

SENATE SELECT COMMITTEE ON DISCIPLINE AND EXPULSION

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COMMITTEE MEMBERS PRESENT:

- SENATOR DAVID WHEELER, CHAIR
- SENATOR JIM BOLIN
- SENATOR SYDNEY DAVIS
- SENATOR HELENE DUHAMEL
- SENATOR BRENT HOFFMAN
- SENATOR LIZ LARSON
- SENATOR DEAN WINK
- SENATOR ERIN TOBIN
- SENATOR REYNOLD NESIBA

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TUESDAY, JANUARY 31, 2023, 5:10 p.m.
 500 EAST CAPITOL AVENUE
 PIERRE, SOUTH DAKOTA 57501

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APPEARANCES:

As Counsel for Employee: JACK H. HIEB
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 PO Box 1030
 Aberdeen, SD 57401

As Counsel for Senator
 Frye-Mueller: STEVEN G. HAUGAARD
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-and-

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TUESDAY, JANUARY 31, 2023

CHAIRMAN WHEELER: I will call this select committee back into session. We do have a court reporter present taking testimony today; so I would ask everybody to be sure to speak slowly and clearly for her benefit. And then for purposes of the record, I would ask Senator Frye-Mueller's counsel to identify themselves.

MR. HAUGAARD: Steve Haugaard appearing on behalf of Senator Julie Frye-Mueller.

MS. TRASK: Stephanie Trask also appearing on behalf of the Senator.

CHAIRMAN WHEELER: The record can reflect that Senator Frye-Mueller is also present along with all members of the committee. Then I would ask counsel for the employee to introduce himself.

MR. HIEB: Jack Hieb appearing on behalf of (employee).

CHAIRMAN WHEELER: Thank you. So we are convening here for the purpose today of receiving testimony from (employee) regarding the incidents alleged in the complaint. So I will first open it up to (employee), if she wishes to make an opening statement or any direct testimony to the committee, you can do so at this time.

COURT REPORTER: Do you want me to swear her in?

CHAIRMAN WHEELER: Yes, I appreciate that. We will do

1 an oath for each individual; so as the Chair of the committee,
2 I will be administering those oaths. So (employee) I would ask
3 you to raise your right hand.

4 Thereupon,

5 EMPLOYEE,
6 called as a witness, being first duly sworn as hereinafter
7 certified, testified as follows:

8 EMPLOYEE: I swear that all the testimony I give is
9 correct.

10 CHAIRMAN WHEELER: Thank you. You may proceed.

11 EMPLOYEE: Thank you, Mr. Chair, committee. First and
12 foremost, the statement that I gave you and my supervisor in
13 the LRC, I still stand by that. The big thing I want to just
14 say is I love my job, I love my job, and I very much hope this
15 doesn't affect it, and I love my family. That's my statement.

16 CHAIRMAN WHEELER: Thank you. At any point if you
17 need a break, please let us know.

18 MR. HIEB: With your permission, Mr. Chair, we had
19 talked about this before, and I think the statement that she
20 provided in writing to her supervisor has been pretty well
21 publicized by now, quite a bit of it without her name on it.
22 As long as that's part of the record, I think her intent was to
23 simply suggest that I have put it in writing and she's making
24 herself available now to answer any questions that anyone may
25 have. Thank you.

1 CHAIRMAN WHEELER: Thank you. The redacted version of
2 that statement has been received already into the record and is
3 part of the committee documents. I will start it off with the
4 first question, and (employee), I would like to have you verify
5 for us, did you personally write out this statement?

6 EMPLOYEE: Yes.

7 CHAIRMAN WHEELER: About how long a period of time did
8 it take you to go through and do that?

9 EMPLOYEE: After the incident?

10 CHAIRMAN WHEELER: No. How much time did you spend in
11 preparation of this document?

12 EMPLOYEE: Mr. Chair, I spent a few hours putting it
13 together. I am sorry to say I didn't time it.

14 CHAIRMAN WHEELER: That's completely understandable.
15 Just trying to get a feel for what time you did put into that.
16 I will open it up to questions from the committee. Senator
17 Nesiba.

18 SENATOR NESIBA: Questions to go through the Chair?

19 CHAIRMAN WHEELER: Thank you. We will treat it just
20 like any other legislative committee. Questions will go
21 through the Chair before being posed.

22 SENATOR NESIBA: I am going to follow up on your
23 question. When did you write the statement? Was it right
24 immediately after the incident or did you write it the next
25 day? Just trying to figure out the time frame.

