

IN THE SUPREME COURT OF THE UNITED STATES

BRANDON BERNARD,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

*On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Fifth Circuit*

**SUPPLEMENTAL APPENDIX TO
REPLY TO BRIEF IN OPPOSITION**

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APPENDIX 4

Full Redacted Transcript of Witnesses A and B that is available on the Fifth Circuit Website, cited by the Government in its Brief in Opposition at 10. This transcript was submitted in support of Complaint of Judicial Misconduct or Disability (5th Cir. September 11, 2014)

FILED

SEP 11 2014

FIFTH CIRCUIT
LYLE W. CAYCE, CLERK



Judicial Council of the Fifth Judicial Circuit

COMPLAINT OF JUDICIAL MISCONDUCT OR DISABILITY

To begin the complaint process, complete this form and prepare the brief statement of facts described in item 4 (below). The RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, adopted by the Judicial Conference of the United States, contain information on what to include in a complaint (Rule 6), where to file a complaint (Rule 7), and other important matters. Requests for copies of the rules should be directed to: Clerk, United States Court of Appeals for the Fifth Circuit, 600 S. Maestri Place, New Orleans, LA 70130. The rules are also available at www.ca5.uscourts.gov.

Your complaint (this form and the statement of facts) should be typewritten and must be legible. Only an original of the complaint must be filed. Enclose the copy of the complaint in an envelope marked "COMPLAINT OF MISCONDUCT" or "COMPLAINT OF DISABILITY" and submit it to: Clerk, United States Court of Appeals for the Fifth Circuit, 600 S. Maestri Place, New Orleans, LA 70130. Do not put the name of any judge on the envelope.

1. Name of Complainant: Ty DeJeanne

Contact Address: *** Address redacted ***

Daytime telephone: _____

2. Name(s) of Judge(s): Walter S. Smith, Jr

Court: Western District of Texas

3. Does this complaint concern the behavior of the judge(s) in a particular lawsuit or lawsuits?

Yes No

If "yes," give the following information about each lawsuit:

Court: _____

Case Number: _____

Docket number of any appeal to the _____ Circuit: _____

Are (were) you a party or lawyer in the lawsuit?

Party Lawyer Neither

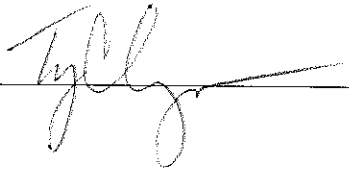
If you are (were) a party and have (had) a lawyer, give the lawyer's name, address, and telephone number:

4. **Brief Statement of Facts.** Attach a brief statement of the specific facts on which the claim of judicial misconduct or disability is based. Include what happened, when and where it happened, and any information that would help an investigator check the facts. If the complaint alleges judicial disability, also include any additional facts that form the basis of that allegation.

5. **Declaration and signature:**

I declare under penalty of perjury that the statements made in this complaint are true and correct to the best of my knowledge.

(Signature)



(Date)

9/8/14

TY CLEVENGER

Attorney at Law

1
1

September 8, 2014

Clerk, U.S. Court of Appeals for the Fifth Circuit
600 S. Maestri Place
New Orleans, Louisiana 70130.



Re: Complaint of Misconduct against U.S. District Judge Frank Walter S. Smith, Jr. (W.D. Tex.) Redacted

To Whom It May Concern:

On March 7, 2014, I deposed Witness A, a former deputy clerk in the Waco Division of the U.S. District Court for the Western District of Texas. According to Witness A's testimony, it appears that Judge Walter S. Smith, Jr. engaged in abusive sexual contact, a felony, as defined by 18 U.S.C. §§2244 and 2246. As a result, it appears that Judge Smith further violated Canon 2(A) of the Code of Conduct for United States Judges.

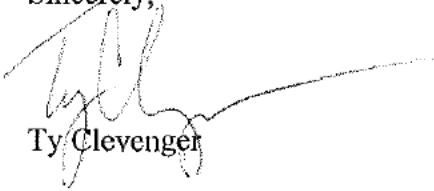
I have enclosed a transcript of Witness A's testimony, as well as a transcript of the testimony of her ex-husband, Witness B. Witness B's testimony corroborates the testimony of Witness A and Witness A identified a number of other witnesses who can corroborate her testimony.

As of 2006, there is no limitations period for prosecuting a violation of §2244. Unfortunately, the incident occurred in 1998, when the limitations period for such an offense was five years. Nonetheless, Congress's power to impeach is not subject to any limitations period, therefore I request that this matter be investigated, with the results of any such investigation reported to Congress.

*****Two paragraphs redacted, unrelated to the complaint against Judge Smith*****

Thank you for your consideration.

Sincerely,



Ty Clevenger

Mr. Clevenger is also referred to as "complainant"

CAUSE NO.

COMMISSION FOR LAWYER) (IN THE DISTRICT	COURT
DISCIPLINE,) (
) (
Plaintiff,) (
) (
VS.) (380th JUDICIAL DISTRICT	
) (
COMPLAINANT) (
) (
Defendant.) (COLLIN COUNTY, TEXAS	

ORAL DEPOSITION OF

WITNESS A

MARCH 7, 2014

VOLUME 1 OF 1

ORAL DEPOSITION OF WITNESS A , produced as a witness at the instance of the Defendant and duly sworn, was taken in the above-styled and numbered cause on the 7th day of March, 2014, from 2:52 p.m. to 3:45 p.m. before Court Reporter , Certified Shorthand Reporter in and for the State of Texas, reported by machine shorthand at Address Waco, Texas, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.

