

1 this and tell me if this appears to be a correct and accurate
2 copy of your responses?

3 A Without comparing it line by line it appears to be
4 the correct copy.

5 MR. MEDLIN: Your Honor, we would tender D6.

6 MR. JONES: Your Honor, I'm not sure what the purpose
7 is of tendering all of the interrogatories unless it has
8 something to do with some impeachment.

9 MR. MEDLIN: Your Honor, if we can stipulate the
10 numbers. I don't need to tender them.

11 THE COURT: What numbers?

12 MR. MEDLIN: Do you stipulated that it was the total
13 with his caveats of \$32,000 in '07 and twenty five and
14 change thus for in '08?

15 MR. JONES: If you've got the documents that we
16 provided to you, we'll stipulate as to the documents.

17 THE COURT: I mean, I understand what he's saying,
18 Mr. Medlin.

19 MR. MEDLIN: Okay. But let me keep going. I don't
20 want to --

21 THE COURT: You've tried cases before me before. You
22 know I am listening.

23 MR. MEDLIN: Yes, absolutely. And I don't want to
24 belabor the point, Your Honor.

25 Q (By Mr. Medlin) Let me hand you 7. Scheduled

1 payments through the year. Does this appear to be a true and
2 accurate copy --

3 A This is a document that I went and pulled for you
4 guys in response to your discovery request that summarizes
5 all of the payments made by the fiscal office to me as a
6 member of the general assembly. It's broken down by what was
7 in session, out of session, the number of days worked, what
8 was other expenses, mileage, so forth.

9 Q And I understand the caveats, but if you'll look --

10 MR. MEDLIN: I'll tender exhibit 7, Your Honor.

11 THE COURT: Let me say this if I can, Mr. Medlin.

12 When I asked you for a copy of her child support
13 worksheet, you actually gave me a copy of Mr. Smith's
14 worksheet. I don't have her worksheet. So I was under
15 the impression we weren't having a fight about his
16 income. So I need to know because I have limited access
17 to child support guidelines.

18 MR. MEDLIN: It's my fault, Your Honor. I
19 apologize.

20 THE COURT: That's all right. And you can have this
21 other one back. I really don't need two of them unless
22 you want me to have two of them.

23 MR. MEDLIN: I'm sorry, Your Honor.

24 THE COURT: We'll swap it. Okay. So there is a
25 fight. Okay.

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MR. MEDLIN: I'll tender D7, Your Honor.

THE COURT: So let me go play with the computer. I'm listening.

MR. JONES: I'm sorry, Your Honor. There is not one. Is that the response -- I couldn't hear -- on the child support worksheet?

MR. MEDLIN: I had mistakenly pulled --

THE COURT: What he had done was he had given me --

MR. JONES: Mine.

THE COURT: -- yours.

MR. JONES: Yes.

THE COURT: And I didn't have one of hers. So I assumed there wasn't a fight over his income. Now I find out there is a fight over his income which gives me more of a problem because of access to support guidelines.

MR. JONES: Okay. Well, me too for the first time.

THE COURT: Okay.

MR. MEDLIN: Your Honor, we would tender D7.

MR. JONES: I have no objection.

THE COURT: No objection. Let me see if I can --

Q (By Mr. Medlin) And, again, I'm trying to be very brief, Mr. Smith. Is the final -- is the final number on page one of D7 \$25,379 and on page two \$32,080?

A Those are - those do not reflect income. If that's the question.

1 Q Well, I understand, sir. But what I'm doing is I'm
2 adding the per diem salary, other expense, mileage, other
3 transportation, and the total you actually received whether
4 it was reimbursement or otherwise, are accurately reflected
5 as shown on D7?

6 A As long as -- as long as you're not suggesting that
7 was income to me. That's -- those are dollars that were
8 received. That is correct.

9 Q And it's your contention that of the actual income
10 that number would actually be a \$17,000 figure?

11 A No, it's the IRS's contention.

12 Q Do you receive income -- the gross base salary as
13 shown on D7?

14 A I received the gross base salary as shown on D7.

15 Q Okay. Thank you.

16 A But -- and can I explain further?

17 Q If there's more that you haven't already said.

18 A Just so that there's no confusion. The Internal
19 Revenue Code section 162H says that when you live outside of
20 a fifty mile radius of the capitol then these payments are
21 not to be deemed as income. So just so there's no confusion
22 about that.

23 Q You have prepared your domestic relations financial
24 affidavit. Correct?

25 A In consultation with my attorney, yes.

1 Q The gross monthly income you have according to this
2 is only \$18,000. Is that correct?

3 A That was -- is correct that it reflects that. It
4 was an estimate based upon an anticipated paycheck that we
5 had not yet received. We were -- we actually received my
6 first paycheck on September the 15th. And this was filed on
7 August the 14th. So we were giving a good faith effort to
8 find -- we knew what the salary was going to be but not
9 precisely what the gross amount would be until we saw that.