1 EMPLOYEE: Mr. Chair. The next day.

2 SENATOR NESIBA: Thank you.

3 CHAIRMAN WHEELER: Senator Duhamel.

4 SENATOR DUHAMEL: My question is how did it make you
5 feel? Was this a girlfriend to girlfriend? Was it girlie
6 talk, as it's been described? How did this make you feel?

7 EMPLOYEE: Mr. Chair. I felt violated. The
8 conversation had, as I outlined in my statement, began as a
9 conversation over a bill draft. It was not personal. She had
10 asked -- excuse me, Senator Frye-Mueller had asked to meet with
11 me. I did not seek her out. So the conversation had started
12 professionally, and I had every expectation that it would
13 remain professional.

14 CHAIRMAN WHEELER: Senator Bolin.

15 SENATOR BOLIN: Thank you, Mr. Chair. Can you relate
16 how this -- the incident or your version of the incident was
17 communicated to the leadership of the Senate? I assume -- it
18 got there much long before I was aware of it. Can you
19 communicate that to us, just so we get a little more of a time
20 line?

21 EMPLOYEE: Mr. Chair. Unfortunately, I am not clear
22 myself as to what happened after -- so let me begin. I gave my
23 statement to Sue Cichos, the deputy director at the LRC, who
24 then told me she would speak with Reed, the director of the
25 LRC. From then on, I was not party to any other conversation,

1 nor was I aware of what was happening internally with Senate
2 leadership.

3 SENATOR BOLIN: If I can just go a little bit further,
4 this incident took place somewhere between like 3:30 and 4:00
5 o'clock on that particular day. That's accurate, right?

6 EMPLOYEE: Correct.

7 SENATOR BOLIN: And then did you communicate this to
8 anyone else during the remainder of that day?

9 EMPLOYEE: I did not.

10 MR. HIEB: Mr. Chair, can I?

11 CHAIRMAN WHEELER: Go ahead.

12 MR. HIEB: Anybody else at her work place or anybody
13 at all?

14 SENATOR BOLIN: Anyone at all.

15 MR. HIEB: Give them a narrative about what you did.

16 EMPLOYEE: So after the conversation had ended and
17 Senator Frye-Mueller and her husband had left my office, I
18 proceeded to shut my door, and it was upsetting, but I had some
19 other things to think about. It was the end of the day, I was
20 a -- I was quite frankly in shock. My husband's in-laws were
21 in town and certainly -- there was just some other things at
22 play. I wanted to go be with my family, and so with all those
23 things considered, I went home. The first people I actually
24 told that this happened was my husband and my mother-in-law,
25 and that's where I first conveyed these things and really

1 realized how violated I felt and how disgusted I felt with
2 myself that my body parts would be talked about. Thank you.

3 SENATOR BOLIN: Thank you.

4 CHAIRMAN WHEELER: Senator Hoffman.

5 SENATOR HOFFMAN: Thank you, Mr. Chairman.

6 (Employee), I first just want to make a few brief comments,
7 that this is uncomfortable for us, and I can't imagine and
8 genuinely empathize with how uncomfortable it must be for you.
9 I just want to acknowledge that before I get into a few brief
10 questions, but I appreciate your courage in just coming forward
11 and sharing your story honestly and objectively.

12 EMPLOYEE: Thank you.

13 SENATOR HOFFMAN: I have heard it described, I think I
14 read this in the media, as a woman/woman conversation in which
15 someone was providing advice, as if it had been requested, but
16 I would like to know whether this was unsolicited advice or if
17 you had asked some questions along the way asking for advice.

18 EMPLOYEE: This was unsolicited. Nowhere did I ask to
19 be talked to like this. No.

20 SENATOR HOFFMAN: Thank you, ma'am.

21 CHAIRMAN WHEELER: Senator Duhamel.

22 SENATOR DUHAMEL: My question is the husband's
23 involvement. We have been told that the husband left during
24 the, quote, girlie talk. I'm just wondering what was the
25 Senator's husband's involvement in this? Was he there during

1 the uncomfortable parts?

2 EMPLOYEE: He was there standing in front of my
3 doorway, standing in front of my closed door, both her and her
4 husband were standing there. He was nodding in agreement and
5 looking at me through the exchange in a -- his smiling made me
6 severely uncomfortable.

7 SENATOR DUHAMEL: Okay.

8 CHAIRMAN WHEELER: Senator.

9 SENATOR DAVIS: I was wondering if you could describe
10 your relationship with Senator Frye-Mueller prior to this
11 incident.