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1 APPEARANCES
 2 FOR THE PLAINTIFF:
 3 Attorney for the Texas Bar
 4
 5
 6
 7 FOR THE DEFENDANT:
 8 DEFENDANT PRO SE
 9 ATTORNEY AT LAW
 10
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 12
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 21
 22
 23
 24
 25

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1 **COMPLAINANT** : This is **Complainant** It is
 2 March 7th at 2:52 p.m. Going on the record. With me in the
 3 room are Court Reporter, ^{Witness A's} husband and Witness A
 4 the witness. On the telephone is Attorney for the Texas Bar
 5
 6 having been duly sworn, testified as follows:
 7 DIRECT EXAMINATION
 8 BY **COMPLAINANT**
 9 Q **Witness A** could you please state your full name?
 10 A **Witness A**
 11 Q And were you formerly known as **Witness A**?
 12 A Yes.
 13 Q What years did you work in the Federal Courthouse?
 14 A Um --
 15 Q Just about --
 16 A About '94 through '98.
 17 Q Were you a deputy clerk?
 18 A Yes.
 19 Q I want to ask you about an attempted sexual assault
 20 that you and I discussed previously. When approximately did
 21 that occur?
 22 A Around 1998, I believe. It's been so long --
 23 Q Sure.
 24 A -- I can't remember the exact date.
 25 Q When -- on that particular day do you remember when

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1 you first saw Judge Walter Smith?
 2 A Yes.
 3 Q And that would be U.S. District Judge Walter Smith,
 4 correct?
 5 A Correct.
 6 Q Describe when you ran into him and what happened.
 7 A It was in the morning. It was about 8:30, and I had
 8 went down to the water fountain down the hall on the third
 9 floor, which is where the clerk's office is and also the
 10 judge's office and courtroom. And I went to rinse out my cup,
 11 get some water. And about that time Judge Smith came up the
 12 stairs, entering the building, coming in for the day. And he
 13 stopped and talked to me, "Hi, how are you?" And, really, I
 14 had never had a conversation with him, per se. We never
 15 crossed paths. The --
 16 Q Before that time?
 17 A Right. I mean, I hardly ever saw him even though we
 18 were on the same floor. But this morning he had -- this
 19 particular morning he had a pretty strong smell -- I don't
 20 know whether it was mouthwash or liquor, but it was pretty
 21 strong on his breath. And he -- when he was talking to me.
 22 He told me that -- he said, "Come see me sometime." I believe
 23 that's the exact words he used. And I was like, "Okay." I
 24 kind of thought it was strange. It was kind of a strange
 25 request. And so I figured it was, like, you know, come by the

1 office and say "hi" sometimes or something. I don't know.
 2 That's kind of the way I took it.
 3 Q Right.
 4 A And I said, "Okay," and anyway --
 5 Q What did you do after that?
 6 A I went back to my desk and started working, and I
 7 had some training that I had to do. I can't remember if it
 8 was an online, but it was something that was piped in that --
 9 training that I did. And I had to go down to the second floor
 10 in a room for that, and I was gone the majority of the morning
 11 doing that training. I got out about lunch.
 12 Q Let me back up a little bit. You mentioned it
 13 smelled like mouthwash or liquor. Did you see or hear
 14 anything else that'd give you the impression he might have
 15 been intoxicated? Or did you mention to anyone else that you
 16 thought he might have been intoxicated?
 17 A Yes, I did.
 18 Q Who did you tell that you thought he might have been
 19 intoxicated?
 20 A I told -- I told my supervisor, the district clerk,
 21 in San Antonio. They called me about the situation. And when
 22 I told them, I told them that I did smell liquor on his
 23 breath.
 24 Q Okay.
 25 A And I was pretty certain it was that. And they

1 asked, you know, "Are you sure it wasn't mouthwash and --" you
 2 know, but it --
 3 Q It smelled like liquor to you?
 4 A Yes.
 5 Q Okay. So you went to this training session. And
 6 then what happened after that?
 7 A I came up to my desk, and immediately my phone rang.
 8 And he said, "Where have you been?"
 9 Q You say "he." You mean Judge Smith?
 10 A Judge Smith was on there. He said, "Where -- where
 11 have you been? And I said -- he said, "I told you to come see
 12 me." And I said, "I had to go to training." I mean, it
 13 just -- really, I mean, he'd never called my phone before, my
 14 extension, you know. It just really caught me by surprise,
 15 and he -- he said, "I told you to come see me." I said,
 16 "Well, I didn't mean -- I didn't realize you meant right now."
 17 And he said, "Yes, I mean right now. Just come over and tell
 18 Employee A that you need to speak to me," which is his secretary.
 19 So I was kind of, like, "Okay." So I went over to his office,
 20 and his door was closed. I went -- Well, ^{Employee}_A was sitting
 21 right outside his office at her desk, which she's his
 22 secretary. And I said -- I -- I said -- I just told her what
 23 he told me to say, "I need to see Judge Smith." And so she
 24 said, "Okay." And she opened -- she said, "Go ahead and knock
 25 on the door," you know. So he came over and opened the door.

1 And when I went inside I walked in, and he's like, "Come in,
 2 come in." And he went behind me and closed the door. And I
 3 felt really nervous, but I thought -- you know, about the same
 4 time as this happened his -- his courtroom deputy clerk -- or
 5 courtroom clerk was retiring, and I knew that position was
 6 coming open. I didn't know if maybe -- you know, maybe he was
 7 talking -- that's the only thing I could even think of that he
 8 would want -- that we would have in common for him to talk to
 9 me about.
 10 Q What -- what did he do after that?
 11 A He basically came over to me and put his arms around
 12 me and kissed me, and I just froze. I couldn't move. And he
 13 said, "Let me make love to you." And I -- and I -- I just
 14 freaked out and --
 15 Q Well, did you say anything to him?
 16 A I said -- I said -- it's just stupid. I said,
 17 "Right now?" That's what I said. I don't -- I was like,
 18 "What? Right now? What?" like that was even the issue. And
 19 he said, "Yeah." He said -- And then he -- he pulled me to
 20 him again, and he kissed me again and stuck his tongue down my
 21 throat, and he pressed himself against me. I could tell he
 22 had an erection, and he said, you know, "A couch right here."
 23 I'm like -- I was just freaked out. I felt like I was in
 24 a -- like, I could hear what he was saying, but it was in --
 25 it was distant.

