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HEARING PROCEEDINGS

November 17, 2022

Judicial Merit Selection Commission

REPORTER: Patricia Bachand

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF RICHLAND)

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JUDICIAL MERIT SELECTION COMMISSION

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TRANSCRIPT OF PUBLIC HEARINGS

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BEFORE: SENATOR LUKE A. RANKIN, CHAIRMAN

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REPRESENTATIVE "MICAH" CASKEY, IV, VICE CHAIRMAN

10

SENATOR SCOTT TALLEY

11

REPRESENTATIVE WALLACE H. "JAY" JORDAN, JR.

12

HOPE BLACKLEY

13

LUCY GREY MCIVER

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ANDREW N. SAFRAN

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ERIN B. CRAWFORD, CHIEF COUNSEL

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DATE: November 17, 2022

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TIME: 9:30 a.m.

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LOCATION: Gressette Building, Room 105

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1101 Pendleton Street

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Columbia, South Carolina 29201

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REPORTED BY: PATRICIA G. BACHAND, COURT REPORTER

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Court Reporter's Legend:

dashes [--] Intentional or purposeful interruption
... Indicates trailing off
[sic] Written as said

1 CHAIRMAN RANKIN: On motion of
2 Representative Jordan, seconded by Senator Talley, we're
3 going to go into executive session.

4 (Off the record.)

5 CHAIRMAN RANKIN: We are back on the record.
6 And for the record, during the executive session, no votes
7 were taken and no decisions made. And now we will proceed
8 to the next candidate.

9 Mr. Patrick Fant. Welcome. Let me first
10 ask you to raise your hand.

11 WHEREUPON,

12 PATRICK C. FANT, being duly sworn and
13 cautioned to speak the truth, the whole truth and nothing
14 but the truth.

15 CHAIRMAN RANKIN: And we, for the record,
16 are doing this via Zoom, because you have had a touch of
17 something that no one wants to get near. And so you are
18 physically where now?

19 MR. FANT: I'm at my house. And I really
20 appreciate you all doing this and accommodating me. I wish
21 I could be with you all.

22 CHAIRMAN RANKIN: Well, very good. All
23 right. You are familiar with this process, having been
24 here before, I think last year, in your quest to be a
25 judge. And so you're familiar with what we do in our

1 investigation of your qualifications serve. The nine
2 evaluative criteria that we focus on includes a ballot box
3 survey, a thorough study of your application materials,
4 verification of your compliance with state ethics laws, a
5 search of newspaper articles in which your name appears, a
6 study of previous screenings, and a check for economic
7 conflicts of interest.

8 No affidavits have been filed in opposition
9 to your election, and no witnesses are present to testify.
10 You have the opportunity for an ever-so-brief opening
11 statement. Otherwise, I'll turn it over to Mr. Maldonado
12 for questions, and then the commission members may ask. Do
13 you understand that?

14 MR. FANT: Yes, sir, I sure do. And is it
15 okay if I -- if I if I have some water if I need it.

16 CHAIRMAN RANKIN: Yeah, Ms. Benson will get
17 you some. Hold on.

18 MR. FANT: I just wanted to be sure it was
19 okay.

20 CHAIRMAN RANKIN: Very good.

21 MR. FANT: Senator, just briefly, I just
22 wanted to thank -- and I know I need to be brief -- but
23 each and every one of you all. I know this is very time-
24 consuming. It's an honor to be in front of you all again.
25 And I would just, you know, thank everybody, including Ms.

1 Crawford and Mr. Maldonado and Lindi, and all the staff.
2 And thank you all for accommodating me like this today.

3 CHAIRMAN RANKIN: Very good. And a little
4 bit of housekeeping. The records of the personal data
5 questionnaire and the sworn statement, are those ready to
6 be entered into the record here?

7 MR. FANT: Yes, sir. The only thing that I
8 noticed, I did make an amendment recently, just reflecting
9 the cost for stationery stamps for introductory letters.

10 CHAIRMAN RANKIN: Okay. And that will now
11 be entered into the record.

12 (EXHIBIT NO. 1 - JUDICIAL MERIT SELECTION
13 COMMISSION PERSONAL DATA QUESTIONNAIRE OF PATRICK
14 C. FANT, III)

15 (EXHIBIT NO. 2 - JUDICIAL MERIT SELECTION
16 COMMISSION SWORN STATEMENT OF PATRICK C. FANT,
17 III)

18 CHAIRMAN RANKIN: And now we'll turn it over
19 to questions. Bob, take it away.

20 MR. MALDONADO: Thank you, Mr. Chairman. I
21 would note for the record that based on the testimony
22 contained in the candidate's PDQ, which has been included
23 in the record, with the candidate's consent, Patrick
24 Cleburne Fant, III, meets the constitutional and statutory
25 requirements for this position regarding age, residence,

1 and years of practice.

2 EXAMINATION BY MR. MALDONADO:

3 **Q. Mr. Fant, why do you want to be a circuit court**
4 **judge?**

5 A. Since I was clerking for Judge Pyle, I believe
6 the seed was planted. I got to observe him in court. It
7 really is on my heart, that I would love to be a public
8 servant. I know that judges can have impacts on people and
9 I just -- I want to be a public servant and serve. I've
10 been practicing for over 30 years, and it's time for me to
11 give back.

12 **Q. Thank you. Mr. Fant, how do you feel your legal**
13 **and professional experience thus far renders you qualified**
14 **and will assist you to be an effective circuit court judge?**

15 A. Well, first and foremost, I was able to clerk for
16 Judge Pyle. In law clerking for Judge Pyle, I had the
17 opportunity to observe a variety of cases, attorneys --
18 interact with attorneys, death penalty cases, a protracted
19 medical malpractice case, elder abuse cases, and observe
20 pleas. And so that was a great experience for me.

21 After that, I came to Columbia. And I was with
22 formally a firm called Lawhorne and Ellis, which became
23 Ellis, Lawhorne & Sims. I had the opportunity there to try
24 three civil jury trials with a senior partner named David
25 Morrison, the first of which was tried in front of Gary

1 Clary up in Chester, and ended up with a directed verdict
2 because there was a Mary Carter agreement. But that's that
3 discussion is for another day. But that was eye-opening
4 for me.

5 After that, I pretty much ended up doing workers'
6 comp. And it has been an incredible practice for me, and
7 that is primarily what I've done. I've continued in
8 Columbia with Ellis, Lawhorne & Sims, practicing on the
9 defense side. And of course mediations are now what I've
10 been doing, involving civil and workers' comp, for probably
11 the last ten years -- probably more so the last five years.

12 But workers' comp has given me an incredible
13 opportunity for learning about discovery, interacting with
14 other attorneys. And I think that is of great benefit.

15 I am practicing on my own, and I have them for,
16 gosh, I guess since 2009 now. But like I said, it's
17 primarily workers' compensation. But I do feel like that
18 has equipped me, and helped to prepare me to serve as a
19 circuit court judge. And I know that's more civil in
20 nature.

21 I would also add that I have -- I always read the
22 advance sheets. I've been learning a lot about criminal.
23 I had been going and observing court, back when I was
24 running the previous time, going into circuit court,
25 observing pleas, a trial with Judge Verdin, bond sets,

1 probation revocation.

2 I have also, when I have opportunities in CLEs,
3 to take the criminal component. Just recently at took --
4 about a month ago, after Representative Murphy had
5 mentioned in my last screening, just about the availability
6 of CLEs, some stuff on-line, which we were doing a lot of
7 back then anyway. But this year, I did the 2022 Criminal
8 Practice.

9 And also, I took what Representative Murphy had
10 said to heart and I sought out a criminal defense attorney
11 here in town, Bozzie Boggs, and I asked him if I could get
12 involved in some of his cases.

13 And he was very gracious, and allowed me to
14 become involved in a criminal domestic violence claim. I
15 was able to meet his client. I was able to sit down with
16 him, go through all that and -- and it ended up plea --
17 becoming a plea. Also, I was able to help him on an
18 evidentiary issue in a murder trial. So I'm trying.

19 **Q. Thank you. Mr. Fant, the commission received 341**
20 **ballot box surveys regarding you, with 38 additional**
21 **comments. The ballot box survey, for example, contained**
22 **the following positive comments:**

23 **"Patrick has the intelligence work ethic and**
24 **commitment to justice, that would make him an excellent**
25 **jurist."**

1 Also, "Mr. Fant has the temperament and the
2 intelligence to be an excellent circuit court judge. His
3 wide range of experiences can only be an asset."

