

1                   MR. PALMER: Do any of the Commission  
2                   members have any questions for Jerry Johnson?

3                   (No questions were presented.)

4                   MR. PALMER: Thank you, Mr. Johnson. You're  
5                   excused and may be released from your subpoena.

6                   (The witness left the conference room.)

7                   MR. SCHAFFER: I have John Nooney but he's  
8                   not here. Do we have the ability to call him?

9                   MR. PALMER: We do. You have a phone number  
10                  for him? Why don't we take a 15-minute recess.

11                  MR. SCHAFFER: You bet. Yep.

12                  (Brief recess was taken.)

13                  DEBBY SALZSIEDER,

14                  called as a witness herein, having been first duly  
15                  sworn, was examined and testified as follows:

16                  MR. PALMER: We're back on the record and,  
17                  Mr. Schaffer, you have another witness.

18                  MR. SCHAFFER: Yes. We're going to call Deb  
19                  Salzsieder, who has just been sworn.

20                  DIRECT EXAMINATION BY MR. SCHAFFER:

21                  Q        Would you please state your name for the record  
22                  and please spell your name.

23                  A        Debby Salzsieder. The last name is  
24                  S-A-L-Z-S-I-E-D-E-R.

25                  Q        Where do you live?

1 A Custer, South Dakota.

2 Q What is your title?

3 A Clerk of Courts, Custer County.

4 Q And how long have you held that position?

5 A Since May of 2006.

6 Q Prior to that, what was your title?

7 A Deputy Clerk of Court, Custer County.

8 Q How long were you in the position?

9 A Since June of 2002.

10 Q And prior to that?

11 A For seven years prior to that I was office  
12 manager and real estate closer for Bradeen Real  
13 Estate & Auctions and The Real Estate Center of  
14 Custer.

15 Q Prior to that? I think you told me you were a  
16 court reporter.

17 A Yes, I was. For approximately eight years I was  
18 a freelance court reporter in Dubuque, Iowa as  
19 well as Rapid City, South Dakota.

20 Q Do you prefer to be called Debby?

21 A Either one.

22 Q Debby, we're here to -- regarding a complaint  
23 against Judge Fuller and an investigation that  
24 Mr. Nelson conducted where he interviewed a  
25 number of people. And I think there were a

1 couple of incidents that you related involving  
2 complaints that you may have had concerning  
3 Judge Fuller. And I would ask if you could -- I  
4 think one of those involved a jury trial down in  
5 Custer in 2007. Does that sound right?

6 A That's right.

7 Q And tell the Commission what happened then.

8 A We had a two-day jury trial scheduled in Custer.  
9 Judge Fuller was presiding. I think it started  
10 when he arrived. I was going to clerk the trial  
11 as is office policy, in Custer County anyway.  
12 And he said he didn't believe he needed a clerk  
13 in the courtroom, that he would be able to  
14 handle it.

15 I said we did it for appeal purposes,  
16 exhibit marking, for his benefit. And he said,  
17 Well, do what you want. And I said, Well, then  
18 I'll be in there. Because we also had a lot of  
19 audio/visual and it's difficult -- my bailiff  
20 doesn't know how to run the audio/visual, and if  
21 it goes down, there's no one to come and fix it.

22 So it seemed that that set him off. After  
23 that, somewhere during the first day of the  
24 trial -- it was also my bailiff's first time  
25 clerk -- bailiffing a trial with Judge Fuller.

1                   So during a break he asked Judge Fuller  
2                   something regarding a jury meal and how that  
3                   would be handled. Judge said he usually leaves  
4                   that to the jurors and said something along the  
5                   lines of taking them out to eat, which  
6                   logistically in Custer is impossible.

7                   Q      Why is that?

8                   A      It's May, nothing opens full-time until after  
9                   Memorial Day. The restaurants all close at 2:00  
10                   in the afternoon, and those that do stay open  
11                   will not take a Custer County voucher. So  
12                   walking distance was impossible.

13                   The only thing I had at that time that we've  
14                   utilized always in the past was Pizza Hut  
15                   because they will deliver to the courthouse at  
16                   any time, as long as it's prior to 10:00 at  
17                   night.

18                   So I -- Judge was at, near my desk and his  
19                   reporter, Amy, was in there, as well as my  
20                   bailiff, Ralph Bueschel. And I said, Judge,  
21                   that's not possible. And I started to explain  
22                   why, and he -- he turned around and pointed his  
23                   finger at me, became red-faced, raised his  
24                   voice, and said, You'll do as you're told. This  
25                   is not about you, this is about the jury. And

1 they get what they want. It's not about you.

2                   He reiterated that to me several times. And  
3                   at the end of each, he would ask, Do you  
4                   understand what I'm telling you? And I finally  
5                   said, Yes. And he turned and walked into  
6                   chambers.

7 Q Was -- as you indicated, was it even physically  
8 possible to take the jury out to eat?

9 A I don't have that luxury in Custer County. I  
10 don't have vehicles on access like Pennington  
11 County. So I was trying to explain to him why  
12 it just wasn't possible.

13 Q And what was his demeanor when he made those  
14 comments to you?

15 A Angry.

16 Q Was there another incident later on involving  
17 another trial, jury trial?

18 A Well, prior to that jury trial, I had an episode  
19 where I needed coverage for Custer County.  
20 There's only two of us in the office. My deputy  
21 clerk was going to be gone.

22 So Hot Springs usually covers. I sent an  
23 e-mail to Hot Springs to the clerk asking her  
24 for coverage, and got a call back from Carol  
25 Foster, who is the clerk in Fall River, stating

1                   that the only one available to cover that day  
2                   from her office was Glenda Reder, and that  
3                   because of a situation between Glenda and Judge  
4                   Fuller in Hot Springs, Glenda refused to work  
5                   the courtroom with Judge Fuller and had  
6                   threatened to quit.

7                   The only way she would come to Custer County  
8                   was if I would make sure and clerk the courtroom  
9                   on that day, which I did.

10                  Q    And was there another incident involving another  
11                   courthouse in Custer where Judge wanted to have  
12                   a trial?

13                  A    We had a -- a day where the -- I have magistrate  
14                   court every other Tuesday, and Judge Fuller was  
15                   scheduling another trial. And across the street  
16                   from our courthouse is the 1881 Courthouse  
17                   Museum. And on the third floor is a very nice  
18                   courtroom in there that is the museum's  
19                   property, not the county's. Judge Fuller had  
20                   visited that one day when he was in Custer.

21                   And I had mentioned to him when he was  
22                   scheduling court that I didn't have the  
23                   courtroom available that day, asking if we could  
24                   use a different day. And he said, We'll just  
25                   use the museum courtroom for the jury trial.

1 Q And was that possible?

2 A In my opinion, it was not.

3 Q Why is that?

4 A The trial was going to be the end of October,  
5 and in Custer that can mean either snow or heat  
6 or a nice day. We don't know. There's no heat  
7 to that courtroom, and the windows do not open  
8 because of the staff painted them shut, is what  
9 I've been told.

10 And so I was concerned with the jury not  
11 having any air or any heat in that courtroom.  
12 And I mentioned those to him, and he said, Well,  
13 just make it work, just get it scheduled.

14 Q Was that even physically or legally possible to  
15 have a jury trial in --

16 A It has an elevator to the third floor.

17 Q Okay.

18 A I was more concerned with the jurors' comfort  
19 than I was anything else. As well as if there  
20 was audio/visual to be held, I -- which the  
21 attorneys are more -- using more and more. I  
22 didn't have any way to get the equipment set up  
23 in that courtroom.