12 EMPLOYEE: First and foremost, if I could first
13 explain a little bit about my job. I'm a legislative staffer.
14 That means not only do I have my current supervisors in the LRC
15 as my bosses, but I have 105 bosses, and that means I deal with
16 a lot of different ideas and a lot of different things that I'm
17 working on at any one given time. And part of how I give a
18 good service, I believe, how I serve all of you is being
19 friendly, it's being courteous, it's listening to you when you
20 come with bill ideas and so forth.

21 And I recognize the passion and I truly enjoy helping
22 you all, but it's not me being your friend, it's me just being
23 your staffer doing a job. I don't see any of you outside of
24 this job. I did not see Frye-Mueller outside of this job. I
25 did not hang out, hang out or go out to eat with her or

1 anything like that. There is no text messages that would prove
2 that. There is no emails. I have never even seen her in
3 public outside of this building. So I don't -- I don't know
4 why my friendliness in my job is being construed that I'm her
5 friend.

6 SENATOR DAVIS: Thank you.

7 SENATOR TOBIN: Mr. Chair.

8 CHAIRMAN WHEELER: Senator Tobin.

9 SENATOR TOBIN: Throughout your time working with
10 Senator Frye-Mueller, have you ever been made to feel
11 uncomfortable before this day that you have in your testimony?

12 EMPLOYEE: Yes. Would you like me to expand?

13 SENATOR TOBIN: Mr. Chair. Yes, please.

14 EMPLOYEE: Senator Frye-Mueller I do believe has
15 crossed boundaries sometimes with me, I suppose in this because
16 she's believed we were friends, but again, I go back to me
17 trying to do my job and be supportive and get the job done.
18 And at the end of the day, I did allow things -- I did allow
19 her to say things that made me uncomfortable. Unfortunately,
20 this time, this time involved my son. I could not let that
21 slide.

22 MR. HAUGAARD: Just for clarification, do we have a
23 time frame associated with that? There is a reference now to
24 son. I don't understand that.

25 CHAIRMAN WHEELER: I think what I would prefer to do

1 is if you could keep that on your list of questions. I think
2 once the committee is finished with its questioning, I will
3 open it up for counsel to ask questions.

4 MR. HIEB: Can we take just a really short break, with
5 your permission?

6 CHAIRMAN WHEELER: Absolutely.

7 MR. HIEB: I want her to gather herself.

8 CHAIRMAN WHEELER: Let's take a five-minute recess.

9 (Whereupon, the committee hearing was in recess at
10 5:25 p.m., and subsequently reconvened at 5:29 p.m., and the
11 following proceedings were had and entered of record:)

12 MR. HIEB: Thank you, Mr. Chair.

13 CHAIRMAN WHEELER: You are very welcome. We will call
14 the committee back into session. Still on committee questions.
15 Senator Tobin.

16 SENATOR TOBIN: Mr. Chair. As far as feeling
17 uncomfortable previously, can you elaborate on what types of
18 specifics made you uncomfortable previously with Senator
19 Frye-Mueller?

20 EMPLOYEE: Mr. Chair. It would be things that didn't
21 have anything to do with bill drafts, nothing to do with
22 research. It would just be comments, you know, there was -- I
23 got married in (year) in Minnesota, and there was a comment
24 that she couldn't believe I got married in Minnesota, that a
25 specific party controls that state, and she went into some

1 details about that and it crossed the lines of -- again, it
2 crossed the lines of any professionalism. It went into my
3 personal life, into my family. Those were things like that
4 that made me uncomfortable.

5 CHAIRMAN WHEELER: Senator Wink.

6 SENATOR WINK: Thank you, Mr. Chairman. (Employee),
7 I'm reading your statement. Evidently when the Senator came
8 in, you started talking about bills and everything was fine,
9 but then when the conversation moved over to vaccinations, the
10 temperature of the room went up, you started feeling
11 uncomfortable. If I understand this right, you went from
12 uncomfortable to you described it to upset to emotionally
13 violated. What I want to know is did you ever at any time feel
14 in physical danger with this situation?

15 EMPLOYEE: Mr. Chair. I didn't feel that I was in
16 immediate physical danger, but I was concerned that things
17 could escalate, if Senator Frye-Mueller got more upset.