4 Four of the written comments expressed concerns.
5 Several comments indicated the concern regarding your lack
6 of civil and criminal experience. I know you just touched
7 on that, but would you -- what response would you offer
8 this concern?

9 A. And I'm sorry, I may have jumped ahead. But I
10 feel like workers' comp has prepared me. I also tried
11 three civil jury trials, even though that was a while ago.
12 That still gave me the experience.

13 I think workers' comp gives you the experience of
14 interacting with other attorneys, discovery, there's
15 medical causation issues. It can be -- you know, you can
16 have complex cases and not complex cases. And you are
17 interacting -- while it is administrative, you're dealing
18 with a judge and you're making arguments to them.

19 There was a period, back in the early days when
20 comp would be appealed to circuit court. That's no more.

21 And then as far as the criminal -- and I -- like
22 I said, I may have jumped the gun. But I really have been
23 very intentional, just about reading the advance sheets.
24 And, certainly, I did that as I prepared for the South
25 Carolina Bar -- they call it a mini bar exam. But I went

1 through when I was -- knew I was going to be screened.

2 But really just -- the fact that there's an
3 intellectual stimulation behind this and the ability to
4 learn. And I know there's going to be a learning curve,
5 but I promise that I'll work hard. I know my good friend
6 Doc Morgan is adjusting. I got to observe him doing pleas
7 not too long ago.

8 And, you know, it's been interesting to observe.
9 You know, just for instance, where you all codified the
10 castle doctrine, and just seeing -- in the Persons and
11 Property and Protections Act, and seeing just how the case
12 law has evolved on that. And so I'm trying.

13 **Q. Thank you.**

14 MR. MALDONADO: I would note that the
15 Upstate Citizens Committee found Mr. Fant qualified in the
16 evaluative criteria of constitutional qualifications,
17 physical health and mental stability, and well qualified in
18 the remaining criteria of ethical fitness, professional and
19 academic ability, character, experience, reputation, and
20 judicial temperament.

21 BY MR. MALDONADO:

22 **Q. I'll finish up with some housekeeping questions.**
23 **Mr. Fant, are you aware as a judicial candidate, you are**
24 **bound by the code of conduct as found in Rule 501 of the**
25 **South Carolina Appellate Court rules?**

1 A. Yes, I am.

2 Q. Since submitting your letter of intent have you
3 contacted any members of the commission about your
4 candidacy?

5 A. No, I have not. I would -- I would qualify it.
6 Representative Jordan, prior to him coming on -- I know
7 that's technical -- but I did send an introductory letter
8 to him.

9 Q. Since submitting your letter of intent have you
10 sought or received the pledge of any legislator, either
11 prior to this date or pending the outcome of your
12 screening?

13 A. No, sir.

14 Q. Are you familiar with section 2-19-70, including
15 the limitations on contacting members of the General
16 Assembly regarding the screening?

17 A. Yes, I am.

18 Q. Have you asked any third parties to contact
19 members of the General Assembly on your behalf, or are you
20 aware of anyone attempting to intervene in this process on
21 your behalf?

22 A. No.

23 Q. Have you reviewed and do you understand the
24 commission's guidelines on pledging in Section 2-19-70(e)?

25 A. Yes, sir.

1 MR. MALDONADO: Mr. Chairman, I would note
2 for the record that any concerns raised during the
3 investigation by staff regarding the candidate were
4 incorporated into the questioning of the candidate today. I
5 have no further questions.

6 EXAMINATION BY CHAIRMAN RANKIN:

7 Q. All right. Mr. Fant, welcome back to this
8 process. Again, we met last year. And you're familiar
9 with this give-and-take. Hopefully, there won't be a lot
10 of either. But tell us what is it about your station in
11 life, that makes now the time to leave the private practice
12 and go to the bench in offer as a candidate for circuit
13 court?

14 A. Thank you. And for the record, it was two years
15 ago. I don't know if that matters. But, you know, I've
16 had a very thriving practice. I've loved doing workers'
17 compensation. I'm at a place in my life, where I just -- I
18 want to give back, and I want to serve the public and have
19 a positive impact.

20 And I have a great opportunity, I feel like at
21 this -- at this stage in my life, my kids are through
22 college and law school, except for the last one. And he's
23 almost through. And my wife is fully supportive of me
24 doing this. She teaches piano.

25 But, financially, I think this is a -- I mean,

1 there's not any issues with that. I hope that answers the
2 question.

3 Q. It does. And obviously, I am well familiar with
4 you. And you have a -- your son is a third-year or a 2L?
5 The last one in.

6 A. My youngest -- my youngest is a 3L. And that's
7 James. And he works for the House judiciary. Which I did,
8 a long, long time ago. And then my oldest is Claiborne,
9 and he also worked at the House judiciary. He is -- he's
10 worked for Judge Verdin, and he is now prosecuting in the
11 13th Circuit.

12 And then my daughter, Lillian Gower, went to UGA
13 law school, and is practicing intellectual property law at
14 Dority & Manning here in Greenville.

15 Q. Very good. There are a couple of 2L's in this
16 class -- in this room today.

17 CHAIRMAN RANKIN: Ms. Mickle, you're a third
18 year? Is that right?

19 MS. MICKEL: I'm a 2L.

20 CHAIRMAN RANKIN: 2L. Okay.

21 Q. There are no 3L's. But everybody -- every 2L,
22 including my son, Luke, knows your youngest, who is
23 doing well and distinguishing and living up to the great
24 Fant name, I will tell you.

25 So you are not the son of a lawyer, are you?

1 A. I am. I am a third generation. My grandfather,
2 Patrick C. Fant, Sr., was a real estate attorney here in
3 town, and was trustee for some of the banks. And he
4 primarily did real estate. And then my father followed
5 after him and did real estate as well.

6 Q. That's a great thing. I am a second generation.
7 I pray that my son will make a third generation lawyer in
8 his own right.

9 A. He will.

10 Q. That service and/or interaction with the public,
11 your father, I don't believe you've said, ever served as a
12 judge in any capacity? Other than judging you as a child,
13 right?

14 A. Yes, he did that.

15 Q. Looking in your background, in terms of your
16 education work and all that -- again, I'm familiar with
17 you. But Vic Pyle, you clerked or worked with Judge Pyle,
18 '91 to '92.

19 A. That's correct.

20 Q. I remember Judge Pyle as almost -- and I say this
21 affectionately -- as one of my law school professors. He
22 smiled a lot. But he was a smiling "C." Meaning, one of
23 the professors that would smile at me, smile because he may
24 have been gracious to give me that "C." But a tough judge
25 is what Judge Pyle was, as I recall.

1 Tell me what you think Judge Pyle -- and this is
2 not a loaded question -- but what Judge Pyle's demeanor in
3 the courtroom, his style and his -- his service, how would
4 that -- would you try to emulate, if you're successful in
5 making it to the beach?

6 A. Certainly. I mean, I think he was respected by
7 the lawyers. He was, you know, a judge's judge and a
8 lawyer's judge. And he'd been on for a while. If I'm not
9 mistaken, I believe he was even a county judge before --
10 before he went on the circuit.

11 And he just -- he had -- he was just very well
12 respected. He was kind. He was gracious. He showed
13 mercy, where mercy needed to be shown. Just his
14 interaction with people, he always was very respectful.

15 And I certainly would be the same way, whether
16 you're dealing with the bailiff, or whether you're dealing
17 with the foreman or for a fore-lady on a jury, or your
18 court reporter or your law clerk, or the attorneys or the
19 witnesses.

20 He was always very -- just very kind. And I did
21 feel like when you went in front of him, he was going to
22 sentence in a fair and impartial way. I think he probably
23 fell into some of the -- I guess in some ways similar to
24 Judge Epps. He was probably more kind on the front end of
25 sentencing, and then if you came in front of him on like a

1 probation revocation, watch out.

2 But I think -- but, you know, he -- because of
3 the sentence, a lot of people, oh, he was the castration
4 judge. Well, yeah, he was. But when you look at the facts
5 to that case, it was horrific. And I think it was more
6 making a point. And of course, you know, that did not hold
7 up.

