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C O N T E N T S

WITNESSES

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(None.)

E X H I B I T S

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P R O C E E D I N G S

1  
2 JUDGE BARTON: Good morning, everyone. This  
3 is the matter of In re: David W. Tidd, Former Magisterial  
4 District Judge at this court's Docket Number 3 JD 2016.

5 At the outset here, why don't we go around  
6 the table and everybody introduce themselves, and we'll  
7 start moving to my left.

8 MR. METZ: Joseph Metz, counsel to the Court  
9 of Judicial Discipline.

10 MS. FLAHERTY: Elizabeth A. Flaherty, Deputy  
11 Counsel to the Judicial Conduct Board.

12 MS. NORTON: Melissa Norton, Assistant  
13 Counsel to the Judicial Conduct Board.

14 MS. SCHREFFLER: Toni Schreffler, Legal  
15 Assistant to the Judicial Conduct Board.

16 MR. HARLACKER: Jack Harlacker, investigator.

17 MR. FONTANES: Paul Fontanes, investigator.

18 MR. TIDD: David Tidd.

19 MR. STRETTON: Sam Stretton on behalf of  
20 former Judge Tidd.

21 JUDGE BARTON: Okay. I see that both  
22 pretrial memos have been filed.

23 Ms. Flaherty, did the Board receive the  
24 Respondent's pretrial memo?

25 MS. FLAHERTY: Yes, we did.

1 JUDGE BARTON: And, Mr. Stretton, have you  
2 received the Board's pretrial?

3 MR. STRETTON: Yes.

4 JUDGE BARTON: I guess we'll turn to the  
5 Board and ask for a brief summary of the case and where you  
6 see this heading at trial.

7 MS. FLAHERTY: Well, as the court knows, this  
8 Board complaint was filed in August, on the 26th of August  
9 2016, and alleged numerous instances of misconduct, Section  
10 A, retaliation; Section B, improper demeanor; Section C, ex  
11 parte communications; Section D, special consideration;  
12 Section E, failure to recuse; Section F, failure to accord  
13 full right to be heard; Section G, conflicts of interests  
14 and prioritization of business court; Section H, failure to  
15 wear judicial robes; Section I, disregard for the dignity of  
16 the judicial robe.

17 There were numerous allegations of violations  
18 of the rules governing standards of conduct of Magisterial  
19 Judges as well as violations of the Constitution of the  
20 Commonwealth of Pennsylvania.

21 We have submitted pretrial memos. There was  
22 a concerted effort to draft stipulations, but we were not  
23 able to come to an agreement as of yet as to any of those  
24 stipulations, so I think that remains a work in progress.

25 Without those stipulations, I believe the

1 trial would be lengthy and involve a great many witnesses.  
2 If we were able to reach agreement on some stipulations, it  
3 would, of course, condense the length of the trial.

4 I have observed, just as opening remarks  
5 about the pretrial memos, that within the Respondent's  
6 pretrial memos, there are many witnesses that would testify  
7 as to former Judge Tidd's character, and it's our belief  
8 that the appropriate time for character witnesses is at the  
9 sanctions hearing as opposed to the trial on the merits, and  
10 if we were to include character witnesses on the trial on  
11 the merits, that it would become an even more lengthy  
12 proceeding. So I would request that we have a ruling as to  
13 the appropriateness of character witnesses at that time.

14 JUDGE BARTON: Okay. Thank you.

15 MR. STRETTON: I will address that. Case law  
16 is so clear character witnesses are allowed. In fact,  
17 during the Merlo case, they raised the same thing and the  
18 board overruled them immediately. The Supreme Court case in  
19 re: Esther Sylvester 1987, the Pennsylvania Supreme Court  
20 said character witnesses in judicial disciplinary  
21 proceedings are absolutely critical and they by themselves  
22 can result in an acquittal, which they did in Judge  
23 Sylvester's case. So she's incorrect on the law on that  
24 particular issue.

25 In a case of this nature, we intend to

1 present numerous character witnesses because we feel it will  
2 give a very different view to the court as to what Judge  
3 Tidd was involved in. We essentially have a runaway office  
4 where secretaries don't work for the Judge. They work for  
5 the AOPC, and secretaries were out to get him and collected  
6 records for years.

7 MS. FLAHERTY: I object to any --

8 JUDGE BARTON: Just a moment. Obviously,  
9 this is Mr. Stretton's belief and characterization. I don't  
10 think the Board needs to object. It's not a matter of  
11 substantive evidence. The court certainly understands that  
12 this is argument with Mr. Stretton's perceptions.

13 I think your point is well taken with respect  
14 to character witnesses at trial. We'll look at it in a more  
15 formal basis. It's my understanding as I sit here this  
16 morning that Mr. Stretton is correct, and while it may add  
17 length to the trial, they're entitled to put on a full and  
18 fair defense and certainly the court is not going to get in  
19 the way of that.

20 Mr. Stretton, in terms of a brief overview,  
21 anything else that you would like to offer?

22 MR. STRETTON: Don't be overwhelmed with our  
23 witnesses. We're going to work stipulations out. Elizabeth  
24 Flaherty, she and I are pretty good friends even though  
25 we'll fight like cat and dog in a courtroom in a courteous

1 way, but we're going to work out a lot of the stipulations.  
2 We're not trying this case for four or five weeks. We're  
3 going to try this case in about a week just like we did in  
4 Merlo. Merlo, I think we did three and a quarter days.

5 She sent me a lot of stipulations. I went  
6 through them. I'm going to say they're slanted, but I'm  
7 going to redraft them to get all the facts in. I just can't  
8 -- there's a little bit of editorializing in some of her  
9 matters.

10 Like, for instance, he raised his voice all  
11 the time with the secretaries; I can't initially agree to  
12 that, but we can stipulate to most other things. I just  
13 have to recast it in facts so it gives me the wiggle room to  
14 disagree on the merits.

15 Here's how I intend to present this. It will  
16 primarily be David Tidd's testimony. In fact, it's possible  
17 he might be my first witness. Usually you make your Judge  
18 last, but I may make him my first depending on the timing  
19 and everything else and go through each of these matters and  
20 lay the groundwork.