18 SENATOR WINK: Thank you.

19 CHAIRMAN WHEELER: Senator Larson.

20 SENATOR LARSON: I want to get a sense. You mentioned
21 that there were other times in the course of your job that you
22 had felt uncomfortable, and I'm trying to get a sense of was
23 this a common occurrence culturally within LRC that staff had
24 to deal with or was it more of like in the sense that was this
25 the straw that broke the camel's back or was it more of a

1 specific one time or a couple time incident, if there was sort
2 of something? I don't know if you have any thoughts about
3 that.

4 EMPLOYEE: Mr. Chair. In this job, we deal with high
5 tension situations, and people, legislators, staff, we say
6 things, I think we all know that, but, ummm, this conversation
7 went as far as to say that my son would die, my child, that
8 something physically might happen to him based on my parenting
9 decisions. It talked about one of my body parts and sexual
10 acts I would do with my husband, and I don't believe that's --
11 I don't think that's -- that's not falling into the category of
12 maybe getting a little heated if your bill didn't go -- your
13 hearing didn't go the right way. That's beyond what should be
14 happening in this building. I truly believe that crossed a
15 very clear boundary.

16 SENATOR BOLIN: Thank you, Mr. Chair. At any time
17 during any of these -- during the one incident and others, did
18 you ever indicate to the Senator, can you please stop talking
19 about this?

20 EMPLOYEE: Mr. Chair. Quite frankly, I don't feel
21 like I can say that I am -- that -- I don't feel like I have
22 the ability to say that because of my role as a staffer and
23 that you all have that relationship of being my -- I view you
24 all as my bosses, and I don't believe that if I were to upset
25 you in that way, that you may decide not to work with me or

1 something to that effect. So no, I did not.

2 SENATOR BOLIN: Thank you.

3 SENATOR TOBIN: Mr. Chair.

4 CHAIRMAN WHEELER: Senator Tobin.

5 SENATOR TOBIN: With everything that has happened in
6 the last week, have you ever been fearful that you would have
7 to leave your job or that you would lose your job?

8 EMPLOYEE: Mr. Chair. I was fearful, and I still am,
9 that I will be treated differently, that certain legislators
10 may not want to work with me, and I don't want to leave this
11 job, but I do have that fear.

12 CHAIRMAN WHEELER: Senator Duhamel.

13 SENATOR DUHAMEL: Have you paid attention to how the
14 Senator is portraying the incident, and how do you respond to
15 how it's being portrayed versus how you say it happened?

16 EMPLOYEE: Mr. Chair. It's been really upsetting to
17 me to -- I haven't been able to listen to much. Some of the
18 comments I've seen, they are very mean. And so I have had to
19 take a break and not look on social media or look on some of
20 these news blogger sites, just for my mental health. I know I
21 need to take care of myself too in this situation.

22 CHAIRMAN WHEELER: Senator Larson.

23 SENATOR LARSON: This is kind of a follow-on question
24 to that, but had you, in your mind, any expectation of the
25 amount of attention that this has gotten in the media? How has

1 been your -- obviously mentally it's been extremely difficult.
2 Was it worse than you thought? How did you handle that?

3 EMPLOYEE: Mr. Chair. It's been extremely difficult,
4 for the reason I am legislative staff and I enjoy the
5 background. I do not want the lime light. I leave that to all
6 of you, and you all do it very well. I don't want to be in the
7 news. That was not my intention. I just would like to take a
8 step back and just say that when I gave my statement to my
9 supervisor in the LRC, my intention was this was not to get in
10 the news. My intention was just to make my supervisors aware
11 that I was uncomfortable, that I thought this matter needed
12 their attention, but in no way, no, I did not want this in the
13 news, no.

14 CHAIRMAN WHEELER: Senator Bolin.

15 SENATOR BOLIN: Just for the record, (employee), how
16 long have you worked for the LRC? When were you first hired?

17 EMPLOYEE: Mr. Chair. I was hired in (year); so this
18 is my (ordinal) session here.

19 SENATOR BOLIN: And then just to follow up, in the
20 (number) years you have been working in the LRC, have you had
21 any incident with any other Senator, either current or present,
22 that made you uncomfortable, any other incident with any other
23 individual?

24 EMPLOYEE: No. I have not made a statement like this
25 ever accusing a legislator of harassment, no, no.

1 SENATOR BOLIN: Thank you.

2 CHAIRMAN WHEELER: Further questions. Then at this
3 time I will invite counsel for Senator Frye-Mueller to pose
4 questions. Again, we will run those through the Chair.

5 MR. HAUGAARD: Thank you, Mr. Chair. I just want to
6 clarify, going back to that one point where you made some
7 comment about this prior times of discomfort where your son was
8 involved or was this part of it? Tell me about the time frame
9 and what you are talking about in regard to your son.

