

JUDICIAL MERIT SELECTION COMMISSION)
)



In the Matter of: Jan Bromell Holmes)
Candidate for Family Court Judge District 15)

) WITNESS AFFIDAVIT)
) FORM)
)

I will appear to testify concerning the qualifications of the above-named candidate and will produce all documents in my possession, if any, which will further develop or corroborate my testimony.

I understand that this written statement and all supporting documentation, if any, must be completed and the hard copies of all such documents shall be returned to the Judicial Merit Selection Commission by the deadline for complaints in order for the Commission to hear my testimony, and that the deadline for complaints is **12:00 Noon, Monday, October 28, 2024**. I understand I must be available to testify at the Public Hearing, and failure to appear will result in a dismissal of my complaint.

In regard to my intended testimony, I will offer information as to the following:

- (1) Set forth your full name, age, address, and both home and work telephone numbers.

Michelle Davis Capps

Redacted

- (2) Set forth the names, addresses, and telephone numbers (if known) of other persons who have knowledge of the facts concerning your testimony.

Mary Madison Brittain Langway

Redacted

Julaan Derrick

Redacted

Gregory Forman

Redacted

Karen Davis

Redacted

Haley Kathryn Capps

Redacted

Emily Capps

Redacted

- (3) State the nature of your testimony regarding the qualifications of the above named judicial candidate, including:
- (a) specific facts relating to the candidate's character, competency, or ethics, including any and all allegations of wrongdoing or misconduct on the part of the candidate;
 - (b) specific dates, places, and times at which or during which such allegations took place;
 - (c) names of any persons present during such alleged actions or possessing evidence of such alleged actions; and
 - (d) how this information relates to the qualifications of the judicial candidate.

**** See attached

- (4) Set forth a list of and provide a copy of any and all documents to be produced at the hearing which relate to your testimony regarding the qualifications of the judicial candidate.

* See attached

- (5) State any other facts you feel are pertinent to the screening of this judicial candidate.

* See attached

WAIVER

I further understand that my testimony before the Judicial Merit Selection Commission may require the disclosure of information that would otherwise be protected by the attorney-client privilege. Therefore, in order that my complaint may be fully investigated by the Commission,

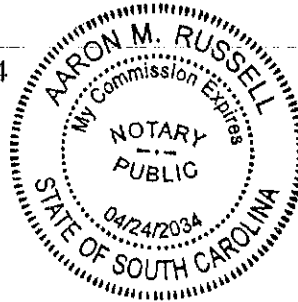
I hereby waive any right that I may have to raise the attorney-client privilege as that privilege may relate to the subject of my complaint. I further understand that by waiving the attorney-client privilege for this matter, I am authorizing the Commission to question other parties, including my attorney, concerning the facts and issues of my case.

Michelle Davis Capps
Signature

Sworn to me this 24th day of October, 2024

[Signature] L.S.
Notary Public of South Carolina

My commission expires: 4.24.24



The information within this document is to address my concerns with Judge Holmes lack of character, competency and ethics. None of the information that I present should be viewed as an attempt to re-litigate or have any ruling changed. The information is simply to substantiate my claims to her violations of the judicial canons.

In 2016 my former husband filed a RTSC against me and it was set to be heard before Judge Bromell Holmes on **January 30,31 and February 1, 2017**. Civil Action Number is 14-DR-26-1563. In 2018, again my former husband filed another RTSC against me. It was initially set to be heard before Judge Ronald Norton. However, Anita Floyd's office emailed the court scheduler stating that Judges Holmes had requested remand over this case so she followed the request and scheduled it to be heard by Judge Bromell Holmes on **December 10,11 and 14, 2018**. After 3 days of testimony I had not even been able to take the stand so the completion of the trial was set for **May 22-23, 2019**. Final Order was Issued on **June 14, 2019**. I filed an appeal. During the pendency of the appeal, Court Administration informed me that the transcript of the December 10-11, 2018 hearing dates could not be reconstructed. I filed a Motion to Remand on May 18, 2020. On July 1, 2020, the Court of Appeals issued an order remanding the matter for the family court to reconstruct the record of those 2 days of the trial. On July 15, 2020, Judge Holmes stated that she could reconstruct the record from the review of her notes. A hearing to reconstruct the record took place on **September 25, 2020**. A custody case involving our youngest daughter was also filed in June 2019. Judge Holmes did not preside over this case but on **March 9, 2020**, she presided over a Motion to Compel. Further, on **July 8, 2020**, she signed off on an Ex-Parte hearing request associated with the custody case. Also associated with the custody case was a 2nd Temporary Hearing that had been scheduled for **August 12, 2020**. As acting administrative judge, Judge Holmes decided that my temporary custody hearing needed to be continued. After my former husband refused to provide for our daughter's college support I filed a motion on **July 30, 2020** to request that support be granted. Motions were filed and again they were scheduled to all be heard in front of Judge Holmes. The hearing took place on **November 2, 2021**, with Judge Holmes finally dismissing the case. Throughout all of this I have had the opportunity to observe Judge Holmes in the courtroom and in no way did I ever once find her to display ethics, character, or judicial

temperament. Her lack of knowledge on what Parental Alienation is and whether or not it was even a viable claim is either deplorable or a shameful choice of collusion. I have been approached by many professional members of our community and her reputation is that of a biased, ill tempered and corrupt judge. Further, through the evidence of court transcripts, I believe that I can easily show that on many instances she has violated:

Canon 1, a Judge shall uphold the integrity and independence of the Judiciary;

Canon 2, a Judge shall avoid impropriety and the appearance of impropriety in all

of the Judge's activities; and Canon 3, a Judge shall perform the duties of the

judicial office impartially and diligently. In an attempt to keep things as concise as possible, I will address each action individually.

Judicial Issues during the 2017 RTSC

Canon 3 - (8) A states that a judge shall dispose of all judicial matters promptly, efficiently and fairly. Specifically, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs.

Throughout this entire hearing Judge Holmes allowed Anita Floyd to take the court's time and make false and slanderous claims about me and my children that were not in violation of our agreement. One such example of this is found on **pages 37-67 of the trial transcript-(Exhibit #1).**

Canon 1 - A judge shall uphold the integrity and independence of the judiciary. Canon 2- A judge shall avoid impropriety and the appearance of impropriety in all of the judges activities. Canon 3- A judge shall perform the duties of judicial office impartially and diligently. (2) A judge shall be faithful to the law and maintain professional competence in it. (5) A judge shall perform judicial duties without bias or prejudice. A judge shall not by words or conduct manifest bias or prejudice.

On pages 138-145 and then again on pages 363-378 of the trial transcript, along with Defendant's Exhibit #26-(Exhibit #2). The first sentence in Defendant's Exhibit #26 states, " I wanted to start this letter by stating that I was very happy to have met with you this past Thursday." Page 369 starts a transcription of a recording that was played. Line 7 & 8 clearly states, " You owe me \$300.00 for the services that have been given to you for the last time and this time." On page 370 line 9 Hal references a 1 hour meeting. Lines 11-13 Dr. Brown states that Hal had previously met with him for 3 hours and 20 minutes. Even though Hal states that he was dismissed after 5-10 minutes line 18 shows him asking if he is being dismissed after 20 minutes. Anita Floyd suborned false testimony from Hal and misrepresented

the evidence throughout this entire hearing. Hal perjured himself repeatedly stating that he only had 1 phone call with Dr. Brown that lasted 43 minutes and 1 in person meeting that last 10 minutes or less. His own evidence is in complete contradiction to his lies directly to the court. All of this took place while Judge Holmes sat still and acted like she was not hearing the blatant lies contrasting to the evidence being presented. Even on **page 372-line 14-18 when Mary Madison Langway questions the recording and references hearing a statement clearly made about a 3 hour and 20 minute meeting** Judge Holmes sat silent and did not bother to pursue the truth. Further, on **page 374 - line 24 during Anita Floyd's redirect she again introduces Defendant's Exhibit #26 where the very first sentence states, " I wanted to start this letter by stating that I was very happy to have met with you this past Thursday."** Judge Holmes' silence was a choice and it sent a very clear signal of her bias, one that no one else in that court room could ignore.

Canon 3 - (8) A states that a judge shall dispose of all judicial matters promptly, efficiently and fairly. Specifically, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs.

On **pages 169-178 (Exhibit #3)** Judge Holmes again allowed Anita Floyd to take the courts time and allow testimony that was clearly not in violation of the agreement but even more so was not even cited or presented in Hal's affidavit in his complaint. During this testimony she allowed slanderous and inflammatory statements that were not based on any evidence. These actions clearly show bias and impropriety. Further, on **page 175 line 25 through page 176 lines 1-3** her reference to alienation of affection shows her total lack of knowledge to what parental alienation even entails. Alienation of affection is between a husband and a wife and is not even utilized in SC.

Canon 1 - A judge shall uphold the integrity and independence of the judiciary. Canon 2-A judge shall avoid impropriety and the appearance of impropriety in all of the judges activities.

On page 183 - line 25 the questioning of former Senator Raymond Cleary begins. On page 205 lines 15-17 (Exhibit #4) **Senator Cleary thanks her and states, " It was a pleasure to see you again."** Ray had not been subpoenaed to testify and he did not have any first hand knowledge of any of Hal's claims. It is hard to imagine that the purpose of his testimony was anything other than to influence Judge Holmes in Hal's direction. Further, the only time Ray had even seen our children was when they were in the office for a cleaning. At the time of the hearing I of course knew that Ray was a senator, but I had no knowledge about the existence of the Judicial Merit Selection Commission and certainly had no idea that Ray was a member. After the hearing I was informed that prior to applying for the judgeship, Judge Holmes contacted the senator in her district, which happened to be Senator Cleary, and expressed her interest in becoming a candidate. By researching the public transcripts of the hearings I saw that Senator Cleary was instrumental in Judge Holmes being vetted by the JMISC and voted on in the legislature, thus resulting in her appointment to the bench. Every time after that she came up for review the public transcripts show that he always supported her. Anita Floyd was very aware of Senator Cleary's support of Judge Holmes as during this time she had 2 failed attempts herself at being deemed qualified by the JMISC. Certainly, Judge Holmes should have recognized that not disclosing her familiarity of Senator Cleary could give the appearance of impropriety and bias.

There are other examples of bias and impropriety that I could have cited from this hearing but I simply can't do every single one with the amount of actions that need to be addressed. When Judge Holmes allowed Anita Floyd to suborn perjury from Hal and allowed them both to make false and misleading statements throughout the hearing, she allowed her courtroom to be weaponized and her silence encouraged further abuse of myself and our children. It was because of this that prior to taking the stand and testifying my attorney advised me to settle with Hal. I knew that I had factual evidence

that could disprove each of his lies and accusations but due to the level of bias and impropriety that Judge Holmes displayed I knew that I could not trust it to be received, admitted or even heard. I felt I had no other choice other than to settle.

During this hearing there are 3 important issues that might not have appeared strong in bias and impropriety at the time but need to be preserved because they are weaponized and carried on throughout the remainder of our legal battles. First, Hal did not abide by the Rules of Court and comply with Rule 20, SCFCR and refused to file a Financial Declaration for this case. It is my recollection that this was addressed prior to the start of the hearing in judge's chambers and that Judge Holmes stated it could be held in abeyance until the completion of the hearing. This is why it is not referenced in the transcript. In all of our future hearings with Judge Holmes, Judge Buckhannon and Judge Norton somehow Hal is allowed to continue with this behavior and never file a Financial Declaration. Second, the inappropriate usage of the term alienation or parental alienation. Throughout my research I have not found that any family court in SC has recognized Parental Alienation Syndrome. There is no working legal or agreed upon medical definition for alienation in SC. Parental Alienation is not recognized by the American Medical Association, The American Psychological Association, the World Health Organization, is not included in the DSM V and does not have an ICD-9 billing code. Yet, Judge Holmes allows its usage throughout this entire hearing-even though it is not stated as a violation to our agreement and was never defined. Finally, on **page 446-line 14 through page 453 line 5 (Exhibit #5)** discusses a recording that we try to introduce. Judge Holmes denies it at the time but allows the counselor to testify to what she recalls hearing on the recording. This is significant because somehow this recording is never allowed to be introduced at any future hearing.

At this time (2017 RTSC) the below examples are not examples of corruption, bias, impropriety or collusion but I want to preserve them now so that when they reappear during later complaints the truth of what was agreed to and stated on the record can be referred to. On **page 507-lines 20-25 (Exhibit #6)** Anita Floyd states that **Hal and I both agree to get counseling and that the issue we are both to address with our counselors is alienation and co-parenting.** I have also included

the cover page from the Final Order and #5 Counseling: on the following page has now been changed from what we agreed on to only me needing counseling for alienation issues. Which was not at all what we agreed to during the hearing. My attorney tried to object to the drafts but Judge Holmes signed off on them anyway. This is the beginning of where falsehoods are presented as facts and placed on the record in a Final Order. **On pages 514 line-18 through page 515 line 15 (Exhibit #7) Judge Holmes states that she wants to make the ultimate determination of who the children's counselor will be.** She states that she wants the 2 counselors to submit a name each and she will choose. Anita Floyd states that she will prepare an order for now and it will note in there that a supplemental order will be issued within the next 30 days noting who the children will see and in the mean time the 2 counselors will make suggestions for Judge Holmes selection.

Exhibit

#1

1 **MRS. LANGWAY:** Your Honor, I have no objection.

2 **THE COURT:** Defendant's exhibit three.