21 I listed probably every police officer that  
22 walked through Easton or Northampton County. I'm going to  
23 be meeting with a number of them. I'll probably cut them  
24 down just to get a cross section of officers who will say,  
25 "I've been in his courtroom and he didn't do this and he did

1 that, didn't see him yelling at his secretaries."

2 I'm going to stipulate -- even though we  
3 fought early on, I'm going to stipulate to the tapes and how  
4 they got set up and all the documents. So we don't have to  
5 worry about the tapes. They can play the tapes and then  
6 we'll explain why he was in a bad mood that day and why he  
7 said things maybe he shouldn't have said. That would be his  
8 testimony pretty much.

9 We have some of these lawyers, who most of  
10 them will be quick on direct; just we've been in his  
11 courtroom. He stands at the counter. Everything is done  
12 right. There weren't any deals made by him and his demeanor  
13 was good and we loved being in his courtroom, stuff like  
14 that or things of that effect. They should be pretty quick.

15 Then we get into the conflict of interest.  
16 He'll explain his understanding when he got that letter from  
17 Judge Duncan who headed or at least participated in the  
18 ethics committee for the State Judges and then his  
19 explanation. That I'm going to work stipulations to all the  
20 facts; that his office entered a judgment here and then he  
21 was representing him there, and then we'll put in how he got  
22 the clients so we can negate any suggestion he was  
23 soliciting clients out of his office, at least try to negate  
24 that in any event.

25 So, although it looks overwhelming when you

1 look at my pretrial memo and Elizabeth's and you feel, my  
2 God, we're going to be here from now to eternity, that's not  
3 going to happen here. Elizabeth and I are going to work  
4 this out, and when we come to trial in January, the 18th, or  
5 whatever day it is, we have three days there. I don't know  
6 if we can complete it in those three days, but then we'll  
7 get another two days or maybe another day and I think we can  
8 complete this case without doing any injustice.

9 Quite frankly, David Tidd, and I told him  
10 this, knows, too, that if I'm going to prolong this and make  
11 this messy like Lucadota -- and I didn't try Lucadota. I  
12 represented her until about a week before and then she got  
13 mad at me and I was history and she made a mistake how she  
14 presented her case at the time. She could have done a lot  
15 better. She wouldn't have been off, but she could have done  
16 a lot better for herself if she had just done it my way.

17 I'm well aware that although this court will  
18 listen and give us all the time in the world, we're dealing  
19 with experienced trial Judges and you've tried all kind of  
20 cases yourself and we're well aware that Judges know if I'm  
21 overdoing it and I'm not going to help my cause by doing  
22 that. So I want to get to the essence of it. So I'll pare  
23 these down.

24 I'm going to try to meet with a lot of these  
25 people between Christmas and New Years or the first week of

1 January and I'll probably get rid of a lot of people. I'll  
2 probably just submit a supplemental or final pretrial memo  
3 so you know actually who I'm going to call as opposed to my  
4 wish list which is here, but I guarantee you we're not going  
5 to call every one of these and I guarantee when we show up  
6 on the 18th, Ms. Flaherty and I will have stipulations on  
7 the case, like this case happened here; these Judges were  
8 here, and things of that nature. He didn't stand at the  
9 counter. He was not standing with his robe on, because I  
10 don't think he ever did, but I'll double-check if there was  
11 ever a time until he got the letter. Then, of course, we  
12 changed a lot of that.

13 So we'll have all that and we'll have a  
14 stipulation of authenticity. Well, we have that stipulation  
15 already, authenticity of any court record and any document.  
16 So we don't need to trot people in.

17 I honestly believe that we'll be able to do  
18 this in a rational fashion, and, you know, with all the  
19 fluff, character, lawyers and all that, that will be useful,  
20 but it really comes down to his testimony. I don't want to  
21 torment you for three weeks to hear that and then you hear  
22 his testimony. At that point, everyone is half brain dead.  
23 I want him almost to go first and then I'll fill in the  
24 blanks with some of the others.

25 Now, as to the Jim Burke issue, the lawyer

1 who's his friend, who he would call for, you know, "A  
2 warrant is about to issue. Why don't you come in and pay  
3 your traffic tickets," I called Mr. Burke. He's a little  
4 hesitant to get involved, because I guess he's afraid he  
5 could have other consequences. I'll probably call him, but  
6 mainly it will be David Tidd or former Judge Tidd who will  
7 testify.

8 It is what it is. If it was a mistake doing  
9 that, it was a mistake, but it's our position it's not a  
10 mistake, but you've got to hear the testimony on that. So I  
11 think we can sort of bring it to a more logical conclusion,  
12 and then I can save Elizabeth from all these people, but the  
13 people I probably can't save her from is the secretaries. I  
14 don't know how I can -- I mean, I could stipulate they were  
15 secretaries, they worked there, and whatever, but I probably  
16 can't stipulate to their relationships and that he was  
17 yelling at them all the time.

18 JUDGE BARTON: Well, I certainly wouldn't  
19 expect the defense necessarily to make that type of a  
20 stipulation and I'm confident with experienced advocates on  
21 both sides of the case, you know how to prepare your cases  
22 in an efficient manner with some attention to being  
23 conscious of the judicial resources that the clock will be  
24 ticking on during the trial with the court.

25 MR. STRETTON: We are very conscious of that

1 and we know that every one of you has another life beyond  
2 this court and we will respect that. We also know that if  
3 it does go a little longer but you see we're not just  
4 playing, or we're not being serious and we're just throwing  
5 everything but the kitchen sink, that we're not doing that  
6 and you see it might need an extra day, we know the court  
7 will keep an open mind. That's the way it's always been.

8 The Court of Judicial Discipline, I've never  
9 had a problem with them or the Judicial Inquiry and Review  
10 Board. I've been through a lot of Judges over the years.  
11 Some courts are more liberal; some are more conservative,  
12 but I've always found that the bottom line was they were  
13 great people doing their best to do justice, and judicial  
14 trials are always difficult, as Joe Metz knows and Ms.  
15 Flaherty knows, and you will know if you stay here longer,  
16 and Toni, who's an institution here; she has the  
17 institutional memory.