10 Q Okay. According to this your rent right now -- is
11 that \$1610?

12 A That's correct.

13 Q In addition to that you have expenses that you
14 incur, such as meals outside of the home, of \$300? Is that
15 right?

16 A What page are you on?

17 Q I'm on page -- under number 5A, your expenses each
18 month. It says expenses outside of the home -- I mean, meals
19 outside of the home \$300. Do you think that's fair and
20 reasonable?

21 A That seems to be a good approximation.

22 Q And that doesn't include the ones that you eat on
23 the job and that you're reimbursed for. Correct?

24 A Correct.

25 Q All right. You've also got electricity and water,

1 garbage, sewer, repairs, maintenance, lawn care. And you've
2 got other expenses each month that relate to utilities.

3 Correct?

4 A Correct.

5 Q Do the utilities that you have in your apartment,
6 are they paid separately from your rent?

7 A Yes.

8 Q So the rent itself is \$1600?

9 A No.

10 Q What's the rent itself?

11 A The rent is \$1,000 at my residence.

12 Q And what do you estimate the utilities at your
13 residence to be?

14 A The twelve month average for electricity is two
15 seventy-nine. Beyond that it's -- utilitywise there's not a
16 lot of cost outside of the electricity bill.

17 Q Do you have water and sewer?

18 A I'm on a well so I don't pay a water bill. And I'm
19 on a septic system so I don't pay a sewer fee. And I take my
20 own garbage to the dump. So I don't have a garbage fee.

21 Q What about gas?

22 A It's electric. I don't have any gas bill at the
23 residence.

24 Q So to live in your apartment you pay \$1,000 rent a
25 month and 279 a month for your electricity on average.

1 Correct?

2 A In my residence.

3 Q Does anybody else live there with you?

4 A The kids when they are with me they're there, yes.

5 Q Are there any other fixed costs that you have at
6 your residence other than 1279? Because I'm adding a 1,000
7 and 279 to be 1279.

8 A Let's see. I have rental insurance, which is about
9 \$25 a month. I have an alarm monitoring system, which is
10 about \$14 a month. I pay a cable TV service, which is about
11 \$100 a month. And then I have household grocery items to
12 stock the house.

13 Q How much are groceries? How much does it cost you
14 for groceries?

15 A Well, I put down \$250. And I think that's probably
16 a little low, but I was being conservative.

17 Q All right. 250, 100, 25, 14, 1,279, and then 300.
18 That's what I've written down. Is that about right?

19 A For the residence.

20 Q Okay. When did you buy the Harley Davidson
21 motorcycle?

22 A I believe it was about a year and a half ago.

23 Q And were you separated from your wife when you
24 bought it?

25 A Yes.

1 Q How much did that cost?

2 A It was sort of a wash. I got a loan from United
3 Community Bank and they basically sold it to me for the loan
4 value and I financed that. So I didn't -- there's not really
5 any equity in the motorcycle give or take, you know, five
6 hundred to a thousand dollars at most depending on what a
7 sale might bring. And --

8 Q Well, let me ask the question again and then you
9 can explain it. When you bought the motorcycle what was the
10 purchase price?

11 A Purchase price -- it's --

12 Q When you bought it.

13 A I put it in discovery in my responses to you
14 because I went and looked it up. I believe it was \$5,000 or
15 thereabout.

16 Q So your cost in 2006 when you went to buy it it was
17 a cost of \$5,000 to get a 2006 Harley Davidson Sportster?

18 A That's an estimate. But I think that's in the
19 ballpark.

20 Q I have it shown there that the fair-market value is
21 \$5,500 on your domestic relations financial affidavit. Is
22 that accurate?

23 A When we prepared the domestic relations affidavit I
24 looked up the value of the bike and the loan balance and put
25 exactly on there what it said. So as of August when I signed

1 that that was -- should have been a hundred percent accurate.

2 Q So, sir, this - I'm still am not seeing where the
3 purchase price is. You're saying that you purchased it for
4 5,500 in '06 and it's still worth 5,500 as fair-market value.
5 Is that what you're saying?

6 A I -- I took the loan out to transfer the title to
7 me and didn't -- and began making payments on it. And I
8 assumed that the payments which are 149 a month have brought
9 down the principal slightly and it's depreciated slightly.
10 I'm not upside down on it, but there's no real equity in it
11 either. It's not a high dollar type of motorcycle.

