount of up to 25 percent.

10 GENERAL STOVALL: Yeah, you just  
11 showed it to us.

12 REPRESENTATIVE WAGLE: That says  
13 up to.

14 GENERAL STOVALL: Yes, I just  
15 read it to you.

16 REPRESENTATIVE WAGLE: You just  
17 offered that to Hutton and Hutton.

18 GENERAL STOVALL: You gave it to  
19 me.

20 REPRESENTATIVE AURAND: Just out  
21 of curiosity, Entz and Chanay was not  
22 required to keep track of hours, and this

23 whole thing is leading up to a tax bill  
24 which I think people I've talked to have  
25 different reasons for wanting to support the  
0034

1 tax bill. There is various reasons out  
2 there where people want to support this tax  
3 bill. Did you ever ask them if they did  
4 keep track, not that they had to, did you  
5 ever ask them if they just kept track in  
6 passing.

7 GENERAL STOVALL: I did not, no.

8 REPRESENTATIVE AURAND: Do you  
9 know if they might have.

10 GENERAL STOVALL: They have said  
11 that they didn't.

12 REPRESENTATIVE AURAND: I guess  
13 the other thing I was kind of wondering if  
14 you figure this out, the 10,000 hours is  
15 what everybody is kind of --

16 GENERAL STOVALL: It was in the  
17 arbitration decision the tobacco companies  
18 estimated local counsel put in 10,000 hours  
19 on that case. It works out to about 2,700  
20 hours it's one and a half percent of the  
21 billion and a half the stated will receive.  
22 The state is not paying a dime of it.

23 REPRESENTATIVE AURAND: I  
24 understand the percentage is low. The  
25 \$2,700 an hour, did you say the attorney  
0035

1 general's office billed out.

2 REPRESENTATIVE WAGLE: 200--  
3 233-some thousand.

4 GENERAL STOVALL: John was 150.  
5 I was 165. That's what you get for being  
6 the boss.

7 REPRESENTATIVE AURAND: The extra  
8 15 bucks an hour.

9 GENERAL STOVALL: Not that any of  
10 it comes to us, obviously.

11 REPRESENTATIVE AURAND: The 2,700  
12 an hour as compared to that 150 an hour, can  
13 you see why some people as far as tacking on  
14 a tax making whatever 16, 17 times as much  
15 per hour might bother a lot of people.

16           GENERAL STOVALL: I understand --  
17 I don't understand about the tax at all. I  
18 think if you're going to tax these guys, tax  
19 the people that defended big tobacco. They  
20 are the bad guys in my mind. I don't  
21 understand that. Those lawyers made plenty  
22 of money. They made it every single month  
23 in regular checks from the tobacco  
24 companies. They didn't put anything up  
25 front. They didn't risk anything. They  
0036

1 knew they were going to get paid every  
2 single months and dozens got paid on just  
3 the Kansas case. Clearly, 27 million is a  
4 lot of money. I wouldn't tell you any  
5 differently. It's more money than I'm ever  
6 going to see in my lifetime I'm sure. The  
7 issue is not that they got 27 million in my  
8 mind. It's the fairness of all of it. They  
9 did a lot of work. The arbitration panel is  
10 the one that made that determination. If  
11 Hutton and Hutton would have gotten the  
12 contract, what would they have gotten. They  
13 wanted a guaranteed percent. They would not  
14 of taken from the arbitration money, the  
15 tobacco pot money. They would have been  
16 able to as attorneys in Maryland, Illinois  
17 and I think Iowa have sued or filed liens  
18 against the state, oh, no, we had a  
19 guaranteed percent whatever it was,  
20 guaranteed 15 percent let's say for purposes  
21 of discussion contract with the state. We  
22 don't want to take from the arbitration  
23 panel. Those numbers are really low, one  
24 percent, two percent. We want our  
25 guaranteed percent. The attorney general in  
0037

1 that state guaranteed us 20 percent of what  
2 the state got. We want that. The state  
3 hasn't gotten the 38 million Kansas has  
4 gotten from tobacco. They put liens on it.  
5 We're not facing that at all, folks. No  
6 question. Entz and Chanay is who I used to  
7 work for part time in the 1990's. Did they  
8 do a good job for us. Yes they did. Did

9 they fronted expenses along with national  
10 counsel. Yes. Did they risk it all. Yes.  
11 Did they take it on a contingency, yes. Are  
12 they now being financially compensated.  
13 Absolutely. That was the nature of this  
14 agreement. Nobody in August of 1996 had any  
15 idea that any money was involved in this  
16 contract.

17 REPRESENTATIVE WAGLE: General,  
18 Stovall, could we address that question. I  
19 have here another document from Hutton and  
20 Hutton dated June fifth that I'd like you to  
21 look at. It's a letter from John Campbell.  
22 I'm wondering if you ever saw it. Object  
23 the second page we understand the potential  
24 recovery in this litigation could be  
25 enormous.