18 I always say I'm going to hire her some day,  
19 but they won't let me.

20 JUDGE BARTON: Well, thank you, Mr. Stretton.

21 MS. SCHREFFLER: Thank you.

22 JUDGE BARTON: Ms. Flaherty, with respect to  
23 the Board's pretrial memorandum, I wanted to make sure that  
24 the names and addresses of all witnesses expected to testify  
25 at the trial are provided, and it sure looks to me like they

1 are. You have a list of all exhibits that you intend to  
2 introduce at trial.

3 MS. FLAHERTY: Yes. I would like to say  
4 within the trial witness list, I noticed a couple of  
5 omissions, unintentional, of course. At paragraph 16,  
6 Officer Dominic Fragano will be testifying regarding Section  
7 C; and then at paragraph 21, Jeff Leahy will be testify  
8 about the audio/video recording system at District Court 03-  
9 2-04.

10 JUDGE BARTON: And I understand that the  
11 Board's pretrial statement includes a list of exhibits. Are  
12 those all the exhibits that the Board at least at this point  
13 intends to introduce at trial?

14 MS. FLAHERTY: Yes.

15 JUDGE BARTON: We discussed already  
16 stipulations, and I understand that they would be ongoing in  
17 our efforts to eliminate factual disputes that won't make  
18 sense to spend time at trial on.

19 I guess next we come to a certification by  
20 the Board that it has furnished the Respondent with the  
21 materials required to be exchanged under Rule of Procedures  
22 401(D)(1). Has the Board provided all of those materials?

23 MS. FLAHERTY: Yes.

24 MR. STRETTON: Too much.

25 MS. FLAHERTY: I would like to comment that

1 although earlier, Mr. Stretton had referred to the  
2 stipulations as slanted, that in drafting those, we made  
3 every effort to tone them down from the language in the  
4 complaint. So it's a matter of perception for each of the  
5 parties and we certainly didn't believe we were submitting  
6 something that was slanted, but that was the way it was  
7 perceived. So it's a work in progress.

8 JUDGE BARTON: As a lawyer having been on  
9 both sides of those equations, I understand completely.

10 Has the Board provided the Respondent with  
11 any exculpatory evidence relevant to the charges contained  
12 in the Board complaint in accordance with Rule of Procedure  
13 401(E)?

14 MS. FLAHERTY: Yes. All exculpatory evidence  
15 to our knowledge has been submitted or provided to Mr.  
16 Stretton.

17 JUDGE BARTON: Mr. Stretton, are there any  
18 questions that you have concerning the Board's pretrial  
19 memo?

20 MR. STRETTON: Not right now. If I do, I'll  
21 call Ms. Flaherty. Like I said, we get along pretty well.  
22 I can't imagine we can't resolve any disputes, but I think  
23 we both know where this case is going and the outline and  
24 what we have to do to get it in an orderly fashion.

25 I've just been on too many trials recently to

1 get this stipulation firmed up, but we will have that. The  
2 Christmas holidays sometimes give you time to get things  
3 straightened out.

4 JUDGE BARTON: Is there any additional  
5 information by the Board that the Board would like to raise  
6 at this time?

7 MS. FLAHERTY: Just one factor that Toni  
8 Schreffler noticed with her eagle eye, and that is within  
9 the complaint at paragraph 116, the Lohman case, the year  
10 was misstated within the docket citation as 2016 when it's  
11 actually a 2015 case. So, thank you, Toni.

12 JUDGE BARTON: Okay. The expected length of  
13 time for the Board to present its case. I appreciate that  
14 the matter of stipulations remains outstanding.  
15 Nonetheless, I'm going to ask you to make a calculated  
16 estimate.

17 (Pause.)

18 MS. FLAHERTY: It is hard for us to answer  
19 that because of the outstanding stipulations. We have 62  
20 pages, 251 stipulations. So it's hard to know what we're  
21 going to get in. If Sam and I are able to work and  
22 accomplish a great deal of the stipulations, my hope would  
23 be two to three days. If we are not able to reach  
24 agreement, then it may take the Board up to five days to  
25 present its case.

1 JUDGE BARTON: Thank you. Mr. Stretton, with  
2 respect to your pretrial memorandum, has it included the  
3 names and addresses of all witnesses expected to testify at  
4 trial and the subject of the testimony for each?

5 MR. STRETTON: It has the names, but in terms  
6 of addresses, police officers, we don't have their personal  
7 addresses. We just have the police department. As to the  
8 attorneys, I guess I got a little lazy when I put it  
9 together. I said their addresses would be on the  
10 Disciplinary Board website, but I can get those.

11 When I pare it down to the ones I'm actually  
12 going to call, I'll have specific addresses and phone  
13 numbers. I'm working on that. But I think it pretty well  
14 has everything we need.

15 JUDGE BARTON: We've already discussed the  
16 stipulations. I guess let's touch on the exhibits. Does  
17 your pretrial statement include all of the exhibits that  
18 you're aware of that potentially would be introduced at  
19 trial?

20 MR. STRETTON: I believe so. Most of the  
21 ones were the ones attached to the original letter of  
22 inquiry. We do have the one letter that you had written to  
23 him at one point which I can't find, but I'll get another  
24 copy from Ms. Flaherty. I probably have it somewhere in my  
25 file.

1                   Then we referenced all of the exhibits that  
2 they provided. The only reason I did that is if they  
3 present a witness and the witness digresses from the  
4 statement they gave earlier, then I might mark it as an  
5 exhibit and say, "Well, you told their investigator X not  
6 Y." But we pretty well have all the exhibits.