12 Q Okay. I just want to ask one more time because I'm
13 not sure you're answering me. It says FMV. That means fair-
14 market value today. Correct?

15 A It meant fair-market value the day that I signed
16 it. I was swearing to what it was the day I signed it, which
17 was August the 18th.

18 Q Of what year?

19 A Of 2008.

20 Q Okay. But you bought it in '06. Correct?

21 A '06 or '07. I don't remember which year I bought
22 it in.

23 Q Okay. Within the last couple of years after you
24 separated from your wife where you found this motorcycle,
25 what was the price tag on the motorcycle when you got it? I

1 don't want to know about loans. I want to know what was the
2 price tag when you bought it.

3 A I'm trying to remember. It was a repossession and
4 I bought it from the bank as a repo. And I think it was in
5 the neighborhood of \$6,000.

6 Q So in '06 your testimony before this court is that
7 you got a 2006 Harley Davidson Sportster less than a year old
8 for \$6,000?

9 A It had been repossessed and the bank had lost money
10 on it and they were selling it for the loan balance.

11 Q And that was \$6,000?

12 A That's the - that's the Blue Book value of it if
13 you look it up today. Or it was in August. It's just one of
14 their lower-end bikes.

15 Q On May 7th 2008 you cashed out \$39,690.12 from J.P.
16 Morgan Chase bank, didn't you?

17 A That's right.

18 Q Where did that money go?

19 A It takes a moment to explain, so if you'll bear
20 with me.

21 Q I'm just asking you where the money went.

22 THE WITNESS: Your Honor, it's going to take me a
23 minute to answer the question.

24 THE COURT: Just take your time.

25 THE WITNESS: Thank you, Your Honor.

1 A In March of this year I lost my job and so I did
2 not have employment to support our family starting in April
3 of this year. I was looking, trying very hard to find a job.
4 As you can see from the demands that your client makes as to
5 expenses she spends on a monthly basis of \$6,000 or so,
6 there's a pretty big burden on me being the sole financial
7 breadwinner to try to provide for me and her and the family.
8 And so I did not have an income from an employer for six
9 months this year from April through September 15th. During
10 that time we had no available resources. Michelle was not
11 working. I did not have a job. And so the only decision
12 that I saw that we could make was to take out that money that
13 we had built up into that savings retirement account and to
14 use that money to help us get through that time and support
15 everyone until such time as I could get gainful employment.
16 Which I did in August and received the first check September
17 15th. But during the time from April through September the
18 15th we essentially lived by necessity off of -- and paid all
19 the bills for Michelle and for me off of the savings
20 retirement account that we had built up by virtue of me not
21 having an employment check during that time period.

22 Q Were you getting money as a member of the general
23 assembly during that time?

24 A I received -- yes, I received \$900 a month during
25 those months and that was the only income that I had other

1 than I attempted to do some limited legal work for clients
2 that I knew in the community on a fee basis. And I would
3 complete the work and charge them a fee and they would pay
4 it. And I've listed all that to you in our discovery
5 responses. It amounted to a pretty small figure. It was
6 about \$7,000 total over that six month period. So we really
7 lived off of the retirement account until I could obtain a
8 job. And, frankly, the debts grew, the needs grew, and it
9 was a very frightening experience for me to go through in
10 this economy.

11 Q Do you have any ownership interest of where you
12 live right now?

13 A No.

14 Q You still have about \$100,000 in your campaign
15 account.

16 A I do. They're not personal assets, but I do have
17 an approximate balance of \$100,000.

18 Q When is your next election?

19 A 2008 -- 2010.

20 Q Did you lend money to that account?

21 A I don't think I recognized any outstanding loans
22 that were made to the account. Whenever you run for office
23 virtually everything you do constitutes some sort of benefit
24 to the account. I mean, if I drive somewhere to attend an
25 event, theoretically my driving there costs me personally

1 something in mileage, wear and tear on the vehicle, and so
2 forth. So in a technical sense that's probably around in the
3 account. But we typically don't reflect things like that
4 unless it is a monetary amount that is paid to the account for
5 some purpose and we'll recognize that.

6 Q Have you loaned any money, cash money, checks,
7 deposits of any kind that are money to the account?

8 A I do not believe so.

9 Q Have you ever lent money to the account?

10 A I -- I -- it seems like maybe there was a couple of
11 instances where I purchased something the account needed and
12 reimburse myself for the purchase.

13 Q Have you paid yourself back?

14 A Yeah. There's no outstanding money owed to me from
15 the account, if that's what you're asking.

16 Q At times you can give money back to contributors.
17 Is that correct?

18 A That is correct. In fact, in an effort to help
19 Michelle in her situation, although there's no obligation to
20 do so, I've sent her parents \$4,000 to refund a contribution
21 they made in 2002 to the campaign in hopes that maybe they
22 would coordinate together and add that to her available
23 resources to purchase a car.