8 But I never found him to be overly harsh. I
9 guess like I said, he was characterized as being kind and
10 compassionate and empathetic. And he was -- he was like a
11 father -- a father figure.

12 Q. Well, and you lead into a area that is of great
13 concern and great focus of this commission, and has been
14 since I've been a part of it -- not the cause of me, but
15 corporately -- this can be commission has uniformly placed
16 a great focus on that style that you're talking about.

17 And in terms of speaking to all, being friendly
18 to all, be fair but firm, and popping the situation with
19 the full force of law, if need be. But in the vein of
20 judicial temperament, your personality lends itself to the
21 very description of Judge Pyle, that you were just talking
22 about, in terms of speaking to all friendly -- Judge Epps,
23 that as a -- to me, a great example of an approachable,
24 friendly, not to be feared, not to be afraid off, but a
25 fair judge.

1 Beyond Judge Pyle or Judge Epps, who else -- and
2 you don't need any more -- not to add more to it, but is
3 there anybody else that you see in your service, that you
4 would like to be compared to in your service? Again, if
5 you were to be so successful and lucky.

6 A. Well, and I -- and I hope that does happen. But
7 we will see. You know, I love all my Greenville judges. I
8 think that's a -- that's probably a good answer to give.
9 You know, you can learn so much from Ned Miller. And even
10 like Chuck Simmons, his demeanor, and John Kittredge.

11 Judge Verdin, I mean, I -- you know, I've gotten
12 to know her. She's become a very close friend. And of
13 course my son clerked for her. But just the -- the fact
14 that there's a reverence and respect for the position, but
15 that -- it's getting back to what you said, it's not --
16 it's not out of fear. It's respect to the position. But
17 being very approachable and being --

18 And, you know, that's something that has to be
19 earned. So I mean, those are some of the people that
20 impacted me, and that if I were to go on the bench, I would
21 want to emulation

22 Q. Well, and let me just tell you, though, not a
23 judge, you have carried yourself out in a -- you have
24 encountered lots of people over your time in practicing
25 law. You've angered some attorneys, perhaps. But you've

1 pleased some attorneys, perhaps.

2 But one of the metrics that we look at is the
3 ballot box survey, and 340-plus respondents took the time
4 to comment and/or rate you. Lots of comments, that Bob
5 offered in theme. But what stands out to me as a lawyer,
6 and very important for us, is judicial temperament. You
7 rate very highly among these 340 people who have taken the
8 time to score that.

9 And I would tell you that Letitia Verdin -- you
10 mentioned Judge Verdin, you are in close company with her
11 as a judge; she has distinguished herself better, which is
12 an even more important increase.

13 So you're going from a position as a lawyer,
14 fighting with the litigants, but you have one of the
15 highest well qualified's in judicial temperament, and the
16 lowest unqualified.

17 And so my point to you is, you've named Judge
18 Verdin. And if you're successful -- again, there are a lot
19 of people running for these offices. But you're
20 successful, I would hope that you would -- your numbers
21 would only improve as a sitting judge. And that's not a --
22 you would agree with that, right?

23 A. Amen.

24 Q. Okay. And, again, the point is, you are starting
25 at a very high level. And so you conduct yourself in a way

1 that is disarming and friendly and respectful, treating
2 people mostly in the Golden Rule fashion, right? You are
3 treating them as you would want to be treated.

4 A. Absolutely. And, you know, I've share -- but I
5 mean, this whole process is very humbling. But, you know,
6 we're all on equal footing. All of us. And no one is
7 better than anyone else. And I just -- I think that I've
8 got plenty of people in my life that will give me humble
9 pie if I -- if I'm honored to serve, but if -- if for some
10 reason, you know, I'm not carrying the spirit of humility.

11 CHAIRMAN RANKIN: All right. Thank you, Mr.
12 Fant. I'm going to turn it over the Representative Caskey
13 for questions.

14 REPRESENTATIVE CASKEY: Thank you, Mr.
15 Chairman.

16 EXAMINATION BY REPRESENTATIVE CASKEY:

17 Q. And thank you, Mr. Fant, for being is us today. I
18 hope you're feeling better.

19 A. Thank you.

20 Q. As I was reviewing some of the materials in your
21 application packet, one of the things that stood out to me
22 was in your interview questions, as they were reduced to
23 the document provided to us.

24 You know, I would acknowledge that there is
25 sometimes a -- you know, different folks get different

1 questions. And sometimes they are harder, and sometimes
2 there are less hard questions. And you seem to have been
3 dealt a more difficult bunch on balance. But one
4 consistent theme that I see here is, your fluency and the
5 rules of both evidence and procedure being at a level that
6 gave me pause, in terms of what your candidacy could mean
7 for litigants before you.

8 In some of your answers here made me think, well,
9 let me look back at his experiences. And your career,
10 while distinguished, is principally, in the last two
11 decades, in the workers' comp area. The last time it seems
12 you were -- had an active civil practice, you know,
13 President Clinton was in office.

14 And so I wanted to give you an opportunity to
15 help allay my concerns to that effect. Because you had
16 addressed, I think in your opening statement, or in the
17 opening colloquy, about questions about your criminal
18 experience. And so I'm hoping you can give me some
19 assurances that your fluency in the rules that you would
20 have to then apply in court.

21 A. Thank you. And that's certainly a fair question.
22 I do in workers' comp -- I mean, we did have -- we have
23 evidentiary issues that come up. And, certainly, they are
24 probably different than what happens in the civil context
25 or even the criminal context.

1 I know that -- you know, I spent -- I did spend
2 time preparing for that. And, certainly, I will -- like I
3 said, I will do everything I can to prepare myself. And
4 I'll work hard and I'll study hard on potential evidentiary
5 issues.

6 A lot of times, the things that come up are going
7 to be either in, you know, pre-trial motions and -- I'll
8 tell you, I don't have any problem if -- if I can't rule
9 immediately on something, saying, "I need to take a break
10 because I want to get this right."

11 I do feel like I've got the intellect, and
12 certainly the intelligence, to handle any evidentiary
13 issues that come before me. I understand where you're
14 coming from. And that's certainly a fair question.

15 **Q. And I want to be fair to you. Because things**
16 **like deadlines and that sort of thing to be right, we got**
17 **to look those up to just make sure as a general practice.**

18 **But, you know, in the moment of trial, if there's**
19 **a relevance question, you know, we're -- the 406 issue that**
20 **was implicated here, I mean that does give me substantial**
21 **pause. Because you -- in the -- in the -- in the moment,**
22 **you don't get a lot of time to decide those questions.**

23 **And I don't know what else you can do about it.**
24 **And, again, I want to be fair to you. You don't really --**
25 **not all candidates get a even slate of questions.**

1 So one other thing, though, that I want to ask
2 you about -- bear with me just one second,

3 A. Yes, sir.

4 Q. Well, I'll stop there. I know there are other
5 questions. Thank you, sir.

6 CHAIRMAN RANKIN: Senator Talley.

7 MR. FANT: And I do -- just a -- if I can
8 add. It just -- you know, I really prepared, like for
9 403(b), just that kind of analysis like in the criminal
10 context. And, you know, I -- I did -- you know, that is
11 something that I will have to work on. But it is certainly
12 a fair question.

13 CHAIRMAN RANKIN: All right. Senator
14 Talley.

15 EXAMINATION SENATOR TALLEY:

16 Q. Mr. Fant, good morning --

17 A. Good morning.

18 Q. -- how are you doing? Thanks for being with us.
19 Thank you for your candidacy. I wanted to just ask,
20 obviously, in very general terms, one -- one issue that
21 circuit court judges around South Carolina continue to
22 grapple with are motions in general sessions court.

23 As an example, anytime there's a general sessions
24 week in Spartanburg, it seems like all day Friday is set
25 aside for motions. And most of those motions deal with

1 either bond revocation being set, or sought by the
2 solicitor's office for a variety of reasons, bond
3 modification or -- or just bond in general, depending on
4 what someone may be charged with.

5 So I know we've talked a little bit about your
6 experience and things that you've done to better educate
7 yourself in the general sessions arena. But can you tell
8 us, generally, how you would approach bond matters? Be it,
9 you know, setting bond, looking at what's presented by a
10 solicitor, a defense attorney who is arguing for or against
11 a bond revocation or a modification action that may come
12 before you.