1 Q Did he --
 2 A I just panicked, and all I thought about was his
 3 anger, you know. And I was like how am I going to get out of
 4 here without making him angry?
 5 Q Did he -- did he grab you with his hands?
 6 A Yes.
 7 Q What -- what did he do with his hands?
 8 A I mean, he -- he put his arms around me and, you
 9 know, just pulled me close and held -- you know, wouldn't let
 10 me go.
 11 Q Was he groping you anywhere?
 12 A Yeah. I mean, but --
 13 Q I know this is difficult, and I apologize. But do
 14 you mind saying where he groped you?
 15 A Well, I just -- I just remember he just put his arms
 16 around me, around my back, and then lower. And then he
 17 started to try touch my breasts, and I kind of pushed away and
 18 said -- I said, "I -- I need to go." I said, "They're going
 19 to be wondering where I'm at in my office. My manager doesn't
 20 know where I'm at, so they're going to be wondering where I'm
 21 at. I need to get back to my desk." And he's like -- he
 22 said, "No, you don't. I'll take care of that." He said, "You
 23 just --" he said, "Just let me make love to you, and I have
 24 this couch over here." And I'm like -- I was like, "Your wife
 25 works in this building. Your --" I mean, I came up -- such

1 weird things came out of my mouth, you know. And in
 2 hindsight, you know, I wish I would have said things
 3 differently, but I was like -- I -- I was just trying to keep
 4 him from blowing up at me because I could tell he was very --
 5 he was agitated because I had not come in there earlier that
 6 morning. He was already agitated, and I could feel that, you
 7 know, and --
 8 Q Did he have a reputation for having a temper, being
 9 angry?
 10 A Uh-huh.
 11 Q Is that a "yes," he did?
 12 A Yes.
 13 Q Okay. Did he have a reputation for drinking?
 14 A Yes. I found -- I -- Yes.
 15 Q Okay. And so after that last conversation you just
 16 described, did he try to grab you again, or did he physically
 17 touch you after that?
 18 A He just look my hand, and he was like, you know,
 19 "Just come stay with me in here for a while," and I was just
 20 like, you know, "I -- I've got to get back to my desk. I've
 21 got to --" I don't really remember too much of what I said.
 22 I was just trying to get out of there and --
 23 Q Okay. You want to take a break?
 24 A No.
 25 Q So where did you go? Did you talk to anybody right

1 her, I guess you went back to your office?
 2 A Yes. And he called me again in the afternoon.
 3 Q You said "he." You mean Judge Smith?
 4 A Judge Smith. And asked me, "Take off --" he said,
 5 "Take off a couple of days. Take off a couple of days of
 6 work. I want to take you somewhere." And I said, "Well, I
 7 don't really have that many days, you know, available." I
 8 said I'd been sick, and so I'd had to take my sick leave.
 9 And, plus, I don't care how many days I had available, I
 10 wasn't going to tell him --
 11 Q Sure.
 12 A -- "Oh, sure, let me just block off one of my weeks
 13 for you," you know. But he was like, "I want to -- just --
 14 just take off a few days. I'll take care of it," you know,
 15 "I'll make sure that, you know, you can have the time off and
 16 you'll get paid and everything." And I don't remember how the
 17 conversation ended.
 18 Q Did you stay the rest of the day or go home?
 19 A I stayed the rest of the day. And that evening I
 20 just -- It -- it happened on a Thursday. I know that for
 21 sure because on Fridays my schedule was to come in at one
 22 o'clock. And so Friday before I came in I called my boss,
 23 Employee C, there at the district clerk's office and
 24 said -- I told him what happened. And I said, "Please don't
 25 leave me alone with him." I said, you know, "I'm afraid," you

1 after you left his office?
 2 A When I went out of the office, he -- he told me to
 3 shut the door behind me and that -- I don't really even know
 4 how I got him to allow me to get out of the office. I don't
 5 remember exactly what I said. But ^{Employee} A was there, and I
 6 just told her "Hi." I mean, I felt like I was going to pass
 7 out. I knew she could tell something was wrong, but I didn't
 8 say anything, you know. And I went back to my desk. And my
 9 coworker, Employee B came by my desk. And I was just
 10 sitting there. I was just sitting in my chair, just -- I
 11 don't know. I couldn't even -- I just felt numb. And she
 12 said, "What is wrong with you? You look like you've seen a
 13 ghost." She said, "You're pale. You're -- What is wrong?"
 14 And so she said, "Meet me down at the bathroom." We had a
 15 particular bathroom on the third floor that was women only and
 16 it was locked and only we had a key to it. And so I went --
 17 she went down there, and then I came down there a little later
 18 and told her what happened.
 19 Q So you told about what Judge Smith had done?
 20 A Uh-huh.
 21 Q Did -- what -- did she advise you or suggest that
 22 you do anything?
 23 A She was just in shock, and I don't remember what she
 24 said.
 25 Q Sure, sure. So after that, after you spoke with

1 know, "He's propositioned me. He's very adamant about it, and
 2 he's not even thinking no is an option, or he doesn't even
 3 think that I just don't want him," you know, how could I -- I
 4 mean, that just wasn't even a -- it's like how could I not be
 5 so indebted to him for him making that offer is the way I
 6 felt, you know. And so my boss was like -- you know, he got
 7 real quiet, and he was like, "Okay." Well, then I came in at
 8 one o'clock. And when I walked in, there was a dozen yellow
 9 roses on my desk, a big ol' thing. And I just -- I felt like
 10 I was going to faint. And my boss was sitting up front. We
 11 had a metal table there. And he was just opening the mail and
 12 distributing it. And I just looked at him, and he looked at
 13 me because he knew exactly what it was.
 14 Q You mean Employee C?
 15 A Employee C. And right after -- it was -- I
 16 guess he had -- the judge had watched me come in the building,
 17 and he paged my desk, and he said, "Where have you been? I've
 18 been waiting on you to get here all day. Where have you
 19 been?" And I told him, "I don't come in till one o'clock,"
 20 you know, which was a pretty -- I think I had started doing
 21 that, you know, within the last six months or so, so it was
 22 fairly new for me, my schedule. And I said, "No, you should
 23 not have sent these. You should not have sent these." He's
 24 like, "Well, sent what?" And I'm like, "You know what I'm
 25 talking about. You should not have sent these. It's just --