3 **(DEFENDANT'S EXHIBIT NUMBER THREE IS**
4 **ADMITTED INTO EVIDENCE.)**

5 **Q:** I am going to come back to -- now this Sunday,
6 November 23, this was the Sunday before Thanksgiving, is
7 that correct?

8 **A:** Yes.

9 **Q:** All right and we will come back to Thanksgiving for
10 a moment, but I want to stick with the, the house issues.
11 So when were you finally able to get back in the house?
12 What was the date that you went back to the house for the
13 first time?

14 **A:** December 20th.

15 **Q:** And at that time, what was the condition of the
16 home?

17 **A:** It was not like what we left it. Not like what I
18 remembered it. It was not showable and it had been
19 damaged.

20 **Q:** Okay, and if you will, please, tell me how it had
21 been damaged.

22 **A:** I walked into the family room. We had some
23 customized window treatment that was in the family room
24 that matched a customized back splash that was in the
25 kitchen. The window treatment along with the fixtures had

1 been ripped from the wall leaving holes in the wall and in
2 the sheet rock. Not only was the paint damaged but the
3 actual sheet rock was damaged. I walked upstairs to the
4 master bedroom, found the customized window treatment was
5 ripped from the walls along with the fixtures leaving holes
6 in the wall.

7 I realized she had taken the big screen TV from the
8 master bedroom along with the mount, along with the fixture
9 that held the TV to the wall. It was ripped from the wall
10 leaving holes, damaged the sheet rock, leaving exposed
11 wiring.

12 I then walked towards my oldest daughter's room.
13 On my way, there is a landing; she had removed a large
14 mirror that was bolted to the wall, damaged the sheet rock.

15 Upon entering my oldest daughter's Haley-
16 Katherine's room, I discovered the customized window
17 treatment that matched the decor in her bedroom had been
18 ripped from the wall, the holes in the sheet rock damaging
19 the paint. Upon walking into her bedroom (sic) there was a
20 series of three curved shower rods that were screwed into
21 the tile. Upon those shower rods, there was custom,
22 customized, shower curtain treatment if you will. The
23 shower curtain treatment had been taken; the tiles were
24 damaged. In that room the mount had been ripped off of the
25 tile cracking the tile, and the mount was broken rendering

1 one of the bars useless. I further looked up and the
2 shower head had been removed from the shower, the actual
3 shower head.

4 Upon seeing this, I walked to my youngest daughter,
5 Emily's room, across the hall to find the shower head had
6 been removed from the shower. Again, there were a series
7 of three curtain rods for the customized shower curtain
8 treatment. The shower curtain treatment had been removed
9 and the tiles were damaged.

10 I walked into the fam -- the game room. I realized
11 the large screen TV had been taken along with the fixture
12 or the mount that was screwed into the stud. There was
13 again a large gaping hole in the wall, exposed wiring.
14 There were two sconces that were adorned on the wall
15 laterally to the TV; they had been removed and there were
16 exposed wires.

17 I walked downstairs to find a few marble tiles; one
18 was slightly fractured and another was loose. Those will
19 have to be replaced.

20 And I found a pergola which we had built for our
21 porch was in a state of disrepair and rotting. It can't be
22 repaired; it has to be replaced or taken down.

23 On the outside of the house, in the past my ex-wife
24 had accidentally hit the garage when she was entering it
25 and damaged the stucco. That has sat there for a while and

1 there's damage to that, water damage up underneath the
2 stucco.

3 Q: Okay, I am going to ask you if you recognize that
4 picture. Tell me when it was taken.

5 A: It was taken as I came in as the shower head of one
6 of my daughter's bathrooms. This is another.

7 Q: Okay. And you said it's the shower head, but is
8 the nozzle on it?

9 A: There is no -- there is no nozzle.

10 Q: So she had even unscrewed the shower heads in both
11 children's bathrooms?

12 A: Yes, ma'am.

13 Q: Now I am going to ask you if you recognize this
14 picture.

15 A: Yes.

16 Q: Okay, and you've got that noted as Emily's ---

17 A: Emily's room ---

18 Q: --- room. Okay, and does it note where the -- and
19 what does this show, please, sir.

20 A: This shows one of the shower rods was damaged where
21 it was missing.

22 Q: Okay, and on the other side of the shower rod, was
23 it bolted into the tile?

24 A: Yes, it was bolted into the tile.

25 Q: Could the curtains, if she had actually wanted to

1 take the shower curtains, could she have done so without
2 destroying the rods?

3 A: Yes, they were placed up there without destroying
4 the rods.

5 Q: Okay, and because they were bolted in the tile,
6 what are you going to have to do?

7 A: The tile is going to have to be replaced.

8 Q: When was that tile installed?

9 A: Perhaps 2006.

10 Q: And are you able to simply match this tile?

11 A: It is going to be very difficult to match the tile
12 if at all.

13 Q: Have you been trying to do that?

14 A: Yes.

15 Q: All right, now I am going to ask you if you
16 recognize that picture?

17 A: Yes.

18 Q: And what is that, please, sir?

19 A: This is my youngest daughter's room, Emily, with
20 the shower rod down on the floor. It's broken.

21 Q: Okay, and I am going to ask you if this is a close
22 up of where the rod was pulled from the tile?

23 A: Yes.

24 Q: Is it possible to get another rod and install it in
25 there?

1 **A:** I am sure it is possible. I don't know if they
2 will get a good match.

3 **Q:** Okay, do you know how you could do that,
4 practically speaking, is it going to be possible to put
5 another rod in there and it be stable?

6 **A:** The tile will have to be replaced.

7 **Q:** Okay, that was my question.

8 And I am going to ask you if you recognize that
9 picture?

10 **A:** Yes, this is the guest bathroom.

11 **Q:** What is missing from there?

12 **A:** A mirror that was on the wall.

13 **Q:** And how was the mirror fixed to the wall or
14 attached to the wall.

15 **A:** It was attached with a hook or apparatus that went
16 in the sheet rock.

17 **Q:** Okay. And I am going to ask you if you recognize
18 that picture?

19 **A:** Yes.

20 **Q:** What is that -- what does that picture depict?

21 **A:** This is my oldest daughter's room depicting holes
22 in the wall from where the window treatment was ripped off.

23 **Q:** And I am going to ask you if you would, please, to
24 explain both of these pictures.

25 **A:** These are just pictures to show more damage, the

1 size of the damage where the customized window treatment
2 was ripped off.

3 Q: Okay, and you are holding a dollar bill next to it,
4 what is that for?

5 A: That is just to show the size.

6 Q: Okay. And I am going to show you that picture and
7 ask you what that is.

8 A: This is another picture of the customized window
9 treatment in the family room that matched the customized
10 back splash that we had made. This is where it hung and
11 this is where the damage occurred, and some of the damage
12 occurred where she ripped it off the wall. There's holes
13 in the wall.

14 Q: All right. And if you will, please, explain that
15 picture.

16 A: This is in the master bedroom. This is where the
17 TV was and shows where the TV mount was and where it was
18 removed from the wall.

19 Q: Okay. So she didn't just remove the television but
20 she removed the fixture, the mount?

21 A: She removed the mount that was screwed into the
22 stud.

23 Q: All right. And I am going to ask you if you
24 recognize this picture and -- well, both of these pictures.

25 A: These two pictures depict the game room where the

1 TV was removed, the large screen TV was removed from the
2 wall along with the mount, and along with the sconces.
3 Again, you can see exposed wiring and holes, numerous
4 holes, in the wall.

5 Q: Okay. In fact, it is riddled with holes all across
6 the wall, isn't it?

7 A: There were a lot of holes.

8 Q: And I am going to ask you if you recognize that?

9 A: This is a close up of the exposed wiring where the
10 sconce was removed.

11 Q: All right. And was the sconce affixed to the wall?

12 A: It was ---

13 Q: Was it a fixture?

14 A: Yes, it was a fixture.

15 Q: Okay. All right, and do you know why the plate was
16 removed?

17 A: No, I do not.

18 Q: Was there any excuse -- first of all, was there any
19 excuse in removing the fixture?

20 A: No.

21 Q: All right, was there any excuse at all for removing
22 the cover?

23 A: No.

24 Q: The wall cover? Okay. All right, now I am going
25 to ask you if you recognize this picture?

1 **A:** Yes.

2 **Q:** And what is that?

3 **A:** It's a picture of six remotes that were left.

4 **MRS. LANGWAY:** Your Honor, for purposes of mine,
5 there are so many pictures, could we mark them so I -- I
6 don't even know what she is showing him.

7 **MRS. LEE:** Okay, I was mark -- I was going to mark
8 them collectively as one exhibit ---

9 **MRS. LANGWAY:** I would like to know what he is
10 responding to so I can make some notes. I just don't know
11 what picture you are showing him at all. There's like 18
12 pictures here so ...

13 **MRS. LEE:** Okay, okay. I -- all right.

14 **THE COURT:** So just refer to the picture that you
15 are showing so that she can also refer to it.

16 **MRS. LEE:** All right.

17 **Q:** Let's go back and do it this way. Those three
18 pictures, I believe you testified that those are pictures
19 of the finished room over the garage where she removed not
20 just the television but also the mount and the sconces, is
21 that correct?

22 **A:** The television, yes, ma'am.

23 **Q:** All right.

24 **MRS. LEE:** Why don't I mark this as exhibit four.

25 **MRS. LANGWAY:** That's fine, and just show me, and

1 then I will verify with mine which ones you are looking at.

2 (WHEREUPON, THE ATTORNEYS CONFER.)

3 MRS. LEE: And this will be defendant's exhibit
4 four.

5 THE COURT: Any objection to defendant's exhibit
6 four?

7 MRS. LANGWAY: No, Your Honor.

8 (DEFENDANT'S EXHIBIT NUMBER FOUR IS
9 ADMITTED INTO EVIDENCE.)

10 THE COURT: Okay, that's pictures of you said the
11 room above, the loft, is that the game room?

12 MRS. LEE: Yes, ma'am.

13 Q: And then I am going to show you this. You pointed
14 out that this was the master bedroom where she removed
15 again not just the television but also the wall mount.

16 A: Yes, ma'am.

17 Q: All right.

18 MRS. LEE: I will mark this as exhibit five.

19 MRS. LANGWAY: Okay.

20 Q: And if you will identify that picture if you would,
21 please.

22 A: These are holes in the wall from where the window
23 treatment had been removed.

24 MRS. LEE: This will be defendant's exhibit six.

25 THE COURT: Okay, so no objection to defendant's

1 exhibit five?

2 MRS. LANGWAY: No objection, Your Honor.

3 THE COURT: Okay, that's admitted.

4 (DEFENDANT'S EXHIBIT NUMBER FIVE IS
5 ADMITTED INTO EVIDENCE.)

6 THE COURT: All right, defendant's exhibit six, any
7 objection?

8 MRS. LANGWAY: No, Your Honor.

9 (DEFENDANT'S EXHIBIT NUMBER SIX IS
10 ADMITTED INTO EVIDENCE.)

11 Q: Now tell me what these two pictures are?

12 A: That's just where some of the fixtures had been
13 removed that held up the window treatment with dollar bills
14 to show the size of the damage.

15 MRS. LEE: It will be defendant's exhibit seven.

16 THE COURT: Any objection?

17 MRS. LANGWAY: No objection, Your Honor.

18 THE COURT: Defendant's exhibit seven is admitted.

19 (DEFENDANT'S EXHIBIT NUMBER SEVEN IS
20 ADMITTED INTO EVIDENCE.)

21 Q: And then I am going to show you a series of five
22 pictures that you have identified as Emily's and/or Haley-
23 Katherine's bathroom. And are these the pictures that we
24 were discussing ---

25 A: Yes, ma'am ---

1 Q: --- in regards to the problems created in the
2 bathroom?

3 A: Yes.

4 Q: All right, and one other, I am going to ask you
5 also this picture of the guest bathroom you said with the
6 mirror removed?

7 A: Guest bathroom and the mirror is removed, yes.

8 MRS. LEE: All right, and that six pictures total.
9 This will be defendant's exhibit eight.

10 THE COURT: Any objection to defendant's exhibit
11 eight?

12 MRS. LANGWAY: No objection, Your Honor.

13 THE COURT: Defendant's eight is admitted.

14 (DEFENDANT'S EXHIBIT NUMBER EIGHT IS
15 ADMITTED INTO EVIDENCE.)

16 Q: And I am going to show you a picture that you
17 identified as Haley-Katherine's bedroom?

18 A: Yes, ma'am.

19 Q: And where damage had been created from the removal
20 of ---

21 A: The window treatment ---

22 Q: --- the window treatment.

23 MRS. LEE: Okay, this will be defendant's exhibit
24 nine, Your Honor.

25 THE COURT: Any objection?

1 **MRS. LANGWAY:** No objection, Your Honor.

2 **THE COURT:** Defendant's nine admitted.

3 **(DEFENDANT'S EXHIBIT NUMBER NINE IS**
4 **ADMITTED INTO EVIDENCE.)**

5 **Q:** And then we were on this picture. I am going to
6 ask you if you recognize this picture?

7 **A:** That's the family room.

8 **Q:** Okay, and what's the purpose of that picture?

9 **A:** The purpose is to show where she left six remotes
10 and there's very little ---

11 **Q:** Of the furniture. And what's the significance of
12 the six remotes?

13 **A:** She took all of the electronics, and she left the
14 TV and she left one -- she left very little electronic
15 devices to go with the remotes. The remotes were useless
16 except for the one for the fireplace.

17 **Q:** Okay, and did she leave -- how many televisions did
18 you have in your house?

19 **A:** I believe we had three -- we had four televisions.
20 One was 20 years old.