13 A. Well, I think you have to look at everything, and
14 you need to make sure that the victims are there. If they
15 -- you know, they certainly have a right to be there, and
16 have a right to be heard. I think there's a notification
17 process for that.

18 And really just being fair and impartial, and
19 looking at all the circumstances in each case, and
20 listening to what is said on both sides, and getting
21 something that's fair.

22 And, you know, I think that's something that you
23 come to learn. Also on -- it depends on the severity of
24 the crime. There's just, you know, different factors that
25 go into setting bond. And, again, I think that's something

1 that would come with just the experience. Is that getting
2 to what you're asking?

3 Q. Yeah, it -- you know, frankly, I know where I
4 stand when I'm a defense attorney, arguing one of those
5 motions. But as a judge -- you know, you say "fair."
6 Obviously, the person sitting in jail doesn't think
7 anything is fair. And if you're let out of jail, you've
8 got a victim that feel otherwise. So it's a hard call. I
9 mean, I don't know that there's a exact answer to the
10 question. I'm just curious as to your thoughts. So I
11 appreciate it.

12 A. Thank you.

13 CHAIRMAN RANKIN: Mr. Safran.

14 MR. SAFRAN: Thank you, Mr. Chairman. I've
15 known Mr. Fant a long time. And I can say this, I'm sure I
16 have come close at times, to pushing his buttons over the
17 years. And he has, uniformly, maintained a good composure,
18 has always been pleasant. And, you know, that says a lot.

19 Because we have situations, oftentimes,
20 where we get very close to the case, we get very
21 emotionally attached. And some people have a better
22 opportunity and a better ability to than others, to kind of
23 not let it bleed over.

24 And Mr. Fant is somebody that I think has
25 always maintained a strong sense of professionalism. He is

1 somebody that I've never had to question in terms of when
2 he tells me something. And, honestly, from my standpoint
3 as a lawyer, the greatest thing that you have as far as
4 capital, is being able to have your word become something
5 people can trust.

6 You know, you can have a lot of flaws that,
7 you know, folks can overlook. But to me, maintaining an
8 honesty and credibility is the absolute zenith of what we
9 strive for as a lawyer.

10 And I've never had a problem like that with
11 Mr. Fant. I think that, certainly, people sometimes down -
12 - look down their nose at being a workers' comp litigator.
13 But these cases aren't like they were when I first started
14 many years ago. Back then they used to kind of look at it
15 and -- I had a good, close friend of mine who did a lot of
16 different types of defense work and litigation comps in
17 every other level of court. He tried to refer to it
18 sometimes as baby law.

19 And I can tell you, it may have been at one
20 point. But I've seen, over a period of 35-plus years, that
21 we get into some very technical stuff. We do a lot of work
22 in terms of both discovery and hearings that are equal to,
23 if not greater, than what you can run into in most of the
24 circuit court cases.

25 And so I don't think anybody should necessarily

1 just sneeze at the fact somebody has spent a good bit of
2 their career doing that. Because those cases, frankly,
3 when you compare them to the vast majority of the cases
4 that are heard and tried in circuit court, they're dealing
5 with a tremendous amount more money, and on a regular basis
6 more, and that -- you know, there's a lot at stake. And so
7 you know, there's nothing baby about it.

8 EXAMINATION BY MR. SAFRAN:

9 **Q. Mr. Fant, do you feel like -- you know,**
10 **obviously, being away from circuit court for a period of**
11 **time, necessarily, is something that you find a tremendous**
12 **hindrance? Or is it something you can overcome?**

13 A. Well, first, I appreciate your comments. And you
14 certainly have been a worthy adversary over the years. And
15 I have the utmost respect for you. And you do an
16 incredible job representing your clients.

17 I don't think it to be a hindrance. I don't.
18 And I'm going to work hard. And if I am allowed the
19 opportunity to serve, I just -- the fact that I've done
20 workers' comp -- I think you've kind of alluded to this --
21 is something that will -- you know, I'll carry it with me.

22 But I think that I can transition. And I will
23 work hard, and I will certainly study and do what I need to
24 do to be the best circuit court judge out there.

25 **Q. Okay. And, again, we're sorry you couldn't be**

1 here with us. I understand the COVID. Been there. I hope
2 it's a situation where you get through it easy. And I
3 appreciate your being here -- or remotely.

4 A. Thank you all for accommodating me.

5 CHAIRMAN RANKIN: All right. Mr. Fant, with
6 that, unless there are other questions by members of the
7 commission, we're going to wrap that portion of the
8 screening process up.

9 Let me remind you -- two years ago, you
10 heard this. It seemed a year ago, but time does run
11 awkwardly and alternatively for me, these folks will tell
12 you. But pursuant our criteria -- and you know that we are
13 very -- strict adherence to both the spirit and the letter
14 of ethics law. Any violation on your part, or the
15 appearance of impropriety, would be deemed a serious and
16 deserving of our heavy deliberation.

17 You know that the record is not closed but
18 will remain open until the formal release of record of
19 qualifications. In the unlikely event that either a
20 violation or the appearance thereof by you were to occur,
21 you do know that we would be able to call you back for
22 further questions. Is that right?

23 MR. FANT: Yes, sir.

24 CHAIRMAN RANKIN: All right. And with that,
25 Mr. Fant, God bless you. And Godspeed in getting rid of

1 the crud. Thank you so much.

2 MR. FANT: Thank you. It was an honor to be
3 before you all. Take care.

4 (Candidate excused.)

5 WHEREUPON,

6 DOWARD KEITH KARVEL HARVIN, being duly sworn
7 and cautioned to speak the truth, the whole truth and
8 nothing but the truth.

9 CHAIRMAN RANKIN: You have before you the
10 documents of PDQ and a sworn statement. Are those ready to
11 be entered into the record without objection?

12 MR. HARVIN: Yes, sir.

13 CHAIRMAN RANKIN: All right. You'll handle
14 those Lindi.

15 (EXHIBIT NO. 5 - JUDICIAL MERIT SELECTION
16 COMMISSION PERSONAL DATA QUESTIONNAIRE OF DOWWARD
17 KEITH KARVEL HARVIN)

18 (EXHIBIT NO. 6 - JUDICIAL MERIT SELECTION
19 COMMISSION SWORN STATEMENT OF DOWWARD KEITH
20 KARVEL HARVIN)

21 CHAIRMAN RANKIN: You have with you a most
22 patient person, because I saw you two sitting out in the
23 lobby earlier. Introduce us to your accompaniment here.

24 MR. HARVIN: So this is my awesome and
25 beautiful wife, Charlene Harvin.

1 CHAIRMAN RANKIN: Welcome, Ms. Harvin. All
2 right. You are familiar with this process. We look very
3 closely, in our investigation of your candidacy and
4 qualifications for service, nine evaluative criteria, which
5 include a ballot box survey, a thorough study of your
6 application materials, a verification of compliance with
7 the state ethics laws, a search of newspaper articles in
8 which your name appears, a study of previous screenings,
9 and a check for economic conflicts of interest.

10 No affidavits have been filed in opposition
11 your campaign and no witnesses are here to testify --
12 unless your wife decides she wants to be heard.

13 MR. HARVIN: I don't think that's happening.

14 CHAIRMAN RANKIN: All right. And you're to
15 be comforted in knowing she agrees. You have the
16 opportunity to make a very brief opening statement. But
17 given the hour, you can at the end make any closing
18 statements you'd like. Unless you'd like to, Mr. Hinson
19 will proceed with questions.

20 MR. HARVIN: And, Chairman, the only thing I
21 would like to say is that I'm humbled and very grateful to
22 be able to stand before you all and offer myself for this
23 position of service. And so any questions that you all
24 have, please throw them at me. I'm pretty much an open
25 book.

1 CHAIRMAN RANKIN: All right. Mr. Hinson.

2 MR. HINSON: Good afternoon, Mr. Harvin.
3 How are you?

4 MR. HARVIN: Pretty good. How are you
5 doing?

6 MR. HINSON: Mr. Chairman, I note for the
7 record that based on the testimony contained in the
8 candidate's PDQ, which has been included in the record,
9 with the candidate's consent, Mr. Harvin meets the
10 constitutional statutory requirements for this position
11 regarding age, residence, and years of practice.