24 Q Describe to the Commission your working  
25 relationship with Judge Fuller.

1 A I've never felt as belittled as I did the day in  
2 May when he and I had that. I chose to shut  
3 down. His court reporter that day had seen  
4 that. Amy and I have been friends and worked  
5 together at Thompson Reporting. She knew I was  
6 upset. She said, Try not to take it personally.  
7 That's just the way he is sometimes, and the  
8 best way to deal with it most times is to ignore  
9 him, which is what I chose to do.

10 I also talked with Jeff Krattenmaker and  
11 Judge Davis regarding it, and that I preferred  
12 not to work with Judge Fuller but would do so  
13 because, as Judge Davis pointed out to me, that  
14 the rotation is the rotation, or cases get  
15 assigned, there was no way he could preclude  
16 that from happening. And I told him I would do  
17 what I had to do, it was my job.

18 MR. SCHAFER: That's all. Thank you.

19 MR. PALMER: Judge Fuller?

20 JUDGE FULLER: No questions.

21 MR. PALMER: Anybody on the Commission have  
22 any questions? Mr. Travis.

23 EXAMINATION BY MR. TRAVIS:

24 Q Do you have any personal knowledge of the  
25 circumstances with Glenda Reder?

1 A Just secondhand knowledge.

2 Q What do you know from secondhand knowledge?

3 A That Judge Fuller had made some derogatory

4 statements regarding the Fall River County

5 Clerk's Office and their practice and procedures

6 in scheduling a courtroom and had used some

7 derogatory language.

8 Q Towards Ms. Reder?

9 A Clerk's office in general in Fall River County.

10 MR. PALMER: Prompt any questions?

11 MR. SCHAFFER: No.

12 MR. PALMER: Judge Fuller?

13 JUDGE FULLER: No.

14 MR. PALMER: Thank you. You may be excused

15 and you are released from your subpoena. Thank

16 you.

17 (The witness left the conference room.)

18 (Brief recess was taken.)

19 MR. SCHAFFER: John, I've got Jacque Perli

20 here. She's going to administer an oath across

21 state lines, if that's legal.

22 JUDGE FULLER: No objection.

23 JOHN NOONEY,

24 called as a witness herein, having been first duly

25 sworn, was examined and testified as follows:

1 DIRECT EXAMINATION BY MR. SCHAFFER:

2 Q John, would you please state your name for the  
3 record.

4 A John Nooney.

5 Q John, and you're testifying in this proceeding  
6 pursuant to a subpoena; is that correct?

7 A That is correct.

8 Q And you're currently where?

9 A I'm currently in San Francisco.

10 Q Okay. And we made this accommodation for you;  
11 is that right?

12 A That is correct, and I do appreciate it.

13 Q John, I just have a couple questions. And one  
14 of the issues that came up in Mr. Nelson's  
15 investigation concerned ex parte contacts by  
16 Judge Fuller. And I just want you to briefly  
17 tell the Commission your experience in that  
18 regard.

19 A As I shared with Mr. Nelson sometime this past  
20 summer, I believe it was -- I don't believe, it  
21 was sometime in July or August of 2009, I was  
22 involved in some litigation involving --

23 (Brief interruption in the proceeding.)

24 Q Speak up, John. Speak --

25 A Okay. I'm sorry. I said sometime in July or

1                   August of 2009, I was involved as an attorney  
2                   involved in some litigation related to a siting  
3                   of a correctional facility in Rapid City,  
4                   South Dakota.

5                   And during that process, I recall on one,  
6                   and perhaps I think several occasions, having a  
7                   conversation with Judge Fuller as it concerned a  
8                   question he had raised as to some potential  
9                   controlling authority as it related to that  
10                  litigation.

11                 Q        Let me stop you there.

12                 A        I was --

13                 Q        Let me stop you there, John.  Were those  
14                 contacts initiated by you or by Judge Fuller?

15                 A        By Judge Fuller.

16                 Q        And were they over the phone or in person?

17                 A        They were over the phone.

18                 Q        So he would call you and get you on the line and  
19                 raise some concerns about a case that he thought  
20                 may be controlling in this particular  
21                 litigation?

22                 A        My recollection, Mr. Schaffer, is that Judge  
23                 Fuller called me and raised a question as to the  
24                 potential controlling impact or significance of  
25                 a particular case.

1                   My recollection is it was a case that the  
2                   Judge had been involved in when he was in  
3                   private practice, and just raised that as, you  
4                   know, have you, Nooney -- something about, Have  
5                   you looked at this particular case? I think it  
6                   involved Homestake Mine. I don't think, I know  
7                   it did.

8                   Q        Okay.

9                   A        And that is my recollection of those  
10                   conversations that I had with the Court.

11                  Q        Let me ask you this, Mr. Nooney, did you ever  
12                  receive a letter from Judge Fuller that was  
13                  directed to all counsel, or a conference call  
14                  with all counsel, in which Judge Fuller raised  
15                  this issue?

16                  A        Mr. Schaffer, I don't have any recollection of  
17                  getting any correspondence from the Court  
18                  relative to that. I -- I do have some  
19                  recollection that during the course of the  
20                  litigation, it was an injunctive-type relief  
21                  case, that the Court, meaning Judge Fuller, did  
22                  raise that question about the controlling nature  
23                  of the case that he had mentioned to me on a  
24                  prior occasion.

25                  Q        Okay. Just so the Commission understands, he

1 brought it up to you in a private phone  
2 conversation, but he also raised the issue with  
3 other counsel in the legal proceedings?

4 A That is certainly my recollection, yes,  
5 Mr. Schaffer.

6 Q When he called you, how did you feel about that  
7 contact?

8 A Well, it's a little uncomfortable for any  
9 lawyer, I think, who would get called by a judge  
10 because we don't ever know if the judge has  
11 other counsel on the line or not. So when one's  
12 office or one's receptionist tells us there's a  
13 judge on the phone, we obviously take the call,  
14 if at all possible.

15 It was just one of those situations that the  
16 Court called and raised this question, you know,  
17 rhetorically to me, and makes you feel a little  
18 uncomfortable, because you feel as if you as a  
19 practitioner could be doing something you should  
20 not be doing, and that is communication with the  
21 Court on a subject matter involved in  
22 litigation.

23 Q And has that happened with your partners also?

24 A It is my general understanding that that has  
25 happened with -- well, I only have one other

1                   partner that does really any litigation-type  
2                   work. But yes, it is my understanding that has  
3                   happened as well.

4                   Q       And your observation about Judge Fuller's  
5                   temperament and demeanor as a judge is what?

6                   A       Judge Fuller sometimes, just seems to me, can  
7                   interject himself into the process more maybe  
8                   than us lawyers would like it to be that way  
9                   sometimes, and he can get himself involved in  
10                   it. More of an activist instead of a passive  
11                   position I guess is the way I could best  
12                   describe it.

13                   Q       And how would you describe his temperament as a  
14                   judge?

15                   A       At times, it can be a little harsh. I think,  
16                   because it's obviously in the report that  
17                   Mr. Nelson prepared, I said at times the Judge  
18                   can be a little bombastic towards counsel. And  
19                   as I otherwise say, I don't care if you are the  
20                   one getting -- that was brunted or not, that's  
21                   never a comfortable place to be.

22                   MR. SCHAFFER: Okay. Thank you very much,  
23                   Mr. Nooney. Those are my questions. If the  
24                   Commission or Judge Fuller has any questions,  
25                   they can ask them now.

1                   MR. PALMER: Judge Fuller, do you have any  
2                   questions of Mr. Nooney?

3                   JUDGE FULLER: I do.

4                   MR. PALMER: All right. Please.

5                   CROSS-EXAMINATION BY JUDGE FULLER:

6                   Q        John, Pete Fuller.

7                   A        Hello, Your Honor.

8                   Q        In the last 30 days, have you noticed anything  
9                   different about my demeanor?