10 EMPLOYEE: Mr. Chair. This event that I wrote my
11 statement on was dealing with my son. He was just born in
12 (month). No other incidents with Senator Frye-Mueller had to
13 do with my son.

14 MR. HAUGAARD: Mr. Chair.

15 CHAIRMAN WHEELER: Go ahead.

16 MR. HAUGAARD: So during this incident, you didn't say
17 anything to Senator Frye-Mueller or her husband about your
18 discomfort with the conversation; is that correct?

19 EMPLOYEE: No, I did not.

20 MR. HAUGAARD: Mr. Chair. Prior situations, you never
21 expressed to Senator Frye-Mueller that you were uncomfortable
22 with the conversation?

23 CHAIRMAN WHEELER: What I will do is I will let you
24 answer the question. Just be careful we are not repeating. I
25 believe she's answered that previously to other questions, but

1 I'll let you go ahead and answer it again this time.

2 EMPLOYEE: No.

3 MR. HAUGAARD: Mr. Chair, another question. You made
4 a reference to comments that were mean. Who were these
5 comments -- making these comments? Are you talking about
6 something Senator Frye-Mueller said since this came out?

7 EMPLOYEE: Mr. Chair. No, I am talking about --
8 again, this is just my personal feelings. Some of the comments
9 I saw on a blog post I thought were mean, but of course that
10 was just my personal opinion.

11 MR. HAUGAARD: Mr. Chair. Do you have a copy of your
12 employment record with you today?

13 EMPLOYEE: Mr. Chair.

14 CHAIRMAN WHEELER: Go ahead.

15 EMPLOYEE: No, I do not.

16 MR. HAUGAARD: Just to follow up to that. Would you
17 make that available to us?

18 CHAIRMAN WHEELER: I'm going to decline to pose that
19 question to the witness.

20 MR. HAUGAARD: Additional question.

21 CHAIRMAN WHEELER: Go ahead.

22 MR. HAUGAARD: You indicate that you have never
23 accused a legislator of harassment. Have you ever accused
24 anyone else of harassment?

25 SENATOR WHEELER: I am going to also decline to pose

1 that question to the witness. We are going to keep it to
2 conduct related to her job here as an LRC staffer. I believe
3 she's answered that question regarding harassment of people
4 here. If you want to rephrase it in that sense, I would allow
5 that, but I'm not going to open this up to questions regarding
6 any other person at any other time.

7 MR. HAUGAARD: Mr. Chair, it's relevant to
8 credibility.

9 CHAIRMAN WHEELER: I don't believe her having made a
10 prior harassment allegation against somebody is relevant to her
11 credibility, unless you have proof that she's previously
12 testified falsely in that case.

13 MR. HAUGAARD: Mr. Chair. My question to her is
14 simply whether there's been any other allegations of harassment
15 against anyone in the work place.

16 CHAIRMAN WHEELER: If you keep it to questions
17 regarding her employment here in LRC, I will allow that
18 question.

19 EMPLOYEE: Mr. Chair.

20 CHAIRMAN WHEELER: Go ahead.

21 EMPLOYEE: No.

22 MR. HAUGAARD: Additional question. Where did you
23 previously work?

24 EMPLOYEE: Mr. Chair.

25 CHAIRMAN WHEELER: Go ahead.

1 EMPLOYEE: When I started with the LRC in (year), that
2 was my first job beyond working for (place of employment).

3 MR. HAUGAARD: Additional question.

4 CHAIRMAN WHEELER: Go ahead.

5 MR. HAUGAARD: As you were preparing your statement,
6 did you have conversation with anyone else in regard to what
7 should be included in the statement?

8 EMPLOYEE: Mr. Chair.

9 CHAIRMAN WHEELER: Go ahead.

10 EMPLOYEE: No.

11 MS. TRASK: Mr. Chair.

12 CHAIRMAN WHEELER: Go ahead.

13 MS. TRASK: Just a few additional questions. First of
14 all, a clarification. Is this session here considered the
15 Senate's investigation into this matter?

16 CHAIRMAN WHEELER: I'll consider that a question to
17 the Chair. Yes, this is part of the investigation. This is
18 not the entirety of the investigation.

19 MS. TRASK: Additional question. Could you describe
20 the entirety of the investigation just so the defense is clear
21 as to where we are in the investigation?