0038

1 GENERAL STOVALL: Sure. It could  
2 be.

3 REPRESENTATIVE WAGLE: Wasn't  
4 that the word on the streets.

5 GENERAL STOVALL: Well, I don't  
6 know what the word --

7 REPRESENTATIVE WAGLE: The word  
8 among people that were involved in  
9 litigation and you said yesterday yourself  
10 that we were talking at the beginning of  
11 your testimony a potential.

12 GENERAL STOVALL: Potential,  
13 yeah, big tobacco had never paid a dime to  
14 any plaintiff ever.

15 REPRESENTATIVE WAGLE: Did you  
16 ever receive a document stating the  
17 potential recovery was enormous. Did you go  
18 into this knowing if we did recover we were  
19 talking about massive amounts of money.

20 GENERAL STOVALL: And that is why  
21 we didn't want a guaranteed percent in the  
22 contract that Hutton and Hutton wanted. I  
23 would not guarantee the percent because we  
24 did not know. It could have been because  
25 big tobacco had never paid anybody any dime

0039

1 anytime. But on the other hand, there was

2 money involved. That's why we sued because  
3 the states Medicaid reimbursement for  
4 smoking related illnesses was substantial.  
5 But I could not have told you nor would I  
6 have bet money, yes, we were going to get  
7 it.

8 REPRESENTATIVE WAGLE: But you  
9 entered the lawsuit believing there was a  
10 potential there to settle.

11 GENERAL STOVALL: Of course there  
12 was. We wouldn't have sued if there wasn't  
13 a potential for litigation. There's always  
14 a settlement. We could settle for Nebraska  
15 in water, but I don't think that's very  
16 likely.

17 REPRESENTATIVE WAGLE: And the  
18 new national strategy involving the  
19 attorneys general across the nation could  
20 result in massive amounts of money. I mean.

21 GENERAL STOVALL: I was the 11th  
22 state to sue. Not the 49th. When I sued in  
23 August of 1996, there was not the mass  
24 swelling or the grand swell of support of  
25 attorneys general for this litigation. One  
0040

1 of the documents quoted in the lengthy book  
2 I call it that John and I gave you yesterday  
3 talks about two attorneys general, one from  
4 Alabama and one from Ohio that in 1997 both  
5 were saying don't be getting in that tobacco  
6 litigation. The theories are weak, not very  
7 strong, weak at best I think prior said and  
8 bizarre at worst. There was not a grand  
9 swell of support in August of 1996. I am  
10 guilty of not having a crystal ball to have  
11 known that. For that I apologize to this  
12 committee. I did not know this would result  
13 in 206 billion dollars in a national  
14 settlement that was historic in the history  
15 of the world.

16 REPRESENTATIVE WAGLE: John, just  
17 so you could show that document to the  
18 attorney general.

19 GENERAL STOVALL: I don't doubt  
20 that we got it.

21 REPRESENTATIVE WAGLE: So that  
22 was just --

23 MR. CAMPBELL: But the risks,  
24 however, are likewise enormous.

25 REPRESENTATIVE WAGLE: Right.  
0041

1 MR. CAMPBELL: With that said,  
2 we'd like some certainty that the state  
3 agrees a contingency of 25 percent is fair  
4 and reasonable. We have made some changes  
5 to your latest draft. Rejection, counter  
6 offer which I would encourage you to review  
7 and discuss with us. Yeah.

8 REPRESENTATIVE WAGLE: That was  
9 provided to me by the Hutton law firm.

10 GENERAL STOVALL: John doesn't  
11 have it apparently. We have given what we  
12 have.

13 REPRESENTATIVE WAGLE:  
14 Representative Wilk.

15 REPRESENTATIVE WILK: Just an  
16 observation. The legal fees that are going  
17 to be paid, are they not -- is that schedule  
18 over 25 years.

19 GENERAL STOVALL: It is.

20 REPRESENTATIVE WILK: 27 million  
21 and dividing it by 25 years.

22 GENERAL STOVALL: However long it  
23 takes to be paid up to 25 years, no  
24 interest.

25 REPRESENTATIVE WILK: Just an  
0042

1 observation. We are focusing on the money  
2 here. I don't know that that ought to be  
3 the focus. Let's go back to 1996. Look at  
4 how many people actually ever one a lawsuit  
5 and then let's ask -- I look at this putting  
6 it back in business terms. Basically if you  
7 use the ten,000 hours, you've gut a law firm  
8 that invested close to a quarter of a  
9 million dollars. And they didn't know if  
10 they were going to win. Up to 1996, nobody  
11 had won anything. If they took that quarter  
12 of a million dollars and look at some rate  
13 of returned over that, you're basically



14 looking at a ten fold return over 25 years.  
15 I suggested to the committee, if you've got  
16 a quarter of a million dollars to invest in  
17 1996, that probably wouldn't have been the  
18 top spot to put it in the tobacco lawsuit  
19 because there are countless other  
20 investments you could have got a ten fold  
21 return on in much less than 25 years. So I  
22 think we ought to put it in perspective.  
23 Let's move beyond the money. We can come  
24 back and talk to it.