10                  A        I do, Your Honor. I -- I had the opportunity to  
11                  be in front of you in the last, I'm going to  
12                  say, two weeks, I think it was, Your Honor  
13                  involving a case. And I -- I commented to  
14                  myself that I had noticed a difference.

15                  I think the word I would use was not --  
16                  maybe more judicial, I guess, is the way I would  
17                  describe it, perhaps.

18                  JUDGE FULLER: Thank you.

19                  MR. PALMER: Mr. Schaffer, does that prompt  
20                  anything from you?

21                  MR. SCHAFFER: No.

22                  MR. PALMER: Do any of the Commission  
23                  members have anything for Mr. Nooney? Can you  
24                  hear me, John?

25                  THE WITNESS: Yes, Cris, I can hear you.

1 MR. PALMER: Okay. Judge Wilbur has a  
2 question.

3 EXAMINATION BY JUDGE WILBUR:

4 Q Mr. Nooney, did those phone cont -- was it  
5 multiple phone contacts that you talked about  
6 receiving from Judge Fuller on the case with the  
7 Homestake authority?

8 A Judge Wilbur I think I heard you to ask me --  
9 and I apologize, just kind of hard to hear. You  
10 asked me if it was multiple occasions that Judge  
11 Fuller had contacted me. And when I told  
12 Mr. Nelson, and I had reviewed my notes this  
13 morning, or I should -- while I was approached  
14 this summer, what I had said, it is my  
15 recollection that on more than one occasion  
16 during the prison siting case that Judge Fuller  
17 did contact me about an issue or another.

18 I specifically recall the one conversation  
19 involving the case involving Homestake Mine, and  
20 I'm not sure if we had -- it's my recollection  
21 we had more than one conversation during the  
22 course of that litigation.

23                   But to give you the substance as to the  
24                   second conversation, I don't know if it was  
25                   repetitive to the first subject matter or if

1                   there was a different subject matter the next  
2                   time.

3                   JUDGE WILBUR: Thank you.

4                   MR. PALMER: Anybody else have anything for  
5                   Mr. Nooney?

6                   MR. SCHAFFER: No.

7                   MR. PALMER: If not, thank you, John.

8                   Thanks for taking the time.

9                   THE WITNESS: Thank you, Cris. And I assume  
10                   I'm all done for the day?

11                   MR. PALMER: You're all done and released  
12                   from your subpoena. Thanks, John.

13                   THE WITNESS: Thank you.

14                   (Speakerphone was disconnected.)

15                   MR. PALMER: You may call your next witness.

16                   MR. SCHAFFER: Call Dave Nelson.

17                   DAVE NELSON,

18                   called as a witness herein, having been first duly  
19                   sworn, was examined and testified as follows:

20                   DIRECT EXAMINATION BY MR. SCHAFFER:

21                   Q        Would you please state your name for the record.

22                   A        My name is Dave Nelson.

23                   Q        And I hate to ask you this question, but what do  
24                   you do now, Dave?

25                   A        I'm a lawyer.

1 Q You were a former state's attorney in Minnehaha  
2 County; is that correct?

3 A That's correct.

4 Q And retired, I think...

5 A About two years ago.

6 Q Okay.

7 A Coming up on two years ago.

8 Q Okay. And how long did you hold that position?

9 A Twenty years.

10 Q Have you also served on a number of boards and  
11 commissions over the years?

12 A Yes, I have.

13 Q And what would those be?

14 A Well, I've been involved in a number of private  
15 nonprofit organizations. I was also a member  
16 professionally of the Judicial Qualifications  
17 Commission. I've served on a couple of  
18 committees of the bar, appointed to study  
19 cameras in the court, criminal code revision,  
20 commission, things like that.

21 Q And are you a member of the parole board?

22 A I am.

23 Q Okay. Currently?

24 A Yes.

25 Q Dave, were you contacted by the Judicial

1 Qualifications Commission this summer to conduct  
2 an investigation concerning a complaint and also  
3 demeanor questions regarding Judge Fuller?

4 A Yes, I was.

5 Q And when -- when do you recall you contacted the  
6 individuals, just a time frame?

7 A I think Judge Wilbur contacted me about doing  
8 the work in June of this year. I came out to  
9 Rapid City and spent about a week, the last week  
10 of July of this summer interviewing 20 to 25  
11 people here in Pennington County.

12 O And I believe your report is in evidence as....

13 JUDGE FULLER: A.

14 Q (BY MR. SCHAFER:) Exhibit 4, which is an  
15 attachment to Exhibit A, and you also submitted  
16 an affidavit for filing that with the  
17 Commission; is that correct?

18 A That's correct.

19 Q The individuals that you interviewed, did you  
20 include their names in the report?

21 A Yes, I did.

22 Q And did you include your -- the substance of the  
23 comments that they had to make about Judge  
24 Fuller's demeanor and any complaints that they  
25 had concerning him?

1 A Yes, I did.

2 Q And I'm not going to go through the whole thing  
3 because the Commissioners have it. But when  
4 dealing with the court personnel, particularly  
5 the clerks of court, the court service workers  
6 and people like that, what was their general  
7 description of his demeanor in treating other  
8 people?

9 A Well, I thought that there were a couple of  
10 things that struck me during interviews with  
11 those kinds of people. One is, a general  
12 impatience, sarcasm, degree of condescension on  
13 the part of Judge Fuller in dealing with not  
14 only those types of persons but also parties and  
15 lawyers.

16 I think that there are several of the people  
17 that I interviewed commented about Judge  
18 Fuller's use or attempted use of humor, and  
19 characterized that use of humor as being either  
20 inappropriate to the circumstances,  
21 inappropriate to the audience, or used in --  
22 used ineffectively as a way to make a point that  
23 would be critical of a lawyer or a court  
24 employee.

25 Q And I noticed -- and I'm looking at page 5 of

1 your report, the middle of the page where you  
2 address the issue of demeanor, and you talked to  
3 a number of court personnel. The language that  
4 you described, was that isolated or did you kind  
5 of get that from everyone?

6 A Well, I chose those words because at least one  
7 of the people that I interviewed used at least  
8 one of those words. So all of those words were  
9 used at some point by at least one of the people  
10 that were interviewed.

11                   And I would say that those words generally  
12                   summarized a pretty consistent theme among those  
13                   that I interviewed about their observations of  
14                   Judge Fuller's demeanor.

15 Q You also interviewed a number of lawyers; is  
16 that correct?

17 A I did.

18 Q And I gather from the report and from actually  
19 talking to the lawyers and their testimony today  
20 is that many of these lawyers like Judge Fuller?

21 A I think that's a very fair characterization.

22 Q And find him to be engaging and personable and  
23 affable to deal with. Would you --

24 A I think a number of them made a point of saying  
25 that they considered Judge Fuller a friend, and

1 still do.

2 Q And nonetheless, was it -- were these people  
3 critical of Judge Fuller as far as his judicial  
4 temperament and his demeanor as a judge?

5 A I think on balance they were.

6 Q Was this difficult for these people to come  
7 forward?

8 A To a person, I would say there was no one that  
9 was eager to talk to me about this. I know that  
10 when I called the lawyers, I can remember at  
11 least a couple of lawyers saying to me, Let me  
12 think about this before I agree to talk to you.  
13 And then within -- literally, within minutes,  
14 they both called back and said, I'm going to  
15 talk to you. I'm going to tell you what I know.  
16 I'm going to do so because of the obligation  
17 that I feel for the bar.

18 Nobody that I called wishing to speak to  
19 declined to speak with me. But nobody who I  
20 spoke to was eager to speak with me or to be  
21 frank or be critical about Judge Fuller.

22 Q Did you tell the people that you talked to that  
23 their comments would be included in a report and  
24 that Judge Fuller would be provided with a copy  
25 of that?