7                   JUDGE BARTON: You raised a point that I was  
8 going to touch on, and that is it's listed on page 9 in  
9 paragraph 12 of your pretrial statement a letter on ethical  
10 issues from Judge Barton to David Tidd. My recollection --

11                   MS. FLAHERTY: I have copies of that.

12                   MS. NORTON: Thanks, Ms. Flaherty.

13                   JUDGE BARTON: My recollection is that I was  
14 not the author of that letter. Ms. Flaherty has brought a  
15 copy. That was the letter from Lorinda Hinch. Now,  
16 attached to that letter is a redacted copy of an opinion of  
17 the Ethics and Professionalism Committee of the Special  
18 Court Judges Association of Pennsylvania in which I  
19 authored; however, I would note that it was not directed to  
20 Mr. Tidd, but rather to another inquiring Judge.

21                   MR. STRETTON: I'll accept that as an  
22 amendment to my memo. Without the letter, I couldn't recall  
23 the specifics, so I threw it in more broad-brushed than I  
24 should have done.

25                   JUDGE BARTON: Okay. I wanted to make sure

1 that was squared away.

2 MR. STRETTON: Thank you. Thanks for the  
3 copy, Ms. Flaherty. It's somewhere in my file.

4 JUDGE BARTON: Have you furnished the Board  
5 with the material required to be exchanged under Rule  
6 401(D) (1)?

7 MR. STRETTON: I think so. I'll check with  
8 Ms. Flaherty, but I believe so. I'll ask her. I've given  
9 her pretty much every exhibit that we have, and she's given  
10 me really -- anything I'm going to use I got from her, if I  
11 use it at all.

12 JUDGE BARTON: Okay.

13 MS. FLAHERTY: Do you want me to speak or  
14 wait?

15 JUDGE BARTON: Actually, you're next on my  
16 list of questions.

17 MS. FLAHERTY: Okay.

18 JUDGE BARTON: And that is, is there any  
19 questions by the Board with regard to the Respondent's  
20 pretrial memo?

21 MS. FLAHERTY: We do have extensive comments.  
22 As to whether or not we've received discovery on the newly  
23 listed witnesses, we have not received any information about  
24 them. Based on the fact that there are new witnesses listed  
25 -- and we can go over them point by point -- just generally

1 speaking, we don't have the contact information. If they're  
2 going to be introduced at trial, then our investigators  
3 would need time and opportunity to follow up with those  
4 witnesses.

5 We don't have any information as to what  
6 they've discovered so far. So we would ask that that take  
7 place.

8 MR. STRETTON: We don't have any information.  
9 I haven't talked to most of them. He knows them. They're  
10 going to come in and testify when they come into court, he  
11 does things right. I don't have any statements, nothing I  
12 can give.

13 MS. FLAHERTY: Will you be conducting  
14 interviews with these individuals?

15 MR. STRETTON: I'm going to be interviewing  
16 them, but I won't take statements. I'll just listen to them  
17 and I may make some rough notes.

18 JUDGE BARTON: Ms. Flaherty, are you  
19 referring to the witnesses listed on page, I guess, five and  
20 six, the various lawyers that are listed in Respondent's  
21 pretrial statement?

22 MS. FLAHERTY: Well, it begins on page three.

23 JUDGE BARTON: Can you identify which ones  
24 specifically?

25 MS. FLAHERTY: Yes. Dr. Eric Becker.

1 JUDGE BARTON: In paragraph 11.

2 MS. FLAHERTY: Paragraph 11. In paragraph  
3 13, Police Officers Tom Barndt, Tom Lauder, Stephen Kunigus.  
4 I'm not sure about Charles Werkheiser. We may have some  
5 information on him. Kyle Hagerty. On page four, Police  
6 Chief Mark DiLuzio. Although we do have more comments about  
7 some of these individuals, but just in terms of naming, Nina  
8 Reynard, Tracie Barnes at paragraph 17. Page five -- this  
9 is a continuation of paragraph 18 -- B. George Heitczman,  
10 Esquire; John Waldron, Esquire; Joseph Yanuzzi; Tom  
11 Jaoachim, Esquire; Christopher Shipman, Esquire; Rory  
12 Driscoll, Esquire.

13 Continuing in that paragraph at letter J,  
14 John Obrecht, Esquire; William Matz, Esquire; Gary S.  
15 Azteak.

16 I could simplify by saying in the  
17 continuation from M through T, the only one we have  
18 knowledge of is Matthew Potts. If you'd like me to read the  
19 rest of them into the record, I can.

20 JUDGE BARTON: I don't think that's  
21 necessary.

22 MS. FLAHERTY: Okay.

23 JUDGE BARTON: With respect to the list of  
24 lawyers set forth in paragraph 18 and all of its subparts  
25 through subparagraph T, Mr. Stretton, are they all

1 essentially that, as you said previously, they would appear  
2 and say that they appeared before Judge Tidd in his  
3 courtroom and generally things were done as they were  
4 supposed to be?

5 MR. STRETTON: That's correct. They'll talk  
6 about him at the counter. They'll also give character  
7 testimony, but they'll talk about him at the counter.  
8 They'll talk about how he handled their cases and they never  
9 saw him yelling and screaming, how he treated everyone  
10 fairly.

11 JUDGE BARTON: They're all character  
12 witnesses as opposed to specific factual witnesses about  
13 individual instances?

14 MR. STRETTON: No. They're both. They're  
15 character, and, also, they'll testify they came in and there  
16 was never any misconduct with the police. At the counter,  
17 he acted judicial. He handled the cases appropriately.  
18 There were disputes saying what was done in the courtroom.  
19 In the courtroom, he always had his robe on.

20 Remember, we have six years of material that  
21 was dropped on us. Normally, when a complaint is made  
22 against a Judge, the complaint is made and you deal with it.  
23 Here, last summer -- not last summer; the summer before,  
24 whenever we got that original letter, suddenly Judge Tidd is  
25 told for six years, everyone thinks you're doing something

1 wrong, and it's awfully hard to defend on that and we don't  
2 have their resources. He doesn't have the money.

3 Sure, if I had \$200,000, I'd have teams of  
4 investigators out. We don't have that kind of money; barely  
5 enough to afford legal fees for something like that.