25 REPRESENTATIVE WAGLE: Is there a  
0043

1 possibility the monies could be paid out  
2 earlier than 25 years.  
3 GENERAL STOVALL: I indicated it  
4 was to be paid at the end of 25 years. The  
5 lawyers are looking at 15 to 20. If I could  
6 go on with the documents that we provided  
7 this morning, this set is from the Morrison  
8 and Hecker law firm. It is another firm as  
9 you know that we talked with. The first  
10 thing you'll be given hopefully is a Xeroxed  
11 copy of the business carried of Mary  
12 Barrier, B A R R I E R. She came along with  
13 Bob Vancrum who was formerly a colleague of  
14 yours who now works with Morrison and  
15 Hecker. Bind that business card will be my  
16 handwritten notes as to that discussion.  
17 And on one of the pages it will enumerate  
18 what the financial arrangements are that  
19 that firm was tentatively talking about.  
20 They certainly hadn't made a decision to  
21 take the case, but they talked about we  
22 would have to fronted expenses as well as  
23 pay some discounted rate of hourly fees.  
24 They mated at the bottom of one of the pages  
25 you'll see one million dollars a year for

0044

1 five years. As I told you, that was  
2 unacceptable to us. They sent a follow-up  
3 letter that is the April 10th letter that  
4 should be in your possession as well. That  
5 confirms the discussion in the meeting. You  
6 may remember yesterday legislative post

7 audit -- from my comments about post audit  
8 anyway that Mary Barrier called back after  
9 this meeting and told John that the firm was  
10 unwilling to front expenses. Then when we  
11 found that Skruggs was willing to front  
12 expenses, John talked to Morrison and  
13 Hecker, called Morrison and Hecker to see if  
14 they would be local counsel. They at that  
15 time told us they had a conflict of interest  
16 discovered, some partner of theirs had, I  
17 don't know, some tangential relationship and  
18 they didn't want to be involved. So that  
19 was the Morrison and Hecker conversations.  
20 The next things we provide to the tax chair  
21 are documents regarding the Entz and Chanay  
22 consultations. Things aren't necessarily in  
23 chronological order. I grouped them by  
24 subject matter, perhaps that would be  
25 easier. The first thing is a July 25th  
0045

1 letter with a proposed draft of the contract  
2 in it. Behind that is a July 31st letter.  
3 That's the one you may remember from  
4 yesterday that I handed to the committee  
5 chair yesterday, not to you committee  
6 members because John had uncovered it Sunday  
7 night and it had not been originally  
8 provided. It says attached is the draft  
9 engagement letter, information about naming  
10 some other party defendants and then a rough  
11 draft of the petition. That was provided.  
12 Then on August the 14th is a letter from  
13 Entz and Chanay actually signed by Stu Entz  
14 to John saying enclosed is the proposed  
15 revision to the contract. They set out four  
16 things that is their interpretation of the  
17 payment clauses in the contract. No. 1, if  
18 the state receives nothing, there is no fee.  
19 No. 2, if any judgment is entered, the court  
20 can determine the fee pursuant to rule 1.5.  
21 That you've heard us talk about is the  
22 requirement ethically for lawyers to have  
23 fees determined as reasonable. No. 3, if  
24 there is a settlement, the fee shall be a  
25 part of the settlement and the state must

0046

1 approve settlement. That made sure the  
2 lawyers couldn't settle without my approval.  
3 No. 4, there is an absolute cap on counsel's  
4 fees at less than the normal contingent fee.  
5 Normally contingent fees are one-third, 33  
6 percent. Then attached to that was the  
7 draft contract, not the signed dated one.  
8 I've given you that before, but a draft  
9 contract. Let me provide to you, too,  
10 what's called Q and A. This is something I  
11 mentioned yesterday in my testimony to you  
12 that is the Q and A that we provided the day  
13 the press conference announcing the lawsuit.  
14 It was handed out attached to every  
15 statement that I made as well as to the  
16 press release. Question No. 13 on the back  
17 page. How did you choose counsel for the  
18 State of Kansas. Answer we have sought the  
19 assistance of both local and national  
20 counsel in this lawsuit. Entz and Chanay  
21 P.A., attorney General Stovall's former law  
22 firm, was chosen because it's a leading  
23 expert on Medicaid reimbursement and holds  
24 attorney General Stovall's utmost trust in  
25 protecting the interest of taxpayers. We

0047

1 never, ever hid who it was that we had  
2 hired. The last thing that I would like you  
3 to be sure to have then is a copy of the  
4 arbitration decision. That, too, was made  
5 available to your tax committee chair. I  
6 have copies of the bio's of the three  
7 members that served on that arbitration  
8 panel. I didn't copy those thinking that  
9 was going a little too far. If you have  
10 desire for that, I absolutely will make that  
11 available. But it's the arbitration  
12 decision, then, that is how the attorney  
13 fees were decided. Every law firm in the  
14 country that chose the route of arbitration  
15 goes through this kind of process. They  
16 present their side. The tobacco company  
17 presents their side. In this case, it took  
18 several months, a decision was made. They

19 go through, you'll see and evaluate what the  
20 contract said which was up to 25 percent.  
21 They talk about the nature of the lawsuit.  
22 I would even boast for a moment because I'm  
23 sure no one else will and say this opinion  
24 says given the political atmosphere in the  
25 State of Kansas, it appears that the Kansas  
0048