22 CHAIRMAN WHEELER: Sure. So the committee is
23 receiving testimony today. We are receiving testimony right
24 now from the employee. After we are done with this, I am going
25 to go back into open session. We will then invite testimony

1 from Senator Frye-Mueller. If you have a witness that you want
2 to present, that would be the time to do that. But we would
3 intend that this will be done, the testimonial portion, will be
4 today, and I believe, unless the committee has other requests,
5 that that will be the extent of the investigation.

6 MS. TRASK: Thank you for that clarification.

7 Additional question.

8 CHAIRMAN WHEELER: Go ahead.

9 MS. TRASK: This one for the witness. (Employee),
10 were you asked how you wanted this conversation with Senator
11 Frye-Mueller handled?

12 EMPLOYEE: Mr. Chair.

13 CHAIRMAN WHEELER: Go ahead.

14 EMPLOYEE: No.

15 MS. TRASK: And do you know who made the decision to
16 make the conversation between you and Senator Frye-Mueller a
17 public spectacle?

18 CHAIRMAN WHEELER: I'm going to decline to pose that
19 question. She's already said that she had given the statement.
20 If you are referring to the written statement, she gave that to
21 a supervisor and was not part of the decision after that point
22 on when to release that. If you have a follow-up on that
23 point, I'll allow it.

24 MS. TRASK: One additional. Do you appreciate the
25 Senate's handling of this matter to date?

1 CHAIRMAN WHEELER: Go ahead.

2 EMPLOYEE: Mr. Chair.

3 CHAIRMAN WHEELER: I will give you the choice to
4 answer that question. You are not required to.

5 EMPLOYEE: Thank you, Mr. Chair, but I would decline.

6 MS. TRASK: No further. (Brief pause)

7 MR. HAUGAARD: Another question, Mr. Chair.

8 CHAIRMAN WHEELER: Go ahead.

9 MR. HAUGAARD: I'm wondering, (employee), if there was
10 any discussion or offer or opportunity for you to have a
11 conversation with staff or with others present to address this
12 with Senator Frye-Mueller.

13 EMPLOYEE: Mr. Chair.

14 CHAIRMAN WHEELER: Go ahead.

15 EMPLOYEE: No.

16 MR. HAUGAARD: Just to clarify, did anyone in your
17 office offer or suggest maybe there's an opportunity to clear
18 this up?

19 EMPLOYEE: Mr. Chair.

20 CHAIRMAN WHEELER: Go ahead.

21 EMPLOYEE: No.

22 MR. HAUGAARD: Mr. Chair, in light of the fact that we
23 have no access to employee records, we have not had an
24 opportunity for any discovery, we have essentially been denied
25 information until yesterday, when it was available four days

1 before that, we have no further questions at this time. But I
2 would reserve the right to have additional questions asked as
3 this investigation proceeds.

4 CHAIRMAN WHEELER: Any further recall of a witness
5 would be within the committee's discretion, but it is I believe
6 the intent of the committee to take all testimony today, and so
7 there would not be any further opportunities for testimony
8 beyond today.

9 MR. HAUGAARD: Mr. Chair, I'm beginning to understand
10 that this is a situation where we have been denied access to
11 information, we are now being denied access to employee records
12 to identify whether the testimony is correct or not. We are
13 denied details about this to adequately investigate it
14 ourselves and put up any kind of a defense to the allegations.

15 And I just want it to be clear that I have made the
16 request, but no one has responded to my request for
17 information, and now you are telling me that we have no right
18 to review anything, other than to sit here with a piece of
19 paper, no previous information about past actions, and that's
20 all we are going to get. Is that correct, Mr. Chair?

21 CHAIRMAN WHEELER: The committee is conducting an
22 investigation. This is not a civil action in which there are
23 motions for discovery or such. The committee is in charge of
24 the nature of the investigation. If the committee wants to
25 review files or records, it has that ability. The documents

1 that counsel had sent to the committee yesterday were captioned
2 as in a case, as in a federal case, and so frankly thought it
3 was more in relation to the federal filing that had been made
4 that same day and were not understood to be requests as part of
5 this investigation.

6 MR. HAUGAARD: Mr. Chair, if I might respond to that.
7 There was no federal heading on that. You are an attorney, you
8 can see the caption. I simply indicated, because there is no
9 other option, I indicated in the Senate of the State of South
10 Dakota, and this is -- you are essentially putting my client on
11 trial as though it's a criminal event, and you are denying us
12 access to all this information, and you are giving us a couple
13 hours of opportunity to try to put up some sort of a defense.
14 That is not a just process, and we are simply asking for
15 information.