1 A I told everybody that I talked to that all the  
2 proceedings before Judicial Qualifications were  
3 to be considered confidential. However, having  
4 said that, I also told each person that their  
5 comments would be attributed to them by name;  
6 that a report would be generated and sent to  
7 Judicial Qualifications; and that, depending on  
8 how Judicial Qualifications elected to proceed,  
9 if they elected to proceed further, then those  
10 comments, coupled with their names, could and  
11 probably would be disclosed to Judge Fuller; and  
12 could, depending on how far it goes, be  
13 disclosed publicly, depending on how the Supreme  
14 Court deals with the disposition of the matter.

15 Q After the Commission elected to proceed  
16 formally, did you then recontact these people as  
17 a courtesy to advise them that the report would  
18 be given to Judge Fuller?

19 A I did. I advised them that there would be  
20 documents served on Judge Fuller in connection  
21 with these proceedings that would include their  
22 comments attributed to them by name. And I did  
23 so, after talking with you, I think after  
24 talking with Judge Wilbur and maybe the  
25 Chairman, about how we all thought that it would

1                   be appropriate that these folks knew about that  
2                   so that in the event they had a matter with  
3                   Judge Fuller, they wouldn't be put in a position  
4                   that would be unfair or a surprise to them.

5                   MR. SCHAFFER: That's all the questions I  
6                   have.

7                   MR. PALMER: Judge Fuller?

8                   JUDGE FULLER: I have no questions.

9                   MR. PALMER: Do any of the Commission  
10                  members have any questions for Mr. Nelson?

11                  (No questions were presented.)

12                  MR. PALMER: Thank you, Mr. Nelson.

13                  THE WITNESS: Thank you.

14                  MR. SCHAFFER: Those are all the witnesses  
15                  that I have.

16                  MR. PALMER: Okay. Judge Fuller, do you  
17                  have any witnesses or how would you like to  
18                  proceed with your presentation?

19                  JUDGE FULLER: May I have five minutes?

20                  MR. PALMER: Of course, you may. Let's take  
21                  ten.

22                  (Brief recess was taken.)

23                  MR. PALMER: We're back on the record.

24                  Judge Fuller, how would you like to proceed?

25                  JUDGE FULLER: May I testify?

1 MR. PALMER: Of course, you may.

2 JUDGE A.P. FULLER,

3 called as a witness herein, having been first duly  
4 sworn, was examined and testified as follows:

5 JUDGE FULLER: My name is A.P. Fuller.

6 First of all, as to Heidi Linngren, I received a  
7 letter which was a typical letter from an  
8 attorney asking me to recuse myself. Previously  
9 I had sat on a case, I can't tell you how to  
10 spell it, but it was State versus Falkenburg,  
11 and it involved also a drug case and the drug  
12 dogs, and the whole concept of the training and  
13 et cetera, et cetera.

14 And Heidi was at that time working for Tim  
15 Rensch in his office as a defense lawyer. And I  
16 believe she worked on that case, and I had ruled  
17 in that case that the items requested from the,  
18 you know, the personnel files, the books,  
19 training books, certifications, all these things  
20 about the dog, I had ruled in that case that I  
21 would view those in camera in my chamber to  
22 ascertain whether any of it was discoverable.  
23 That is the reason I thought Heidi filed the aff  
24 -- the request, because she knew how I ruled in  
25 another case.

1                   I did not know that she felt uncomfortable.  
2                   I guess maybe I'm naive, and I apologize for  
3                   that. I -- never crossed my mind that I would  
4                   be unfair or biased to her. She's a very good  
5                   attorney.

6                   There was some mention in the report -- I've  
7                   never been known, when I was a lawyer, as a long  
8                   pleader. I apologize to the Commission if you  
9                   thought I was being curt because I was not. In  
10                  response to the complaint filed by Sheriff  
11                  Holloway and the State's Attorney's Office and  
12                  the Chief of Police, my clear intent was to  
13                  admit to what I had done and to admit that I had  
14                  violated the Canons.

15                  I still have some crim -- oh, I forgot. The  
16                  state -- the Attorney General's Office has never  
17                  filed an affidavit against me until this first  
18                  one, the Attorney General's Office. So, and I  
19                  still have Attorney General's criminal cases  
20                  pending in my courtroom.

21                  And I also have other State's Attorney  
22                  criminal cases like probation violations and  
23                  sentencings, and even some others that  
24                  apparently have stayed with me, and I would ask  
25                  the investigator to contact Deputy State's

1                   Attorney Tracey Decker, Josh Zellmer, and Tony  
2                   Bolson.

3                   Since being served with these papers, I have  
4                   changed. I think what happened to me is, I  
5                   practiced law for 35 years and I love lawyers, I  
6                   love being with lawyers, I love talking to  
7                   lawyers. I became too familiar. I don't know  
8                   why I trapped myself.

9                   I did stop wearing a robe and had a black  
10                  suit or a blazer on. Not in front of a jury.  
11                  Never in front of a jury. But in my short cause  
12                  days, which is Tuesdays, as Ms. Linngren  
13                  explained to you, and some court trials even.

14                  And then I got more familiar and stopped  
15                  wearing the tie sometimes. That was a mistake.  
16                  Because even now, as I robe up, tie up, I think  
17                  it's a good reminder if nothing else that you're  
18                  a judge. And I forgot.

19                  That's why I asked Mr. Nooney that question,  
20                  because we just had a trial, a court trial with  
21                  he and Mr. Waggoner, and I was curious if he had  
22                  noted a difference. And I think if your  
23                  investigator will talk to those deputy state's  
24                  attorneys, that would be -- I think the Board  
25                  should be interested to see if those deputy

1 state's attorneys have also seen and noticed a  
2 difference.

3 The -- is it -- I apologize. Is it okay if  
4 I continue with this narrative way?

5 MR. PALMER: Absolutely. That's just fine.

6 JUDGE FULLER: Gee, I just lost -- oh, the  
7 State's Attorney's Office started to, I don't  
8 know, maybe a month ago or so -- Judge Davis  
9 might recall because they started to  
10 systematically file affidavits, which I  
11 systematically refused to recuse, which of  
12 course they filed the affidavits. Actually they  
13 sent the affidavits with the letter knowing that  
14 that's what I do do, is refuse.

15 And I told Judge Davis about it because it  
16 appeared there was a pattern developing. And  
17 then it got larger and larger. And two weeks  
18 ago Judge Davis came to me and asked if we could  
19 change the system, because our system is on a  
20 computer basis where each of us -- as to our  
21 respective percentages, as Judge Davis assigns  
22 us every year, take civil and criminal cases,  
23 excuse me, then somebody goes to Custer and Fall  
24 River, somebody does juveniles, somebody does  
25 abused or neglected children, and somebody does

1 child support. And then we all have these  
2 percentages.

3 And he asked me since the state's attorney  
4 was doing that if he would -- would it be all  
5 right if he took me off of all criminal cases.  
6 And I consented because it was very hard to  
7 manage for Judge Davis and for Donna, the person  
8 that assigns the cases. Because if they kept  
9 filing, then they'd have to go through a  
10 process.

11 So Judge Davis removed me from the criminal  
12 calendar and assigned me a larger percentage of  
13 the civil cases, which would be I'll say  
14 everything but criminal cases. So I am no  
15 longer on any criminal cases.

16 So that's why I asked at the beginning what  
17 would be the purpose or the reason to suspend  
18 me? And since I can sit -- or, excuse me, it  
19 appears I sit on several civil cases, including  
20 divorce cases and the whole gamut, I think this  
21 year in the civil calendar, all of it, a lawyer  
22 in Sioux Falls who I don't know, and I don't  
23 even know what the case was about either, but  
24 they filed something -- they filed an -- they  
25 filed a request and the affidavit. Otherwise,

1 I've not civilly in any area been asked to  
2 recuse myself. And I've had other cases with  
3 the Hagg firm where I have not been recused.