1 Attorney General took a courageous step in  
2 commencing litigation against the settling  
3 companies. You can say that again.  
4 Nonetheless, it talks about the work of  
5 local counsel in evaluating those 2500  
6 documents that I mentioned to you yesterday  
7 that we broke the joint defense privilege on  
8 and that stood to be opened up to the rest  
9 of the country. The decision as you know  
10 concludes that totally. 54 million is what  
11 will be paid to the three law firms that  
12 represents Kansas. This panel doesn't know  
13 how the split will be made. That was done  
14 in the original contract. Nonetheless, that  
15 I believe is all the documents that we have  
16 provided to the tax committee chair, and I  
17 wanted to be sure you had those as well.

18 REPRESENTATIVE WAGLE: General  
19 Stovall, on the arbitrator's decision which  
20 was faxed to the press on the day that they  
21 determined.

22 GENERAL STOVALL: Right. And  
23 then I made available to them as well.

24 REPRESENTATIVE WAGLE: And you  
25 made available to everyone. There is three  
0049

1 signatures here. Who is John Calhoun Wells?

2 GENERAL STOVALL: I believe he's  
3 the one who was chosen mutually --

4 REPRESENTATIVE WAGLE: By  
5 tobacco.

6 GENERAL STOVALL: And the state's  
7 lawyers.

8 REPRESENTATIVE WAGLE: A neutral  
9 party.

10 GENERAL STOVALL: Chosen by those  
11 two parties.

12 REPRESENTATIVE WAGLE: And the  
13 Honorable Charles Renfro.

14 GENERAL STOVALL: Chosen by  
15 tobacco.

16 REPRESENTATIVE WAGLE: Chosen by  
17 tobacco. He was a judge.

18 GENERAL STOVALL: Yes, I maybe  
19 should have made this available. Used to  
20 work for standard identical company. A  
21 partner in Pillsbury, Madison and Sutro  
22 (spelled phonetically). He was a deputy  
23 attorney general of the United States. U.S.  
24 district judge for the northern district of  
25 California, had been with Pillsbury before  
0050

1 that. Was a part-time instructor at a law  
2 school at Berkley, very good resume. I can  
3 make that available. That's who the tobacco  
4 company's choose.

5 REPRESENTATIVE WAGLE: Harry.

6 GENERAL STOVALL: Hugey (spelled  
7 phonetically). That's who the state's  
8 lawyers chose.

9 REPRESENTATIVE WAGLE: A neutral  
10 panel to determine fees.

11 GENERAL STOVALL: I didn't say it  
12 was neutral. Tobacco's company choose one  
13 person. He's there to look out for the  
14 financial interests for the tobacco  
15 companies. One person that the state's  
16 lawyers chose who they thought would be  
17 sympathetic to their concerns and a third  
18 person chose and it was mutually agreed upon  
19 or else there wouldn't have been consensus  
20 on that person.

21 REPRESENTATIVE WAGLE: Did you  
22 appear before this counsel.

23 GENERAL STOVALL: I did not  
24 except by telephone.

25 REPRESENTATIVE WAGLE: You called  
0051

1 in. And you gave them facts about the  
2 Kansas Kay.

3 GENERAL STOVALL: I talked to  
4 them about what had happened in Kansas, yes.

5 REPRESENTATIVE WAGLE: Okay. Is  
6 there written testimony about what you said  
7 to this panel.

8 GENERAL STOVALL: No. I was in  
9 Pasadena for the Colorado water lawsuit.  
10 Called in from my hotel room on a Saturday  
11 morning. Made comments. I have rough  
12 drafts of notes I would have spoken from.

13 REPRESENTATIVE WAGLE: Would you  
14 care to deliver those notes to the  
15 committee?

16 GENERAL STOVALL: Well, I'd be  
17 happy to if you think that's important. It  
18 wasn't anything you had requested earlier.

19 REPRESENTATIVE WAGLE: No, it  
20 wasn't anything I requested earlier. I  
21 think this was the basis -- your  
22 communications with a basis by which they  
23 arrived at a \$54 million settlement.

24 GENERAL STOVALL: Mine as well as  
25 a lot of other information they received.

0052

1 What I refused to do in that telephone call  
2 was to name any amount of money. I said  
3 that from the outset. I had no idea how  
4 much Kansas counsel was asking for. I  
5 assumed from they asked for an amount. They  
6 provided information about the work they had  
7 done. This panel, based on the prior  
8 decisions and their knowledge, came up with  
9 what amount was appropriate. I told them at  
10 the beginning and despite the harsh  
11 questioning by this Mr. Renfro demanding  
12 basically that I name an amount. I refused  
13 to do so. I explained this very issue to  
14 them. Because I had worked with Stu and  
15 Jeff, I simply was not going to name a  
16 number. It put me in a very uncomfortable  
17 position, and I would not do that. So I  
18 told them about the work, about what it was  
19 like when I filed, how I chose them and how  
20 policed I was with the work we did. We were  
21 the only state in the country to break the  
22 joint defense privilege which was crucial.  
23 We talked about that.