1 you know, it's not right." And he's like, "Well, I just had
 2 to. I just had to," you know. And, you know, just kind of
 3 nonchalantly like -- I don't know. Then he asked me to take
 4 off again. But then he came over to -- from his office to the
 5 district clerk's office. And my desk is right -- when you
 6 walk in the district clerk's office door, you can see my desk.
 7 And he came in and he asked ^{Employee}C who was sitting up in the
 8 front -- and his office is way in the back of the -- the room.
 9 He asked -- he came in and said, ^{Employee}C "I need you to go look
 10 up -- what was the juror's -- juror number seven on this
 11 trial," and he gave a trial number and stuff. And -- and
 12 was like, "I don't know, Judge. I'll go find out."
 13 Q So he left you there?
 14 A And he left me there, and he just -- he -- So the
 15 judge comes right over to me, you know.
 16 Q Right.
 17 A And I don't remember what happened right then. I
 18 was just -- I remember being so mad that he left me in there.
 19 And, I mean, it was just -- that's something that he would
 20 have -- he was in there digging for for 30 minutes. And he
 21 finally came out and said, "I can't find it, Judge, but when I
 22 find it I'll bring it." "Okay, ^{Employee}C That's fine." And so
 23 anyway I -- and then he -- later on he came -- or he called my
 24 extension and asked me what I was doing that weekend. I said,
 25 "I'm going to see my grandparents." And he said -- anyways

1 he -- he dropped by and he -- he left a note, "I hope you have
 2 a pleasant weekend," on my desk. And I just decided that I --
 3 over the weekend I wasn't going to come back. I was quitting
 4 my job.
 5 Q On that -- on that Friday, as I recall, you said,
 6 you know, he propositioned you again to -- to go, like, rent a
 7 room? Is that what it was, or --
 8 A No. Like he wanted me to take off work --
 9 Q Okay.
 10 A -- to go somewhere.
 11 Q Okay. So that day ended, had the week -- weekend
 12 off. Then what happened after that?
 13 A Well, the weekend came, and I -- I had the keys, you
 14 know, to the building, so I went in and just cleaned out my
 15 desk, cleaned everything out. And I just left those flowers
 16 on the desk. And, you know, my coworker ^{Employee}B told me, she
 17 said it was -- she said it was just kind of crazy, you know.
 18 Because she said those flowers just sat there and just died,
 19 you know. And she said it was -- it was so strange because
 20 everybody was, you know, "What's going on?" and -- I don't
 21 know. She said it was just strange. And the next week I
 22 called ^{Employee}C my supervisor, and asked him to please tell my
 23 superiors in San Antonio that -- what happened. Because they
 24 knew me. I had a good working relationship with them. I've
 25 been down there for training. And I didn't want them thinking

1 that I just left, you know, irresponsibly just left my
 2 position, just quit.
 3 Q So you asked ^{Employee}C to tell them why you had left?
 4 A Exactly.
 5 Q Okay.
 6 A So ^{Employee}C basically accepted my resignation, and he
 7 said, well -- he hesitantly said "Okay." Well, it wasn't
 8 too -- He met me in a park and my -- my ex-husband at a park,
 9 and he had, like, torn out the -- out of the -- the clerk's
 10 manual about sexual harassment and gave it to me, folded it up
 11 and brought it to me out at a park somewhere.
 12 Q Oh, ^{Employee}C did?
 13 A Uh-huh.
 14 Q Okay.
 15 A And then -- Can I take a break?
 16 Q Oh, sure. Let's take a -- what? -- five-,
 17 ten-minute break?
 18 A Yeah.
 19 **Complainant** : Okay.
 20 **Attorney for the Texas Bar** : Okay.
 21 **Complainant** : I'll call you back,
 22 **Attorney for the Texas Bar** : All right. Bye.
 23 (Recess from 3:16 p.m. to 3:24 p.m.)
 24 **Complainant** : We are back on the record at
 25 3:24 p.m.

1 I think when we left off you were talking about
 2 you left the weekend and you had resigned and **Employee C**
 3 met you at the park. What happened after that?
 4 **THE WITNESS**: Uh-huh. Well, I had asked
 5 **Employee C** to please tell my superiors in San Antonio
 6 that -- what the reason was for my leaving.
 7 Q **COMPLAINANT** : Okay.
 8 A And he agreed that he would do that. So it was
 9 probably not two hours from that time my supervisor from San
 10 Antonio called me at home, and he had the -- the director of
 11 human resources with him and also the assistant district clerk
 12 there, his assistant.
 13 Q And who was the name of that supervisor? Is that
 14 **Employee D**?
 15 A **Employee D**
 16 Q **Employee D**?
 17 A **Employee D**
 18 Q **Employee D**
 19 A Uh-huh.
 20 Q Okay.
 21 A Or **Employee D**. And he told me that -- he said,
 22 "First of all, I want to let you know that **Employee C** --
 23 and I let him know that he had no right to accept your
 24 resignation. That wasn't within his power to do." And he
 25 said that was above and beyond his power. And he said that

1 "I've got Employee E here." And I forget the other
 2 gentleman's name. There were three of them in the room. And
 3 basically he asked me, you know, in detail what happened,
 4 and -- and I told him. And he said that he was not going to
 5 accept my resignation, that I was a good employee and that
 6 this was a traumatic event and that he wanted to put me on six
 7 weeks administrative leave with pay to think about it. So he
 8 said, you know "If you decide that you want to quit after
 9 that," he said, "We understand." But he said, "I don't feel
 10 like right now it's -- it would be good for you to just quit
 11 because this is a good job." You know, it's a good job for a
 12 woman in Waco, you know, without a four-year degree. And I'd
 13 worked hard to get that job, you know, the right way. And he
 14 knew that. He knew my reputation. And so he said, "I'm --"
 15 you know, "So that's what we're going to do, you know, we're
 16 going to put you on six weeks' leave." And he said, "After
 17 that, you know, we'll go from there, see what you want to do."
 18 So --
 19 Q Again, I don't mean to interrupt you.
 20 A No.
 21 Q I believe you told me that sometime while you were
 22 on leave you got a call from Judge Smith's law clerk?
 23 A Yes.
 24 Q Who was that?
 25 A Law Clerk

1 Q How do you spell that?
 2 A Law Clerk He was Judge Smith's law
 3 clerk, and he called me the week after that. It was, I would
 4 say, a week, maybe two -- no, probably two weeks just because
 5 of the events that he said has been -- had been happening, it
 6 had been -- He said -- he called me at home, and he said,
 7 "Witness A," he said, "You need to put some kind of closure on
 8 this. You need to do something about this." He said, "The
 9 judge is -- I'm having to go pick him up for work. He can't
 10 come into work. He's been in the hospital." He said, "He's,
 11 you know, falling apart. He's having to cancel court things,
 12 and, you know, he's not functioning. You've got to do
 13 something about this."
 14 Q Well --
 15 A And I said --
 16 Q So he was suggesting it was your responsibility?
 17 A Yes.
 18 Q Okay.
 19 A And I was like -- I said, "Law Clerk I'm the victim
 20 here. He did this to me. Why -- you know, what -- you're not
 21 even in your right mind to call and tell me to make things
 22 better, you know, about this." And he's like, "Well, you just
 23 need to do something because I can't do this anymore." In
 24 other words, he was feeling the stress of it.
 25 Q So what did he say he wanted you to do?