12 EXAMINATION BY MR. HINSON:

13 **Q. Mr. Harvin, how do you feel your legal and**
14 **professional experience thus far renders you qualified and**
15 **assist you to be an effective circuit court judge?**

16 A. Well, a couple of things. I've been blessed to
17 practice law in the 3rd Judicial Circuit with some judges
18 who have placed me under their fire. For a substantial
19 period of time, I started practicing in front of Judge
20 Howard King, and I continue to practice it in front of
21 Judge Cothran and Judge Buck James, and just a great group
22 of judges.

23 Being in the 3rd Circuit, as a general
24 practitioner, mostly since I began practicing law, has
25 allowed me to kind of dabble and dabble, and spread my

1 wings in different areas of practice. And I believe that -
2 - you know, obviously being in front of those judges who
3 have -- who come before you and -- and have shown great
4 temperament and have shown great patience in the courtroom,
5 and a great ability to handle the courtroom, has allowed me
6 to really understand what it takes to be a great judge.

7 My experience from being a general practitioner
8 has allowed me to, honestly, you know, spend time working
9 in criminal defense. I've spent time working as a
10 prosecutor. I've spent time handling civil cases that
11 range from -- anything from, you know, your landlord tenant
12 action to car accident cases to medical malpractice cases.

13 And so the great thing about practicing in a
14 small town is that you don't turn down work. You do
15 everything that comes through the door. You spend time
16 with the law -- different areas of the law. You don't just
17 spend time in one area.

18 And so over the last 14 years, I feel like I've
19 spent a lot of time in a lot of different areas of the law,
20 and I think that's to my benefit, if I were chosen to go to
21 the bench.

22 **Q. Thank you, Mr. Harvin. Mr. Harvin, the**
23 **commission received 142 ballot box surveys regarding you,**
24 **with 29 additional comments. The ballot box survey, for**
25 **example, contained the following positive comments:**

1 **"He has always been a professional and of good**
2 **character."** Another stated you would be an asset on the
3 bench. Yet another said you had a wonderful temperament
4 and would be an asset on the bench.

5 A couple of the comments expressed concern about
6 the efficiency in which you handle your cases. How would
7 you like to respond to that concern?

8 A. Yeah, so I've always attempted to handle my cases
9 as quickly and as efficient as you possibly can.

10 I spent a lot of time as a public defender and a 608
11 attorney, and so a lot of cases that have come before me
12 are those that I've been appointed to handle, with
13 individuals who -- you know, they're trusting me with all
14 types of rights and -- and, you know, I do my best to try
15 to walk them through a process that's new to them, or a
16 process that they may not be very familiar with.

17 And so it has always been my hope that I move my
18 cases forward as efficiently as possible. Because, you
19 know, honestly, in the private practice, the saying goes,
20 "A open case is a great case, but there's no real the
21 greater case than a closed case."

22 And so we try to move those cases as quickly as
23 we can. And I've tried to do so.

24 **Q. Thank you, Mr. Harvin. Mr. Harvin, you have**
25 **indicated in your PDQ, that a lawsuit was filed against you**

1 in 2019 by Barclays Bank.

2 A. Yes.

3 Q. Can you explain the nature and disposition of
4 that lawsuit?

5 A. Yeah, so I had a account with my law office, in
6 which Barclays Bank was the holder of the debt, and we had
7 a dispute about how much money I owed on that particular
8 debt. And so in order for me to gain some leverage, I
9 decided to force them to file a lawsuit in South Carolina,
10 so that I could use the laws of South Carolina to my
11 benefit.

12 Once they filed that lawsuit, and we were able to
13 actually have a meaningful conversation to negotiate and
14 handle the matter quickly.

15 Q. So that is taking care of? It settled?

16 A. It was resolved shortly thereafter.

17 Q. Thank you, Mr. Harvin. Mr. Harvin, your SLED
18 report indicated there was a lawsuit filed against you in
19 2017, in Williamsburg County, by Shirley McFadden.

20 A. Yes.

21 Q. Please explain the nature and the disposition of
22 that lawsuit.

23 A. So every once in a while, the lawyer calls you
24 and asks you to do them a favor. In this particular
25 instance, a local attorney called me and asked me to

1 participate as a special administrator for an estate, so
2 that he could bring a lawsuit against that estate.

3 It was put in the system, just simply under my
4 name. I have no reason -- I don't know why they did that.
5 But that's essentially what that case is.

6 **Q. Thank you.**

7 MR. HINSON: I would note that the Pee Dee
8 Citizens Committee reported that Mr. Harvin is qualified in
9 the criteria of constitutional qualifications, physical
10 health and mental stability, and well qualified in the
11 criteria of ethical fitness, professional and academic
12 ability, character, reputation, experience and judicial
13 temperament.

14 BY MR. HINSON:

15 **Q. Mr. Harvin, are you aware that as a judicial**
16 **candidate, you are bound by the Code of Judicial Conduct as**
17 **found in Rule 501 of the South Carolina Appellate Court**
18 **rules?**

19 A. Yes.

20 **Q. Since submitting your letter of intent have you**
21 **contacted any members of the commission about your**
22 **candidacy?**

23 A. I have not.

24 **Q. Since submitting your letter of intent have you**
25 **sought or received the pledge of any legislator prior to**

1 this date or pending the outcome of your screening?

2 A. I have not.

3 Q. Are you familiar with Section 2-19-70, including
4 the limitations on contacting members of the General
5 Assembly regarding your screening?

6 A. Yes, sir.

7 Q. Have you asked any third parties to contact
8 members of the General Assembly on your behalf, or are you
9 aware of anyone attempting to intervene in this process on
10 your behalf?

11 A. No, sir.

12 Q. Have you reviewed and do you understand the
13 commission's guidelines on pledging in South Carolina Code
14 2-19-70(e)?

15 A. Yes, sir.

16 MR. HINSON: Mr. Chairman, I would note for
17 the record that any concerns raised during the
18 investigation by staff regarding this candidate were
19 incorporated in the questioning of the candidate today.
20 And with that, Mr. Chairman, I have no further questions.

21 EXAMINATION BY CHAIRMAN RANKIN:

22 Q. Mr. Harvin, again, welcome. And I appreciate
23 your offering for this position. We looked through all
24 sorts of things. You got somewhat of a highlight there.
25 And I just want to ask a few questions at the outset,

1 in terms of your work history -- obviously, we're familiar
2 with Senator Ronnie Sabb, and the lawyers are well familiar
3 with Attorney Ronnie Sabb. And so you have certainly been
4 associated with a stellar advocate.

5 You worked with him, it appears, 2009 till 2011,
6 and from then last year 2021 until presents with him again.
7 Is that right?

8 A. That is correct.

9 Q. Okay. You ran your own shop for 10 years, for
10 2011 and 2021?

11 A. Yes.

12 Q. All right. And tell us about that transition.
13 You're also a part-time or a public defender at that time
14 from 2011 to 2021?

15 A. And I smile when you kind of got caught up in
16 part-time --

17 Q. Well, not --

18 A. -- and full-time.

19 Q. If you're ever a public defender, you're always.
20 But go ahead.

21 A. Yeah, so during the period of time in which I
22 practiced law by myself, I was the part-time public
23 defender, but the public defender for the Williamsburg
24 County, part of the 3rd Judicial Circuit.

25 And so I handle everything from juvenile court to

1 municipal court to magistrate's court to general sessions
2 court, low-level felonies to more serious crimes. And so I
3 transitioned in 2021, and decided to close my practice and
4 join the Sabb Law Group at that time, again, to focus
5 primarily on civil litigation.

6 **Q. And that's what you're doing full-time now,**
7 **without criminal defense or -- because you're -- you've got**
8 **a mix of 40/40, I think I saw.**

9 A. Yes. Yes. So in 2021, as I was transitioning
10 in, I still had a pretty good caseload of criminal cases.
11 And so we're still working through those -- I'm still
12 working through some of those cases. Because I took a lot
13 of criminal cases, especially when I worked for myself.