24 REPRESENTATIVE WAGLE: Is there a  
25 document of this conversation between you  
0053

1 and the arbitration panel? Is it  
2 documented anywhere.

3 GENERAL STOVALL: I don't know if  
4 they did a transcript or not.

5 REPRESENTATIVE WAGLE: I was  
6 wondering if there was anyway for you to  
7 look at it. If there is anyway to provide  
8 to the committee whatever your testimony was  
9 to the arbitration panel. Would that be  
10 possible.

11 GENERAL STOVALL: I can sure call  
12 them and see. I wasn't there. I don't know  
13 if they had a court reporter or not. They  
14 might have.

15 REPRESENTATIVE WAGLE: Could you  
16 have stated to this panel that on page 6 it  
17 says Entz and Chanay, they were a small --  
18 they were a small four to five person law  
19 firm selected by the Kansas AG Stovall after  
20 several Kansas counsel refused to take the  
21 case.

22 GENERAL STOVALL: Well, I -- I  
23 don't remember what I said. I don't know if  
24 I would have explained how we came to them  
25 that, Hutton and Hutton didn't want it for  
0054

1 the contract terms. I don't know if I  
2 talked about Morrison and Hecker not wanting  
3 it because of the financial arrangements and  
4 their later conflict of interest, and I  
5 don't remember if I talked about Don bury  
6 not wanting it because of the expenses be  
7 fronted. I don't remember that.

8 REPRESENTATIVE WAGLE: So you  
9 don't know if you stated to this panel that  
10 several Kansas counsel refused to take the  
11 case.

12 GENERAL STOVALL: I don't know.  
13 That's exactly right.

14 REPRESENTATIVE WAGLE: I think  
15 it's very important that the committee is  
16 able to look at those documents.

17 GENERAL STOVALL: Why?  
18 REPRESENTATIVE WAGLE: I think  
19 it's very important. This was a decision --  
20 okay. We are the client. We are the State  
21 of Kansas. You were representing the State  
22 of Kansas.

23 GENERAL STOVALL: Those law firms  
24 were.

25 REPRESENTATIVE WAGLE: And  
0055

1 securing a law firm on behalf of the State  
2 of Kansas to represent Kansas in the  
3 matters, and I believe that that testimony  
4 is very important.

5 GENERAL STOVALL: I'd be happy to  
6 make it available. I will call and see if  
7 there is a transcript available. You sound  
8 like maybe you know there is one. Maybe you  
9 could make the request as well. Do you know  
10 if there is one. It looks like you do.

11 REPRESENTATIVE WAGLE: I honestly  
12 don't know if there is one. I'm very  
13 concerned here the Kansas Attorney General  
14 Stovall after several Kansas counsel refused  
15 to take the case. We are not seeing that  
16 that is the case.

17 GENERAL STOVALL: What do you  
18 recall Morrison and Hecker, did they refuse  
19 to take the case?

20 REPRESENTATIVE WAGLE: It  
21 appeared they did.

22 GENERAL STOVALL: Did Don Barry  
23 refuse take the case?

24 REPRESENTATIVE WAGLE: It's my  
25 understanding he refused. That's two.

0056

1 Hutton and Hutton wouldn't take it for the  
2 contract terms we insisted upon.

3 REPRESENTATIVE WAGLE: Okay.  
4 That's your statement today.

5 GENERAL STOVALL: That's exactly  
6 my statement today. It was yesterday, and  
7 it has been every day.

8 REPRESENTATIVE WAGLE: Thank you.  
9 Representative Johnston and then



10 Representative Campbell.

11 REPRESENTATIVE JOHNSTON: Thank  
12 you, Madam Chair. First I've got two  
13 things. First I want to ask you one of  
14 those whispering questions that goes around  
15 the capital that nobody has asked.

16 GENERAL STOVALL: There aren't  
17 any whispering questions in this place.

18 REPRESENTATIVE JOHNSTON: Lots of  
19 them. It's very simple. Why did you choose  
20 to contract out for these legal services  
21 rather than doing the services in-house like  
22 say Colorado did.

23 GENERAL STOVALL: We talked about  
24 that yesterday. When Colorado signed on,  
25 they would have sued in June the 5th of  
0057

1 1997. That was June the 23rd just two weeks  
2 probably, three weeks before the June 23rd  
3 settlement was announced. Everybody knew at  
4 that point there was going to be a  
5 settlement. You may remember all the media  
6 hype about the settlement. Secret  
7 negotiations and they weren't. Colorado  
8 sued banging on the fact there would be  
9 settlement and Gale Norton the Colorado  
10 attorney general gambled she would never  
11 have to try that lawsuit. The first 20  
12 states that sued contracted out of house to  
13 do it bosses as I indicated yesterday,  
14 nobody could manage it in-house. I was  
15 pretty comfortable in believing that the 7  
16 million dollars we estimated it would take  
17 over three years would not be forthcoming  
18 from the legislature. And if I wanted to  
19 pseudo back owe, this was the only way to  
20 make it happen.