24 Q That was -- that was between her parents and your
25 campaign. Correct? That's not you personal -- you can't use

1 that account like your own money, can you?

2 A I had the -- I had the option to voluntarily refund
3 it. And she had asked me for it so she was involved in it.
4 And so I said what I can do for you is I can --

5 Q Let me have you to answer the question. That wasn't
6 your personal money, was it?

7 A No.

8 Q And that was between her parents and your campaign.
9 Correct?

10 A Except to the extent that she was involved in it as
11 well.

12 Q But it wasn't her money. She never gave her
13 personal money to the campaign.

14 A She never gave any personal money to the campaign.
15 She did ask me to refund that to her parents -

16 Q She doesn't --

17 A -- to help her out.

18 Q She doesn't have any personal money that she can go
19 access, does she?

20 A She doesn't allow me to see any of her finances so I
21 can't answer that.

22 Q Do you have any reason to believe that \$500 a month
23 is a sufficient amount for her to buy groceries, the clothes
24 for the children, all the things she needs for field trips,
25 the things that she needs on a daily basis?

1 Q It's just not accurate. I pay every bill that she
2 provides to me a hundred percent. I give her a gas card to
3 charge all of her gas to. I give her \$500 a month in
4 discretionary money. And anything above that that she
5 provides to me I pay. I mean, just this weekend she provided
6 me a list of things. She wanted for the kids to have
7 yearbooks at the school and I bought all four kids yearbooks.
8 So the suggestion that she is doing those things may be true,
9 but only to the extent that she turns around and hands me the
10 invoice to either receipt her back, refund the money to her,
11 or to pay directly. So, no, it's not just the \$500.

12 Q Other than the yearbooks didn't she want some
13 Christmas money?

14 A We've talked about that and she then said, well, my
15 lawyers are going to handle you on the 19th.

16 Q You haven't given her one dime of Christmas money?

17 A I gave her \$500 this week actually.

18 Q But that was --

19 A And pending -- pending a hearing that was three days
20 later and paid all the bills for December. And she said
21 you're going to have to deal with my lawyers this week anyway.

22 Q And wasn't that \$500 what you contend to be the
23 regular \$500 amount payment?

24 A I've given it to her every month. I gave it to her
25 even when I didn't have a job and I would borrow money from

1 credit cards to get her money for discretionary purposes even
2 though she wasn't working.

3 Q Do you want her to have safe and reliable
4 transportation for her and the children?

5 A Certainly.

6 Q Your attorney had asked my client about her asking
7 you to leave the bedroom. That was after the relationships
8 with Ms. Michael and Ms. Deaton, wasn't it?

9 A No, we've actually had difficulties for several
10 years. And there have been -- there's a lot of contention of
11 acrimony in the home. There have been situations where she's
12 thrown things at me and broken things, driven the car at me --

13 Q Right now I'm just asking the move out of the
14 bedroom --

15 MR. JONES: Let him finish answering you.

16 MR. MEDLIN: He's not answering the question.

17 MR. JONES: He is answering the question. He's
18 explaining his answer.

19 THE WITNESS: I'm trying to answer the question.

20 THE COURT: He was answering the question. I'm going
21 to allow him to go forward.

22 A It was during those times when she was throwing
23 things at me, breaking furniture in the house, driving the car
24 at me, that really we just hit a point where it didn't seem
25 reconcilable. So we went through a series -- a staged

1 separation where first we tried it in-home. Then that didn't
2 work. Then I moved downstairs to a different floor and then
3 she would throw things downstairs and yell at me. That wasn't
4 going to work. And so finally she said you need to get out of
5 the house and file for divorce. And so I did. And, you know,
6 that was -- that activity started and the marriage fell apart
7 long before I was ever involved in any other relationship.

8 Q Before February 2005 you had seen Ms. Deaton and Ms.
9 Michael. Correct?

10 A That is not correct.

11 Q You didn't have romantic relationships with either
12 women before February 2005?

13 A I had not -- I had not met Ms. Michael in '05. I
14 had had a relationship with Ms. Deaton.

15 Q In fact, didn't you pay the salary of one or both of
16 these ladies?

17 A I've never paid any salary or given any money to Ms.
18 Michael in any way. Ms. Deaton did work in my office for a
19 period of time and received compensation for her work.

20 Q And what office was that?

21 A In the - in the campaign office and also in the
22 senate office.

23 Q Was she your personal secretary?

24 A I don't know whoever gave it a title. She was an
25 assistant and did what needed to be done on the campaign and

1 also on the senate side.