16 From my perspective, this ought to be a reinstatement
17 until there is an adequate investigation done and an
18 opportunity for us to actually put up a defense. And I'm
19 simply making that point, and I sent those documents to you.
20 Those were not filed in federal court. Those were simply
21 provided to you with a clear heading that says in the Senate,
22 State of South Dakota, no other opportunity to frame it, put a
23 heading on it. It seemed like it should be clear enough, at
24 least to the attorneys involved, that they would understand
25 this is a request to the Senate, because you are sitting here

1 as the judge and jury of this event.

2 CHAIRMAN WHEELER: I would just let you know that you
3 did caption it in the Senate, but then with a caption that was
4 identical in terms of the parties to the federal action, and
5 they were posed as resolutions with whereas clauses and a
6 resolve at the end, as if they were meant to be resolutions
7 that would be moved in the Senate in some way. And no Senator
8 brought a request to make those motions or pose those requests
9 to the body. I have not yet heard anybody do so, and so no
10 action has been taken on any of those requests.

11 As to access to the employee record, again, that is in
12 the committee's discretion. Again, this is not an action in
13 which discovery rules would apply or that we would allow a
14 fishing expedition into her employee record. The intent is not
15 to investigate the actions or the history of the employee, but
16 it is in fact to investigate the conduct of Senator Julie
17 Frye-Mueller. And unless you have some indication that there
18 will be some relevant information for the committee inside that
19 file, you can make that proffer to the committee, but simply
20 asking for a copy of her employee record I believe would be
21 simply a fishing expedition.

22 MR. HAUGAARD: Mr. Chair.

23 CHAIRMAN WHEELER: Go ahead.

24 MR. HAUGAARD: Given that level of investigation, what
25 would you expect in a criminal trial to be the result when the

1 judge is denying counsel access to any information? You know,
2 this is a process that you are trying to work through, and I've
3 been in these situations before where there is an effort to
4 shield witnesses from any and all cross-examination and to
5 shelter the individual that's making allegations, only to find
6 out later that maybe we should have had some more information.
7 And in this case, it's not even that gracious.

8 We have been given 24 hours to put up some sort of a
9 defense, and now you are denying us access to relevant
10 information in regard to credibility, and that's all we have,
11 is the opportunity to address credibility. I just don't
12 understand how you can sit here as judge and jury without
13 giving opportunity for this kind of access and to expedite like
14 you have done.

15 CHAIRMAN WHEELER: Your comment is noted. Are there
16 any further questions for the witness? I will open it up to
17 the committee, if the counsel questions happen to prompt any
18 other questioning. Senator Tobin.

19 SENATOR TOBIN: Had you been offered the ability to
20 meet with the Senator, do you think there would have been a
21 possible ability to clear this all up in that discussion?

22 MR. HAUGAARD: Mr. Chair. If we are treating this
23 like a criminal case, I'd say objection, calls for speculation.
24 But I don't know what our process is here.

25 CHAIRMAN WHEELER: This is, just to clear it up

1 procedurally, this is not a criminal or civil proceeding. This
2 is an investigation by a committee. We are running it like a
3 committee, a legislative committee. I will allow objections in
4 the form of raised issues regarding questions. The question
5 does call for speculation as to what would have happened, and
6 so I am hesitant to pose that to the witness because I don't
7 know that it's necessarily relevant or helpful to the
8 investigation. Any other questions? I would offer if either
9 Mr. Hieb or (employee) want to make any final statements to the
10 committee.

11 MR. HIEB: Thank you, Mr. Chair. I would like to,
12 since there have been enough questions asked about my client's,
13 whether she's being candid or telling the truth, I would like
14 to ask a few questions, with the Chair's permission. Is that
15 okay?

16 CHAIRMAN WHEELER: Just to clarify, it's your intent
17 to ask your client questions?

18 MR. HIEB: Yes, to clarify things.

19 CHAIRMAN WHEELER: We will run those through the
20 Chair.

21 MR. HIEB: Yes. Mr. Chair, I have looked at some of
22 the social media that I told my client to quit looking at, and
23 one of the suggestions was that the reason Senator Frye-Mueller
24 came to her that day was to talk about a bill involving
25 vaccination and that the conversation or the lecture that she

1 ended up getting about vaccination was a likely segue from
2 that. What I would like to ask the witness is what the bill
3 was about that she was talking to her about that day.