14 And so right now we're kind of filtering those
15 out. But mostly, I'm handling civil cases.

16 **Q. Getting to the goal of "a closed file is the**
17 **best" --**

18 A. Yes, it is.

19 **Q. -- as you mentioned earlier.**

20 A. Absolutely.

21 **Q. You have a number of folks who have written**
22 **positive things about you, that are all -- most of these**
23 **folks are well known to all of us in that -- in that part**
24 **of the state. And particularly one from Ms. Shuler, in**
25 **terms of her work with Whetstone, Perkins and Fulden, your**

1 intellect and your devotion to work, and your involvement -
2 - again, both community as well as service, both the public
3 defender and in works with youth development.

4 Tell us about that, particularly the latter part,
5 your focus there.

6 A. Yeah. So I've been blessed. I think again,
7 being in a small community, in that -- you know, I've been
8 allowed to come into the school -- the school system and
9 have -- kind of like conversations with students from time
10 to time.

11 Me and Ms. Shuler actually had this situation
12 when we were working as public defenders, where we had an
13 increase of a particular type of crime, and we saw it
14 coming from a particular area of the county.

15 And so what we came together to do is to host a
16 summit, where we went into the school and we broke down the
17 law in a layman, simplistic term, so that they could
18 understand it. But also sort of parents and the teachers
19 could understand it, because it was happening within the
20 school.

21 And what we saw, and what we still see to this
22 day, is that particular crime does not take place in the
23 way that it used to. What we found is that the kids
24 started policing themselves. The teachers knew what to say
25 to the children when they saw them moving in a particular

1 direction. And the parents understood, also, what needed
2 to be done.

3 And so over the years, we've attempted to pay
4 attention to kind of what's going on with young people, and
5 then try to educate those young people. And so we've done,
6 you know, many seminars, many Protect Our Youth seminars,
7 many seminars where we sit down with young people and have
8 conversations.

9 And I'm proud to say, I just finished mentoring a
10 group of 1L's at USC. So I try to stay as connected to the
11 young people as possible. Because, obviously, you know,
12 it's cliché, but, you know, young people are really our
13 future. And so we have to take our time, and kind of guide
14 them through difficult times.

15 And the law is a beautiful thing. But when they
16 don't understand the parameters of the law, it could -- it
17 could end up being dangerous for them. And so we -- we've
18 spent a lot of time, myself and Ms. Shuler and other
19 attorneys, just kind of spending time with the young
20 people.

21 Q. And last for me, at least -- and you know we've
22 heard some of the good -- mostly good comments, these
23 anonymous ballot box survey respondents -- and I want to
24 commend you, though, admittedly, the number of people who
25 have participated is small, you're below 200, about 140-

1 ish, I think, I heard. Is that right?

2 A. I think -- I think -- I think, yeah, that's
3 correct.

4 Q. And that not as a ding, but as a -- perhaps an
5 indication that you are still not that well known, perhaps,
6 beyond your immediate area. Again, you never know.

7 A. Yeah.

8 Q. It may be based on just pure age, but one -- and
9 I think -- if I stand to be corrected, the one judge -- a
10 circuit court judge who's been on the bench, at least two
11 terms, had almost a thousand write in.

12 A. Wow. Yeah.

13 Q. But that's not as important as what I'm about
14 have to ask, and commend you for. Those who know you are
15 saying incredibly positive things about you, in the
16 experience, category, reputation, character, professional
17 and academic ability, ethical fitness. And a note:
18 judicial temperament, you rate very highly as well
19 qualified.

20 And those who don't agree, don't add up to many.
21 You rate very low -- or should I say in reverse, you write
22 very highly, in the sense that very few think that you are
23 unqualified.

24 At 39, that is a great thing to have said about
25 you, by people who can hide and throw bombs and say things

1 that may be totally outliers to who you really are.

2 And again, not to -- don't take great comfort,
3 but -- it is comfort, right? A hundred and forty --
4 they're applauding you. That number will only grow as you
5 continue to interact with folks in the Bar. And,
6 obviously, if you were successful in the quest to be a
7 judge, they'll really ramp up.

8 And so with that, let me just finally ask --
9 you've mentioned a few judges. We hear it all the time who
10 -- and we ask who would you like to be compared by, if you
11 work to be a success? And why?

12 A. So that question, as soon as you asked it became
13 -- the name came to mind. And that's George -- I mean,
14 Judge George James -- Buck James. I call him Buck James as
15 I was trying to remember his first name.

16 But I've always enjoyed trying cases in front of
17 Judge James, because he is very mild mannered and he
18 actually is very rule-oriented. And so when you make an
19 objection, or you make any motion, he would open the rule
20 book in front of everybody in the courtroom, and quote the
21 rules so that both sides are on the same page. And then he
22 would ask one side to give their opinion or their position,
23 and then ask the other side.

24 And I always felt that was a benefit to
25 everybody. Because not everybody knows the rules. And so

1 him taking the time to read the rule and bring everybody
2 onto the same page, I think it did wonders in the
3 courtroom, and it helped the attorneys to present their
4 case at a high level.

5 Because we all know when you're trying cases, you
6 try to prepare for everything. But sometimes, you know,
7 you can't prepare for everything, and you miss a rule here
8 or there.

9 So having a judge that really takes the time to
10 actually pull up the rules and actually have that
11 discussion, I always felt like that was the right way to do
12 it.

13 And so out of everybody does, Judge Buck James
14 just immediately comes to mind. Justice James, I should
15 probably say at this point.

16 **Q. I think the record reflected that when you said**
17 **it the first time.**

18 A. Okay.

19 CHAIRMAN RANKIN: All right. Unless there
20 are other questions?

21 (Hearing none.)

22 CHAIRMAN RANKIN: Mr. Harvin, I want to
23 thank you and your wife for joining us today, and putting
24 yourself out there. This is not an easy venture. And so
25 you're to be commended with your willingness to continue in

1 this avenue of public service.

2 MR. HARVIN: Thank you so very much. And
3 thank you all for everything that you're doing. I believe
4 that -- you know, obviously, this is hard work. And I know
5 that you all are toiling away at it.

6 But from somebody who practices law and
7 tries cases, you know, we love our good judges. And so we
8 appreciate the work that you all are putting in, to make
9 sure that we have the best judges here in South Carolina.

10 CHAIRMAN RANKIN: Don't leave just yet. I
11 got you get two more "amens" on the record. Pursuant to
12 our evaluative criteria, we are sticklers for and adhere to
13 both the letter and spirit of ethics laws. Any violation
14 or the appearance of impropriety would be a very serious
15 matter that we would bring you back.

16 You know that this record is not closed
17 until the final and formal release of a record of
18 qualifications. And in the unlikely event that you were to
19 either commit a violation, or there be a question about the
20 impropriety of ethics laws, you know, do you not, sir, that
21 we could call you back?

22 MR. HARVIN: Yes.

23 CHAIRMAN RANKIN: And with that, Happy
24 Thursday Afternoon. Save travels home.

25 MR. HARVIN: Thank you.

1 (Candidate excused.)

2 CHAIRMAN RANKIN: We are off.

3 (Off the record.)

4 CHAIRMAN RANKIN: All right. We are back on
5 the record. And, Mr. McCutchen, if you will raise your
6 right hand.

7 WHEREUPON,

8 CHARLES J. MCCUTCHEN, being duly sworn and
9 cautioned to speak the truth, the whole truth and nothing
10 but the truth.

11 CHAIRMAN RANKIN: You've got two documents
12 that you have prepared, a PDQ and informed statement. Are
13 they ready to be entered into the record without objection?

14 MR. MCCUTCHEN: They are.

15 CHAIRMAN RANKIN: If you'll hand them over
16 to Lindi, we'll put them in.

17 (EXHIBIT NO. 7 - JUDICIAL MERIT SELECTION
18 COMMISSION PERSONAL DATA QUESTIONNAIRE OF CHARLES
19 J. MCCUTCHEN)

20 (EXHIBIT NO. 8 - JUDICIAL MERIT SELECTION
21 COMMISSION SWORN STATEMENT OF CHARLES J.
22 MCCUTCHEN)

23 CHAIRMAN RANKIN: You have with you someone,
24 if you'd like to introduce them.

25 MR. MCCUTCHEN: This is my wife, Tara

1 McCutchen.

2 CHAIRMAN RANKIN: Tara McCutchen, welcome.

3 MS. MCCUTCHEN: Thank you.

4 CHAIRMAN RANKIN: All right. Mr. McCutchen,
5 you are familiar with our investigation of your
6 qualifications to serve on the bench, which include nine
7 evaluative criteria that looks at the ballot box survey, a
8 study of your application materials, compliance of state
9 ethics laws, verification by us, a search of newspaper
10 articles in which your name appears, previous screenings,
11 and checks for economic conflicts of interest.