1 A He -- I don't know. He wanted me to -- to call and
 2 make things better, I suppose. I don't know.
 3 Q Hum.
 4 A He wanted me to have some kind of contact with the
 5 judge because I just left, never said anything, never wrote
 6 anything, just left the flowers on the desk, and had no
 7 further contact with him. So from the way it sounded, he just
 8 basically, you know, lost it, not knowing what I was going to
 9 do, I -- I suppose. I don't know. I mean, I would hope he
 10 would be thinking uh-oh, you know, by this time. I don't
 11 know.
 12 Q Do you know what kind of -- what he was in the
 13 hospital for? Did anybody say?
 14 A I think he said his blood pressure was up, and -- I
 15 don't know --
 16 Q As I --
 17 A -- chest pains and --
 18 Q Okay. As I recall, you -- you said something to me
 19 on another occasion about Judge Smith telling other people in
 20 the courthouse he was interested in you.
 21 A Uh-huh.
 22 Q What -- what did you hear from those other people?
 23 A Well, I found out that whenever I was first hired --
 24 I at first was hired on at the U.S. Probation Office, and he
 25 had told -- that was, like, about four years prior when I

1 started at that building. I worked there for two years, and
 2 then I took the job, the position of deputy clerk after about
 3 two years. But when I was initially hired -- and I found out
 4 this later, that he had told the supervisor that he really
 5 liked the last time -- the last hire, you know. And I'm not
 6 sure what all he said. But he told me that he, you know,
 7 very -- made it very plain that he was very interested and
 8 liked -- was -- approved very much of their last hire.
 9 Q This is Employee C?
 10 A No. This was a -- my supervisor down in -- he was a
 11 U.S. probation officer --
 12 Q So from what --
 13 A -- at that time. I -- I went to talk to him because
 14 he was the only person that I really trusted. I went to talk
 15 to him on that Friday after it happened. And as it turns out,
 16 you know, he was like, "Why did you come in here and tell me
 17 this? Why are you telling me?" Because the cameras caught me
 18 going into his office, and the judge had been in the marshals'
 19 office and saw me go into Employee F's office. And he went in
 20 there and questioned him as to what I was in there doing, and
 21 Mister -- you know, Employee F basically just said I -- "Why --
 22 why did you do that?" He said, "I -- I just couldn't help
 23 myself," you know.
 24 Q Employee F said that --
 25 A Employee F asked Judge Smith, "Why did you do that to

1 her?"

2 Q Oh. So Judge Smith told Employee F he just couldn't

3 help himself? Is that --

4 A (Nodding head)

5 Q "Yes"?

6 A Yes.

7 Q Okay. Did Employee F quote the judge as saying

8 anything else?

9 A Huh-uh. He just, you know, made it clear that he,

10 you know, watched me every day coming to work, unbeknownst to

11 me.

12 Q That -- that judge Smith watched you coming to work

13 every day?

14 A (Nodding head)

15 Q Okay.

16 A His office faced out. I don't know that he did,

17 but -- I mean, every day, but he watched me. You know,

18 there's cameras in the marshals' office. There's -- his

19 office faced out over the parking lot where I parked, where

20 everybody parked and came in and -- But obviously he knew

21 exactly when I came in because he knew when to buzz my desk,

22 so he was watching me.

23 **** Redacted - unrelated to the

24 complaint against Judge Smith ****

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5 **** Redacted - unrelated to the

6 complaint against Judge Smith ****

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19 Q Did you volunteer to testify today, or were you

20 subpoenaed?

21 A I volunteered.

22 Q When --

23 A And I was subpoenaed.

24 Q When -- when you originally got the subpoena, did

25 you want to testify?

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8 **** Redacted - unrelated to the

9 complaint against Judge Smith ****

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1 A Not originally, no.

2 Q So you've not -- have -- have you been peddling this

3 story around, or did somebody have to urge you to talk?

4 A No. I've been trying to put it behind me. I

5 really -- I was very defensive when I received the subpoena,

6 and I didn't come the first time I was subpoenaed because I

7 didn't want all this. I just didn't want to deal with it

8 again. I didn't want to talk about it. I didn't want to

9 think about it. I didn't want it brought up anymore. I just

10 wanted it gone.

11 Q I want to ask you about a letter that you wrote to

12 Judge Smith. Did you -- did you write a letter while you were

13 on leave to Judge Smith?

14 A Yes.

15 Q And can you describe generally what the letter said?

16 A It basically said that I had decided that I was

17 going to return to the clerk's office and resume my position

18 and that I want him to stay away from me and not to bother me,

19 not to talk to me, not to call me, to stay away from me, and,

20 you know, that what he did was wrong. It caused me a lot of

21 anxiety and problems. And I -- I -- I wasn't able to find the

22 letter that I wrote, but I know that I sent a copy of it to

23 Employee D in San Antonio and to Mister -- Judge X

24 They both received a copy of that letter. And so I

25 suppose it's in my file somewhere. I don't remember exactly

1 what I said. All I know is I remember what I thought when I
 2 wrote it, and it was, you know, stay away from me.
 3 Q All right. But you ended up resigning anyway
 4 afterwards?
 5 A I did. I went -- I went back, and I caught a lot of
 6 flack from other people in the office because they were like,
 7 "Oh, ^{Witness}_A can quit and come back whenever she wants to," you
 8 know, just -- between that and then not knowing what was going
 9 on and they were angry because I got to come back and I could
 10 just leave and come back whenever I wanted to. And also the
 11 fact that, you know, I was on the same floor as the judge's
 12 office, and anytime that I -- you know, I had a fear of
 13 walking out into the hall and running -- running into him.
 14 Q Are you aware of any other incidents in which Judge
 15 Smith has allegedly harassed or assaulted women who work in
 16 the courthouse?
 17 A I had -- I don't know of anything specific.
 18 Q Have you heard anything secondhand, thirdhand?
 19 A I know that he did -- I -- I was told he did have a
 20 reputation for, you know, pushing himself on whoever he
 21 wanted.
 22 Q I think you mentioned to me on another occasion that
 23 there was another woman that worked there in the courthouse
 24 that has a similar experience maybe?
 25 A Yes. But I just -- You know, she --