2 Q And when did your relationship with her start?

3 A It grew over time and it's hard to put a specific
4 date on the start of it.

5 Q When did it become romantic or intimate?

6 A I would say some time in -- some time in probably
7 2004.

8 Q You've been -- other than when your wife did these
9 part-time jobs during law school, and these other part-time
10 jobs that she has done, you've been the only income earner for
11 your family. Correct?

12 A That's correct.

13 Q And you were participating in the decision for
14 Michelle to stay home and raise your children. Isn't that
15 correct?

16 A Well, we have had discussions about it and I have
17 encouraged her to try to find some part-time work during that
18 stage like many of her friends have because we needed -- at
19 the time my income was less than \$100,000, we had two children
20 in Darlington, we had a house that is worth a quarter of a
21 million dollars now and we were over our head and I needed
22 some help with that. And she adamantly refused to do that.
23 But, yes, we have had conversations about her working from
24 time to time or staying home.

25 Q Don't you agree that you approved of her and, in

1 fact, endorsed her being the primary person to stay at home to
2 raise your children?

3 A No.

4 Q You didn't approve of that?

5 A No. I told her I think we need to work out
6 something where we have some supplement to our income. And
7 subject to being able to take care of the kids, that's both of
8 our concerns. That it needed to be a partnership where we
9 both looked at the finances and said how can we both help in
10 some way, as most all of her friends do.

11 Q Other than the part-time jobs prior to March of 2005
12 -- or February of 2005 you were all for her being at home with
13 kids, weren't you, sir?

14 A I think I've tried to answer that and I'll try to
15 say it again if that helps. But, no, that is not the case. I
16 have asked her to help participate with income production for
17 the family so that we can make these obligations work and she
18 is steadfastly defiant. That, in fact, at one point said I'll
19 never get a job because the court will give me more money if
20 I'm not employed.

21 Q You know, sir, that she does this part-time work at
22 home now, don't you?

23 A With the creative memories?

24 Q Yes.

25 A They have cropping parties every third week and she

1 gets together with the girls and they make scrapbooks. And
2 she's never shown me any finances from that. She's never
3 contributed from that to the family income. The first time I
4 ever knew about it was this week when she said it's a net of
5 \$85 a month.

6 Q Sir, when you look at the income potential that your
7 wife has, wouldn't you agree the real estate market is in the
8 tank right now? There's not many realtors that make money, is
9 there?

10 A I would say this. She is a highly qualified,
11 competent person --

12 Q Please answer my question.

13 A I'm trying.

14 Q Is the real estate market good right now?

15 A There are people making money in real estate. There
16 are people with real estate licenses working in spin off
17 businesses. There are lots of areas where jobs can be had and
18 she is remarkably qualified --

19 Q Right now I'm just asking about real estate.

20 A -- and competent to get a job. But she just doesn't
21 want to do that.

22 Q Isn't it true that the real estate market is in the
23 tank right now? You know real estate.

24 A The real estate -- the real estate market is
25 depressed, that's true.

1 Q And regarding these other jobs, most all these jobs
2 require somebody to have left home before 9:00 in the morning
3 and working until after 3 or 3:30 in the afternoon. Isn't
4 that true?

5 A No. If you're saying that someone can't work when
6 their kids are in school full-time, I don't accept that.
7 There are lots of jobs where people can have someone work in a
8 job possibly even partly from home when the kids are in school
9 full-time. I mean, they're gone from 8:00 until 5:00 if they
10 do the after school program. And --

11 Q Do you want your children in that after school
12 program every day?

13 A You know, our kids are remarkable and they have
14 straight A's across the board. One thing that terrifies
15 them is that they've heard rumors that she wants to take away
16 Wednesday nights -- from spending the night with me. That's
17 the one time of the week where they really see me during the
18 week. And their grades are top notch. They are in the top of
19 each one of their classes. And they don't want that. They
20 want to be able to see me and spend the night with me on
21 Wednesday nights. So to shake that up would be a mistake. To
22 suggest they would do something different than what's working
23 would probably be a mistake.

24 Q Mr. Smith, it would be a mistake to do something
25 different than what you're doing now. Correct? It would be a

1 mistake. That's what you just told the court.

2 A Your question seems vague. If you'll explain what
3 you mean by that.

4 Q Sure. I asked you a question about whether or not
5 she should have been home in the afternoons and your answer
6 was if it ain't broke don't fix it including Wednesday
7 overnights. And I didn't ask about Wednesday overnights, but
8 you made a good point --

9 THE COURT: Mr. Medlin, if you've got a problem let
10 me know.

11 MR. MEDLIN: Thank you, Your Honor.

12 Q (By Mr. Medlin) In the scheme of things, do you
13 think with the straight A's and your kids doing top notch are
14 a credit at all to your wife being able to be there for these
15 children the way she has been?