12 No affidavits have been filed in opposition
13 to your campaign. No one is here -- unless your wife would
14 like to say something on the record. Otherwise, we are
15 ready to proceed.

16 Emma Dean, your coach -- your attorney-coach
17 and guide will ask some questions. We can start right away
18 with those, given our late hour for which we apologize, or
19 you can make a brief opening statement. Whichever you'd
20 prefer.

21 MR. MCCUTCHEN: I would simply just like to
22 thank the commission for having me and my wife here today.
23 It's an honor and privilege to be standing here in front of
24 you again. And I'll be happy to answer any questions you
25 all have.

1 CHAIRMAN RANKIN: All right. Ms. Dean.

2 MS. DEAN: Thank you, Mr. Chairman. I note
3 for the record, that based on the testimony contained in
4 the candidate's PDQ, which has been included in the record,
5 with a candidate's consent, Mr. McCutchen meets the
6 constitutional and statutory requirements for this position
7 regarding age, residence, and years of practice.

8 EXAMINATION BY MS. DEAN:

9 Q. Mr. McCutchen, how do you feel your legal and
10 professional experience thus far renders you qualified and
11 will assist you to be an effective circuit court judge?

12 A. Well, I think that overall -- over my past 20
13 years of practicing law, I've practice in many areas, you
14 know, touching pretty much every area of the law, civil,
15 criminal, family Court, even administrative matters.

16 And I think it's important to have knowledge in
17 all areas. Not that you're a master of any given one.
18 Because as lawyers we're always learning, and I think as --
19 I think that applies also to the bench.

20 I don't think once you get there, that's the end
21 of your education, by any means. I just think I'm prepared
22 enough given -- being thrown into a lot of situations that,
23 frankly, when I graduated law school, I never thought I
24 would be. I think that's given me a more balanced approach
25 to be able to sit on the circuit bench.

1 Q. Thank you. The commission received 116 ballot
2 box surveys regarding you, with 11 additional comments.
3 The ballot box survey, for example, contain the following
4 positive comments:

5 "Very qualified and could hit the ground running
6 as a circuit court judge. Well liked and respected in his
7 community. He is well suited for the position he seeks. A
8 hard worker and would be a great judge. I've have been
9 fortunate to work cases against him, and he's always been
10 honest and fair."

11 The ballot box contained zero -- zero of the
12 written comments expressed any concerns.

13 Mr. McCutchen, you have indicated in your PDQ,
14 that you were named in three lawsuits, Infinger v. Regional
15 Medical Center in Orangeburg, Okechukwu Dimpka, and Holmes
16 v. Dimpka.

17 You were named in these cases as the guardian ad
18 litem; is that correct?

19 A. That's correct.

20 Q. Is there anything else we need to know about
21 that?

22 A. Yes. Mr. Dimpka was a doctor who ended up going
23 to federal prison. As a result, there were some cases
24 filed against him. Because of that, him being incarcerated
25 in federal prison in West Virginia, he needed a guardian ad

1 litem. I was appointed by the court to serve. I was happy
2 to do so. But he -- ultimately, he had an early release,
3 and they let him out. And he no longer needs a guardian,
4 and I was relieved in all of those cases.

5 **Q. Thank you.**

6 MS. DEAN: I would note that the Lowcountry
7 Citizens Committee report that Mr. McCutchen is qualified
8 in the criteria of constitutional qualifications, physical
9 health and mental stability. He is well qualified in
10 ethical fitness, professional and academic ability,
11 character, reputation, experience, and judicial
12 temperament.

13 And some of the committee wrote, "Energetic,
14 pragmatic, resourceful, good ideas, personable, smart,
15 great qualities, all qualities of a good circuit court
16 judge."

17 BY MS. DEAN:

18 **Q. Moving to housekeeping issues. Mr. McCutchen,**
19 **are you aware that as a judicial candidate, you are bound**
20 **by the code judicial conduct as found in Rule 501 of the**
21 **South Carolina Appellate Court rules?**

22 A. Yes.

23 **Q. Since submitting your letter of intent have you**
24 **contacted any members of the commission about your**
25 **candidacy?**

1 A. No.

2 Q. Since submitting your letter of intent have you
3 sought or received the pledge of any legislator, either
4 prior to this date or pending the outcome of your
5 screening?

6 A. No, I have not.

7 Q. Are you familiar with Section 2-19-70, including
8 the limitations on contacting members of the General
9 Assembly regarding your screening?

10 A. Yes, I am.

11 Q. Have you asked any third parties to contact
12 members of the General Assembly on your behalf, or are you
13 aware of anyone attempting to intervene in this process on
14 your behalf?

15 A. No.

16 Q. Have you reviewed and do you understand the
17 commission's guidelines on pledging in section -- in Code
18 Section 2-19-70(e)?

19 A. Yes.

20 MS. DEAN: Mr. Chairman, I would note for
21 the record that any concerns raised during the
22 investigation by staff regarding the candidate were
23 incorporated into the questioning of the candidate today.
24 Mr. Chairman, I have no further questions.

25 REPRESENTATIVE CASKEY: Thank you, ma'am.

1 Do any members of commission have questions for Mr.
2 McCutchen? Senator Talley.

3 SENATOR TALLEY: Thank you, Mr. Chairman.

4 EXAMINATION BY SENATOR TALLEY:

5 Q. Nice to see you again, Mr. McCutchen.

6 A. And you as well.

7 Q. One of the things I think the legislature is
8 going to have to wrestle with next year is going to be this
9 discussion about bail reform and -- and looking at a lot of
10 cases that have made the news, especially lately.

11 So just give us some general thoughts. If you
12 were elected and you were holding a term in general
13 sessions court, you're going to hear, you know, motions for
14 bond, bond revocation motions, etc.

15 Just what do you -- what are you looking for,
16 what do you expect from the prosecution, what do you expect
17 from the defense attorney to try to make the best decision
18 you can? Realizing some of it's going to be governed by
19 statute, but obviously there's going to be some discretion
20 given to you as well.

21 A. Right. You know, I think in a bond revocation, I
22 think there's got to be some factual basis to, you know,
23 revoke a bond or -- or even in a situation where there's
24 been a serious felony committed.

25 I mean, you've got to have -- I mean, even though

1 they've been charged, and they're they're seeking bond,
2 there's got to be somebody -- these people still have
3 constitutional rights, and they're -- I think you got to
4 balance, you know, the facts that -- I mean, they're asking
5 for a bond.

6 So I mean, it could be a very high bond. But the
7 fact that they weren't given one -- I mean, I think you got
8 to give consideration to the facts. It's not like you're
9 trying the case in a bond -- in a bond setting. But I
10 think you need sufficient facts.

11 And, obviously, the victim's advocate and
12 victim's have bill of rights as well. But I think you got
13 to look at the facts and, you know, obviously, the
14 underlying record of the -- of the person being charged
15 with the crime to, you know, figure out if he is a danger
16 or a menace to society.

17 You know, one thought I've always had, and I know
18 it's a lot easier in federal court, is when you've got the
19 federal sentencing guidelines or -- and I know, there's a -
20 - there's bond -- some bond guidelines. But ultimately,
21 that decision would lie with me.

22 And I think, you know, using the loose rules as a
23 -- as a framework, and then working from that and the
24 individual facts of every case, you know, I think that's
25 what I would look for, you know, in a situation where I had

1 to -- I had to set a bond or revoke a bond.

2 SENATOR TALLEY: Thank you.

3 REPRESENTATIVE CASKEY: Anyone else?

4 (Hearing none.)

5 REPRESENTATIVE CASKEY: Mr. McCutchen, thank
6 you for being here today. I apologize again for the delay
7 in getting to -- getting to your application discussion
8 here. We had some matters that took a little longer than
9 we expected earlier.

10 Nonetheless, I appreciate your application.
11 Before you get out of here, two things that I have to go
12 over real quick, because we have reached the conclusion of
13 this portion of the screening process. So I need to take
14 the opportunity to remind you, that pursuant to the
15 commission's evaluative criteria, the commission expects
16 candidate's to follow the spirit as well as the letter of
17 the ethics laws, and that we will view violations or the
18 appearance of impropriety as serious and potentially
19 deserving of heavy weight in the screening deliberations.
20 Do you understand that?