1 Q Was that before or after your -- what happened to
 2 you?
 3 A After what happened to me. I found out a whole lot
 4 of things.
 5 Q What was her name?
 6 A I just hate to say because I don't want to mess her
 7 life up, you know.
 8 Q I understand.
 9 A She --
 10 Q That's -- that's fine.
 11 A That's her --
 12 Q Sure.
 13 A You know --
 14 Q Sure. That's fine. How did you come to know
 15 Manager A?
 16 A Um --
 17 Q Actually, let me back up. Who is Manager A?
 18 A Well, I did not know who he was. I was introduced
 19 to him by Employee G
 20 Q He's the ~~Redacted~~ of McLennan County, isn't he?
 21 A Uh-huh.
 22 Q At that time was he a --
 23 A He --
 24 Q -- deputy marshal?
 25 A He was a U.S. marshal, yeah --

1 Q Okay.
 2 A -- deputy U.S. marshal, and he --
 3 Q He introduced you to
 4 A Yes. I'm not exactly sure how it kind of all came
 5 together other than the fact that Manager A offered to take
 6 me to Houston to talk to an attorney to find out if there was
 7 anything that could be done about the situation --
 8 Q Okay.
 9 A -- when he found out about it. And, of course, you
 10 know, Employees G, H were working in the courthouse at the
 11 time, so --
 12 Q Gotcha. So Manager A is the former city manager
 13 of Waco?
 14 A City mayor, yeah --
 15 Q Okay. You mentioned earlier --
 16 A -- I believe.
 17 Q -- Employee F the probation supervisor. What was
 18 his first name?
 19 A Employee F
 20 Q Employee F?
 21 A Employee F
 22 Q Employee F
 23 A Uh-huh.
 24 Q Okay.
 25 A He is no longer with the probation office. He --

1 Q Retired, I think.
 2 A He went to -- he moved to the Bureau of Prisons.
 3 Q Okay.
 4 A He moved.
 5 Q Okay.
 6 A And he may be retired from that, so -- but I know I
 7 put him in a bad position.
 8 Q Hum.
 9 A You know, anybody that knew anything --
 10 Q Right. Let me ask you this. How did -- how has
 11 this incident affected your -- affected you since then?
 12 A It's affected me pretty badly. I went into a pretty
 13 deep depression. I had to be hospitalized. It's just caused
 14 a lot of stress in my life, but --
 15 Q Does it still affect you now?
 16 A Yes.
 17 Q Has it affected your career?
 18 A Yes.
 19 **COMPLAINANT:** I -- I have no further
 20 questions.
 21 **CROSS-EXAMINATION**
 22 **By Attorney for Texas Bar**
 23 Q Okay, Witness A,
 24 A Yes.
 25 Q Okay. Have you had any interaction with Judge

1 Walter Smith since 1998?
 2 A No, sir.
 3 Q Okay. And after that event with Judge Smith in
 4 1998, when did you first speak with complainant?
 5 A Within the past few weeks.
 6 Q So during February of 2014 --
 7 A Yes.
 8 Q -- would have been the first time that you spoke
 9 with
 10 A Yes, sir.
 11 **COMPLAINANT:** No further questions.
 12 **COMPLAINANT:** I believe that's it.
 13 Attorney for Texas Bar: All right. Thank you, Witness A
 14 THE WITNESS: Thank you.
 15 **COMPLAINANT:** There we go.
 16 Attorney for Texas Bar: Take care,
 17 **COMPLAINANT:** Thank you. You, too. Have a
 18 good weekend. We're off record at 3:45 p.m.
 19 (The deposition ended at 3:45 p.m.)
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1 _____
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 10 _____
 11 I, **Witness A** have read the
 12 foregoing deposition and hereby affirm my signature that the
 13 same is true and correct, except as noted above.
 14 _____
 15 WITNESS A
 16 STATE OF TEXAS)
 17 COUNTY OF _____)
 18 Before me, _____, on this day
 19 personally appeared **Witness A** known to me or
 20 proved to be under oath or through _____ (description
 21 of identity card or other document) to be the person whose
 22 name is subscribed to the foregoing instrument and
 23 acknowledged to me that he/she executed the same for the
 24 purpose and consideration therein expressed.
 25 Given under my hand and seal of office on this
 day of _____, 2014.

 NOTARY PUBLIC IN AND FOR THE

1 CHANGES AND SIGNATURE
 2 WITNESS: **WITNESS A** DATE: MARCH 7, 2014
 3 PAGE LINE CHANGE REASON
 4 _____
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1 CAUSE NO.
 2 COMMISSION FOR LAWYER IN THE DISTRICT COURT
 3 DISCIPLINE,
 4 Plaintiff,
 5 VS. 380th JUDICIAL DISTRICT
 6 **COMPLAINANT**
 7 Defendant COLLIN COUNTY, TEXAS
 8 REPORTER'S CERTIFICATION
 9 ORAL DEPOSITION OF
 10 MARCH 7, 2014
 11 I, **Court Reporter** - Certified Shorthand
 12 Reporter in and for the State of Texas, hereby certify to the
 13 following:
 14 That the witness, **Witness A** was duly
 15 sworn and that the transcript of the deposition is a true
 16 record of the testimony given by the witness;
 17 That the deposition transcript was duly
 18 submitted on _____, 2014, to the attorney for the
 19 witness for examination, signature and return to me by
 20 _____, 2014.
 21 That pursuant to information given to the
 22 deposition officer at the time said testimony was taken, the
 23 following includes all parties of record and the amount of
 24 time used by each party at the time of the deposition:
 25 **Attorney for Texas Bar** -- 0 hrs. 1 min.
Complainant -- 0 hrs. 44 mins.