21 **Q:** And which -- did she leave you any?

22 **A:** She left me the 20 year old TV that does not work.
23 She left one large flat screen TV, and she took two large
24 flat screen TVs.

25 **MRS. LEE:** I would like to introduce this as

1 defendant's exhibit 10, I think. Ten?

2 THE COURT: Any objection?

3 MRS. LANGWAY: No objection, Your Honor.

4 (DEFENDANT'S EXHIBIT NUMBER 10 IS

5 ADMITTED INTO EVIDENCE.)

6 Q: And I am going to show you a picture of the wash
7 room; I'm going to ask you if you recognize that?

8 A: Yes.

9 Q: Okay, and what was in the wash room?

10 A: A nice expensive washer and dryer.

11 Q: It is not there now?

12 A: No.

13 Q: Did she remove that as well?

14 A: Yes.

15 MRS. LEE: I would introduce this as defendant's
16 exhibit 11.

17 THE COURT: Any objection to defendant's exhibit
18 11?

19 MRS. LANGWAY: No objection, Your Honor. I think
20 I've lost it, but I will find it. I know which picture you
21 are talking about. I must have put it already somewhere
22 else.

23 (DEFENDANT'S EXHIBIT NUMBER 11 IS

24 ADMITTED INTO EVIDENCE.)

25 Q: And then finally I am going to show you this

1 picture and I'm going to ask you what that is of; what is
2 that picture?

3 **A:** This is a picture of the pergola that we had built
4 and shows the rotten damage on the pergola.

5 **MRS. LEE:** I would like to introduce this a
6 defendant's exhibit 12.

7 **THE COURT:** Any objection?

8 **MRS. LANGWAY:** No objection, Your Honor.

9 **THE COURT:** Defendant's 12 is admitted.

10 **(DEFENDANT'S EXHIBIT NUMBER 12 IS**
11 **ADMITTED INTO EVIDENCE.)**

12 **Q:** Dr. Capps, did you take a picture of all the
13 furniture that had been left for you?

14 **A:** Yes, I took one or two pictures perhaps that showed
15 all the furniture that was left.

16 **Q:** I am going to ask you if you recognize this
17 picture?

18 **A:** Yes.

19 **Q:** Okay, and what is that picture?

20 **A:** This is a picture of all the furniture that was
21 left with the exception of a sofa, a wooden drop leaf
22 table, and a chair and two wooden chairs.

23 **Q:** And ---

24 **A:** And also with the exception of my youngest
25 daughter's bed which was broken.

1 Q: Okay, so this top picture is a picture of virtually
2 everything that was left in your home?

3 A: Virtually everything.

4 Q: Okay. Now when did you furnish the home?

5 A: When we moved into the home.

6 Q: And when was that?

7 A: Two thousand and seven (2007) perhaps.

8 Q: And where were the majority of the furnishings
9 purchased from?

10 A: Kim Grigg who was an interior decorator.

11 Q: And how much did you pay for this furniture?

12 A: Roughly \$60,000.00.

13 Q: Okay. All right, now I am going to ask you if you
14 recognize this next picture I am showing you?

15 A: Yes.

16 Q: And is that just from a different angle from the
17 first one?

18 A: Yes, ma'am.

19 Q: Okay. And then I am going to show you a third
20 picture and I am going to -- before I show you this third
21 picture, the couch that was left, was that even a marital
22 sofa?

23 A: She got it before we were married. There was a
24 couch and a love seat that were -- she had -- before we got
25 married.

1 Q: Okay, so some of the furniture that she left you
2 was not even the marital furniture that was purchased from
3 Kim Grigg; it was furniture that ---

4 A: It had holes in it.

5 Q: Okay, now I am going to ask you if you recognize
6 that picture?

7 A: Yes.

8 Q: All right, and is that too just at a different
9 angle or close up ---

10 A: It's a different angle ----

11 Q: --- of the three chairs and desk chair that she
12 left you?

13 A: Yes, ma'am.

14 Q: That's picture number three. Now I am going to
15 show you picture number four, and I am going to ask you if
16 that too is simply a different angle or a close up of what
17 she left you from the shelves?

18 A: Yes, ma'am.

19 Q: And then I am going to show you this picture and
20 I am going to ask you if that too is simply a different
21 angle ---

22 A: Yes, ma'am. ---

23 Q: --- of the other pictures ---

24 A: Yes, ma'am ---

25 Q: --- that she has left you? All right, now I am

1 going to show you the next picture in sequence, and I am
2 going to ask you if that too is simply a different angle?

3 **A:** Yes, ma'am.

4 **Q:** All right, but does this picture also include a
5 stand up lamp?

6 **A:** Yes.

7 **Q:** And what is significant about that stand up lamp?

8 **A:** It is broken; it doesn't work.

9 **Q:** Now I am going to show you these two brass
10 candlesticks and I am going to ask you what the
11 significance of those two brass candlesticks are?

12 **A:** When we were married, I received two large
13 candlesticks from a friend of the family I had known, my
14 parents had known them since they were young, they were
15 approximately this long, matching. I asked for the
16 matching candlesticks and I received these.

17 **Q:** Okay, and this is simply another picture there
18 depicted in the previous picture, but about how big are
19 those brass candlesticks?

20 **A:** Maybe a little bit -- twice the size of this cup.
21 About that tall.

22 **Q:** Okay.

23 **MRS. LEE:** Now, I want to introduce these pictures
24 collectively. And it's a series of seven pictures that
25 show the furnishings that were left for Dr. Capps on

1 December 20th of 2014.

2 THE COURT: Any objection?

3 MRS. LANGWAY: No objection, Your Honor.

4 THE COURT: That's defendant's exhibit 14?

5 COURT REPORTER: Thirteen (13).

6 THE COURT: Thirteen (13) admitted.

7 (DEFENDANT'S EXHIBIT NUMBER 13 IS
8 ADMITTED INTO EVIDENCE.)

9 Q: I am going to show you this picture that has been
10 marked as the guest bedroom. Do you recognize that
11 picture?

12 A: Yes.

13 Q: What is missing?

14 A: A bed and two tables, lamp.

15 Q: Okay.

16 A: And also a armoire was in there that is missing as
17 well.

18 Q: Okay, and I am going to show you this next picture
19 which appears to be off of the kitchen. I am going to ask
20 you if you recognize that.

21 A: Yes.

22 Q: And what is the significance of that picture?

23 A: Number one, it depicts the window treatment which
24 is gone, and there used to be a secretary which was there.
25 There used to be a long wooden table that was there, and

1 the sofa that was there.

2 Q: And then as we move on around the room, I am going
3 to ask you if you recognize that next picture and what is
4 that?

5 A: That's another picture of the family room; no
6 window treatments; a chair is missing; a lamp is missing.
7 Again, there is no small table and no sofa.

8 Q: And then the next picture in sequence is -- do you
9 recognize that?

10 A: Yes.

11 Q: Okay, and is that the television that she left,
12 that Michelle left?

13 A: One of them, yes, ma'am.

14 Q: And then the next picture in sequence, is that
15 another angle of that room?

16 A: Yes.

17 Q: And what is the significance of that picture, and
18 I call specific attention to the two vases beside the ---

19 A: We had purchased two vases from Kim Grigg, the
20 interior designer. We paid \$300.00 apiece perhaps,
21 probably a little more; I have no idea. These two vases
22 were bought at Stein Mart for \$30.00.

23 Q: The next picture in sequence, does that show the
24 couch that Michelle left you?

25 A: Yes, it shows the sofa and love seat.

1 Q: Okay, excuse me, the sofa and the love seat. And
2 were these purchased during the marriage?

3 A: No.

4 Q: These were Michelle's sofa and love seat from 20
5 plus years ago?

6 A: Yes, ma'am.

7 Q: All right, and what's the condition of that sofa
8 and that love seat?

9 A: They are stained, they are uncomfortable and they
10 have holes in them.

11 Q: Okay. And the next picture, I am going to ask you
12 what the significance of that picture is, please, sir?

13 A: No window treatment. My recliner is gone. There
14 is no sofa. There is no small table.

15 Q: All right. Now the ---

16 A: And no rug.

17 MRS. LEE: Now, Your Honor, I am going to introduce
18 all of these pictures collectively which is a series of
19 seven pictures as defendant's exhibit 14.

20 THE COURT: Any objection?

21 MRS. LANGWAY: How many did you say?

22 MRS. LEE: Seven.

23 MRS. LANGWAY: Seven. No objection, Your Honor.

24 THE COURT: Defendant's 14 admitted.

25 (DEFENDANT'S EXHIBIT NUMBER 14 IS

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ADMITTED INTO EVIDENCE.)

Q: Now the next picture in sequence looks like a picture of a hall. What, if anything, is significant of that?

A: Down the hall we had numerous family pictures, mostly pictures of the girls, throughout five years or so as they grew up.

Q: Were any pictures left?

A: No, none. There's holes in the walls as well.

Q: All right, and have you been able to get the pictures to copy them so that you can replace these pictures on the wall?

A: No.

MRS. LEE: I would like to introduce this as defendant's exhibit 15.

THE COURT: How many pictures?

MRS. LEE: It is just one picture.

THE COURT: Any objection to defendant's exhibit 15?

MRS. LANGWAY: No objection, Your Honor.

(DEFENDANT'S EXHIBIT NUMBER 15 IS

ADMITTED INTO EVIDENCE.)

Q: I am going to show you the next picture and I am going to ask you what that depicts, please?

A: This depicts a toilet tissue holder that was empty.

1 She took all the toilet tissue from the home, and one of
2 the toilet tissue holders was broken.

3 Q: Okay, so she not only took the shower heads, but
4 she even took and tore up the toilet paper holders?

5 A: One of them, yes, and she took all of the toilet
6 tissue.

7 MRS. LEE: Okay, I would like to introduce this as
8 defendant's 16.

9 THE COURT: Any objection?

10 MRS. LANGWAY: No objection, Your Honor.

11 (DEFENDANT'S EXHIBIT NUMBER 16 IS
12 ADMITTED INTO EVIDENCE.)

13 Q: I am going to show you the next two pictures and I
14 am going to ask you what those are?

15 A: These are pictures of mounts, wall mounts, for TVs
16 that -- and it shows the price. I took these at Best Buy.

17 Q: And then the next picture, I'm going to ask if you
18 recognize that?

19 A: Yes.

20 Q: And what is that?

21 A: That's a drop leaf table that she left.

22 Q: And I am going to ask you if you recognize that
23 picture?

24 A: Yes, that is the formal living room. That is a
25 sofa she left, a round table with a few pictures on the

1 wall minus -- no, that's it, a few pictures on the wall.
2 What's missing are the portraits of our daughters.

3 Q: And I am going to ask you if you recognize this
4 next picture?

5 A: Yes, that's one of the chairs that she left.

6 Q: That was a chair that she left. And then I am
7 going to ask you, the next picture is simply a different
8 picture of the sofa and that shows the four pictures that
9 she left?

10 A: Four to six pictures, yes, ma'am.

11 Q: And have we now covered all of the furniture that
12 was left in the home for you?

13 A: Yes.

14 Q: Okay, was there a bed left in any room?

15 A: There is -- my youngest daughter's bed was left
16 with a small trundle bed. And the bed was broken.

17 Q: Okay.

18 MRS. LEE: Your Honor, I would like to introduce
19 these series of one, two, three, four pictures which would
20 be of the living ---

21 Q: Is that the living room ---

22 A: Yes, ma'am ---

23 MRS. LEE: --- of the living room. It shows the
24 remaining furniture that was left in the house.

25 THE COURT: Any objection to defendant's 17?

1 **MRS. LANGWAY:** Your Honor, I don't have an
2 objection, but I want to clarify something real quick for
3 the record.

4 **THE COURT:** Okay.

5 **MRS. LANGWAY:** You talked about these two but you
6 didn't mark them?

7 **MRS. LEE:** I'm not putting those in.

8 **MRS. LANGWAY:** Okay, just making sure I didn't miss
9 something.

10 No objection.

11 **(DEFENDANT'S EXHIBIT NUMBER 17 IS**

12 **ADMITTED INTO EVIDENCE.)**

13 **Q:** Now, Dr. Capps, you testified that Mrs. Capps left
14 or Mrs. Capps took even the shower heads from the girls'
15 bedroom.

16 **A:** Yes.

17 **Q:** Did she leave the shower head in the guest bedroom?

18 **A:** Yes.

19 **Q:** Okay, sir. And what about the master bedroom?

20 **A:** The ---

21 **Q:** The master bedroom and the master bathroom?

22 **A:** The master bedroom, she left the shower head. The
23 hose for the tub was cracked. It leaked.

24 **Q:** Okay.

25 **A:** I have to have a new hose for that.

1 Q: A new hose for what?

2 A: For the tub.

3 Q: Okay, and that's in the guest bathroom?

4 A: It's in the master bathroom.

5 Q: Master bathroom. And you said that there was a
6 bed, one bed, that was left in one of the children's
7 bedroom. And I am going to ask you if you recognize that?

8 A: Yes.

9 Q: Is that the bed that was left?

10 A: Yes.

11 Q: And you said that it was broken?

12 A: Yes.

13 Q: Is there anything in the room left besides just the
14 bed?

15 A: No; maybe a hanger and a small trundle bed up
16 underneath this bed.

17 MRS. LEE: I would like to introduce this picture
18 as defendant's 17 or is this 18? Defendant's 18, excuse
19 me.

20 THE COURT: Any objection to defendant's 18?

21 MRS. LANGWAY: No, but again I just wasn't exactly
22 sure. I want to make sure I have the right one. I didn't
23 see this one. Okay.