21 REPRESENTATIVE JOHNSTON: I  
22 appreciate your response to that. I think  
23 it's important that you are fully heard on  
24 that question. The second thing I guess I  
25 want to say and since I didn't read anything  
0058

1 about this in the newspaper this morning,  
2 again, I want to state that the whole

3 reason, I'm not sure what the purpose of  
4 this hearing is, but what I have learned  
5 from it is that this whole situation is a  
6 stellar example of why we should require a  
7 process for competitive bidding in  
8 professional contracts. That having been  
9 said, I do not believe that you've done  
10 anything illegal, but I have to admit to  
11 you, General Stovall, that I was very  
12 disappointed when I read on page 10 of your  
13 testimony yesterday that you ruled out  
14 hundreds of attorneys and presumably law  
15 firms just because they weren't registered  
16 Republicans. That is appalling to me. I'd  
17 like you to respond to that.  
18 GENERAL STOVALL: Thank you. We  
19 didn't rule out them. We considered  
20 everybody who came to us. Hutton and Hutton  
21 -- I don't know what their political  
22 affiliation is. They are trial attorneys,  
23 the stereotype is that makes them Democrats.  
24 I don't know. Morrison and Hecker, there is  
25 so many lawyers, Bob Vancrum I happen to  
0059

1 know is a Republican. A member of this  
2 body. He was in the legislature. It didn't  
3 mean every firm with Democrats in the state  
4 I wouldn't have talked to if they had come  
5 in. But a concern was how this lawsuit was  
6 viewed statewide. I took as I shared with  
7 you in the book yesterday we put together  
8 that after the decision to file the many,  
9 many, many editorials that were very, very  
10 critical of my decision to file the lawsuit,  
11 people believing that tobacco was a lawful  
12 product which it is, that the state shunt be  
13 suing, so for me to go with the traditional  
14 plaintiff's lawyers, trial lawyers would be  
15 furthering that, giving more fuel to people  
16 that I expected to be critical of the  
17 lawsuit decision, and that very much was  
18 part of my decision. And every year, every  
19 few years the legislature has a bill to  
20 require some other kind of legislative  
21 process to go through attorneys, we will

22 comply with it with whatever law it is that  
23 you pass. We ask for flexibility only  
24 because when we are sued, we have to respond  
25 within 20 days. It needs to be fast. But

0060

1 we'll do whatever it is that you tell us to  
2 do.

3 REPRESENTATIVE JOHNSTON: And I  
4 appreciated that. I appreciate your  
5 response. As I said yesterday. It's the  
6 fault of the legislature that we haven't  
7 done that, but, you know, the testimony  
8 yesterday still gave me serious pause. The  
9 next question was I had a representative  
10 mention to me yesterday that your office  
11 during the budget process and the  
12 appropriations process had been asked last  
13 year and may have even been in the budget as  
14 a line item to develop the process for  
15 making these decisions for, you know,  
16 establishing I guess a regulatory process or  
17 process of rules by which you hire outside  
18 counsel. Has that happened.

19 GENERAL STOVALL: Guidelines.  
20 Yes. That was distributed. It's this.  
21 It's the July 1, 1997 guidelines for hiring  
22 counsel. In addition to that, what post  
23 audit talked about was we have an accounting  
24 firm, a specialty accounting firm I think in  
25 California called Examine. They look at all

0061

1 the bills of counsel that we contract with  
2 to go through them to be sure they are  
3 reasonable, they are accurate. That's on  
4 the contracts that are the standard. This  
5 one clearly was not a standard contract. We  
6 don't engage in this kind of litigation on a  
7 regular basis. That's in place as well John  
8 thank you very much. Thank you Madam  
9 Chairman.

10 REPRESENTATIVE WAGLE:  
11 Representative Campbell.

12 REPRESENTATIVE CAMPBELL: Forgive  
13 me, the arbitration panel, was it part of  
14 their process you would interface with them,

15 or did you make the overture to call in to  
16 them.

17       GENERAL STOVALL: They very much  
18 expected attorneys general to participate in  
19 that process. My understanding is most did  
20 it in person with the exception of Attorney  
21 General Jim Ryan of Illinois. It was their  
22 feeling if the person who did the  
23 contracting, the person responsible for the  
24 litigation could talk about how it went,  
25 that helped them decide, helped them look at  
0062

1 evaluate the whole case.

2       REPRESENTATIVE CAMPBELL: An  
3 invited process and standard, normal with  
4 what they were doing.

5       GENERAL STOVALL: Yes, sir.

6       REPRESENTATIVE CAMPBELL: Thank  
7 you.

8       REPRESENTATIVE WAGLE: Are there  
9 further questions of the committee?  
10 Representative Gregory.

11       REPRESENTATIVE GREGORY: Thank  
12 you. Contingency fees goes, what is the  
13 largest ever awarded within the state.