1 That pursuant to information given to the
2 deposition officer at the time said testimony was taken, the
3 following includes counsel for all parties of record:

4 Attorney for Texas Bar Attorney for Plaintiff;
5 Complainant, Defendant Pro Se;

6 I further certify that I am neither counsel
7 for, related to, nor employed by any of the parties or
8 attorneys in the action in which this proceeding was taken,
9 and further that I am not financially or otherwise interested
10 in the outcome of this action.

11 Further certification requirements pursuant
12 to Rule 203 of the Texas Rules of Civil Procedure will be
13 complied with after they have occurred.

14 Certified to by me on this ____ day of
15 _____, 2014.



18 Court Reporter's signature
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1 FURTHER CERTIFICATION UNDER RULE 203 TRCP
2 ORAL DEPOSITION OF Witness A
3 MARCH 7, 2014

4 The original deposition was/was not returned to
5 the deposition officer on _____;

6 If returned, the attached Changes and Signature
7 page contains any changes and the reasons therefor;

8 If returned, the original deposition was
9 delivered to Complainant, Custodial Attorney;

10 That \$ _____ is the deposition
11 officer's charges to the Defendant for preparing the original
12 deposition transcript and any copies of exhibits;

13 That the deposition was delivered in accordance
14 with Rule 203.3 and that a copy of this certificate was served
15 on all parties shown herein and filed with the Clerk.

16 Certified to by me this ____ day of
17 _____, 2014.
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IN THE 380TH JUDICIAL DISTRICT COURT
COLLIN COUNTY, TEXAS

COMMISSION FOR LAWYER)	
DISCIPLINE,)	
Plaintiff,)	
)	Cause No.
VS.)	
)	
COMPLAINANT)	
Defendant.)	

* * * * *

ORAL DEPOSITION OF

WITNESS B

FEBRUARY 12, 2014

VOLUME 1

* * * * *

ORAL DEPOSITION OF WITNESS B , produced as a witness at the instance of the Defendant, and duly sworn, was taken in the above-styled and -numbered cause on the 12th of February, 2014, from 2:42 p.m. to 2:54 p.m., via telephone, before Court Reporter in and for the State of Texas, reported by machine shorthand, at the offices of Court Reporters, Court Reporter's address pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.

Page 6

1 kissed her at some point during the -- during all the
 2 events.
 3 Q. Did she say she was resisting this?
 4 A. She said that she pushed him away and told him
 5 that she couldn't do anything like that with him because
 6 she was married.
 7 Q. And did she describe anything he said?
 8 A. I don't recall at that point. I think that he
 9 tried to coerce her some, but I don't remember any
 10 further on the conversation.
 11 Q. In terms of coercion, was it your
 12 understanding that was something said verbally or
 13 something done physically or both?
 14 A. I know, you know, that at one point he was
 15 hugging her and I don't know if -- if it was more of him
 16 trying to talk her into it, or physically.
 17 Q. And this happened, you said, in his office?
 18 A. Yes.
 19 Q. Were there any other witnesses?
 20 A. There was a secretary outside of his office,
 21 but I don't believe there was anyone else in the room.
 22 Q. Do you have -- have any knowledge of whether
 23 the secretary heard or saw anything?
 24 A. Other than Witness A coming and going, I don't
 25 know. She said she felt like the secretary was looking

Page 7

1 at her oddly, but she doesn't know if she heard anything
 2 or not.
 3 Q. Do you know the secretary's name?
 4 A. I do not recall.
 5 Q. Okay. Was any -- I'm sorry. Go ahead.
 6 A. After this happened, she went back to her
 7 office and then that evening is when she told me about
 8 it. The next day when she got to work, there was a
 9 bouquet of flowers on her desk with an unsigned card.
 10 And then Witness A called his office to see if they were
 11 from him and he said that they were from him and he
 12 again was trying to talk her into having an affair with
 13 him, I guess you'd say, and offered to get a room
 14 somewhere and she declined.
 15 Q. Okay. Was there any other communications
 16 after that?
 17 A. Later -- I told her to not go back to work,
 18 and she later sent a registered letter to him saying
 19 that she was just trying to do her job, she didn't
 20 appreciate that, that it was inappropriate. She did at
 21 some point in time talk with her supervisor -- he's the
 22 district clerk there, Employee C -- and made him
 23 aware of it.
 24 And his boss out of San Antonio, who I
 25 don't remember his name, but he was also made aware of

Page 8

1 it, and they put her on administrative leave for a
 2 period of time before she finally decided to finally
 3 terminate her job there.
 4 Q. Do you know if the incident was reported to
 5 anyone outside the clerk's office?
 6 A. Yes. I'm not sure who -- at whose suggestion
 7 it was. I'm thinking it was the man out of San Antonio,
 8 but Witness A called and spoke with the senior judge out
 9 in -- I think it's in Lubbock -- I don't remember his
 10 name --
 11 Q. Okay.
 12 A. -- and told him of the event. And his reply
 13 was basically, What do you want me to do about it? So
 14 she got --
 15 Q. Really?
 16 A. -- no help or support out of him.
 17 Q. So it was your understanding he basically was
 18 not interested in doing anything?
 19 A. Correct.
 20 Q. Okay. Was anyone else notified?
 21 A. That is -- that's the only people I can
 22 remember right now.
 23 Q. Are you aware of any investigations, like, by
 24 the judicial council or the police or anybody like that?
 25 A. No.

Page 9

1 Q. Did -- did Witness A hire an attorney?
 2 A. No. She did at one -- at one time speak with
 3 an attorney that was recommended, and I believe he was
 4 out of Houston. I don't recall his name for certain.
 5 Q. Okay. And do you -- did she actually speak
 6 with him or do you know?
 7 A. She did speak with him. A former city manager
 8 for Waco, Manager A, had encouraged her to talk to
 9 him, and I believe he and his wife drove her down there
 10 to see him.
 11 Q. Okay. Did anything come out of that or was
 12 that the end of it?
 13 A. I believe that was the end of it. There was a
 14 report of another female in the office that something
 15 had happened to similar and she was still employed there
 16 and refused to get involved in it, so I think they felt
 17 they didn't have much of a case at the time.
 18 Q. Do you know who the other female was?
 19 A. It's been so long, I don't remember her name.
 20 Q. Okay. So to your knowledge, no lawsuits were
 21 filed?
 22 A. Correct.
 23 Q. Were any letters sent by any attorney or
 24 anyone else regarding the incident?
 25 A. Not that I'm aware of.