6 JUDGE BARTON: My difficulty is that the  
7 purpose of the pretrial statement -- and I appreciate that  
8 you've been tied up on some other trials in the run-up to  
9 the filing of it -- is the purpose of the pretrial statement  
10 is to provide fair notice to the other side, these are the  
11 witnesses, these are the addresses, this will be the  
12 substance of their testimony, and --

13 MR. STRETTON: Well, I've done that in my  
14 opening -- in my thing there. I can't do any better than  
15 that. They will come in and testify, each time they come  
16 in, how he handled his courtroom. I mean, how else do I  
17 deal with seven years of garbage?

18 JUDGE BARTON: Well, if any of those  
19 witnesses will be addressing specific cases that were raised  
20 in the Board's complaint that, in other words, are other  
21 than general character witnesses, I think that needs to be  
22 set forth in the pretrial statement.

23 MR. STRETTON: Well, I don't think any of  
24 them, except for Mr. Burke and I think Mr. Minotti had one,  
25 but most of them weren't on the cases listed here, but were

1 in the court regularly every week and handled similar cases  
2 and had no problems and will tell you exactly how he ran his  
3 courtroom, and they will also tell you that's the way all  
4 the other Judges do it in that particular county.

5 So, I can't do any better than that.  
6 Remember, I don't have any discovery. This is not a  
7 discovery type of place. We get discovery. I give them the  
8 documents. I don't have to create discovery for them and I  
9 don't intend to in these matters, in these kind of  
10 proceedings. I don't have depositions or things of that  
11 nature.

12 So I've done the best I can and that's what  
13 I've always done and it's always been allowed. If you want  
14 to give me a team of investigators, I'll send them out, but  
15 we don't have the money for that, and you can't judge a case  
16 because the Judge doesn't have a lot of money, a former  
17 Judge doesn't have a lot of money in terms of how they're  
18 tried.

19 JUDGE BARTON: There's no question that  
20 that's the case. I just want to make sure that the Board  
21 has a fair opportunity to examine in advance the witnesses  
22 that the Respondent would be calling so that they can  
23 prepare their case as well.

24 MR. STRETTON: Well, I'll be meeting with  
25 most of these people hopefully right after Christmas. I'm

1 going to go up and rent a room and drag them all in, and if  
2 there's anyone who has anything specific, one of these cases  
3 if when I'm talking to them, they say, "Oh, you know, I was  
4 on that case," then I'll, of course, be able to shoot a  
5 letter over.

6 I've only talked to several and just general.  
7 I have not spent hours doing that.

8 JUDGE BARTON: Okay. So long as if any of  
9 these witnesses are other than general character witnesses  
10 --

11 MR. STRETTON: Well, they're more than  
12 general character witnesses. They will testify to  
13 character. They'll testify as to how he handled their cases  
14 and their observations during the years, alleged yelling and  
15 screaming and ranting and raving, disrespecting the robe,  
16 fixing deals at the thing, and these people are going to  
17 come in and say they were there every day or every week.

18 MR. TIDD: One second.

19 (Attorney Stretton and Mr. Tidd conferring.)

20 MR. STRETTON: As Mr. Tidd pointed out, if  
21 you read their complaint, they are very general allegations  
22 in their complaint. I mean, many of the things in the  
23 complaint he has no recollection of. They are years and  
24 years ago.

25 Like if I said to you, well, back in 2010,

1 you handled Bill so and so, now, unless Bill so and so  
2 really stuck out in your mind, you'd probably said, "Who?",  
3 unless you had a photographic memory. That's the situation  
4 we're faced with. He doesn't remember many of these  
5 matters.

6 JUDGE BARTON: Okay. I understand your  
7 position. Ms. Flaherty, I interrupted you ticking off some  
8 items on the list. I'll turn it back to you.

9 MS. FLAHERTY: If I may, I agree that there  
10 were some introductory general statements in several of the  
11 sections, but then they were followed with very specific  
12 citations, dates, names, factual patterns to illustrate the  
13 conduct that was charged. So, if in the course of Mr.  
14 Stretton's interviews, if there are more substantive matters  
15 that arise at that late date, that may put us into  
16 difficulty with the dates that we have for trial as far as  
17 our being able to follow up on those. So we'll have to see  
18 how that goes.

19 JUDGE BARTON: Well, the court -- several  
20 things. First, I contemplate perhaps issuing an order  
21 requiring that Mr. Stretton disclose certain things to you  
22 by a date well in advance of the trial. In addition, the  
23 Board, of course, is always free to object at trial to a  
24 witness and testimony that goes beyond the nature of what  
25 was indicated in the Respondent's pretrial statement if that

1 were to arise.

2 MS. FLAHERTY: Certainly.

3 JUDGE BARTON: And I'm confident that the  
4 Board and Mr. Stretton will continue to work on the pretrial  
5 statements and the witness lists at the same time as you're  
6 working on stipulations.

7 MS. FLAHERTY: Yes.

8 JUDGE BARTON: And you're always free to make  
9 motions at trial.

10 MR. STRETTON: If you want to go to trial  
11 January 18th and you want that kind of level of specificity,  
12 I'm going to ask for a six month continuance, because I  
13 would need that. We don't have the resources and time to  
14 pull something like that together. This is the way I've  
15 always tried these cases in time immemorial, and if it's  
16 going to be different now, you should say so, but then you  
17 better change your rules and give us some discovery.

18 I would love to get a crack at those four  
19 secretaries during a deposition in these matters and Judge  
20 Baratta and others.

21 JUDGE BARTON: Well, the rules of the court  
22 haven't changed and the trials will be conducted as they  
23 have heretofore, but, again, if the court were to see that  
24 the Respondent's pretrial statement didn't provide fair  
25 notice as to the content of a witness' testimony, the court

1 would deal with that at trial.

2 MR. STRETTON: That's fair.

3 MS. FLAHERTY: The next item within the  
4 statements about trial witnesses, Mr. Stretton has listed  
5 officers beginning at paragraph three, which is Office  
6 Bowlby, and then referred to a 2015 memo. Again within  
7 paragraph four with Officer David Roxbury, there's reference  
8 to a May 30th, 2015, memo, and I just wanted to clarify that  
9 those were the reports of interview as provided by the Board  
10 during discovery.