14       GENERAL STOVALL: The percent or  
15 the amount.

16       REPRESENTATIVE GREGORY: The  
17 amount stow tow to my knowledge. The  
18 percent certainly is not. The settlement  
19 totally was the largest settlement in the  
20 history of the world. So I would guess -- I  
21 know bringing in a billion six to for the  
22 state is the largest settlement. Whether or  
23 not 27 million is the biggest fee. John has  
24 been with the office 20 some years and has a  
25 better history than I do.

0063

1       MR. CAMPBELL: The biggest one in  
2 Kansas paid so far was 12 million to free  
3 done when he did the military thing. KPERS,  
4 I don't think this has been paid yet.

5       GENERAL STOVALL: 30 to force  
6 percent.

7       MR. CAMPBELL: It's 40 percent. I

8 think it's about 18 million. I think this  
9 is the biggest one, but I don't really know.

10 GENERAL STOVALL: The percent is  
11 by far tiny compared to those other percent.  
12 KPERS right now is paying 40 percent for its  
13 attorney fees. I think we've recouped about  
14 60 million. 30 to 40 percent is going out  
15 in fees. That's not what I wanted to see  
16 happen here.

17 REPRESENTATIVE WAGLE: Further  
18 questions.

19 REPRESENTATIVE WAGLE:  
20 Representative Gatewood.

21 REPRESENTATIVE GATEWOOD: Madam  
22 Chairman, will these other attorney fees be  
23 affected by this tax bill.

24 REPRESENTATIVE WAGLE: What other  
25 attorney fees.

0064

1 REPRESENTATIVE GATEWOOD: Such as  
2 the KPERS fund? Will these other  
3 attorneys.

4 REPRESENTATIVE WAGLE: We're  
5 going to focus on the bill tomorrow if  
6 that's okay and answer the questions and try  
7 and get staff.

8 REPRESENTATIVE GATEWOOD: Will  
9 they be affected.

10 REPRESENTATIVE WAGLE: I really  
11 don't know.

12 GENERAL STOVALL: That might be  
13 interesting to the lawyers that represent  
14 KPERS and lots of other lawyers in the  
15 state. I would offer if you're going to do  
16 it.

17 REPRESENTATIVE WAGLE: We'll get  
18 into the details of the bill tomorrow and.  
19 It's not open for discussion. My plans are  
20 representative Powell will appear before the  
21 committee tomorrow to discuss the bill  
22 specifically and what it does and what  
23 impact it has and on who the impact, you  
24 know, who it's impacted. Represent  
25 afternoon Tomlinson.

0065

1 REPRESENTATIVE TOMLINSON:  
2 Comment first. My mother always wanted me  
3 to be a lawyer.

4 GENERAL STOVALL: I bet she's  
5 happy, isn't she, representative.

6 REPRESENTATIVE TOMLINSON: If  
7 she's not, I am. I'm sure you said this  
8 yesterday. I was.

9 GENERAL STOVALL: We missed you.

10 REPRESENTATIVE TOMLINSON: I'm in  
11 graduate school city stow I am sorry for  
12 that.

13 REPRESENTATIVE TOMLINSON:  
14 Believe me, it's much better than this. My  
15 question is, the settlement amount the  
16 arbitrator set for Kansas is within -- it's  
17 within -- well, education would say within  
18 one standard deviation. It is close to the  
19 other figures or the other percentages that  
20 were set for other states.

21 GENERAL STOVALL: At this point  
22 in time, it is the second smallest award  
23 that's been made. Illinois counsel's  
24 received 1.29 percent. That is after their  
25 attorney general did not show up. Then  
0066

1 there was a 4.4 percent for Iowa. 12.37  
2 percent for Louisiana, 6.52 percent for  
3 Hawaii. The other four station,  
4 Mississippi, Florida, Texas, Massachusetts  
5 -- Massachusetts got 9 percent. The other  
6 three states were tremendously large, 34  
7 percent, 26 percent and 19 percent. They  
8 were the first three that settled. I think  
9 the vast criticism from those attorney fees  
10 made the panels think maybe we overdid on  
11 those. Everything since those is much, much  
12 less.

13 REPRESENTATIVE TOMLINSON: It has  
14 something to do with the order of the  
15 entrance in the suit.

16 GENERAL STOVALL: And level of  
17 risk.

18 REPRESENTATIVE TOMLINSON: And 11  
19 of risk. Since we were 11, there was some

20 significant risk and so on and so on. Does  
21 it have anything to do with what has some to  
22 do with your testimony in Pasadena, from  
23 Pasadena as well you would think, we would  
24 hope you had some influence.

25 GENERAL STOVALL: I don't know  
0067

1 that they weighed factors. I don't know how  
2 much that impact that had, had I not  
3 participated, that might have been negative  
4 than my testifying did have positive.

5 REPRESENTATIVE TOMLINSON: They  
6 solicited information from the firm  
7 themselves in terms of the work.

8 GENERAL STOVALL: The three law  
9 firms my understanding were present as well  
10 as the tobacco lawyers.

11 REPRESENTATIVE TOMLINSON: The  
12 tobacco lawyers had the opportunity to  
13 present and argue their point in terms of  
14 how much work.