4 But that's really all I have to say except I  
5 trapped myself by my personality and forgot that  
6 I was a judge. And I was wrong.

7 MR. PALMER: Thank you. Mr. Schaffer, do  
8 you have any questions of Judge Fuller?

9 MR. SCHAFFER: I have just a few.

10 CROSS-EXAMINATION BY MR. SCHAFFER:

11 Q When were you appointed to the bench, Judge?

12 A That's always interesting. Judge -- Governor  
13 Janklow appointed me the same day that he  
14 pardoned, I can't remember if it was Means or  
15 Banks, though. That was in December of '02, I  
16 believe the 24th or 25th.

17 Q And you're how old now?

18 A How old am I now? 67.

19 Q Your date of birth is what?

20 A February 17, 1943.

21 Q In the original complaint when you say the  
22 allegation is correct, that complaint contained  
23 an allegation that you violated Canons 1, 2 and  
24 3 of the Code of Judicial Conduct. You  
25 understand that?

1 A Correct.

2 Q Are you accepting that you've -- when you said  
3 the allegation is correct, that you violated  
4 those Canons?

5 A Correct.

6 Q And the issue with Ms. Linngren, you understand  
7 where she's coming from, don't you, Judge?

8 A Absolutely.

9 Q That she felt like you had her name and the  
10 statement that she gave Mr. Nelson, and she had  
11 to appear before you and that concerned her for  
12 both herself and her client. Can you understand  
13 that?

14 A Correct.

15 Q And I looked at the Canons in the Code of  
16 Judicial Conduct and they say, I think -- I'm  
17 paraphrasing. But where a judge's impartiality  
18 could reasonably be questioned, the judge should  
19 take himself off the case. You agree with that,  
20 don't you?

21 A Correct.

22 Q So I guess I'm wondering, did it just not dawn  
23 on you the -- the reason? I mean, you were  
24 speculating as to why you were doing it, but you  
25 obviously had the report, you read what she said

1                   in there, you got her letter, did you not see  
2                   why she did what she did?

3                   A      I did not.

4                   Q      Just totally missed it completely?

5                   A      I did.

6                   Q      And the comments that we've heard here where you  
7                   referred to juvenile court as Little Prick Day,  
8                   and then we heard the comment about some mother  
9                   that comes out and wonders how her child can get  
10                   a fair shake if he thinks they are little  
11                   pricks, do you understand that not only do  
12                   judges have to do justice but they have to  
13                   appear to do justice?

14                   A      Yes.

15                   Q      And do you understand how lay people can lose  
16                   faith in the system when they hear comments like  
17                   that?

18                   A      Yes.

19                   Q      And when you say you've changed, is that because  
20                   you got the complaint?

21                   A      It's because what I was doing was brought to my  
22                   attention, and I did not understand what I was  
23                   doing.

24                   Q      So you are saying, up until this point, none of  
25                   these things had ever occurred to you as being

1 problems with either the appearance of  
2 impartiality or actual impartiality?

3 A Well, you see, the -- it's not -- and that's why  
4 I had absolutely no questions -- if I may speak  
5 in a narrative?

6            Yes.    Yes.

7 A That's why I had absolutely no questions of any  
8 of the witnesses because, you see, it's not  
9 whether or not what they say here in this  
10 hearing or at another hearing is accurate or  
11 not.

12                   What it is, is my profession, the attorneys  
13                   that appear in front of me, have a problem with  
14                   me in the way I've been acting. I find that to  
15                   be the most serious problem.

16 So I don't wish to challenge, cross-examine,  
17 or attack these people and their perceptions of  
18 what they say I said.

19 Q Well, let me ask you this, Judge. Do you agree  
20 that from the standpoint of the administration  
21 of justice in this part of the state, that the  
22 things these attorneys have brought forth raise  
23 serious questions about you?

24 A Correct.

25 Q And I'm sure you've been in court where somebody

1 showed remorse, whether it's a criminal  
2 defendant that actually you're questioning, Are  
3 you really sorry? Are you sorry you did it or  
4 are you sorry you got caught.

5 I mean, you've heard that expression, maybe  
6 you've used it yourself?

7 A Have I heard the expression?

8 Q Yes.

9 A Yes, I have.

10 Q And the question I would have here, and I think  
11 maybe the Commission would have is, you've  
12 changed now in the last two weeks or since this  
13 complaint has been served on you, but what's to  
14 make us believe that this change in attitude or  
15 behavior will lapse?

16 A Well, I -- I know. But how to convince this  
17 Commission --

18 Q That's who you have to convince.

19 A No. No, I understand that. But how do I  
20 convince them? I don't know how to convince  
21 them of that because I -- I know what it meant  
22 to me when I received the complaint. You go  
23 through all of the emotions, you know, the  
24 anger, the frustration.

25 But then when you read it and you think

1                   about it, what -- what I had done before in my  
2                   demeanor and in my conduct was reprehensible.

3                   And that's why I started out by saying I'm  
4                   afraid what happened to me is I became too  
5                   familiar. I brought my lawyer to the courtroom  
6                   instead of my judge.

7                   And I forgot that I have an obligation to  
8                   the lawyers to allow them to do whatever they  
9                   wish to do in my courtroom, and that I must  
10                   maintain a demeanor of fairness and  
11                   impartiality, and I didn't.

12                   That [REDACTED] case is a perfect example  
13                   of -- of a -- of bad judging.

14                   Q        Well, do you agree that how you treated that  
15                   officer was inappropriate?

16                   A        Oh, absolutely.

17                   Q        Did you ever apologize to him?

18                   A        No, I haven't. I've been -- I didn't know  
19                   whenever I could, because I didn't want to -- I  
20                   didn't want to ever say anything to him in view  
21                   of the proceedings, that I thought he might  
22                   think I was trying to influence him or  
23                   intimidate him. But whenever we're done with  
24                   this, whatever the outcome is, I do plan on  
25                   doing that.

1 Q Let me ask you this, Judge. All the people  
2 whose names show up in the report of Mr. Nelson  
3 and particularly the lawyers, can you see why  
4 those lawyers, for themselves or their clients,  
5 would have some concern of potential retaliation  
6 or some concern that their client or they might  
7 not get a fair shake in your court?

8 A The potential, yes, I can understand that.

9 Q So what happens when they all move to disqualify  
10 you in the future or ask you to recuse yourself?

11 A I guess then I've shot my wad.

12 Q And how does this affect the administration of  
13 justice when you're not available to handle  
14 criminal cases or the bulk of criminal cases so  
15 that the other judges here have to shuffle their  
16 schedules to accommodate you?

17 A I would -- I would have to yield to Judge Davis  
18 as to the answer to that question. I -- I do  
19 remember that Judge Srstka told me one time that  
20 he had been taken off the criminal calendar in  
21 Sioux Falls, and I don't -- I don't know how  
22 Judge Severson handled that at that time.

23 MR. SCHAFFER: Okay. Those are all the  
24 questions I have.

25 MR. PALMER: Are there questions from

1                   anybody on the Commission for Judge Fuller?

2                   EXAMINATION BY JUDGE WILBUR:

3                   Q        I'm not sure I understand, but regarding Dave  
4                   Nelson's report, do you deny any of the  
5                   allegations or statements that the individuals  
6                   he interviewed have asserted? Do you take --  
7                   are there factual disputes that you have with  
8                   anything in that report?

9                   A        Let me look because I -- I've... If I could, I  
10                  do not keyboard, so I haven't -- I've penciled  
11                  in my answers to the complaint.