11 Are those the memos that you're referencing?

12 MR. STRETTON: They were the exculpatory --  
13 you gave us 10 or 12 memos of alleged exculpatory. Some  
14 have exculpatory, some have not, but I listed them and then  
15 referenced their memo. I haven't spoken to them. Whether I  
16 call everyone is another story, but I wanted to preserve the  
17 right to do so.

18 JUDGE BARTON: But I think she was trying to  
19 ascertain whether the memoranda referenced in there were  
20 reports of interview from the Conduct Board or some other  
21 memoranda.

22 MR. STRETTON: They're her -- not her, but --

23 JUDGE BARTON: The Board's documents.

24 MR. STRETTON: Documents.

25 JUDGE BARTON: Okay. Thank you.

1 MS. FLAHERTY: This issue came up at a recent  
2 trial. In that case, we were talking about some FBI 203  
3 reports, and this is analogous. We're talking about some  
4 reports of interview generated from our Board, and I just  
5 wanted to reiterate that those are summaries of interviews  
6 conducted by our investigators; that some of the language  
7 may be quoted, in which case that could be attributed to the  
8 police officer, but otherwise, it's a memorialization by the  
9 investigators that we typically do not present as evidence  
10 to the court, but use it to refresh the recollection of the  
11 investigator should that investigator be called to the  
12 stand.

13 So I just wanted to emphasize that going  
14 forward.

15 MR. STRETTON: Well, I would disagree with  
16 that. I use those memos regularly to question witnesses  
17 when they vary from that.

18 JUDGE BARTON: Well, they're certainly  
19 subject to use for impeachment purposes. I think that's  
20 unquestioned.

21 MR. STRETTON: And if we have to, then I'll  
22 add all of your investigators, including the one who is no  
23 longer here, and we'll have to get them in if they're going  
24 to say we need that person and actually get them in. That  
25 hasn't been the practice in the past. In Merlo, I just

1 continued to pull out the memo in front of the witness.

2 JUDGE BARTON: I think that's how you do it.

3 Ms. Flaherty.

4 MS. FLAHERTY: Did you have some comments,  
5 Ms. Norton?

6 (Pause.)

7 MS. FLAHERTY: I can go ahead. Which  
8 paragraph was that?

9 MS. NORTON: Paragraph 11.

10 MS. FLAHERTY: Thank you.

11 (Pause.)

12 MS. NORTON: If I may, Your Honor?

13 JUDGE BARTON: Yes.

14 MS. NORTON: Thank you. I'm going to refer  
15 to paragraph 11 in Mr. Stretton's document, and that would  
16 be the witness, Dr. Eric Becker. There is reference there  
17 to Dr. Becker testifying as to the treatment of former Judge  
18 Tidd for Crohn's disease.

19 The first question I would have on that is if  
20 Mr. Stretton could or if the court would ask Mr. Stretton  
21 how that would be relevant to the charges that we will be  
22 presenting to the court.

23 JUDGE BARTON: Mr. Stretton, do you have a  
24 brief response?

25 MR. STRETTON: Sure. During many of these

1 times, Judge Tidd has not been in good health. He had major  
2 I think it was lung surgery and he was back in his office,  
3 and a week later, there's a video of him yelling at his  
4 secretaries. The doctors had told him not to come back for  
5 a month. He wasn't well.

6 I think it's important to show that he was  
7 physically not well during most of his time on the bench.  
8 His Crohn's disease was longstanding. That is just to put  
9 in perspective his conduct and everything else. I would  
10 remind the court that in the Ballentine case, that was  
11 considered extremely strong litigating evidence, Crohn's  
12 disease, for the Judge.

13 JUDGE BARTON: It's certainly my  
14 understanding that that's both relevant and admissible.

15 MS. NORTON: Thank you, Your Honor. Then I  
16 would also be looking at paragraph number 15 in Mr.  
17 Stretton's document. That references a Chief Mark DiLuzio.  
18 It's indicated he's the Chief of Police of the Bethlehem  
19 Police Department.

20 The second sentence there says, "Chief  
21 DiLuzio was never in his courtroom personally, but he would  
22 testify to what his officers experienced." In that regard,  
23 I would be asking is Mr. Stretton going to be presenting  
24 hearsay evidence? What is that about? I don't understand.

25 MR. STRETTON: I can answer that. It's an

1 interesting issue, but Chief DiLuzio wasn't in his  
2 courtroom, but he was in charge of the night court officers.  
3 So any officer who had a case with the Judge when he was  
4 assigned to night court had to report back to him that  
5 night, and if there was a complaint or the Judge was acting  
6 badly for whatever reason, that would be noted.

7 The only thing I would ask him is: Were you  
8 the night court Judge -- I mean, not night court; supervise  
9 the officers? During what times? Did your officers ever  
10 report back to you that the Judge was acting  
11 inappropriately? And his answer to my understanding is no.

12 JUDGE BARTON: Obviously, he's not going to  
13 call him as to what happened in the courtroom specifically.  
14 It's going to be the absence of complaints that were made.  
15 I think that's set forth in the paragraph. I don't see  
16 anything improper with that.

17 MS. NORTON: I guess what I'm struggling with  
18 then is if he's going to testify about absence of  
19 complaints, is that coming in in the nature of habit  
20 testimony? What rule of evidence is that coming in under?

21 MR. STRETTON: It's coming in under --  
22 they're alleging pretty much that he was a maniac for those  
23 five or six years, yelling at secretaries, mistreating them,  
24 dishonoring the robe, acting like a loose cannon at the  
25 counter, cutting deals that he had no authority to do,

1 et cetera, et cetera, et cetera.

2 It's hard for me to -- it's not like I  
3 murdered him, but I know I have an alibi where it's very  
4 specific. I have to try to show a different view of his  
5 courtroom. So it's all coming in to show that other people  
6 have not had any complaints who have dealt with him, whether  
7 they're lawyers, whether they're police officers, whether  
8 they're the night supervisor. That's why it's all coming  
9 in.

10 It's very hard to deal with seven years.  
11 He's a real bad Judge. He's bad all the time. How do I  
12 deal with that? I've got his testimony and I'm trying to  
13 fill in the blanks.