15 GENERAL STOVALL: It was quite an  
16 adversarial process, I understand.

17 REPRESENTATIVE TOMLINSON: Okay.  
18 Thank you.

19 REPRESENTATIVE WAGLE:  
20 Representative.

21 REPRESENTATIVE RAY: Thank you.  
22 If the Kansas law firm would have received  
23 half of what they did, what would have  
24 happened to the other money, the 13 million.

25 GENERAL STOVALL: I'm sorry, say  
0068

1 that again.

2 REPRESENTATIVE RAY: If they  
3 would have awarded our law firm half of the  
4 percentage, one-half of a percent.

5 GENERAL STOVALL: Of 54 million  
6 -- 54 million is what all the Kansas three  
7 law firms get.

8 REPRESENTATIVE RAY: I'm trying  
9 to find out if we didn't bring it in paying  
10 this law firm from this arbitration fund,  
11 where does it go.

12 GENERAL STOVALL: No, we wouldn't

13 get anything else. If they had awarded less  
14 -- if they awarded anything less than they  
15 did, the state doesn't get anymore money.  
16 The law firms would get whatever they  
17 awarded and this big pot of lawyer money  
18 that big tobacco committed to pay would just  
19 have that money.

20 REPRESENTATIVE RAY: The tobacco  
21 company.

22 GENERAL STOVALL: Right.

23 REPRESENTATIVE RAY: So any  
24 lesser is a savings for the tobacco company.

25 GENERAL STOVALL: Absolutely.

0069

1 Big tobacco is paying all this. The  
2 strategic contribution fund set up by this  
3 agreement that awards states based on what  
4 they did decided for Kansas 159 million  
5 dollars, that comes from 2008 and 2017 in  
6 terms of when it's paid to the State of  
7 Kansas over the period of time. I think  
8 it's wonderful recognition of the role we  
9 played in it. Again, I'd proud the role  
10 Kansas did in this litigation and No. 11 and  
11 not waiting until the handwriting was on the  
12 wall. That's not my style.

13 REPRESENTATIVE WAGLE: Further  
14 questions? General Stovall, I think it  
15 would be real important for us to have  
16 copies of the documents that you gave and  
17 maybe tobacco gave to the arbitration panel.

18 GENERAL STOVALL: I gave nothing  
19 to the tobacco panel.

20 REPRESENTATIVE WAGLE: You didn't  
21 speak with them over the phone? You did  
22 speak with them. You did have notes?

23 GENERAL STOVALL: Right.

24 REPRESENTATIVE WAGLE: If there  
25 was a recording, I'd like a reporting.

0070

1 GENERAL STOVALL: I would ask if  
2 there was.

3 REPRESENTATIVE WAGLE: It does  
4 say clarify national counsel provided most  
5 of the personnel power and resources for the



6 Kansas.

7           GENERAL STOVALL: When I looked  
8 at that, I highlighted it. That is not at  
9 all what happened. I questioned counsel  
10 about that to say and I personally know Joe  
11 Rice. He's with the Ness Motley firm. What  
12 in the heck are you talking about. It was  
13 not an accurate statement at all of what  
14 happened, and anybody who looks at that who  
15 was at the conference will say it was a  
16 misstatement. Joe Rice could not under oath  
17 say that, and he would have been  
18 miscellaneous quoted.

19           REPRESENTATIVE WAGLE: Maybe it's  
20 very important this committee seize those  
21 documents if there are documents that make  
22 exist.

23           GENERAL STOVALL: I'll make the  
24 phone call when I get back to the office and  
25 see.

0071

1           REPRESENTATIVE WAGLE: Is there  
2 one more question. Representative Vickery.

3           REPRESENTATIVE VICKERY: At the  
4 point of this arbitration, does this affect  
5 what the State of Kansas would receive at  
6 all.

7           GENERAL STOVALL: Absolutely not.

8           REPRESENTATIVE VICKERY: So this  
9 is just what their fees will be.

10           GENERAL STOVALL: That's right.  
11 Had they not chosen to go the arbitration  
12 route, their fees would be subtracted out of  
13 the Kansas settlement and we would be  
14 writing a check to the firms. The way the  
15 arbitration was set up so the state wouldn't  
16 have any expense for the litigation and  
17 tobacco pays for all of it. States filed  
18 very, very late in the game, and they did  
19 not hire outside counsel. Those states are  
20 getting the same allocations that were set  
21 out on the chart in November the 23rd of  
22 1998 as we are getting. The states that  
23 aren't paying lawyers or didn't have lawyers  
24 that tobacco has to pay, they are not

25 getting any incentive, any boost, any  
0072

1 subsidy, nothing as compared to those that  
2 got in early and the companies are having to  
3 pay attorney fees for those states. We are  
4 suffering not a dime for this. In fact,  
5 it's a huge benefit that we are not paying  
6 attorney fees.

7         REPRESENTATIVE WAGLE: Okay.  
8 Committee, you have a ton of information to  
9 digest. We're going to adjourn. Tomorrow  
10 we will look into the specifics of the bill  
11 that representative Powell has proposed.  
12 Thank you.

13         GENERAL STOVALL: Thank you for  
14 courtesies committee members.

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