24 (DEFENDANT'S EXHIBIT NUMBER 18 IS
25 ADMITTED INTO EVIDENCE.)

1 Q: Does that cover all of the furniture that was left
2 for you?

3 A: Yes.

4 Q: All right, sir. Now attached ---

5 A: Well to get back I think I said there was an old TV
6 cabinet with a 20 year old TV that did not work in the
7 playroom and two wooden chairs.

8 Q: All right, sir. Did she also leave you some
9 rocking chairs?

10 A: She left two patio chairs.

11 Q: Those are the two wooden chairs that she left?

12 A: Oh, no, ma'am, the wooden chairs were in the
13 playroom.

14 Q: All right. Now attached as exhibit A to the letter
15 that you sent to Mr. Hearn in February of 2015 which is our
16 defendant's, which is our exhibit one, contained a listing
17 of the household property. Tell me when you put that
18 together? Did you put it together either at or near the
19 time the letter was prepared?

20 A: Yes.

21 Q: All right, sir, so does that -- is even that --
22 would even that be a complete list?

23 A: No ---

24 Q: At the time ---

25 A: --- not at all.

1 Q: Okay, sir, at the time that you prepared that list,
2 how long had it been since you had even been in the home?

3 A: I would say two years or there about.

4 Q: All right, sir. Now you have attached or you have
5 asterisked and double asterisked certain property. And it
6 notes on there that the one asterisk is property that you
7 would like returned to you, and the double asterisk is the
8 property that was left at the time, is that correct?

9 A: Yes, ma'am.

10 Q: Okay, do you still want -- this has now been two
11 years. Do you still want this property returned to you?

12 A: No, not at all.

13 Q: Okay. Now you have asked in your Return that Mrs.
14 Capps be required to pay you \$8000.00, why is that?

15 A: When we moved into the house, the house was
16 furnished with approximately \$60,000.00 worth of furniture.
17 During our time during the house we furnished it slightly
18 more. When we separated, the property was valued at
19 \$20,000.00. I feel I got roughly 10 percent of that which
20 comes out to \$2000.00. Ten thousand minus \$2000.00 is
21 \$8000.00.

22 Q: All right, sir, now you said that at the time you
23 and Mrs. Capps separated from one another, you valued the
24 personal property at \$20,000.00. I am going to ask you if
25 you recognize this marital assets addendum?

1 **A:** Yes, ma'am.

2 **Q:** Okay, and at that time did you indeed value the
3 personal property in the home at a total of \$20,000.00, the
4 household property?

5 **A:** Yes.

6 **Q:** Okay, so that was just something that you and
7 Michelle together agreed upon?

8 **A:** Yes.

9 **MRS. LEE:** All right, I would like to introduce
10 this MAA from the time of the parties' divorce as defendant
11 exhibit 18.

12 **COURT REPORTER:** Nineteen (19).

13 **MRS. LEE:** Nineteen (19), excuse me.

14 **THE COURT:** Any objection to defendant's MAA?

15 **MRS. LANGWAY:** No objection, Your Honor.

16 **THE COURT:** Defendant's 19 admitted.

17 **(DEFENDANT'S EXHIBIT NUMBER 19 IS**

18 **ADMITTED INTO EVIDENCE.)**

19 **Q:** Have you tried repeatedly to discuss this issue
20 with Mrs. Capps?

21 **A:** Yes.

22 **Q:** To any avail?

23 **A:** No.

24 **Q:** All right, sir. Now, I want to stay on the house
25 for just another few minutes and then we will move on.

1 In Michelle's Rule to Show Cause against you, she noted
2 that you have not listed the house for sale and that you
3 were required to do so. The Marital Settlement Agreement
4 provides that the home shall be listed for sale
5 immediately, is that correct?

6 **A:** Yes.

7 **Q:** All right, and that Marital Settlement Agreement
8 was signed on June 14th, is that also correct?

9 **A:** Yes.

10 **Q:** And from June 14 until you regained possession of
11 the home, were you able to get it listed?

12 **A:** No.

13 **Q:** Okay. Would Michelle list it?

14 **A:** No.

15 **Q:** Would she cooperate in listing it?

16 **A:** No.

17 **Q:** Okay, so Michelle complains that the house was not
18 listed immediately, yet were you even in a position to list
19 it without her help and cooperation since she was in
20 possession of the home?

21 **A:** No.

22 **Q:** All right, sir. Now after you moved into the home
23 in December, you have gone over some of the problems in the
24 home, but was the home ready to be listed? Could the home
25 have been listed for sale with any -- to any -- good result

1 when you moved back into the home?

2 **A:** No, it was not showable at all.

3 **Q:** All right, sir. And how much do you think it will
4 cost to repair the damage that has been caused as a result
5 of Mrs. Capps leaving the home?

6 **A:** Upon getting estimates and talking to people, the
7 walls cannot simply be patched. The rooms are going to
8 have to be repainted. I would estimate \$30,000.00.

9 **Q:** All right, sir. And has Mrs. Capps cooperated in
10 fixing this -- in putting this house -- in the condition in
11 which it was in at the time you and she signed the
12 separation agreement?

13 **A:** Has she what?

14 **Q:** Has Mrs. Capps cooperated in, in getting the
15 property back to the condition that it was in on June 14 of
16 2014?

17 **A:** Not at all. When I left, I was proud of the house.
18 Returned to a disaster.

19 **Q:** All right, sir. Now I am going to turn to page
20 three (3) of the Marital Settlement Agreement which has
21 been entered, I believe, as defendant's exhibit number
22 two. And I am going to ask you if you would, please, to
23 publish the paragraph that starts, "This property shall be
24 listed".

25 **A:** "This property shall be listed for sale

Exhibit #2

18 May 2016
met w/ Brown for 15 mins

Dear Dr. Brown,

I wanted to start this letter by stating that I was very happy to have met with you this past Thursday. I want to stress again the reason I desire to meet with you. I am very concerned about my children and I love them. I want to be involved in the psychological treatment of my children. I have information, points of view, and firsthand knowledge of events that have shaped my children's lives. I feel I am an essential and paramount resource to facilitate the thorough treatment you have been giving my children.

I have several questions concerning Haley Kathryn's (and to some extent Emily's) treatment:

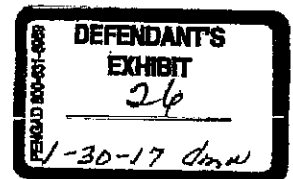
- 1) What is the diagnosis?
- 2) What is the treatment plan strategy?
- 3) What progress is being made and what observations are apparent that indicate progress?
- 4) How has the treatment plan changed since you have been seeing her?
- 5) If there is a concern with the family and/or the parents will they become involved?
- 6) What are the goals of treatment?
- 7) Have I not been included in the treatment due to legal or ethical reasons?

I am optimistically hoping we can meet to further discuss concerns I have with my children.

Thank you for your time

Sincerely,

J. Hal Capps, Jr.



met for < 15 minutes

main interest is my children these are valid questions & I am concerned write you this letter

"It appears that you are using these children to satisfy your insanity"

That's sad. You are a very pathological man

1 **A:** She took Haley-Katherine out. Emily did not even
2 see Dr. Heidt, and she started seeing Harold Brown who is
3 some type of therapist in Murrells Inlet.

4 **Q:** And on Harold Brown's website, what does he claim
5 to be a specialist in?

6 **A:** He's an addictions therapy specialist.

7 **Q:** And does the restraining order require or prohibit
8 these children from being in the presence of any one who
9 denigrates the other parent or who discusses this
10 litigation or the circumstances of the separation with the
11 children?

12 **A:** Yes.

13 **Q:** And Harold Brown has been seeing your children?

14 **A:** Yes.

15 **Q:** And did you agree for Harold Brown to see your
16 children?

17 **A:** Not at all.

18 **Q:** All right, sir. And did you contact Harold Brown?

19 **A:** Yes.

20 **Q:** And what happened when you contacted Harold Brown?

21 **A:** There were two occasions I contacted him. One was
22 a 43 minute phone conversation. Would you like me to
23 describe the phone conversation?

24 **Q:** You cannot tell me what Harold Brown said to you.
25 You can tell me, however, what you said to him.

1 **A:** I told Harold Brown that I loved my children. We
2 had gone through a contentious divorce. I am worried about
3 my children. I have many things to offer. I am their
4 father. I feel as if he is getting all of his information
5 from Michelle. I related the fact that Michelle stated
6 Haley-Katherine has panic attacks. Michelle is a pscho
7 therapist. She has a license. The first thing you know
8 when you are in her position, there is a difference between
9 a panic attack and an anxiety attack. Michelle and
10 Haley-Katherine both told me that Haley-Katherine -- I'm
11 sorry, I apologize. I am trying to get this right. It was
12 brought to my attention ---

13 **Q:** Do not tell me what he said to you.

14 **A:** I understand. I am telling this to Dr. Brown. I
15 am telling Dr. Brown it was brought to my attention that
16 Haley-Katherine suffers from panic attacks. I had a
17 conversation with my daughter concerning these panic
18 attacks and from that conversation I came to the conclusion
19 that the panic attacks were actually anxiety attacks due to
20 the fact that the child's mother went into ---

21 **Q:** Okay, don't tell ---

22 **A:** I'm sorry.

23 **Q:** You disputed what had been ---

24 **A:** I disputed what had been said. I told him I had
25 valuable information. I said, all I care about is my

1 children and please contact me; I would like to meet with
2 you and tell you my side of the story so we can help our
3 children; that's the common thing we want to do.

4 Q: How did Harold Brown respond?

5 A: He asked me about the problems in the marriage.

6 I was asked about the problems in the marriage. He ended
7 the conversation by saying, Okay, I will call you ---

8 Q: Don't tell me what Harold Brown said.

9 A: He was supposed to contact me. He was supposed to
10 call me back.

11 Q: And did he do that?

12 A: He did not contact me back.

13 Q: So while you were trying to contact Harold Brown
14 and offer what you believed was valuable insight into
15 alienation issues, Dr. Brown had no interest in that, is
16 that correct?

17 A: That's correct.

18 Q: He simply asked ---

19 A: Not only alienation issues but the happiness and
20 well being of my kids.

21 Q: Certainly.

22 A: Forget about the fact that she is alienating me, I
23 wanted him to know about my kids.

24 Q: Okay. All right, and did he have any interest in
25 that?

1 **A:** No.

2 **Q:** Did he instead have an interest in your and
3 Michelle's divorce?

4 **A:** Yes.

5 **Q:** Okay, sir. Now did you thereafter send Harold
6 Brown a letter?

7 **A:** Yes.

8 **Q:** Okay. And what did you tell him?

9 **A:** In the letter I sent to him, "Dear Dr. Brown,
10 I wanted to start this letter by stating I
11 was very happy to have met with you this past
12 Thursday. I want to stress again the reason
13 that I desire to meet with you, I am very
14 concerned about my children and I love them.
15 I want to be involved in the psychological
16 treatment of my children. I have information,
17 points of view, and first hand knowledge of the
18 events that have shaped my children's lives. I
19 feel I am an essential and paramount resource
20 to facilitate the thorough treatment you have
21 been giving my children. I have several
22 questions concerning Haley-Katherine's and
23 to some extent Emily's treatment. Number one,
24 what is the diagnosis. Number two, what is the
25 treatment plan strategy. Number three, what

1 progress is being made and what observations
2 are apparent that indicate progress. Number
3 four, how has the treatment plan changed since
4 you have been seeing her. Number five, if there
5 is a concern with the family and or the
6 parents, will they become involved?
7 Number six, what are the goals of the
8 treatment. Finally number seven," I have
9 not -- "have I not been included in the
10 treatment due to legal or ethical reasons.
11 I am optimistically hoping we can meet to
12 further discuss concerns I have with my
13 children. Thank you for your time.
14 Sincerely, J. Harold Capps, Jr."

15 Q: Did you ever hear back from Harold Brown?

16 A: Not from that letter.

17 Q: Do you want your children in counseling with Harold
18 Brown?

19 A: Not at all.

20 Q: Do your children need to be in counseling with
21 Harold Brown?

22 A: No.

23 Q: Okay.

24 MRS. LEE: Now, Your Honor, I would like to
25 introduce ---

1 Q: Before I introduce this, let me ask you, when you
2 contacted Dr. Brown -- let me ask you something. Since the
3 children started seeing Harold Brown, what have you
4 learned? What have you learned from Michelle?

5 A: Nothing. I am in the dark.

6 Q: Has Michelle not told you about issues that the
7 children are having?

8 A: I've learned that they have gotten worse. She
9 won't tell me what the counseling sessions are about.
10 They have gotten worse. My oldest daughter has started to
11 cut herself. She was taking narcotics that were from my
12 ex-wife's house. Emily has been apparently posting
13 pictures on social media sites and apparently exhibiting
14 attention seeking behavior.

15 Q: Did any of this happen before they went to Harold
16 Brown?

17 A: No.

18 Q: Okay. Why -- why did Michelle want to leave Hal
19 Heidt?

20 A: She didn't agree with what his diagnosis was with
21 what he was trying to accomplish.

22 Q: Okay. Now and what is your opinion about the
23 therapist who draws a diagnosis totally from the input of a
24 spouse or an ex-spouse in your case?

25 A: He is not -- he is seeking an ulterior motive. He

1 is not doing what he is supposed to be doing. He is
2 unethical.