14 Now, if you rule it's not admissible, it's  
15 not admissible. I think it's very pertinent. If he just  
16 had two instances, on this occasion, you screamed and yelled  
17 or fixed a case, then, sure, none of this other stuff is  
18 going to come in, but we don't have that. Pretty much  
19 they're saying that since he got on the bench, he's been a  
20 bad egg and he's run his courtroom that way.

21 JUDGE BARTON: Well, I think that really  
22 that's a trial objection. If I were ruling on it today, I'd  
23 be letting it in; however, I don't want to presume and speak  
24 for the other two panel members at trial. The Board can  
25 raise an objection if you think the presentation of that

1 evidence is objectionable, and then we'll rule on it at  
2 trial.

3 MS. NORTON: Thank you, Your Honor. Then if  
4 I could drop down to paragraph 16 in Mr. Stretton's  
5 document, he references a Nina Reynard of Pretrial Services.  
6 Will she be a fact witnesses?

7 MR. STRETTON: Yes. In your allegations, it  
8 is alleged that he did not give ample time or enough time  
9 for defendants at arraignments. She's the pretrial person  
10 who's there and she's going to state exactly to the  
11 contrary. There would be ample time. His bail was correct.  
12 He had all the information, things of that nature.

13 MS. NORTON: You indicated she was there.  
14 What do you mean she was there?

15 (Attorney Stretton and Mr. Tidd conferring.)

16 MR. STRETTON: She was present for bail  
17 modifications, which is part of, I guess, the arraignment  
18 and then post-arraignment process. At any rate, she would  
19 probably testify at the most that she was present when he  
20 set bail and bail was modified and how he conducted it and  
21 how he got the appropriate information, and as Pretrial  
22 Services, she did not get complaints that he was not  
23 spending the appropriate time.

24 MS. NORTON: So you are indicating that she's  
25 a fact witness because she was present when he set bail?

1 MR. STRETTON: That's correct.

2 (Attorney Stretton and Mr. Tidd conferring.)

3 MR. STRETTON: Excuse me a second.

4 (Attorney Stretton and Mr. Tidd conferring.)

5 MR. STRETTON: All right. Now I got it. No,  
6 she wasn't present. I thought she was. I'm thinking  
7 Chester County where they do it a little differently. The  
8 Judge when he was on night duty would call her to discuss  
9 the bail issue and discuss the appropriateness of a bail or  
10 whatever, and it's those discussions and that the bail that  
11 he was arriving at was based on information provided and  
12 that she considered appropriate.

13 Maybe it's a little more tangential than  
14 that. I thought she was actually physically sitting in the  
15 courtroom. I stand corrected. But it goes to the issue  
16 that he wasn't spending proper time to evaluate setting  
17 bail, doing arraignments, things of that nature.

18 JUDGE BARTON: Again, I think that's really a  
19 trial type objection. If I were ruling on it today, I think  
20 I would overrule the objection and allow the admission of  
21 the testimony, but I'm not.

22 MS. NORTON: And I appreciate that, and part  
23 of the reason that I'm in a situation of asking these  
24 questions is because -- I'm searching for a way to say this  
25 -- the document that we received from Mr. Stretton was in

1 some respects vague, and because we're up against a calendar  
2 that's pretty tight, including holidays, it's important that  
3 we get as much information as we possibly can, because I'm  
4 fearful that we won't get that information in time to have  
5 our investigators interview these people.

6 So if you are willing to bear with me for a  
7 few more questions?

8 JUDGE BARTON: Sure.

9 MS. NORTON: Thank you, Your Honor. On  
10 paragraph 17, the next paragraph, there's reference to a  
11 Tracie Barnes. In particular, it talks about she's going to  
12 testify to the fact that Diane Kale, and it references her  
13 position as county employee.

14 If Mr. Stretton is saying at this point in  
15 time -- and, again, I'm not sure -- if he's saying that that  
16 is a witness he intends to propose, we would be objecting to  
17 the relevancy of the witness in the terms that he's placed  
18 it.

19 I think this is a situation where he's  
20 basically putting our witness on trial. He's indicating  
21 that there's something wrong with the manner in which she's  
22 being paid or the manner in which she was hired by the  
23 county in his statement, and that to me sounds very much  
24 like he is putting the witness on trial. It also sounds  
25 somewhat like it's approaching a harassment or some type of

1 retaliation or a threat of that against this witness by  
2 putting this in a document, written in this document -- it's  
3 a filed document -- and then indicating that he may want to  
4 present that type of testimony at trial.

5 I'm objecting strenuously to that, and if he  
6 is indicating that he is intending to call that witness for  
7 that purpose, we are objecting to it, and I believe it would  
8 be helpful if the court could make a ruling on that for us.  
9 That witness needs to be prepared if that type of testimony  
10 is going to come out.

11 JUDGE BARTON: Mr. Stretton, how is the  
12 testimony -- well, I guess, first, substantively, what do  
13 you contemplate the testimony of Tracie Barnes set forth in  
14 paragraph 17 will be and then how is it relevant and  
15 admissible?

16 MR. STRETTON: Just keep in mind what I said  
17 at the beginning; that we believe these several secretaries  
18 over the years ganged up on him, kept book on him, acted  
19 badly, did not like him. We're going to present evidence  
20 about that. This would go to her motive and bias. We  
21 believe that these people with the court administration and  
22 others were out to get him, and we'll show that she was  
23 given very favorable treatment through the system; that she  
24 was allowed to retire and get benefits and come back to work  
25 when no one else was so allowed.

1                   So we think it goes to her bias and motive  
2 and also enhances our position that she and the other ladies  
3 weren't just innocent and injured people, but had a game  
4 plan and motive throughout these five or six years in these  
5 matters.

6                   You've got to keep in mind he didn't know any  
7 of this. He thought they were his friends. He would talk  
8 to them. He would lend them money and other things. He  
9 helped them. It was one of the biggest shocks of his life  
10 when he finds out, when he gets the letter that the people  
11 he sat with every day were apparently the Benedict Arnolds  
12 of Northampton County.