16 A I think we both have been able to participate in
17 their lives in the way that they know we love them and support
18 them and help them in school. And I think that's contributed
19 to their success equally. That doesn't mean --

20 Q Okay. I want --

21 A -- however that when they are in school that -- and
22 not in the home that someone else can't contribute some to the
23 family finances. That doesn't mean they don't have to be
24 there -- she doesn't have to be gone in the morning or gone in
25 the afternoon.

1 Q Sir, do you not think -- and I don't want to -- your
2 answer which covered sixteen things.

3 A I'm sorry.

4 Q By her being there in the morning, by helping with
5 the volunteering at their schools, by helping with the car
6 pool in the morning, by being there when Marshall comes home
7 at age five, do you not give her credit at all individually as
8 to why these kids in your own words are top notch.

9 A Well, let me -- let me answer by telling you --

10 Q Yes or no, sir.

11 A I do give her credit. And let me explain why I
12 think that makes sense. For the first two years we did this I
13 took them to school every single morning. Every single
14 morning without fail I drove over, picked them up, took them
15 to school. And everything was going great until she got upset
16 that she thought I was too involved in their life and so she
17 wanted to do that. Subsequent to that they got tardy after
18 tardy after tardy after tardy because she couldn't get up and
19 get them to school on time. She even apologized to me in
20 writing about the number of tardies they had because the
21 school was starting to discipline them. If you're dedicated
22 to it and actually working towards making it work, yes, I
23 think she's been a benefit and a big help to them. But it
24 does take work and there is an opportunity to do that and to
25 provide for some family supplemental income.

1 Q Mr. Smith, when is the last time you drove your
2 children to school?

3 A Yesterday morning.

4 Q Before that?

5 A Monday morning.

6 Q Is it when you have the overnights?

7 A Now it is at her insistence.

8 Q Other than that -- when you have the overnights --
9 when is the last time you have driven the children to school?

10 A Whenever she calls and asks me to do it. Because
11 she doesn't want me to do it any other time.

12 Q When was the last time?

13 A There was some meeting or conflict that had arisen
14 and she asked if I could take them. And I don't remember the
15 dates of that that I took them. When she -- a couple of years
16 ago when she broke her leg I took them every day, took the
17 kids to the pediatricians, took the dog to the vet. I stepped
18 in and did everything I could to make things work.

19 Q When she broke her leg.

20 A I went grocery shopping for her. I went out and got
21 the kids and drove them back for her.

22 Q When she broke her leg.

23 A Whenever she calls me and needs something I do it.

24 Q When you're talking about the time when you said I
25 used to take the kids to school every day --

1 A Right.

2 Q -- other than when she broke her leg, when was that?

3 A During the first two years of the separation I would
4 take the kids to school every single day until she felt like
5 that might look bad in court. And so she said I don't want
6 you doing that anymore. Bring them here and I'll take them to
7 school. I said fine.

8 Q When was that?

9 A It would have been in '06.

10 Q So in '06 you'd been separated two years?

11 A Yeah.

12 Q And you separated in '04?

13 A That's right. We had an in-home separation of three
14 different levels and then an out of home separation beginning
15 of '05. I continued to take them to school in '05 and part of
16 '06.

17 Q And your testimony under oath is until what point in
18 '06 did you take the children to school every day?

19 A I'd have to look that -- I don't know the dates.
20 But at some point she was -- it was probably during one of the
21 semester breaks she decided that that probably looked like I
22 was doing too much and so she wanted to do it. I can tell you
23 the point you can look back to is when the tardy's started.

24 Q So your testimony is '04/'05 until some point in '06
25 you took all of the children to school every day?

1 A Two different schools. That's right.

2 Q Was Marshall in school then?

3 A Marshall went to a separate program then. He went
4 to a PALS program at Trinity United Methodist Church.

5 Q Who took care of Marshall in the morning?

6 A I don't remember if he was -- left early enough to
7 go with them to the school and I took him there. But I know I
8 have taken and picked him up at PALS before.

9 Q You didn't take all five children with you --

10 A I only have four children --

11 Q I'm sorry. You didn't take all four children with
12 you when Marshall was just two years old, did you?

13 A When he was in the preschool program and she needed
14 me to, I did that too.

15 Q So in other words --

16 A In fact, one of the reasons why I was taking the
17 other kids during that time was because it allowed her and
18 Marshall to sleep later because their program started at 9 or
19 9:30 and I could take the other kids for her -- and let her
20 sleep -- to the elementary school and middle school.