1 Q. Had anyone other than me contacted you about
 2 this deposition?
 3 A. Witness A sent me a text message yesterday
 4 regarding it.
 5 Q. What did she say in the text message?
 6 A. If you'd like, I can read it for you from my
 7 phone.
 8 Q. Sure. That would be fine.
 9 A. She said, "I was able to speak with the
 10 attorney who is representing the State Bar of Texas
 11 against Complainant and he said he is not even going
 12 to be at the deposition tomorrow. It would be good if
 13 you could contact him because he could answer any
 14 questions you have on bias. Complainant is being sued
 15 for misconduct, and he's just grabbing at straws to take
 16 the heat off himself.
 17 "Judge Smith knows about the deposition
 18 set up tomorrow, and to tell you the truth, I think he
 19 is capable of doing anything to keep it from happening.
 20 I'm not going, and I asked that you please be careful if
 21 you go. Despite the threat about not showing up on the
 22 subpoena, no action will be taken against us for not
 23 showing up.
 24 Complainant may file a motion to compel,
 25 but I am working on getting a motion to quash a subpoena

1 Judge Smith?
 2 A. No, there wasn't.
 3 Q. Have you ever talked to Judge Smith?
 4 A. No, I have not.
 5 COMPLAINANT: I don't believe I have
 6 any more questions.
 7 Attorney for Texas Bar: No questions.
 8 COMPLAINANT : I believe that's it,
 9 Thank you for your cooperation.
 10 THE WITNESS: Okay.
 11 (Deposition concluded at 2:54 p.m.)
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1 for both of us. Call if this doesn't make sense. Okay.
 2 The state's attorney is Attorney and has his phone
 3 number.
 4 Q. So that's a text message from her?
 5 A. Yes.
 6 Q. What is her telephone number?
 7 A. Redacted
 8 Q. Did anyone else contact you about the
 9 deposition?
 10 A. Her mother contacted me and asked me to
 11 contact her, but that was the extent of that.
 12 Q. Okay. Do you know why Witness A would say that
 13 she thought Judge Smith was capable of anything?
 14 A. She probably is concerned -- knowing that he
 15 has a lot to lose. I don't know if there's been any
 16 threats. I think she's probably just afraid of him
 17 because of the power that he has.
 18 Q. Do you know whether she ever had any threats
 19 in the past from him?
 20 A. No, I do not.
 21 Q. Did you -- have you heard any information
 22 about how she would know that Judge Smith is aware of
 23 the deposition?
 24 A. No.
 25 Q. Was there ever a confrontation between you and

1 IN THE 380TH JUDICIAL DISTRICT COURT
 2 COLLIN COUNTY, TEXAS
 3 COMMISSION FOR LAWYER)
 4 DISCIPLINE,)
 5 Plaintiff,) Cause No.
 6 VS.)
 7)
 8 COMPLAINANT,)
 9 Defendant.)
 10
 11 REPORTER'S CERTIFICATE
 12 DEPOSITION OF Witness B
 13 FEBRUARY 12, 2014
 14
 15 I, Court Reporter, a Certified Shorthand Reporter
 16 in and for the State of Texas, hereby certify to the
 17 following:
 18 That the witness, Witness B was duly sworn by
 19 the officer and that the transcript of the oral
 20 deposition is a true record of the testimony given by
 21 the witness;
 22 That examination and signature of the witness to
 23 the deposition transcript was waived by the witness and
 24 agreement of the parties at the time of the deposition;
 25 That the original deposition was delivered to Mr.
 Complainant;
 That the amount of time used by each party at the
 deposition is as follows:
 Attorney for Texas Bar - 0:00
 Complainant - 0:12

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That § _____ is the deposition officer's charges to the Defendant for preparing the original deposition transcript and any copies of exhibits;

That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes counsel for all parties of record:

Attorney for Texas Bar Attorney for Plaintiff,
Mr. Complainant, Attorney for Defendant.

That a copy of this certificate was served on all parties shown herein on _____ and filed with the Clerk pursuant to Rule 203.3.

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Certified to by me this _____ day of _____, 2014.

Court Reporter's signature



APPENDIX 5

Relevant Unredacted Testimony for pages 22-24 for
the Transcript of Witness A, provided in Appendix 4

her?"

Q Oh. So Judge Smith told [REDACTED] he just couldn't help himself? Is that --

A (Nodding head)

Q "Yes"?

A Yes.

Q Okay. Did [REDACTED] quote the judge as saying anything else?

A Huh-uh. He just, you know, made it clear that he, you know, watched me every day coming to work, unbeknownst to me.

Q That -- that judge Smith watched you coming to work every day?

A (Nodding head)

Q Okay.

A His office faced out. I don't know that he did, but -- I mean, every day, but he watched me. You know, there's cameras in the marshals' office. There's -- his office faced out over the parking lot where I parked, where everybody parked and came in and -- But obviously he knew exactly when I came in because he knew when to buzz my desk, so he was watching me.

Q Do you know -- I -- as I understand, sometime while you were on leave Mr. [REDACTED] got in touch with the [REDACTED] [REDACTED]; is that correct?

A Correct. He told me that -- ██████████ said, "I'm going to fly out to meet Judge ██████████. He is in charge of anything dealing with sexual harassment with federal employees."

Q This is Judge ██████████?

A Uh-huh. And he said, "Mr. ██████████ told me --" He -- he was irate. I mean, he was very upset. He wanted something done about it. He was angry, you know. And he wanted to do all he could to make sure that -- that he did all he could, you know. And so he flew out to West Texas, wherever ██████████ was, and told him about it. And when he came back -- when he flew back, Judge ██████████ called me at my house and said, "What do you want me to do about it? What exactly do you want me to do about this?"

Q So was it a dismissive sort of tone?

A Yeah. It was very derogatory, very like, you know, I -- I don't know what you think you're going to get out of this or what -- I don't know. It was ugly. It was very -- It was disrespectful. It was demeaning and --

Q Did he -- did he ask you what happened or he just --

A No.

Q Did --

A Huh-uh.

Q No -- no questions about what happened?

A No.