13                   MS. FLAHERTY: I'd object to the  
14 characterizations.

15                   JUDGE BARTON: That's fine. Ms. Kale is a  
16 Board witness; that's correct?

17                   MS. NORTON: Yes, she is, Your Honor.

18                   JUDGE BARTON: I can't imagine that the  
19 testimony of Ms. Barnes would be relevant or admissible.  
20 Again, I'm not the trial panel. I think that's properly a  
21 ruling of the trial panel. I can tell you my impression  
22 sitting here, and that is that I have a hard time imagining  
23 how Ms. Barnes' testimony as to Ms. Kale's treatment as a  
24 county employee would be relevant or admissible.

25                   I think if there was some special treatment

1 afforded Ms. Kale, Respondent's counsel will do that by way  
2 of cross-examination. So, if I were ruling on Ms. Barnes'  
3 testimony, I'd be sustaining the objection today, but,  
4 again, to be clear, I am not.

5 MS. NORTON: Thank you, Your Honor.

6 JUDGE BARTON: Anything else on behalf of the  
7 Board?

8 MS. FLAHERTY: Yes. I would just like to  
9 make a request that in additional public filings that  
10 opposing counsel refrain from making statements about our  
11 witnesses which could be construed as harassing or  
12 intimidating conduct or retaliatory. Our witnesses have to  
13 be comfortable coming into the courtroom and being candid  
14 with the court, and these type of statements could be  
15 disruptive toward our case.

16 MR. STRETTON: Well, I would object to that.  
17 If they don't want to play the game, if they feel they did  
18 something wrong, then don't come in and testify. Don't use  
19 them. This is combat. I mean, these people destroyed his  
20 career and we intend to fight them hard.

21 I'm not saying anything -- it's my opinion  
22 she got benefits from that county, and, as I said earlier,  
23 the way the secretaries are run at least in that county, the  
24 Judge has no control over them whatsoever. These people  
25 never listened to him.

1 JUDGE BARTON: I trust that all of the  
2 advocates in this proceeding will file appropriate  
3 documents. I'm not offended by anything in paragraph 17,  
4 although I don't believe as I sit here it's relevant and  
5 admissible.

6 Any other items on behalf of the Board? And,  
7 again, there are going to be some trial objections that we  
8 don't need to discuss today.

9 (Pause.)

10 MR. STRETTON: Just so you know, when I pare  
11 this down, some of these may go away anyway, because I  
12 wanted to try this case focused, but right now, I want to  
13 put the kitchen sink in, because I don't want to -- if  
14 something really comes up and then I drag someone in and  
15 everyone says, well, it's not here and you didn't say it,  
16 just keep that in mind. I intend to really do a surgical  
17 approach. This is everything I could think of, but I don't  
18 intend to try it quite the way it seems. It will be pretty  
19 simple.

20 JUDGE BARTON: Certainly, my experience in  
21 civil litigation is exactly that. When you file your  
22 pretrial statement, it's everything you can conceivably,  
23 possibly, maybe use and introduce, but it's a very rare case  
24 that that would be the actual list of who is called.

25 MR. STRETTON: And remember, even though I

1 always use combat, we get along with these people. I have  
2 absolute confidence in them. I've dealt with them for too  
3 many years. We can disagree and have some fun arguing here  
4 and there, but this case comes down to his testimony. The  
5 rest is fluff. I'll put some fluff in. I'm not going to  
6 put all the fluff in, but it's really going to come down to  
7 his testimony and I guess to some extent the secretaries.

8 There's not a lot disputed. It's how you  
9 view it. That's really what it comes down to. So, although  
10 it sounds like we're being a little like wildcats over here  
11 and all that, I'm not going to try it that way. It's just  
12 not a first degree murder case or everything else. This is  
13 an old-fashion disciplinary trial with cooperation,  
14 courtesy, not tormenting witnesses. I mean, we make our  
15 points. It's what is required.

16 So a lot of stuff I have in here, a lot of  
17 these witnesses probably won't be there. Remember, I got  
18 back in this case. I was out, so I put the box away and I  
19 came back in about three or four weeks ago. Unfortunately,  
20 they've been the worst three or four weeks of my life with  
21 two Supreme Court arguments, a huge election fight that's  
22 still going on in Chester County and a number of other  
23 trials.

24 So I wish I could tell you like Perry Mason,  
25 I've been sitting here for three weeks just doing this, but

1 I haven't been. So --

2 JUDGE BARTON: I trust that the parties will  
3 continue to work on the stipulations and so forth. The  
4 court will issue a trial order probably later today or  
5 tomorrow, but as we discussed previously, January 18, 19  
6 and, if needed, 20. Maybe we're going to go beyond that.  
7 We'll have to wait and see.

8 MR. STRETTON: We might go beyond that, but  
9 not -- if we do this right, and we're going to do it right  
10 -- Elizabeth and I will work it out. We always do. I don't  
11 think it will go past five days, because I intend to get  
12 together a set of stipulations that I think she can live  
13 with, and I'll remove my word "slanted" to some extent. We  
14 couldn't agree to them, but I can get them where we agree  
15 enough that it's not going to be five days of her case. It  
16 will be two or three.

17 And I'll get those to her. I haven't sat  
18 down and redictated them, but I will do that now. I think  
19 we can work it out. I'm too busy to spend three weeks  
20 before you. As much as I like everyone, I couldn't do it.

21 JUDGE BARTON: Okay. We contemplate the  
22 trial will be in this building.

23 MS. FLAHERTY: Thank you.

24 MR. STRETTON: Good. I'm glad we're not  
25 using the Widener Building. If I get stuck one more time in

1 that elevator --

2 JUDGE BARTON: Okay. That concludes this  
3 proceeding. Thank you.

4 (Whereupon, at 12:35 p.m., the prehearing  
5 conference was adjourned.)

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C E R T I F I C A T E

I hereby certify, as the stenographic reporter, that the foregoing proceedings were taken stenographically by me, and thereafter reduced to typewriting by me or under my direction; and that this transcript is a true and accurate record to the best of my ability.

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By: Sandra J. Milus  
Sandra J. Milus

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