21 MR. MEDLIN: Nothing further at this time.

22 THE COURT: Let me ask you this, Mr. Medlin, do you
23 have any further witnesses?

24 MR. MEDLIN: No, Your Honor.

25 THE COURT: Is it all right then if Mr. Jones takes

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Mr. Smith on direct without him coming down and going back up?

MR. MEDLIN: I have no objection.

MR. JONES: Thank you, Your Honor.

THE COURT: I'm assuming you were going to call him for direct, Mr. Jones?

MR. JONES: I will.

DIRECT EXAMINATION by: Mr. Jones

Q Preston, I want to clarify one issue about the campaign account for the record. Explain what uses that you are permitted to make under the law with the funds in the campaign account --

THE COURT: I don't know whether this is appropriate or not. The judges have campaign accounts and I am very familiar with what you can use them for and what you can't use them for.

MR. JONES: I know, Your Honor. I was just doing it for the record.

THE COURT: I gotcha. Go ahead.

A O.C.G.A. section 21-5-33C sets out a code that says the money in a campaign account and the interest earned thereon is not to be considered as a personal asset of a - of a candidate. So it's not -- it's a corporate asset. We actually have a separate incorporation (sic) that runs that.

1 Q Very quickly. If you, for some reason, are no
2 longer a senator, either decide not to run or defeated or
3 whatever, what happens to those funds?

4 A There's only three -- three ways that you can deal
5 with that. One, is you can donate the money to charity, you
6 can refund the money to donors, and you can donate it to
7 political parties or organizations.

8 Q Now did you have a request from your wife concerning
9 a refund of money to her parents so that she would be able to
10 use that? And is that permissible under the law to refund to
11 donors?

12 A I did. She asked me -- told me that she wanted me
13 to give them back the campaign contribution they made in 2002
14 so that she could use that money. And I said, well, I need to
15 investigate whether or not there's any legal or ethical
16 prohibition against it because six years have passed. And,
17 two, it would have to be technically cut back to them and you
18 can work it out with them about how to handle that money. It
19 would be between you and her. I did get an opinion from the
20 state ethics commission which says you're allowed to refund
21 campaign contributions regardless of the length of time that
22 has passed provided -

23 Q And did you in fact --

24 A -- you don't refund more than the amount given.

25 Q Right. Did you in fact refund \$2,000 to each of her

1 parents?

2 A I did. I wrote \$4,000 in \$2,000 checks which
3 represents a hundred percent of their donation in March of
4 2002 and I tendered it to her attorneys.

5 Q And that was done at your wife's request?

6 A Well, I did it voluntarily. I mean, there's no
7 really requirement that I refund anyone's contribution, but I
8 knew that she needed some help and I was trying to find a pool
9 of money available to us and we don't have any. And so I
10 offered that to her as a way to help ease the burden a little
11 bit.

12 Q All right. Now with regard to your financial
13 affidavit, just briefly, on page 2, if you'll look under Item
14 3A, you have salary or wages of \$16,666.67. And that's the
15 amount -- the gross monthly amount you receive from Apollo or
16 your employer. Is that correct?

17 A That's correct.

18 Q All right. And then you have another item
19 \$1,445.13, which is approximately \$17,000. Is that the income
20 that you receive from the general assembly?

21 A It is.

22 Q All right. Is there any other gross income that you
23 receive?

24 A No.

25 Q Okay. Is there any source of funds that you can

1 obtain through collateral that you can use to borrow against
2 to pay either me or Mr. Medlin at this time?

3 A Because of the loss of my job for six months and
4 having no employment income, we tapped out every reserve we
5 had to get -- be on the status quo through that time. And
6 that leaves us in August starting from scratch. I mean, we've
7 got a significant amount of debt including student loan debt
8 and credit card debt and home debt. And we've got income
9 stream now, but we don't have any reserves or assets we can
10 tap into.

11 Q You've not -

12 A The only thing I can think of, you know, I would be
13 happy to -- if Michelle wants to we can sell the lot next to
14 the Twickenham home and give that money to her attorney if he
15 wants that. And so that would be -- the tax basis of it is
16 \$12,000. And, you know, I don't know what it would bring at
17 the market for an empty lot in Twickenham. But certainly I
18 would offer that up as a possibility.

19 Q You have itemized on the last page in detail, to the
20 best of your knowledge, all of the assets and showing the
21 loans and balances of those loans. Is that correct?

22 A That is correct. It was written in August and so
23 there's slight variations in the balances of each one
24 probably. But, yes, that is correct.

25 Q Okay. With regard to the expenses that Mr. Medlin

1 was asking you about, you have a condo in Atlanta that -- and
2 explain why you have a residence and a condo.