3 Q: And -- now have you continued to be sent bills from
4 Harold Brown?

5 A: Yes.

6 Q: Do you believe you should pay those?

7 A: Not at all.

8 Q: Do you want to pay one more bill from Harold Brown?

9 A: No.

10 Q: Okay.

11 MRS. LEE: Your Honor, I would like to introduce
12 this letter as defendant's exhibit number 26.

13 THE COURT: Any objection?

14 MRS. LANGWAY: I just haven't seen it; if I could
15 just look at it.

16 No objection, Your Honor.

17 THE COURT: Okay, defendant's exhibit number 26 is
18 admitted.

19 (DEFENDANT'S EXHIBIT NUMBER 26 IS
20 ADMITTED INTO EVIDENCE.)

21 Q: Now after you sent that letter, you were ultimately
22 able to schedule an appointment with Harold Brown, is that
23 correct?

24 A: Yes.

25 Q: How long did that last?

1 **A:** Ten minutes if that.

2 **Q:** Okay, sir. And did you leave?

3 **A:** Yes.

4 **Q:** Okay, and before you left was it evident that
5 Harold Brown had diagnosed you?

6 **A:** He stated that -- he was belligerent; he was
7 unprofessional; he did not care to talk to me about my
8 side of anything; and, yes, he had diagnosed me. He said,
9 he stated you are using -- I'm sorry, I can't say that.
10 I came out of the conversation, the brief ten minute
11 meeting with Harold Brown, with the idea that I was using
12 my children to further my pathology.

13 **Q:** Okay, and what pathology is it that you supposedly
14 have? Do you have a pathology ---

15 **A:** Certainly not.

16 **Q:** All right, sir, and do you believe that you are
17 insane?

18 **A:** No.

19 **Q:** All right, sir, and what is your opinion about
20 Harold Brown and his technique and his treatment and his
21 diagnosis, and most importantly, him seeing the children?

22 **A:** Most importantly, I want him away from my children.
23 His technique is wrong. He's, he's -- he has no
24 credibility in my mind. If he wanted to get to the root
25 of the problem and truly help my children, he would have

1 that is in my Rule to Show Cause about the house being
2 listed. And it is ---

3 **THE COURT:** Okay, but let's not get this confused.
4 I -- the objection was to the relevance of whether it was
5 a loan or a mortgage.

6 **MRS. LANGWAY:** My understanding, Your Honor, of
7 his testimony yesterday was that the reason he could not
8 list the house for sale immediately was because he could
9 not possibly -- he would have had to list it so high
10 because he was going to owe so much money when the house
11 sold, and I was just trying to show that I do not believe
12 that that is an accurate statement.

13 **THE COURT:** Okay, well how have you shown that?
14 What have you shown to the Court that it is not an accurate
15 statement?

16 **MRS. LANGWAY:** I was just simply trying to ask him
17 if it was in fact a construction loan ---

18 **THE COURT:** Okay, what do you have to show to me
19 that it's a construction loan?

20 **MRS. LANGWAY:** I don't have anything.

21 **THE COURT:** Okay.

22 **BY MRS. LANGWAY:**

23 **Q:** Dr. Capps, have you had the opportunity to visit
24 with Harold Brown any time prior other than the May 18th
25 meeting that you referenced yesterday?

1 **A:** I believe the -- I am confused. If there is a
2 meeting that I was with him perhaps ten minutes, and then
3 there's a 43 minute phone conversation.

4 **Q:** Okay, but you were not able to physically meet
5 with him other than the one time that you believe is a ten
6 minutes meeting, is that what you said?

7 **A:** Yes, ma'am, ten or 15 minutes of talking.

8 **Q:** So no other times you have been in his office?

9 **A:** None, no.

10 **Q:** And you have never seen him for any of your own
11 personal issues?

12 **A:** Absolutely not.

13 **Q:** Okay, and you have never attended any counseling
14 sessions with him and any of your daughters?

15 **A:** Never.

16 **Q:** Okay, and have you ever written a check directly to
17 him?

18 **A:** Yes.

19 **Q:** And what would that have been for?

20 **A:** I can't recall. I have it on -- I have a recording
21 if you would that details the amount that I owe him if I
22 can present that.

23 **Q:** My question is were you paying for counseling
24 services for Harold Brown?

25 **A:** Yes, ma'am, I paid. I had made an appointment one

1 day for him. Something came up; I called the day before
2 to cancel hoping he would get someone else in there. He
3 said he didn't get the message. I was charged for a no
4 show fee for a full hour. The second time I saw him for
5 the 10 or 15 minute period, I was charged the full fee
6 which was I think \$150.00. So for \$300.00 I spoke with him
7 in person for perhaps 15 minutes.

8 Q: Okay, and from that conversation is when you
9 learned that you were not comfortable with the counseling
10 services that he is providing to your daughters?

11 A: No, ma'am, I was not -- that put the nail in the
12 coffin.

13 Q: And what is it with specific, specificity, that
14 Dr. Brown does, techniques or what not that you feel are
15 not appropriate for your daughter?

16 A: It's -- first of all my first impression of him to
17 me was unprofessional. He was accusatory, he was
18 belittling. He did not let me get any of my points across.
19 He seemed more about denigrating me as my wife did versus
20 helping my children. I can go on but that's it in a nut
21 shell.

22 Q: And do you have any proof that my client told
23 Harold Brown anything about you in particular?

24 A: Yes.

25 Q: Have you presented that proof?

1 **A:** I -- yes.

2 **Q:** You have presented that proof?

3 **A:** Yes.

4 **Q:** Is that your recollection or is it like a piece of
5 paper, an email?

6 **A:** I have a recording.

7 **Q:** You have a recording?

8 **A:** Yes, ma'am.

9 **Q:** Has that been introduced into evidence?

10 **A:** No, ma'am.

11 **Q:** Okay.

12 **A:** I would like to introduce it into evidence, please,
13 ma'am, if it please the Court.

14 **Q:** Is your objection ---

15 **MRS. LEE:** Your Honor, she asked him if he had any
16 evidence. He said, yes, I do; I've got a recording. And
17 she asked the question.

18 **THE COURT:** All right, he answered your question;
19 he says he has a recording.

20 **MRS. LANGWAY:** Your Honor, I mean if I could hear
21 it I mean I don't know. Does it involve the child because
22 I mean that's not going to come in.

23 **A:** It's between ---

24 **MRS. LEE:** No, this is directly from Dr. Brown to
25 Hal Capps.

1 Can he get off the stand and get the recording?

2 THE COURT: Sir, you may get where you have the
3 recording.

4 MRS. LANGWAY: May I hear it first?

5 MRS. LEE: Certainly, she can. I don't mind that.
6 It last about 45 seconds.

7 THE COURT: Okay.

8 A: May I ---

9 THE COURT: You may. You may retrieve it.

10 MRS. LEE: Will Your Honor allow us -- will you
11 give us time for Mrs. Langway to hear the tape?

12 THE COURT: Sure.

13 All right, everyone is going to take a break, so
14 we need to clear the courtroom.

15 (WHEREUPON, A BRIEF RECESS IS HAD.)

16 THE COURT: All right, what's the result of the
17 recording?

18 MRS. LANGWAY: Your Honor, my issue with the
19 recording is that, and I understand Dr. Brown is not here,
20 I have no way of knowing -- it's a 45 to one minute. I
21 have no way of knowing -- there were obviously
22 conversations before and after that. It's a snippet of a
23 conversation and that would be my objection to it is
24 without Dr. Brown here to testify, we can't have him
25 offering evidence with respect to whether or not there was

1 any conversation that happened before or after the
2 particular recording. And that he -- it was certainly
3 taken by Dr. Capps, so he had control over when to stop it
4 and start it, and so he certainly I am sure chose a
5 portion of it that was more beneficial to him and I
6 understand that, but, you know, Dr. Brown is not here to
7 talk about what may or may not have happened.

8 **THE COURT:** Okay. Mrs. Lee.

9 **MRS. LEE:** Your Honor, Mrs. Langway asked, Do you
10 have any evidence of what you are testifying to and he
11 said, Yes, I do have evidence. And she said, well what is
12 it, why didn't you introduce it in Court? She opened this
13 door and at this point and time we would like to introduce
14 that evidence. We think that it is very clear that this
15 was a recording from start to finish, but certainly you
16 can take it for whatever value you deem it appropriate,
17 but Mrs. Langway asked him the question. He is trying to
18 answer the question. The door was opened.

19 **THE COURT:** I am going to overrule your objection.
20 You asked the question and I think this is probably Trial
21 101, you don't ask a question that you don't know the
22 answer to, so we are going to find out what proof he has.

23 **(WHEREUPON, A RECORDING IS PLAYED AND THE COURT**
24 **REPORTER TRANSCRIBES IT TO THE BEST OF HER ABILITY AS**
25 **REQUESTED BY THE COURT.)**

1 VOICE 1: You sit there and say the things that
2 you said that are not true about me. (Cannot understand).
3 What are you doing with your phone?

4 VOICE 2: I had a text.

5 VOICE 1: All right, you can pay me then.

6 VOICE 2: How much do I owe?

7 VOICE 1: You owe me \$300.00 for the services that
8 have been given to you for the last time and this time.

9 VOICE 2: Is this a full session today or what?

10 VOICE 1: Yes.

11 VOICE 2: So we are going to sit here for an hour?

12 VOICE 1: No.

13 VOICE 2: The session is over?

14 VOICE 1: This session is done.

15 VOICE 2: That was quick. It was five minutes, ten
16 minutes?

17 VOICE 1: Well no ---

18 VOICE 2: So you are dismissing me after 20
19 minutes.

20 VOICE 1: No, I am going to let you say something
21 before you go (Parties talking over each other).

22 VOICE 2: The big thing is I want to -- the main
23 interest to you is my children and I am not getting any
24 help from you. I am trying, that I wrote you that letter
25 last week apparently you didn't get it but those were valid

1 questions that I have and I am concerned.

2 VOICE 1: It appears that you are using these
3 children to satisfy your insanity. (Someone
4 laughing).

5 VOICE 2: Okay, I am sorry you see it that way.

6 VOICE 1: That's sad.

7 VOICE 2: I'm sorry you see it that way.

8 VOICE 1: That's sad.

9 VOICE 2: You met me for one hour (talking on top
10 of each other) ---

11 VOICE 1: To see that you are a very pathological
12 man to sit there with me for three hours and 20 minutes and
13 lie like you did.

14 VOICE 2: Okay, I'm sorry, we don't -- how much do
15 I owe you? I am not going to listen to this.

16 VOICE 1: Pay me the \$300.00.

17 VOICE 2: All right.

18 MRS. LEE: That wasn't it, Your Honor.

19 MRS. LANGWAY: That's all I heard.

20 MRS. LEE: No, it stopped. Hold on.

21 (WHEREUPON, THE RECORDING CONTINUES TO PLAY.)

22 VOICE 1: And I will tell you this, I will pray
23 for you.

24 VOICE 2: You know when you said that last week,
25 you said, I don't know how (talking on top of each other)

1 you said I don't know how, why, I am better than any of
2 the other therapists that you have seen that Michele has
3 told us to see, but I know I can fix her. I don't know why
4 but I can fix her.

5 VOICE 1: I did not say (talking over each other)

6 VOICE 2: Well, you said, I am pretty sure I can
7 fix -- you said something to that effect. You said you
8 were (talking over each other). You said you were
9 optimistic. I can do this I am optimistic. I said, Why?
10 You said, I am not really sure but I prayed about it. So
11 when you said that I took it like maybe I was wrong but
12 that implies that all the other therapists that I've gone
13 to didn't pray about it. Is that -- I mean that's how I
14 took it.

15 VOICE 1: Well you take things very erroneously.
16 We can see that by you (talking over each other) that you
17 lied to me about (talking over each other).

18 VOICE 2: We will agree to disagree with that.

19 VOICE 1: No, we just know that you are lying and
20 that's what I know, so ...

21 VOICE 2: So 300 even.

22 VOICE 1: And I wish you the best.

23 VOICE 2: Wish you the best too. The biggest
24 thing I wish is the best is for my children.

25 VOICE 1: I don't know that -- I hope that's true,

1 I hope that's true, but what you have done now is set off
2 a bomb that's harming your children. And when you accuse
3 your wife of saying things and me of saying things that
4 are absolute lies, that doesn't seem like the best thing
5 for your children. I agree with you. I wish you the best.

6 (END OF PLAYING RECORDING.)

7 MRS. LEE: Is that it?

8 WITNESS: Yes, ma'am.

9 MRS. LANGWAY: Your Honor, I believe I have
10 finished with this. I am just going to check one thing if
11 you don't mind.

12 THE COURT: Okay.

13 BY MRS. LANGWAY:

14 Q: Real quick, just to clarify on that recording. I
15 couldn't quite tell myself. It sounded like Dr. Brown
16 mentioned three hours and 20 minutes, is that true, did
17 you meet with him at some point -- did you spend three
18 hours and 20 minutes with him?

19 A: I spend 43 minutes on the phone with him like I
20 stated. I had missed an appointment which I called to
21 reschedule so he could fill that appointment. He did not
22 reply to me. And I spent approximately five minutes
23 talking to him, perhaps 20 minutes, in his office including
24 time I filled out paperwork. So in his presence I was
25 there perhaps five minutes. In conversation with him, I

1 had 43 minutes. I am assuming his three hours was the
2 time that I missed that I cancelled. I am assuming that's
3 what was included.

4 Q: Okay, and do you recall what he was -- what you
5 were referring to, I think it was he referred to, a
6 conversation the week before. I believe he mentioned on
7 the recording a conversation that happened the week before
8 between the two of you. Do you know what conversation he
9 is talking about?