4 CHAIRMAN WHEELER: Go ahead.

5 EMPLOYEE: Mr. Chair. The bill was on license plates.

6 MR. HIEB: Mr. Chair, another question. At any point
7 in this encounter with Senator Frye-Mueller, was there anything
8 about vaccination or breast feeding bills that were being
9 discussed?

10 EMPLOYEE: No.

11 MR. HIEB: Mr. Chair. And when you said before that
12 the reason this bothered you particularly because it dealt with
13 your son, could you elaborate for the committee on why that is?

14 EMPLOYEE: Mr. Chair. My husband and I (health
15 information), it was a miracle, to say the least. And then
16 during my pregnancy, (health information), and thankfully I was
17 able to give birth to a beautiful, healthy son, and that's
18 especially why it was so painful to hear that he -- due to my
19 parental decisions, he could die.

20 MR. HIEB: Mr. Chair, just briefly. There's been some
21 question about your involvement with this matter getting to
22 this level, and I just want to make it clear for the record,
23 have you talked to anyone in Senate leadership about this
24 matter?

25 EMPLOYEE: No.

1 MR. HIEB: And you talked to your mother-in-law, as I
2 understand it, about reporting this, and then you went to
3 the -- which supervisor did you go to?

4 EMPLOYEE: Mr. Chair. Sue Cichos. She's the deputy
5 director for the LRC.

6 MR. HIEB: Mr. Chair. Why did you go to Sue?

7 EMPLOYEE: Mr. Chair. Because of the nature of what
8 had happened, I wanted to talk to a woman.

9 MR. HIEB: Mr. Chair. Was it Ms. Cichos's idea to
10 take it further than that?

11 EMPLOYEE: Mr. Chair. Yes.

12 MR. HIEB: Mr. Chair. Did you have any input or
13 suggestion about taking it past the point where you gave this
14 statement to Ms. Cichos?

15 EMPLOYEE: Mr. Chair.

16 CHAIRMAN WHEELER: Go ahead.

17 EMPLOYEE: No.

18 MR. HIEB: Finally, Mr. Chair. Have you, to anyone in
19 this body or anybody in your office, been suggesting or rooting
20 for any sort of an outcome in this Senate investigation?

21 CHAIRMAN WHEELER: I am going to give you the same
22 opportunity I did before. You can choose to answer that
23 question if you want to.

24 EMPLOYEE: Can you say that question again?

25 MR. HIEB: Have you suggested to anyone in this body

1 or anyone in the office that you work in that you are rooting
2 for some sort of an outcome here?

3 EMPLOYEE: Mr. Chair. No.

4 MR. HIEB: I have nothing further, Mr. Chair.

5 CHAIRMAN WHEELER: Thank you. Does that prompt any
6 other questions from the committee or counsel?

7 MR. HIEB: Mr. Chair.

8 CHAIRMAN WHEELER: Go ahead.

9 MR. HIEB: There's also been some, because of all the
10 requests for employment files, I would like to clear that up to
11 insure that my client isn't hiding anything. Mr. Chair, with
12 your permission.

13 CHAIRMAN WHEELER: Go ahead.

14 MR. HIEB: Have you ever made a claim that somebody
15 has harassed you in the work place, whether it be sexually,
16 vaccination wise, breast feeding wise, et cetera?

17 EMPLOYEE: Mr. Chair.

18 CHAIRMAN WHEELER: Go ahead.

19 EMPLOYEE: No.

20 MR. HIEB: That's all I have.

21 CHAIRMAN WHEELER: Again, any further questions from
22 committee or counsel? Seeing none, I want to thank (employee)
23 for coming and providing her testimony today. The committee
24 greatly appreciates you going through this process with us.
25 And with that, is there any other discussion for the committee?

1 Otherwise we will recess and say we will take a 10-, 15-minute
2 recess. 10 minutes. So we will -- let's reconvene in 10
3 minutes up in room 414.

4 (Whereupon, the proceedings were concluded at 6:07
5 p.m.)

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STATE OF SOUTH DAKOTA)
) ss.
COUNTY OF HUGHES)

I, Carla A. Bachand, RMR, CRR, Freelance Court Reporter for the State of South Dakota, residing in Pierre, South Dakota, do hereby certify:

That I was duly authorized to and did report the testimony and evidence in the above-entitled cause;

I further certify that the foregoing pages of this transcript represents a true and accurate transcription of my stenotype notes.

Dated this 1st day of February 2023.

/s/ Carla A. Bachand

Carla A. Bachand, RMR, CRR
Freelance Court Reporter