12                  MR. SCHAFFER: I think that she's  
13                  asking about Mr. Nelson's report.

14                  JUDGE FULLER: Well, some of those are  
15                  contained --

16                  MR. SCHAFFER: I understand that.

17                  JUDGE FULLER: -- within that. But let me  
18                  get it. It's back here.

19                  Q        (BY JUDGE WILBUR:) And I guess maybe start on  
20                  page 3 of that report, second to the last  
21                  paragraph. Do you admit or deny the: "Let me  
22                  guess: Mexican driver, California license  
23                  plates" comment?

24                  A        I don't -- I don't -- I can't admit nor deny it.  
25                  I don't remember it. So if Ms. Linngren said I

1           said it, then I probably -- then I did.

2   Q       Okay. Do you then -- in that next paragraph --

3   A       Am I on page 3 still?

4   Q       Yeah. Next paragraph, the last one on page 3,  
5            comments critical of the forfeiture process?

6   A       No, I wouldn't deny that. Would you like me to  
7            expand on that?

8   Q       Sure.

9   A       I had a case in which a criminal defendant was  
10           before me and also the forfeiture case was  
11           before me. And what I did was I appointed an  
12           attorney in the forfeiture case which was the  
13           same attorney handling the person in the  
14           criminal matter. And that was appealed to the  
15           South Dakota Supreme Court. The Supreme Court  
16           said because the criminal case was still  
17           pending, that he was entitled to an attorney on  
18           the forfeiture. And the criminal case was taken  
19           care of, and the Attorney General moved to  
20           remove the court-appointed attorney which was  
21           remanded as per the Supreme Court decision.  
22           I've never been critical of the process at all.  
23           That was the only thing that happened.  
24           I will tell you, and you can inquire of  
25           Judge Long about that, when I made that

1                   decision, Judge Long did -- did as a matter of  
2                   fact, recuse me on all forfeiture cases and  
3                   Attorney General Jackley does not.

4                   Q     Going on to the next page, when -- top -- that  
5                   partial paragraph at the top of page 4, when  
6                   officers come to you for search warrants, do you  
7                   jokingly or otherwise talk to them about  
8                   violating the rights of suspects?

9                   A     What I have said to them -- my son, my oldest  
10                   son, Brook, is a postal inspector, which is the  
11                   FBI of the United States Post Office. Used to  
12                   be a street cop in the city of Aurora.

13                   And what I have said to them is, I've said,  
14                   My son and I always have a certain greeting  
15                   which is, Well how many constitutional rights  
16                   did you violate today? And he says, Well, Dad,  
17                   I violated them all. And you know what, they  
18                   thanked me. I have said that to them.

19                   Q     To officers when they come for search warrants?

20                   A     Yeah. In a -- in a conversation, just like  
21                   we're talking right now.

22                   Q     Okay.

23                   A     I have said that.

24                   Q     Following down on that page then, do you --  
25                   we're talking about Lara Roetzal, during a jury

1 trial, DUI jury trial, did you refer to the  
2 state's expert chemist as a hired whore?  
3 A No.  
4 Q Or state whore?  
5 A No.  
6 Q Okay.  
7 A There must be a transcript of that, so that  
8 could be verified one way or the other. And the  
9 quote that Mr. Brenner gives me above that first  
10 full paragraph, Pennington County State's  
11 Attorney. It says, Judge Fuller has told  
12 Brenner that a favorite quote is one attributed  
13 to Justice Sabers. Do you see that?  
14 Q Okay.  
15 A I would deny that. I don't even know what that  
16 quote is from. I've never heard the quote. Oh,  
17 the thing -- can I talk about my old Volkswagen  
18 bus?  
19 Q Sure.  
20 A I drove that in in March of '03 when I became a  
21 judge. I still drive it today. Most police  
22 officers think it's the biggest joke they've  
23 ever seen. We've laughed and giggled about  
24 that. I've never, ever called a police officer  
25 a son of a bitch, and nor have I ever said

1 anything intimidating like that.

2 In fact, I had a highway patrolman pull me  
3 over one time. My license plate, as per Judge  
4 Delaney, says P-R-O-B-C-O-Z -- and it was a gift  
5 from Judge Delaney -- which stands for probable  
6 cause.

7 And a highway patrolman pulled me over one  
8 time when I was out on the interstate. I said,  
9 What's the problem, Officer? He says, Well, you  
10 invited me. And then giggled and said, Have a  
11 nice day, Judge Fuller. My license plate says  
12 probable cause. So that, I deny.

13 Q Ms. Roetzal goes on to describe a criminal jury  
14 trial several years ago where the attorney for  
15 the State was prohibited by you from giving an  
16 opening statement. Did that happen?

17 A Not that -- I -- no. I'm going to say no. And  
18 again, that would be a transcript. That would  
19 have been a trial either in '03 after I went on  
20 the bench or in early '04.

21 My recollection, I give a preliminary jury  
22 instruction in criminal matters that says that  
23 opening statements are not evidence. Same as --  
24 and I don't know if she misinterpreted that or  
25 what, but -- and she now I think is a -- is a

1                   deputy attorney general in Cheyenne. There were  
2                   two of them that were twins, I believe, that  
3                   were there for a while.

4                   So that transcript could be found because it  
5                   would be early on. And she -- if she's still  
6                   with the Attorney General's Office, could  
7                   understand that. I'm going to characterize it  
8                   as she and I had a misunderstanding of what I  
9                   had instructed.

10                  Q       DCI Brent -- Agent Brent Gromer says that you've  
11                   said to him, "I read these warrant  
12                   applications" -- is what he's talking about --  
13                   "so that when you guys are out violating  
14                   people's rights, you'll do it right."

15                  A       I don't remember saying that. Yeah, we -- if  
16                   that's a direct quote from Gromer, I -- I've  
17                   known his father for years and I know him. We  
18                   have certainly chitchatted, but I don't...

19                  Q       You don't?

20                  A       I don't recall saying anything like that. I  
21                   would yield to Mr. Gromer on that.

22                  Q       Okay. The things that the witnesses said here  
23                   today, like the Clerk from Custer County whose  
24                   name I can't pronounce.

25                  A       Debby.

1 Q Was she accurate in what she testified to?

2 A I don't remember any of what she said. I would  
3 have -- if somebody could inquire of my court  
4 reporter, Amy Zoller. I don't recall. I -- oh,  
5 excuse me. On the courthouse? The old  
6 courthouse?

7 Q She talked about three different things.

8 A Yeah, the courthouse she was real -- she was  
9 fair -- she was accurate on the courthouse.  
10 Because I did, I went over on lunch, talked to  
11 the people that ran the museum, and asked them  
12 if there -- if we could have a trial over there.  
13 And they were all -- they were kind of excited  
14 about it, said they'd make it available.

15 Q All right. Well, there was an issue about the  
16 jury and taking them to dinner that she said  
17 there was some confrontation.

18 A I don't -- I don't remember. I don't -- I -- I  
19 honestly do not recall any confrontation with  
20 Debby.

21 Q Okay. Do you recall making snide comments to  
22 her in front of the jury?

23 A I don't recall.

24 Q Okay. Do you remember being critical about how  
25 she turned the lights on in the courtroom?

1 A I don't.

2 Q Kind of skimming now just to try to give you  
3 specifics to try to see here.

4 A But -- may I make a comment about the clerks of  
5 court?

6 Q Sure.

7 A Carol Foster, and the one in Hot Springs, and  
8 Debby. If that's their perception of me, I  
9 certainly can't tell you that it is not their  
10 perception.

11 Q Well, I guess when I go through these, what I'm  
12 trying to find out is, in your view, why is it  
13 that Mr. Brenner, Ms. Roetzal, Mr. Gromer, the  
14 clerks of court would say these things that they  
15 have heard you say if they didn't happen? Do  
16 you have any idea? Would people make this up  
17 about you?