10 A: There was no conversation the week before. There
11 was a prior conversation which I went over in testimony
12 yesterday about how I was concerned about the children; I
13 was concerned about being alienated. That was that
14 conversation.

15 Q: And is that the 43 minutes conversation you just
16 testified to?

17 A: That's the 43 minutes conversation, yes, ma'am,
18 and that's the one that we referenced yesterday.

19 Q: Okay. And do you know if Dr. Brown -- did you
20 send a copy of your pleadings or your affidavit to Dr.
21 Brown in this matter that you filed?

22 A: No, the only thing that was sent to him was the
23 questions; what is my child's diagnosis, what is the
24 progress being made; if there is a perceived problem
25 ethical or legal with the parents being involved, please

1 tell me that; why am I not being involved; what are the
2 treatment goals; things like that. During the pause in the
3 recording, I had given him the copy of the letter that was
4 introduced yesterday and he was reading that.

5 Q: Okay, so that pause was him reading the copy of the
6 letter that's introduced?

7 A: Yes, ma'am, I can't recall it word for word.

8 Q: Okay.

9 MRS. LANGWAY: Thank you, Your Honor, I have no
10 further questions.

11 THE COURT: Redirect?

12 REDIRECT EXAMINATION OF JOSEPH HAROLD CAPPS, JR. BY MRS.

13 LEE:

14 Q: Dr. Capps, in regards to Harold Brown, person to
15 person if I understand you correctly, you had about a five
16 minute, I think you said, face to face conversation with
17 him?

18 A: Yes, ma'am.

19 Q: Was that entire conversation recorded?

20 A: The majority of it.

21 Q: Okay, sir. And before that you had a 43 minute
22 phone conversation with him?

23 A: Yes, ma'am.

24 Q: And between the 43 minute phone conversation and
25 the face to face conversation, had you tried to contact

1 him repeatedly?

2 A: Yes, ma'am, numerous times.

3 Q: To any avail?

4 A: Eventually I had -- to the avail that I got the
5 appointment that I did.

6 Q: All right, and did you ever question his, question
7 his decision to treat your children without speaking to you
8 first?

9 A: Yes.

10 Q: And did you question that before or after this
11 phone -- this face to face -- conference that we just
12 listened to?

13 A: It was before.

14 Q: Okay. All right, so when you went in to see him
15 or is -- scratch that.

16 What is the reason that he ultimately agreed to
17 see you?

18 A: I feel like the reason he agreed to see me was to
19 denigrate me, to agree with Michele.

20 Q: Okay, all right, but this was -- his decision to
21 see you was the direct result of you questioning his
22 ethics ---

23 A: Yes, ma'am ---

24 Q: --- is that a fair statement?

25 A: Yes.

1 Q: Okay. And do you still question his ethics in his
2 decision to treat your children without getting a
3 historical background from both parents?

4 A: Every day. Not only from both parents but from
5 other mental health care professionals that have treated
6 myself, Mrs. Capps, and the children..

7 Q: All right, so did Harold Brown ever call Hal Heidt?

8 A: No.

9 Q: Did he ever call Elizabeth Simeone?

10 A: No, ma'am.

11 Q: Did he ever call Jesse Raley?

12 A: No, ma'am, not to my knowledge.

13 Q: All right, sir. So when Dr. Brown started seeing
14 your children, he had the perspective of who?

15 A: Everything was from Michele's side.

16 Q: And nobody else?

17 A: Not to my knowledge, no.

18 Q: And you could not get a face to face meeting with
19 him until you threatened him, could you, sir?

20 A: Correct, and ---

21 Q: Is that the reason that you recorded the
22 conversation that you had with him?

23 A: Yes.

24 Q: All right, sir. Now and this letter which is
25 defendant's exhibit number 26, this is the letter that he

1 was reading and this has already been introduced into
2 evidence. This is your letter. This is the letter that
3 he was reading during that pause in that tape recording,
4 is that correct?

5 **A:** Yes, ma'am.

6 **Q:** All right, sir. And had he ever been in a position
7 in 43 minutes of a phone conference and then a 10 minute
8 face to face meeting to diagnose you with some sort of
9 pathology?

10 **A:** No.

11 **Q:** Or insanity?

12 **A:** No.

13 **Q:** All right, to question the good intentions that
14 you had toward your children, to question your desire to,
15 for, your children's best interest to be served?

16 **A:** He questioned that, he did.

17 **Q:** That's right, he questioned that?

18 **A:** Right, he definitely did, yes, ma'am.

19 **Q:** After meeting with you for 10 minutes, he
20 questioned what your interests were for your own children,
21 didn't he?

22 **A:** He thought it was self-serving for me to be meeting
23 with him. He thought I was using my children to further my
24 pathology.

25 **Q:** All right, and do you want Harold Brown seeing your

1 children?

2 **A:** I don't want him to look at them. I don't want
3 him anywhere near them.

4 **Q:** Okay, thank you, sir.

5 Now, I want to go back to -- you asked about --
6 okay, Mrs. Langway asked you -- Mrs. Langway asked you if
7 you had ever not kept your word to the children and you
8 brought up an instance of you taking one of the children's
9 phones, is that right?

10 **A:** Yes, ma'am.

11 **Q:** Okay, and in fact that created a situation or that
12 created a confrontation, if you will, between you and
13 Michele is that also correct, sir?

14 **A:** Yes.

15 **Q:** All right, and at the time at issue, you had taken
16 Emily's phone, is that correct, sir?

17 **A:** Yes.

18 **Q:** All right, and this time and issue was September
19 17 or September 12 of 2016, is that correct, sir?

20 **A:** Yes, ma'am.

21 **Q:** All right, and you had taken Emily's phone?

22 **A:** Yes.

23 **Q:** All right, and when you told Michele why, what was
24 Michele's reaction to you taking Emily's phone?

25 **A:** She said, that's my property, you are not allowed

Exhibit

#3

1 Michelle, be happy and to move on.

2 Q: All right, sir. Now, Dr. Capps, I am just going
3 to ask you about one more incident and it's an incident in
4 October of 2016. Was there ever a time when one of your
5 children called you and asked you to pick her up from a
6 ball game?

7 A: Yes.

8 Q: Okay, tell me about that if you would, please.

9 A: It was on a Friday night. There was a home game.
10 My girlfriend and I, Sherry, had been out. Emily called me
11 and said, Daddy, could you pick us up ---

12 Q: Don't tell me what she said.

13 A: I'm sorry; I'm sorry.

14 Q: But tell me what you did. She called you and
15 then ---

16 A: She called me. From the conversation I had, I
17 along with my girlfriend picked up my daughter, my youngest
18 daughter, and two friends from a ball game, football game,
19 at home.

20 Q: And what did you ask your daughter before you
21 picked her up?

22 A: I asked is this okay with your Mom.

23 Q: All right, and based on her response ---

24 A: Based on her response, I picked her up. I was
25 happy.

1 Q: All right, and where did you take your daughter and
2 her two friends?

3 A: I took them to a place called Cookout; it's a
4 hamburger place downtown Myrtle Beach.

5 Q: And describe it if you will. What -- is it
6 compared to a Wendy's; is it compared to a ---

7 A: Kind of like a Wendy's. It's more char-grilled
8 hamburgers. It's, you know, something like that.

9 Q: Okay, and when you took her to Cookout, how long
10 was she there?

11 A: She was there -- we were there long enough to order
12 food and for her friends to enjoy a milkshake and hamburger
13 and fries.

14 Q: Okay. And did you hear from Michelle?

15 A: Yes.

16 Q: Now at this time, where was Michelle?

17 A: Michelle was at a friend's house.

18 Q: Okay, and did she send you a text?

19 A: Yes.

20 Q: All right, and what time did she send you the text?

21 A: September 9th at 10:07 PM.

22 Q: Okay, and what did she ask you?

A: 23 She said, "Why in the world did you not ask me
24 about being E home and taking her to Cookout. I had
25 already made arrangements."

1 This is completely -- another text, "this is
2 completely unacceptable. I have never once done this to
3 you on your time. You need to bring her the Wallen's
4 immediately. Is there a reason why you can't respond?"

5 **Q:** Okay, and what was your response to her?

6 **A:** I said, "She told me she had told you. They are
7 eating with 10 or 12 other kids." Then she stated, "This
8 is not okay; do I need to come get her? Thanks for
9 responding." Then I responded, "On the way OTW". She
10 said, "Drop her at Wallens. Just so you are aware, Emily
11 has made it very clear to me that she never told you that
12 it was okay with me for you to pick her up and that you
13 never even asked her if it was okay with me."

14 **Q:** And how did you respond?

15 **A:** My text to Michelle was, "She told me she had told
16 you. Just pulled into Cookout; they are ordering."

17 **Q:** Okay. And then ---

18 **A:** "I absolutely not. This is repeatedly why
19 I have told you that you need to discuss with
20 me prior. This is completely unacceptable.
21 Is there -- when are you leaving? Is there a
22 reason why you can't leave? They are eating
23 with 10 or 12 other kids."

24 **Q:** All right, now at this time, where was Michelle?

25 **A:** She was at a friend's, Lisa Wallens. I don't know

1 what she was doing.

2 Q: All right, and she said that she had made other
3 arrangements. And are you aware of any other arrangements?

4 A: No.

5 Q: Did Emily make you aware of any other arrangements?

6 A: No, I asked twice if it was okay with her mother.

7 Q: All right, and how would you have even known to go
8 pick Emily up if she had not contacted you?

9 A: I wouldn't have.

10 Q: All right, sir. And -- all right, sir. And how
11 did this affect the Cookout event?

12 A: It didn't affect it with Emily at all because I
13 didn't make Emily aware of it. She had a great time with
14 her friends. She had a wonderful time. I'm glad she went.
15 She had a great time. And actually while the three of them
16 were sitting there, more kids came in. I think I knew a
17 parent or two that were there. It was a nice, safe, fun
18 environment the kids should participate in. I'm glad she
19 did it.

20 Q: All right, sir. And when Michelle said repeating
21 to you that the child had never told you this, once again
22 how could you have known to do this if you had not heard
23 from either Michelle or the child?

24 A: I couldn't.

25 Q: Okay, and when you heard from the child, where were

1 you? When she first called you, where were you?

2 **A:** My girlfriend and I had just recently eaten at
3 Conway, somewhere over here. We were on the way back to
4 Myrtle Beach so we pulled over at a restaurant and waited,
5 you know, it was five or ten minutes away from the stadium
6 and waited for Emily.

7 **Q:** All right, sir, and was your girlfriend with you
8 this whole time?

9 **A:** Yes.

10 **Q:** And she overheard the conversation between ---

11 **A:** Yes ---

12 **Q:** --- you and Emily as well?

13 **A:** Yes. And ---

14 **Q:** When do ---

15 **A:** --- actually I made her aware that Ms. Sherry was
16 going to be there, and she said that's fine. I'm sorry, I
17 made her aware of the fact that Ms. Sherry was there and
18 based on my conversation I thought it perfectly okay for
19 her to accompany me.

20 **Q:** Okay, and, Dr. Capps, do you know why your daughter
21 would or may feel the necessity to tell Michelle that, oh,
22 no, she hadn't called you when in fact she had?

23 **A:** Because she doesn't want to get in trouble. She
24 would rather get someone else in trouble than her get in
25 trouble.

1 Q: All right, sir, and what do you think about your
2 children doing that?

3 A: It's a lie. She is playing both of us to get her
4 desired result of whatever that may be. She is playing the
5 two of us against each other.

6 Q: Do you think that is good for the children?

7 A: No, not at all. Of course not.

8 Q: All right, sir.

9 MRS. LEE: Your Honor, I would like to introduce
10 this as defendant's exhibit number 30.

11 THE COURT: Mrs. Langway.

12 MRS. LANGWAY: Your Honor, my objection -- and I
13 just didn't hear the violation of the order in that. I
14 certainly -- there is not one to my knowledge alleged in
15 her rule and I certainly didn't allege anything with the
16 fact of that incident in my rule, so I understand why she
17 might want to have that introduced, I just didn't know
18 exactly what the violation was or what the relevance is
19 specifically to this rule that she filed.

20 THE COURT: Mrs. Lee.

21 MRS. LEE: Your Honor, it not only goes to the
22 alienation of the children, but it goes to the fact that
23 the children are so aware of how the mother feels about
24 father that they cannot tell the truth about when they
25 even want to contact their father. This is very relevant

1 to the issue of alienation, very relevant to the issue of
2 the parents denigrating -- Michelle denigrating Dr. Capps
3 to the children.

4 **THE COURT:** Okay, and if you would point that --
5 point me to the paragraph where your client states that in
6 his affidavit or your pleadings. I do recall seeing
7 alienation.

8 **MRS. LEE:** Well ---

9 **THE COURT:** Just so it's clear to Mrs. Langway and
10 her client as well.

11 **MRS. LEE:** Certainly, Your Honor.

12 On page ten of my affidavit, The parties shall be
13 prohibited, restrained and enjoined from discussing this
14 litigation with the children, in the presence of the
15 children nor shall they be -- nor shall either allow the
16 children to be in the presence of any third person who are
17 discussing any circumstances of the parties' separation or
18 divorce. Beyond that, next paragraph, the parties shall be
19 prohibited from and restrained and enjoined from degrading
20 or denigrating the other to or in the presence of the
21 children. Your Honor, this is a very good indication of
22 continued denigration from Michelle toward Dr. Capps as is
23 evident from the child's necessity in her mind to lie to
24 her mother rather than admit that, I want to see my daddy.