3 A Yeah. It's almost a required -- my residence -- my
4 personal residence is here in Rome and Floyd County outside
5 the city limits of Rome. And that's where the children come
6 and that's where the base is for them and for me. But I have
7 -- working at the state capitol early mornings to late nights
8 -- in addition now with the job I was able to come into also
9 being primarily out of the Atlanta area -- it ends up being --
10 the number of hours you work and the time you're there it
11 takes the entire day. And so it's almost necessary to have
12 some place to stay there. And so I found a cheap, one
13 bedroom, small apartment that I use. And what I -- how I
14 handle that is eight months out of the year I pay for that out
15 of the income that I earn and four months out of the year I
16 take it on as a legislative expense because that's the time
17 that it's used for legislative --

18 Q What's the rent on that apartment?

19 A Nine fifteen.

20 Q All right. And is that where you came up with the
21 mortgage or rent of sixteen ten?

22 A Yeah. That's --

23 Q So that's the residence and the condo?

24 A Yeah. One thousand dollars a month times twelve and
25 then nine fifteen times seventy-five percent gets you to

1 sixteen ten annualized.

2 Q Annualized. Okay. And for the childrens' expenses
3 that you've listed here, you listed school tuition of \$60 and
4 that's because they are out of the district. Is that correct?

5 A Yeah, we're outside the city limits by ten feet so
6 we pay \$20 per child per month. So that's \$80 a month times
7 ten months.

8 Q And not to be too picky, but those expenses that are
9 listed, do you in fact pay those?

10 A Yeah, I try to be as conservative as I could on
11 that. I suspect they're more. But I do pay those.

12 Q All right.

13 A I'll just give you an example. This last month the
14 income came in, I paid all of Michelle's bills, all of my
15 bills, all the creditors, all the debts, and I had \$20 left in
16 the account going into the next pay period for the last five
17 days.

18 Q Describe if you would your contact and visitation
19 with the children over the last two years.

20 A We've done a couple of different ways because we've
21 actually been separated now more than four years, if you
22 include the in-home separation time. And basically what we do
23 is I do have every other weekend plus Tuesday and Wednesday
24 nights of every week. And we did that for about a year. It
25 was very successful in the sense that the children were very

1 adjusted. They were doing outstanding. Each one of them is
2 in the top of their class. The highest readers in their
3 class. Straight A's across the board. My son is in college
4 preparatory classes now at Rome High. And in one of his
5 classes he has a 103 average. So he's on board.

6 And we realized how difficult it was to make that
7 schedule work with Tuesday and Wednesday nights. And we -- my
8 work schedule -- so I proposed a change about a year ago to
9 say let's take the Tuesday night off and put it on Sunday
10 night when we're all together. And let's just go to Wednesday
11 night during the week. So that every other week when I have
12 them on the weekends I pick them up at 6:00 on Friday and
13 return them on Monday morning to school. And then I have
14 every Wednesday --

15 Q That's every Wednesday?

16 A Every Wednesday at 6:00 until the next morning when
17 I take them to school. Now Michelle has wanted to take them
18 to a church program on Wednesdays so I've deferred to her on
19 that so even though my time technically starts at 6, they
20 don't get done until 7:30 or 8, and so that's when I'm there
21 waiting to pick them up. And they come over and we have
22 dinner together and we go home and we finish homework and play
23 a game, tell bedtime stories and go to sleep. And the next
24 morning I take them to school, which actually is fortuitous
25 because my son goes to a Bible study at 6:50 in the morning at

1 Chick-fil-A. And so I'm able to get him to that as opposed to
2 him being tardy to that and waking everybody else up. And
3 then I come back and I coordinate with the car pool to get the
4 two youngest ones there and get the older one to her school.
5 So it works. I do that on Monday mornings and Thursday
6 mornings when I have the kids.

7 And I'll tell you, from time to time Michelle said
8 something in front of the kids about we shouldn't do
9 Wednesdays, it's too disruptive. And the kids get very upset
10 about that. Because it's their one time every week, during
11 the week, when they can come and be with me and kind of relax,
12 do homework, you know, have a pizza or whatever, and get to
13 bed and go to school the next day. And we don't -- that's our
14 weekly kind of grounding.

15 Q The children look forward to that?

16 A They look forward to it very much. And when they
17 kind of caught wind that it might change, they kind of got
18 upset. And things are going so well for them in school I
19 would hate to see us, you know, upset or change that just
20 because -- and, in fact, if I -- if they go to church and get
21 out at 7:30 or 8 there's really -- and they're not going to
22 spend the night with me, then there's really no time to visit
23 at all. So it's a way of squeezing out the visitation all
24 together.

25 Q Okay. In the parenting plan that I got today you