18 A No. I -- no, I don't think they make it -- I  
19 think this is the way they perceive it. And you  
20 know, so I can't argue with what they take from  
21 a conversation. Because we all know that when  
22 certain things are said, people hear things  
23 differently.

24 And so if their perception that -- is that I  
25 am rude and I'm condescending and I'm mean and

1           all those things, I'm not going to say that that  
2           is not their perception of the way I am.

3   Q       Let's talk about Mr. Banks.

4   A       Yep.

5   Q       What should his perception have been of you  
6           flipping him off in court in front of his  
7           client?

8   A       Just the way he said it.

9   Q       No dispute about those facts?

10   A       No.

11   Q       Okay.

12   A       Again, that's a perfect example of familiarity.  
13           His father and I were great friends, used to try  
14           lawsuits against each other, used to help each  
15           other in lawsuits.  Ron and I used to be really  
16           pretty tough on each other in the kidding area.  
17           And Bart, I -- I made a mistake.  I put him in a  
18           position.  That's totally my fault.

19   Q       Thank you.

20   A       May I make another comment?  The redraft of the  
21           pattern jury instructions, that's down at the  
22           bottom of page 9 where Mr. Johnson said I called  
23           the drafters of the patterns idiots.  I would  
24           deny that.

25           Why in the -- I would never say that about

1 volunteers on the civil or criminal pattern jury  
2 instructions that give their time and their  
3 energy to create pattern jury instructions. I  
4 would not call them idiots.

5 Q What about Mr. Hagg and that allegation  
6 regarding the trial?

7 A The only thing I can remember about the trial  
8 is -- and I do this in all trials. When an  
9 attorney objects in the -- to a hearsay  
10 statement in a jury trial or objects to leading,  
11 I do give a special instruction trying to  
12 explain to the jury that, If it's your witness,  
13 you can't ask those leading questions that  
14 require, the typical one would say, "isn't that  
15 correct?"

16 And I -- I typically say that, If you  
17 notice, that's how the attorney asked the  
18 question, and ended it with "isn't that  
19 correct?"

Now, you're going to notice that when the other side cross-examines, they probably will ask leading questions. And it's appropriate for them to do so, but it's not appropriate for the person that called the witness. So I say, I just wanted you to know that simple rule.

1           Then when a hearsay objection comes up, I  
2           try to explain very briefly about the hearsay,  
3           and explain to them, There are thousands of  
4           exceptions to this, but you should understand  
5           that. Those are the two times that I do speak  
6           to the jury.

7   Q    So your position is, those two instructions got  
8           Mr. Hagg to the point where he said to his  
9           co-counsel, "You go do the instructions because  
10           everything I'm saying in court is wrong in this  
11           trial"?

12   A    I don't remember. If he said it to me, I don't  
13           remember him saying that.

14   Q    I don't think that he said it to you but that  
15           was -- looks like that's what the  
16           investigator --

17   A    And if that's what Mr. Hagg said to his  
18           co-counsel, I -- to Mr. Dorsey, I have  
19           absolutely no comment to make about that.

20           Oh, another thing. I've never referred to  
21           Judge Davis as King Davis. I would deny that.

22   Q    I'm not sure if I heard you say this, but do you  
23           deny calling juvenile court day, Little Prick  
24           Day?

25   A    The answer is yes, I do deny it, and --

1 Q You don't do that, you don't call it Little  
2 Prick Day?

3 A That's correct, I don't.

4 Q What do you call it?

5 A I'm going to see my little peckerheads. Well...

6 JUDGE WILBUR: I think that's all I've got.

7 Thank you.

8 MR. PALMER: Any other members? Sally.

9 EXAMINATION BY MS. CHRISTENSON:

10 Q Have you ever been on this Commission, Judge  
11 Fuller?

12 A Yes.

13 Q And when you were appointed or voted on,  
14 whatever, did you take this Commission  
15 seriously?

16 A Yes.

17 Q And so having been on here, the comments you  
18 made about the Commission then, what was going  
19 through your mind when you were saying those  
20 kinds of things to people about, I've been  
21 spanked, knocked down by the JQC, things like  
22 that? Or things that you might have said out  
23 and about, what were you thinking during that  
24 time?

25 A May I read.

1 Q Page 12. Pardon me.

2 A Page 12 of the report?

3 Q There was some of the comments there on page 12  
4 I know as I look at that.

5 A In Mr. Nelson's report?

6 Q Correct.

7 A I think -- may I refer to the transcript of  
8 Exhibit D? (Pause.)

9 The -- what's reported there about, "I got  
10 my ass in a sling," I obviously said that. I  
11 would -- I don't know anything about the fact  
12 that, "I'm sure my courtroom is being recorded,  
13 Judicial Qualifications is having me followed."

14 JUDGE WILBUR: You mean you didn't say that?

15 Q (BY MS. CHRISTENSON:) Right. Are those things  
16 you said? Are you denying you said those?

17 A I'm denying that I said -- and again, I don't  
18 know when this transcript starts or stops. I  
19 don't know, because I only know what it -- what  
20 it says. If there's more to it --

21 Q Okay. I'm on Dave Nelson's report. That's  
22 where I'm at.

23 A On page 12?

24 Q That's -- yes.

25 A Yeah. The statement, if you will, I -- "I'm

1           sure my courtroom is being recorded." I didn't  
2           say that.

3   Q       You deny that. Okay.

4   A       "JQC is having me followed." I deny that I said  
5           that.

6   Q       How about, let's see, what was the one, your  
7           friends tell you to just keep quiet but --

8   A       "My friends have told me to keep quiet, but I  
9           don't go quietly," I didn't say.

10   Q       How about the last one there, in reference to  
11           the JQC, "I showed them, screw you, what are you  
12           going to do about it?"

13   A       I didn't say that.

14   Q       You deny all of that?

15   A       Yeah.

16   Q       Because you do know, having been on this  
17           Commission, for us to even get to this stage,  
18           that's a pretty serious matter?

19   A       Absolutely.

20   Q       And I don't know if you ever had to do that when  
21           you were on the Commission but, it is -- it is a  
22           grave thing. And I -- I think about whether --  
23           you just were discussing about how you enjoy  
24           lawyers, and how you, you know, you're sorry if  
25           you offended them.

1                   I'm a layperson, and I represent the public.  
2                   And what were you thinking when you made some of  
3                   those comments when there were people in the  
4                   courtroom that were just lay people? I mean,  
5                   they don't understand the jargon and the things  
6                   that go on in -- you know, between lawyers and  
7                   things.

8                   And I say to myself, If I were sitting in  
9                   the courtroom, what would I think about some of  
10                  your comments? Did it ever run through your  
11                  mind that you were making -- making comments  
12                  that were just inappropriate?

13                  A   Of course, I -- I don't remember saying anything  
14                  about the juveniles as being little peckerheads  
15                  in -- I have done that in the hallway. Roxie  
16                  Boettcher could be interviewed. I know she's --  
17                  I have mentioned it to her. I mean, it was -- I  
18                  don't know.

19                  But so, I'm not familiar with the lady  
20                  that -- because I would never have called a  
21                  child a prick. I don't call it Prick Day. I  
22                  know I have said to state's attorneys, and I  
23                  think my court service officers have heard me  
24                  say, you know, that when I thought when I was  
25                  going into the courtroom, It's time for me to

1 see my little peckerheads.

2 And there's a titter, maybe it's just  
3 nervous titter. I always assumed it was being  
4 what I thought it would be, a joke. And like  
5 I've said to you and to the Commission, I was  
6 wrong.

7 MS. CHRISTENSON: Okay. Nothing further.

8 MR. PALMER: Thank you. Anybody else? Go  
9 ahead, Mr. Schaffer.

10 RECROSS-EXAMINATION BY MR. SCHAFFER:

11 Q I have just a couple questions, Judge. I  
12 understand that any person, including a judge,  
13 can have a bad day. You'd agree with that,  
14 wouldn't you?