25 **THE COURT:** And this is actually not -- this is

1 not a particular allegation. This actually supports or is
2 an attempt to support what the defendant is claiming is
3 happening in terms of alienation of affection.

4 **MRS. LEE:** That's correct, Your Honor.

5 **MRS. LANGWAY:** And then that's my ---

6 **THE COURT:** It's listed in his affidavit ---

7 **MRS. LANGWAY:** That's what I am trying to find.

8 **MRS. LEE:** We had noted that; in fact, the
9 affidavit was replete with statements that she has
10 continued to try to alienate me from the children. She
11 has continued to try to destroy my relationship with the
12 children. And this is merely a support of that.

13 **MRS. LANGWAY:** Your Honor, if I may, while I
14 certainly understand that, again, harsh words here
15 technically I realize nobody should alienate a child
16 repeatedly. That is not acceptable at any time. That is
17 part of the issue. It is not technically ever in the
18 agreement. And, again, we are not here on modification of
19 child custody, we don't have a guardian. We are here on a
20 Rule to Show Cause. He has to site a specific clause in
21 the agreement that she has violated. This is not
22 denigration. There is nothing in that text message where
23 she speaks poorly about him. I understand how you can try
24 to -- Ms. Floyd (sic) might be trying to encompass that,
25 but that's just not what that is. There is not a specific

1 statement in their agreement that refers to alienation of
2 children even, and more importantly it is not a
3 denigration. That is in there, but this is not
4 denigration.

5 **MRS. LEE:** Your Honor, if I may.

6 **THE COURT:** You may.

7 **MRS. LEE:** If one parent continues to degrade or
8 denigrate the other parent, what happens, you undermine
9 the custodial relationship. You undermine the parental
10 relationship. And if you continue to do it, the children
11 learn, oh, mama hates daddy; mama is mad at daddy. This
12 is what I have to do. That text, that text exchange, is
13 nothing but the end result of what happens when this
14 agreement is violated. Certainly, there is no -- we
15 haven't alleged oath. He picked the child up and took her
16 to Cookout and that therefore and because Mrs. Capps called
17 him, that violates the term. That is not it at all. This
18 supports the end result of what she has done, and it has
19 been insidious and this is the end result. The end result
20 is that this child has to lie to be able to see her daddy.

21 **MRS. LANGWAY:** And, again, Your Honor, I don't
22 disagree that she can try to claim that's what it is.
23 There is not -- Ms. Floyd (sic) did a very good job I
24 believe 60 something paragraphs worth of specific examples
25 and, again, I just don't see how what happened there is a

1 violation of an order. I can understand if she might want
2 to say it's how the child ---

3 **THE COURT:** That's my decision so I will allow that
4 to come in as defendant's exhibit 30. Thank you.

5 **MRS. LEE:** Thank you, Your Honor.

6 **(DEFENDANT'S EXHIBIT NUMBER 30 IS**
7 **ADMITTED INTO EVIDENCE.)**

8 **Q:** Dr. Capps, do you believe that Mrs. Capps has
9 violated this Court Order?

10 **A:** Yes.

11 **Q:** Do you believe that she has violated the Court
12 Order in regards to the division of personal property?

13 **A:** Yes.

14 **Q:** You have testified that you would like an order
15 requiring her to pay to you \$8000.00, is that correct, and
16 you have given your reasons for that?

17 **A:** Yes, ma'am.

18 **Q:** All right, do you believe that Michelle Capps
19 violated the order by refusing to pay you what is due in
20 past due rent?

21 **A:** Yes.

22 **Q:** All right. Even if the Court -- well first of
23 all, do you believe that she has wilfully refused to pay
24 you that amount?

25 **A:** Yes.

Exhibit

#4

Judicial Merit Selection Commission

Sen. James H. Ritchie, Jr., Chairman
Rep. F. G. Delleney, Jr., V-Chairman
Sen. Ray Cleary
Richard S. "Nick" Fisher
Sen. Robert Ford
John P. Freeman
Amy Johnson McLester
Judge Curtis G. Shaw
Rep. Doug Smith
Rep. Fletcher N. Smith, Jr.



Post Office Box 142
Columbia, South Carolina 29202
(803) 212-6092

Jane O. Shuler, Chief Counsel

Mikell C. Harper
Patrick G. Dennis
Bradley S. Wright
House of Representatives Counsel

S. Phillip Lenski
J.J. Gentry
Senate Counsel

January 11, 2007

Dear Members of the General Assembly:

Enclosed is the Judicial Merit Selection Commission's report of candidate qualifications. This report is designed to assist you in determining how to cast your vote. The Commission is charged by law with ascertaining whether judicial candidates are qualified for service on the bench. In accordance with this mandate, the Commission has thoroughly investigated all judicial candidates for their suitability for judicial service. The Commission found all candidates discussed in this report to be qualified.

The Commission's finding that a candidate is qualified means that the candidate satisfies both the constitutional criteria for judicial office and the Commission's evaluative criteria. The attached report details each candidate's qualifications as they relate to the Commission's evaluative criteria.

Judicial candidates are prohibited from asking for your commitment until 12:00 noon on Tuesday, January 16, 2007. **Members of the General Assembly are not permitted to issue letters of introduction, announcements of candidacy, statements detailing a candidate's qualifications, or commitments to vote for a candidate until 12:00 noon on Tuesday, January 16, 2007.** In sum, no member of the General Assembly should, orally or by writing, communicate about a candidate's candidacy until the time designated after release of the Judicial Merit Selection Commission's report of candidate qualifications. If you find a candidate violating the pledging prohibitions or if you have questions about this report, please contact the Commission office at 212-6092.

Thank you for your attention to this matter.

Sincerely,
James H. Ritchie, Jr., Chairman
F.G. Delleney, Jr., Vice-Chairman

Judicial Merit Selection Commission



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S. Phillip Lenski
J.J. Gentry
Senate Counsel

January 11, 2007

Members of the South Carolina General Assembly
South Carolina State House
Columbia, South Carolina

Dear Fellow Members:

This letter is written to call your attention to issues raised during the December 2003 Judicial Merit Selection hearings concerning a judicial candidate's contact with members of the General Assembly, as well as third parties contacting members on a candidate's behalf. It is also to remind you of these issues for the Fall 2006 screening.

Section 2-19-70(C) of the South Carolina Code contains strict prohibitions concerning candidates seeking or legislators giving their pledges of support or implied endorsement through an introduction prior to 48 hours after the release of the final report of the Judicial Merit Selection Commission (Commission). The purpose of this section was to ensure that members of the General Assembly had full access to the report prior to being asked by a candidate to pledge his or her support. The final sentence of Section 2-19-70(C) provides that "the prohibitions of this section do not extend to **an announcement of candidacy by the candidate and statements by the candidate** detailing the candidate's qualifications" (emphasis added). Candidates may not, however, contact members of the Commission regarding their candidacy; please note that six members of the Commission also are legislators.

In April 2000, the Commission determined that Section 2-19-70(C) means **no member of the General Assembly should engage in any form of communication, written or verbal, concerning a judicial candidate before the 48-hour period expires following the release of the Commission's report.** The Commission would like to clarify and reiterate that until at least 48 hours have expired after the Commission has released its final report of candidate qualifications to the General Assembly, **only candidates, and not members of the General Assembly,** are permitted to issue letters of introduction, announcements of candidacy, or statements detailing the candidates' qualifications.

The Commission would again like to remind members of the General Assembly that **a violation of the screening law is likely a disqualifying offense and must be considered when determining a candidate's fitness** for judicial office. Further, the law requires the Commission to report any

violations of the pledging rules by members of the General Assembly to the House or Senate Ethics Committee, as may be applicable.

Should you have any questions regarding this letter or any other matter pertaining to the judicial screening process, please do not hesitate to call Jane O. Shuler, Chief Counsel to the Commission, at 212-6629.

Sincerely,
James H. Ritchie, Jr.
Chairman

F.G. Delleney, Jr.
Vice-Chairman

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Jan B. Holmes, Family Court for the Fifteenth Judicial Circuit, Seat 1.....	257
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CONCLUSION

The following candidates were found qualified and nominated:

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Leslie K. Riddle, Family Court for the Fifth Judicial Circuit, Seat 2.....	117
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Brian M. Gibbons, Family Court for the Sixth Judicial Circuit, Seat 1	132
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Respectfully submitted,

Representative F.G. Delleney, Jr.

Senator Robert Ford

Senator Ray Cleary

Professor John P. Freeman

Mrs. Amy Johnson McLester

Senator James H. Ritchie, Jr.

Representative Doug Smith

Representative Fletcher N. Smith, Jr.

Judge Curtis G. Shaw

Mr. Richard S. Fisher

1 **MRS. LEE:** That is the petitioner's case, Your
2 Honor. Well that is -- that concludes my testimony of Dr.
3 Capps.

4 **THE COURT:** Okay. Do you have any other witnesses?

5 **MRS. LEE:** I do, Your Honor. I have Senator Cleary
6 here. And Mary Madison and I were talking about this, and
7 she has agreed to allow me to take him out of turn before
8 she starts her, before she, cross examines Dr. Capps if the
9 Court will also agree to that.

10 **THE COURT:** Well cross examination of the defendant
11 will certainly take longer than an hour and a half, so
12 rather than have her start, we will take the witness out of
13 order.

14 Sir, you may return to your seat.

15 **MRS. LEE:** Thank you, Your Honor.

16 **MRS. LEE:** With the Court's permission.

17 **THE COURT:** You may proceed with your second
18 witness.

19 **MRS. LEE:** Okay, Ray Cleary.

20 **THE COURT:** Please place your left hand on the
21 Bible, raise your right hand. You may be seated.

22 **RAYMOND E. CLEARY, III, BEING**
23 **FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

24 **DIRECT EXAMINATION OF RAYMOND CLEARY BY MRS. LEE:**

25 **Q:** Dr. Cleary, if you would please state your full

1 hygienist ask for a six month recall. We try to get that.
2 Some patients can't give it to us; they don't know their
3 schedule.

4 **Q:** All right, sir, so in other words, Michelle was
5 the one that would bring the children in regularly and
6 she's the one that would have made the six month
7 appointment?

8 **A:** Correct.

9 **Q:** All right, sir. Thank you.

10 **MRS. LEE:** That's all.

11 **THE COURT:** Any objection to excusing the witness?

12 **MRS. LEE:** I would ask that he be excused, Your
13 Honor.

14 **MRS. LANGWAY:** No objection, Your Honor.

15 **WITNESS:** Thank you, Judge, a pleasure seeing you
16 again.

17 **THE COURT:** Thank you.

18 **COURT REPORTER:** Judge, I need plaintiff's one and
19 two.

20 **THE COURT:** Plaintiff's one and two

21 **MRS. LANGWAY:** I probably took them. I think I
22 did. Sorry, Your Honor.

23 **THE COURT:** Do you have any other short witness
24 that we can probably take direct and cross examination
25 today, Mrs. Lee? And don't feel forced to because I don't

Exhibit #5

1 **IS MARKED FOR IDENTIFICATION ONLY.)**

2 **Q:** I am going to hand you what is marked as
3 plaintiff's exhibit number 20.

4 **A:** Yes.

5 **Q:** And is that, in fact, the report from Dr. Raley?

6 **A:** It has his name on it.

7 **Q:** And is that what you looked at?

8 **A:** I did see this.

9 **Q:** Okay, and so you reviewed that?

10 **A:** Yes, I did.

11 **Q:** While you were counseling?

12 **A:** Yes.

13 **Q:** Okay.

14 **MRS. LANGWAY:** One second, Your Honor.

15 **Q:** I believe you were also asked about, by Ms. Floyd
16 (sic), and certain things were played, about things that
17 happened in the presence of the children, is that correct?

18 **A:** Yes.

19 **Q:** During your time counseling, was there any
20 recording played for you that happened that gave you some
21 concerns regarding the children?

22 **A:** There was a recording about Emily being upset
23 about sleeping in the bed with her father.

24 **Q:** Okay, and do you recall what the problem was?

25 **A:** She didn't feel comfortable doing that. She

1 didn't want to. She wanted to sleep with her sister.

2 Q: And Dr. Capps wanted her to sleep in the bed?

3 A: Yes.

4 Q: With him?

5 A: Yes.

6 Q: And this was after she had been exposed to
7 pornography?

8 A: Yes.

9 MRS. LANGWAY: Your Honor, I would like to
10 introduce that recording.

11 MRS. LEE: Your Honor, I am going to object to
12 anything, any type of recording, that involves the minor
13 child. I tried my best ---

14 MRS. LANGWAY: It's ---

15 MRS. LEE: --- I wanted to introduce a recording
16 involving the minor child ---

17 MRS. LANGWAY: It's not the minor child. It's a
18 conversation where it happened because it happened between
19 our two clients talking about it.

20 THE COURT: Okay ---

21 MRS. LEE: Well then my client wasn't a part to
22 that conversation, then I certainly object to it.

23 MRS. LANGWAY: It was him and her.

24 MRS. LEE: And who recorded it?

25 MRS. LANGWAY: My client.

1 **MRS. LEE:** Well then she is certainly not in a
2 position to introduce it.

3 **MRS. LANGWAY:** Well she heard it.

4 **MRS. LEE:** Your Honor, I object.

5 **THE COURT:** Okay.

6 **MRS. LANGWAY:** That's fine.

7 **THE COURT:** I haven't ruled on it yet. Have you
8 -- ma'am, have you listened to the recording?

9 **WITNESS:** Yes, ma'am.

10 **THE COURT:** Okay.