15 A Yeah.

16 Q But what we're seeing here looks more like a  
17 pattern of conduct. Would you agree with that?

18 A Yes.

19 Q It's not just a bad day or several bad days,  
20 it's a pattern of conduct on your part; correct?

21 A Yes.

22 Q And I'm trying to think of the right word. But  
23 a lot of the comments that you make in court, in  
24 the hallway, or conduct, suggests to me -- and I  
25 think of kids that I have dealt with. You know,

1                   there's a filter there that stops you from  
2                   saying things about, Well, gee, that guy's got  
3                   big ears. Or, How come that guy has got only  
4                   one arm.

5                   You know, we learn as adults that there's a  
6                   filter that we don't just say anything that  
7                   comes into our mind in certain circumstances.  
8                   And what I am seeing here is kind of a lack of a  
9                   filter.

10                  And what assurance can the Commission have  
11                  and the public, I guess, that people won't be  
12                  offended, that the system won't look like it's  
13                  broken, that they will have faith in the  
14                  impartiality of the probity of the judges that  
15                  they appear in front of?

16   A               I can only say one, you need to talk to maybe  
17                  other civil lawyers. I think -- I don't know,  
18                  we used to keep a record of recusals in our  
19                  office, either that we've recused ourselves or  
20                  they've been filed by affidavit. That would be  
21                  a good barometer in the civil area, all civil  
22                  side, as to how many times I have been recused,  
23                  or how many times other lawyers think that I  
24                  can't be fair and impartial. We have these  
25                  witnesses.

1 Q Right.

2 A Yeah. Again, I mentioned that the Attorney  
3 General's Office has not recused me, until this  
4 last case, on the drug case. I don't know if  
5 Heidi would continue to do that, I mean, feel  
6 uncomfortable.

7 Q Well, do you feel -- I mean is it reasonable --  
8 just looking at it objectively, do you see how  
9 your impartiality could be called into question  
10 because she's kind of put herself on the line to  
11 come here and testify?

12 A Can I see that?

13 Q Yes?

14 A Yes. I can understand that, yes.

15 Q Okay. But you didn't see it before today?

16 A I did not until she verbalized it, that's  
17 correct.

18 Q And what's going to happen when some of these  
19 other people show up in your court and you don't  
20 see it? And then they have to -- then it has to  
21 end up in a hearing in front of some other  
22 judge?

23 A I -- well, again, I -- I -- I don't have a  
24 history. I do with the State's Attorney's  
25 Office. Don't misunderstand what I'm talking

1                   about. I don't have a history with the others.

2   Q   And as I understand it, Judge, the reason that  
3                   you're being disqualified by the State's  
4                   Attorney's Office stems from this complaint.

5   A   Okay.

6   Q   Do you accept that?

7   A   If that's what they've said, yeah.

8   Q   And you told me in preparation for this hearing,  
9                   I think in a conversation, that you thought  
10                  somehow the fact that you're recused or  
11                  disqualified from those cases would -- and I  
12                  might be mis -- misparaphrasing what you said --  
13                  would somehow factor into why you shouldn't be  
14                  suspended, because you're available to sit on  
15                  all these other cases?

16   A   Excuse me. Excuse me. Excuse me. Yeah, right.  
17                  That's why I mentioned that Judge Davis has  
18                  changed the schedule.

19   Q   Right.

20   A   To accommodate that fact by reducing the civil  
21                  calendar on the other judges.

22   Q   Okay.

23   A   And placing more of the civil calendar on me,  
24                  yes.

25   Q   But it was the original complaint, as I

1 understand it, which you've acknowledged you  
2 violated the Canons of ethics, that brings us  
3 here and then puts us, puts Judge Davis, and all  
4 these other judges in the position to have to  
5 make these changes because of your  
6 disqualification?

7 A Correct. That's what Judge Davis had to do,  
8 yes.

9 MR. SCHAFER: That's all I have.

10 MR. PALMER: Judge Fuller, anything else you  
11 would like to share with us at this point?

12 JUDGE FULLER: No. I talked to Mr. Schaffer  
13 earlier, because I didn't -- and I don't know  
14 when to ask you this. But I was going to...

15 MR. SCHAFER: He was going to ask for an  
16 informal hearing. Under the rules, he's -- I  
17 think there's a procedure for that.

18 JUDGE FULLER: I was going to ask if we --  
19 if whatever -- this is a show cause hearing.

20 MR. PALMER: Correct.

21 JUDGE FULLER: The next hearing in subpart  
22 13, Conduct of the Hearing, in Roman Numeral  
23 III, Judicial Discipline: The hearing shall  
24 take the form of an informal conference between  
25 the Commission and the Judge complained against;

1                   or in the alternative, required by said  
2                   Commission, a formal hearing noticed and  
3                   conducted in the following manner. And then it  
4                   explains it. I was going to request.

5                   MR. PALMER: Okay.

6                   JUDGE FULLER: And so I don't know if I do  
7                   that now for the next hearing, or whether I do  
8                   it after this decision or -- but I was going to  
9                   ask for that informal hearing, whether the  
10                  Commission would allow that or not.

11                  MR. PALMER: Okay. I'll tell you what we'll  
12                  do, Judge Fuller. I appreciate that and we'll  
13                  take that as a request for an informal hearing  
14                  today, and we'll figure out how we're going to  
15                  logistically deal with that.

16                  JUDGE FULLER: Okay.

17                  MR. PALMER: With that, anything else from  
18                  you, Mr. Schaffer?

19                  MR. SCHAFFER: No, Your Honor.

20                  MR. PALMER: Judge Fuller?

21                  JUDGE FULLER: No.

22                  MR. PALMER: Any of the Commission members  
23                  have any questions, anything else? If not,  
24                  we're adjourned. Thank you. No, we're not  
25                  adjourned.

1                   Judge Fuller, we will -- we're going to try  
2                   to get our decision made very timely. And  
3                   whatever our decision is, we will inform you as  
4                   soon as we know.

5                   JUDGE FULLER: Do you want me to wait or do  
6                   you want to just communicate with me by phone?  
7                   How do you want --

8                   MR. PALMER: I wouldn't wait because I don't  
9                   know how long we'll be. Whatever we do, we'll  
10                   have to provide some sort of formal response to  
11                   you.

12                   JUDGE FULLER: So...

13                   MR. PALMER: You can be excused. We'll put  
14                   it in writing.

15                   JUDGE FULLER: And that will be the way I  
16                   get it?

17                   MR. PALMER: Yes.

18                   JUDGE FULLER: Oh, okay. Very well. Thank  
19                   you.

20                   MR. PALMER: Thank you.

21                   (The proceeding was adjourned at 3:51 p.m.)

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C E R T I F I C A T E

3 STATE OF SOUTH DAKOTA }  
4 COUNTY OF PENNINGTON } ss:

7 I, Jacqueline K. Perli, Court Reporter, do hereby  
certify that the witnesses were duly sworn by me prior  
8 to the taking of testimony as to the truth of the  
matters attested to and contained therein; that said  
9 proceedings were taken by me stenographically and  
thereafter reduced to typewriting under my  
10 supervision; that the foregoing transcript is a true  
and accurate record of the testimony given to the best  
11 of my understanding and ability.

12 I further certify that I am neither counsel for,  
13 related to, nor employed by any of the parties to this  
case and have no interest, financial or otherwise, in  
its outcome.

15                   IN WITNESS WHEREOF, I have hereunto set my hand  
and affixed my notarial seal  
this 1st day of October, 2010.

JACQUELINE K. PERLI  
Court Reporter  
Notary Public  
My commission expires  
May 9, 2013