11 And, Mrs. Lee, you haven't listened to the
12 recording so as we have done in the past, I will give you
13 an opportunity to listen to it. The two of you can step
14 outside the courtroom and you can listen to it.

15 **MRS. LEE:** Okay, thank you.

16 **THE COURT:** Mrs. Capps, you may go as well since
17 you are a party to it if Mr. Capps -- I am not sure if he
18 is going to listen as well.

19 **MRS. LANGWAY:** Your Honor, I don't like to be
20 piffy, but my client wasn't able to hear any of ---

21 **THE COURT:** Okay, well then that's fine. He needs
22 to come back in.

23 **(WHEREUPON, A RECESS IS HAD.)**

24 **MRS. LANGWAY:** Your Honor, after listening to it,
25 Mrs. Lee and I have agreed that I will put the recording

1 in through my client in her testimony, Your Honor. Again,
2 we are in the unfortunate situation where Dr. Elkins is
3 testifying out of order. I am going to be able to put it
4 in. Ms. Floyd (sic) has -- I am sure she is not going to
5 object ---

6 MRS. LEE: No, I haven't -- oh, no, I haven't.

7 MRS. LANGWAY: Then I was wrong. Then I'm sorry;
8 I was wrong.

9 MRS. LEE: No, what I said was ---

10 MRS. LANGWAY: I didn't understand then.

11 MRS. LEE: Not to interrupt Mrs. Langway, what I
12 said was it will be easier to get it in through her
13 because I don't think that it is proper to come in through
14 Dr. Elkins.

15 MRS. LANGWAY: Well I am going to ask that it come
16 in through Dr. Elkins. It is pertinent to what she heard
17 and the fact that one of the issues that was being
18 discussed in counseling is why the child is being asked to
19 sleep with him after being exposed to pornography and that
20 is what the two of these parties is talking about, and it
21 was something she discussed with the child.

22 MRS. LEE: Well, first, Your Honor, there was a
23 snippet of a recording. I have no idea what was before
24 that or what was after that, and I have no idea nor does
25 Dr. Elkins. Furthermore, by Dr. Elkins own admission, she

1 has never even talked to my client other than him calling
2 and saying, hey, I really want to be involved in this. So
3 for her to hear a piece of a recording about a 30 second
4 snippet where my client gets angry at Mrs. Capps and not
5 to have the context of the whole conversation, and there
6 can be cross examination if indeed it comes in if it comes
7 in through her, if it comes in through the proper channels.
8 I do not think that Dr. Elkins is the proper channels and
9 furthermore, I think that -- I would imagine Dr. Elkins
10 would probably agree that she didn't hear the whole
11 conversation.

12 **MRS. LANGWAY:** She could certainly testify to that
13 just like she was able to do with Harold Brown's recording,
14 she was able to do the same thing. Dr. Brown wasn't even
15 here and didn't even get to know that he was being played
16 on a recording device. Both parties are present in this
17 courtroom and both parties are sitting here and they are
18 both -- they have heard recordings between the two of them.
19 Dr. Elkins heard this and it was addressed in counseling,
20 and it has to do with what this child was going through
21 and part of the anxiety and things that she was exhibiting
22 and why Dr. Elkins was involved.

23 **THE COURT:** The problem that we have here is what
24 the doctor has heard are already admitted as exhibits that
25 came in through the defendant. Unfortunately, you called

1 this witness out of order and what you are seeking to
2 introduce is a conversation that she was not a party to,
3 so that would be the difference.

4 **MRS. LANGWAY:** I understand that.

5 **THE COURT:** Had it already been admitted as an
6 exhibit, introduced by your client who is a party to it,
7 that would be different. So you certainly can recall Dr.
8 Elkins once that is admitted as an exhibit if it is if you
9 want to question her about that. But that ---

10 **MRS. LANGWAY:** That's fine, Your Honor ---

11 **THE COURT:** --- would be the difference.

12 **MRS. LANGWAY:** That's fine. I understand that.
13 Dr. Elkins is not going to be able to come back so that's
14 okay.

15 I guess what I will do with the Court's permission
16 is just question her about what her recollection of the
17 recording is. Is that okay, Your Honor?

18 **THE COURT:** You may certainly question her with
19 respect to her recollection.

20 **Q:** As you are hearing, we aren't going to be allowed
21 to play the recording for you at this time. But do you
22 recall the specifics of the recording that you heard?

23 **A:** There was some discussion between the parents
24 about Emily and sleeping with her, with her dad, in the
25 bed versus not basically and that Emily was not comfortable

1 to do that, and Dad maintained that it was an innocent,
2 you know, behavior but Emily still did not want to do
3 that.

4 Q: Okay, and from your recollection of the recording,
5 were either of the parties upset or angry?

6 A: Yes.

7 Q Okay, which party was upset and angry?

8 A: Dad sounded angry that he was being accused of
9 doing something possibly inappropriate that he didn't feel
10 that he was.

11 Q: And was there any heated language or swear words
12 used by either party?

13 A: There were.

14 Q: And which party was using those words?

15 A: Dad.

16 Q: And did the -- Mrs. Capps -- use any swear words or
17 bad language?

18 A: I don't remember any.

19 Q: And do you recall her getting angry or upset with
20 Mr. -- Dr. -- Capps?

21 A: I don't remember that.

22 Q: And was -- do you recall my client putting forth
23 her -- expressing her concern about him wanting the child
24 to sleep with her (sic) given the circumstances?

25 A: Yes.

1 Q: Okay. And that was your understanding of what the
2 recording was about?

3 A: Yes.

4 Q: Thank you.

5 MRS. LANGWAY: I have no further questions.

6 THE COURT: Mrs. Lee.

7 MRS. LEE: With the Court's permission.

8 RE-CROSS EXAMINATION OF JENNIFER ELKINS BY MRS. LEE:

9 Q: You talked about your recollection of the
10 recording, were you aware that the child often fell asleep
11 either in Dr. Capps lap or on the couch or other places
12 and fell asleep watching television or -- probably just
13 watching television, were you aware of that?

14 A: I wasn't made aware of that.

15 Q: Were you ever aware that there were times when the
16 child would say, Daddy, I want you to lay down with me?

17 A: I was not.

18 Q: That's right. You were never made aware of those
19 things, were you?

20 A: No.

21 Q: You never talked to Dr. Capps, did you?

22 A: I did talk to Dr. Capps.

23 Q: You talked to Dr. Capps one time when he expressed
24 an interest in being involved?

25 A: Yes.

Exhibit #6

1 therapists or counselors for the children right now. We
2 are going to kind of leave that to the professionals.

3 Now ---

4 **THE COURT:** Are the children in counseling
5 presently?

6 **MRS. LEE:** They are, and I am going to address
7 that right now.

8 **THE COURT:** Okay.

9 **MRS. LEE:** There will never be anymore Harold
10 Brown. Neither of these children nor the mother will see
11 Harold Brown again. He is ---

12 **MRS. LANGWAY:** I didn't say that, I'm sorry.

13 **(WHEREUPON, THE ATTORNEYS CONFER.)**

14 **MRS. LEE:** Okay, I have opened an interesting door.
15 The mother is apparently with Harold Brown and she is
16 thinking that she wants to stay there and that is fine,
17 but that is not going to be one of the three counselors
18 the husband will approve of.

19 **MRS. LANGWAY:** Absolutely.

20 **MRS. LEE:** And she is going to be in counseling to
21 again address issues of alienation, and the mother said she
22 felt it important that both parties address this and that
23 is fine, so that will be the issue of counseling will be
24 alienation and co-parenting. And if she wants to see yet
25 another counselor on top of that, that's, I guess, that's

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

Michelle Davis Capps,)
Plaintiff,)

-vs-)

Joseph Harold Capps,)
Defendant.)

HEARING JUDGE:

HEARING DATE:

PLAINTIFF'S ATTORNEY:

DEFENDANT'S ATTORNEY:

COURT REPORTER:

IN THE FAMILY COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
Case Number: 2014-DR-26-1563

**ORDER BASED UPON
RULE TO SHOW CAUSE**

The Honorable Jan Bromell-Holmes
January 30, 31, 2017
February 1, 2017
Mary Madison Brittain Langway
Anita F. Lee
H. Eugene Buckner

FILED
HORRY COUNTY
2017 APR 11 PM 1:46
MERRITT N. ELLIS
CLERK OF COURT
HORRY COUNTY SC

On June 25, 2014, Plaintiff and Defendant entered into a Custody Agreement which was approved by this Honorable Court on July 14, 2014. Thereafter, on October 3, 2014, the parties were divorced from one another. Unfortunately, although the marriage ended, the strife between the parties did not, as within months of having their Custody Agreement approved, one or both parties were expressing discontent over the conduct of the other.

On February 10, 2015, Defendant sent to Plaintiff a letter indicating that if she would attend counseling, and if she would cooperate with Defendant's efforts to attend counseling with the children, he would not request a Rule to Show Cause hearing. Thereafter, the parties attended counseling with Hal Heidt, and Defendant also attended counseling with the parties' oldest child. Defendant alleges that, after only a few months, Plaintiff ceased this counseling, though she located another counselor for herself and the children. Despite Defendant's protestations regarding Plaintiff's decision to withdraw from counseling with Hal Heidt, as well as his objection to the counselor whom Plaintiff selected for the children, Plaintiff would not reconsider her decision.

Thereafter, on May 6, 2016, Defendant filed a Rule to Show Cause Petition, wherein he sought an order holding Plaintiff in contempt of court as well as corresponding sanctions. The basis of Defendant's Petition is as follows:

1. That Plaintiff did not comply with the final order in regards to the division of personal property, in that she removed the vast majority of furniture and other

- b. Every Tuesday morning and every Friday morning, Defendant shall take the children to school. He may participate in a carpool situation, or he may personally transport the children, at his pleasure;
 - c. One evening per week, Defendant shall take the children to dinner, or otherwise have dinner with them. The time for this visitation shall be 6:00PM-8:30PM.
 - d. NOTE: what is set forth in subparagraphs "a" – "c", above shall be in addition to the visitation that was agreed upon in the parties' Custody Agreement that is dated June 25, 2014.
2. **Communication**: Defendant shall be allowed to communicate with the children by way of cell phones from 7:00AM – 9:30PM daily.
 3. **Spring Break, 2017**: Defendant shall have the children in his possession Spring Break of 2017 (and all odd-numbered years thereafter).
 4. **Harold Brown**: The children shall not see Harold Brown again for counseling or otherwise.
 5. **Counseling**: Within the next 15 days, Plaintiff must have an appointment with a counselor (not Harold Brown) to address the issue of her alienating the children from Defendant. Hal Heidt, with whom Defendant is counseling, shall communicate with Plaintiff's counselor, and they shall work together to address the alienation issues. Further, the two counselors shall recommend 3-4 names of counselors for the children to see. These names shall be submitted to The Honorable Jan Bromell-Holmes, who shall select the counselor for the children from this list.
 6. **Counseling**: The children shall be in counseling within the next 30 days.
 7. **Restraining Order**: The parties shall be absolutely prohibited, forbidden, restrained and enjoined from hurting, harming, harassing, molesting, abusing or bothering one another. All communication shall be peaceful and nonthreatening in nature.
 8. **Restraining Order**: The parties shall be absolutely prohibited, forbidden, restrained and enjoined from discussing this litigation with the children, from

Exhibit #7

1 **THE COURT:** I never knew what would happen -- why
2 did Ms. Raley -- Dr. Elkins, why was she terminated? Did
3 it just end?

4 **MRS. LANGWAY:** Hal Heidt was my understanding had
5 worked out -- oh, that's right, she moved to Greenville,
6 Your Honor. She was in Florence. She came to Florence
7 and that's how she originally -- but when she moved to
8 Greenville, it was just too far, you know, for her to go
9 for an afternoon session. That's right. And I think
10 that's when they started with Hal Heidt, the children --
11 no, I'm sorry, I wasn't involved. I will let Ms. Floyd
12 (sic) answer.

13 **MRS. LEE:** I think they can -- I think there is
14 going to have to be communication between the counselors,
15 the children's counselor, might feel like they need to
16 talk with Hal Heidt or talk with her counselor vice versa,
17 so I think it is going to be important to have ---

18 **THE COURT:** And that's fine, but I am going to have
19 -- I will make the ultimate determination in terms of who
20 the children's counselor will be once these two counselors
21 comes up with one ---

22 **MRS. LEE:** Okay.

23 **THE COURT:** If I am satisfied with that particular
24 individual, then I will certainly sign an order to that
25 effect. So I need to know who these two counselors come

1 up with ---

2 MRS. LEE: Okay ---

3 THE COURT: --- because I need to make sure that
4 this particular individual is experienced in these
5 particular issues, because I want these girls to get the
6 best counseling there is. I want the best for them.

7 MRS. LEE: Okay, thank you, Your Honor. So what I
8 will do with your permission is I will prepare an order
9 for now and it will note in there that a supplemental
10 order will be issued within the next 30 days noting who
11 the children will see and that way that will have time for
12 the two therapists to make suggestions, and I can present
13 them to you or we can present them to you, for selection
14 if that works.

15 THE COURT: Okay, any other terms of the agreement?

16 MRS. LEE: No, ma'am, that's everything, I believe.

17 MRS. LANGWAY: And I would -- I think this
18 certainly goes without saying, I would assume that the
19 counseling with respect to the children is going to go
20 until the counselor feels like they are at their maximum?

21 THE COURT: Absolutely, that's what -- they are the
22 professionals.

23 MRS. LEE: And, I guess, there is one more
24 logistical matter. The reduction from the 14,000 to the
25 13,000 will start on -- today is February 1.