21 MR. MCCUTCHEN: Yes, I do.

22 REPRESENTATIVE CASKEY: And on that note,
23 and as you know, the record will remain open until the
24 formal release of the report of qualifications, and you may
25 be called back at such time if that need were to arise.

1 Do you understand that?

2 MR. MCCUTCHEN: Certainly.

3 REPRESENTATIVE CASKEY: All right.

4 Fantastic. Again, thank you for being here today. Thank
5 you for offering for service to the state. And I wish you
6 well in your travels back home.

7 MR. MCCUTCHEN: Well, thank you. And thank
8 you for your time today.

9 REPRESENTATIVE CASKEY: Thank you, sir.

10 (Candidate excused.)

11 REPRESENTATIVE CASKEY: On motion of
12 Representative Jordan, seconded by Mr. Safran, we will go
13 off the record.

14 (Off the record.)

15 CHAIRMAN RANKIN: All right. If you will,
16 please, raise your right hand.

17 WHEREUPON,

18 JANE H. MERRILL, being duly sworn and
19 cautioned to speak the truth, the whole truth and nothing
20 but the truth.

21 CHAIRMAN RANKIN: State your full name for
22 the record, please.

23 MS. MERRILL: Jane Merrill.

24 CHAIRMAN RANKIN: Thank you, Ms. Merrill.
25 You've got two documents that you've been working on, to

1 make sure the PDQ and the sworn statement are to your
2 liking. And my question: Are they ready to be entered into
3 the record without objection?

4 MS. MERRILL: Yes, sir.

5 CHAIRMAN RANKIN: Okay. Hand those over to
6 the court reporter, and we'll mark them.

7 (EXHIBIT NO. 12 - JUDICIAL MERIT SELECTION
8 COMMISSION PERSONAL DATA QUESTIONNAIRE OF JANE H.
9 MERRILL)

10 (EXHIBIT NO. 13 - AMENDED PERSONAL DATA
11 QUESTIONNAIRE OF JANE H. MERRILL)

12 (EXHIBIT NO. 14 - JUDICIAL MERIT SELECTION
13 COMMISSION SWORN STATEMENT OF JANE H. MERRILL)

14 CHAIRMAN RANKIN: You have not been before
15 the JMSC before.

16 MS. MERRILL: I have. One time in 2019.

17 CHAIRMAN RANKIN: Forgive me. Forgive me.
18 So that helps with the second question. You're familiar
19 with what we do in this -- in the evaluative criteria that
20 we follow, including the ballot box survey, a thorough
21 study of your application materials, a verification of your
22 compliance with state ethics laws, a search of newspaper
23 articles in which your name appears, the prior screening,
24 and finally, a check for economic conflicts of interest.

25 No affidavits have been filed in opposition

1 to your candidacy, and no one is here to testify against
2 you. You have someone with you, though. And you're
3 welcome to introduce that person.

4 MS. MERRILL: Thank you. I brought my
5 husband, Albert Merrill, with me.

6 CHAIRMAN RANKIN: Welcome, Mr. Merrill.
7 Thank you. And our apologies to the both of you, for our
8 delayed start. It's been like this all week. And again
9 our apologies.

10 MS. MERRILL: No worries. I understand.

11 CHAIRMAN RANKIN: You have the opportunity
12 to make a brief opening statement, if you'd like. Given
13 the hour, if you don't want to, Ms. Baker can begin the
14 questions. At the end, if you feel like you'd like to make
15 any other statements, you will be welcome to do so. The
16 floor is yours, or we'll turn it over to Ms. Baker.

17 MS. MERRILL: We can turn it over to Ms.
18 Baker.

19 CHAIRMAN RANKIN: Thank you. Ms. Baker.

20 MS. BAKER: Thank you, Mr. Chairman. I
21 would note for the record that based on the testimony
22 contained in the candidate's PDQ, which has been included
23 in the record, with the candidate's consent, Ms. Merrill
24 meets the constitutional and statutory requirements for
25 this position regarding age, residence, and years of

1 practice.

2 EXAMINATION BY MS. BAKER:

3 Q. Ms. Merrill, how do you feel your legal and
4 professional experience thus far renders you qualified and
5 will assist you to be an effective circuit court judge?

6 A. I have a wide range of experience that includes
7 trying cases in circuit court, both civilly and in criminal
8 general sessions. I started my career as a law clerk to
9 George Saunders. I've been a prosecutor.

10 And I worked for civil defense firm and then I
11 opened my own firm. And I do criminal defense work, as
12 well as other civil work now. So I think just that
13 experience, but also my background.

14 I'm conscientious. Except for a few semesters
15 during law school, I've had a job continuously since I was
16 15 years old.

17 I'm courteous. And I think that's important to
18 have in a judge. I'm compassionate. I think one thing
19 that's really important for a judge always remember, is how
20 you make someone feel. People don't always remember what
21 you say or what you do, but they often remember how you
22 make them feel. And I think a judge needs to keep that in
23 mind.

24 And I'm committed to doing the work. Not
25 necessarily to the title, I think wearing a black robe does

1 not make one all knowing. So I think I'm -- you just have
2 to be committed to the work, and to the job itself, and not
3 the title.

4 Q. Thank you, Ms. Merrill. Are there any areas of
5 the law that you would need additional preparation in order
6 to serve as a circuit court judge, and how would you handle
7 the additional preparation?

8 A. I don't know that there's additional preparation,
9 so much as continuing to keep up with the law, as I do as
10 an attorney, including reading the advance sheets, being
11 aware of new statutes and things like that.

12 Q. Ms. Merrill, the commission received 111 ballot
13 box surveys regarding you, with 16 additional comments.
14 The ballot box survey, for example, contained some of the
15 following positive comments:

16 "An excellent lawyer who should make a -- an
17 excellent lawyer who should make a superb judge. If merit
18 counts, she will succeed. Ms. Merrill would make an
19 excellent circuit court judge. She has actual trial
20 experience and would bring an intellectual industriousness
21 to the bench."

22 Three of the written comments expressed concerns
23 regarding your temperament. What response would you offer
24 to this concern?

25 A. I would say that being a litigator, oftentimes

1 you have to take a stand, as most of you know, and
2 sometimes that might rub someone the wrong way. But I'd
3 like to give some examples of how I think I do relate well
4 to others, and my temperament.

5 I have a contract right now, where I help out the
6 public defender's office in Abbeville. And I've done that
7 for about two years. And, still, the elected solicitor of
8 our circuit wrote a letter of recommendation. I get along
9 well, and I have a good working professional relationship
10 with that office.

11 **Q. Thank you. Ms. Merrill, your SLED report**
12 **indicated that there was a lawsuit filed against you in**
13 **2009, in the Federal District Court, by Travis Mendell**
14 **Kemp, who filed a 1983 suit as a prisoner. Please explain**
15 **the nature and the disposition of the suit.**

16 A. That was brought to my attention by Ms. Baker
17 during our meeting. I wasn't aware of that, because I was
18 never served with that. And it was during my time as an
19 assistant solicitor, I was named along with the elected
20 solicitor. I was never served and the case was dismissed.

21 **Q. Thank you. Ms. Merrill, you disclosed in your**
22 **PDQ, that you are a named plaintiff in a case pending in**
23 **Abbeville County. Could you please describe the current**
24 **status of that case?**

25 A. It is pending. The defendant has been served.

1 And my interest is very minor, in that it's a -- it's some
2 veterinarian bills. My uncle was walking my dog and was
3 injured.

4 **Q. Thank you, Ms. Merrill.**

5 MS. BAKER: I would note that the Piedmont
6 Citizens Committee reported that Ms. Merrill is well
7 qualified in the evaluative criteria of ethical fitness,
8 professional and academic ability, character, reputation,
9 experience, and judicial temperament, and qualified in the
10 evaluative criteria of constitutional qualifications,
11 physical health and mental stability.

12 The committee stated in its related
13 comments, "Ms. Merrill brings a compelling personal story,
14 a matchless work ethic, and a diverse and wide-ranging
15 background to her candidacy for circuit judge. She's one
16 of the very few candidates whom this committee has ever
17 interviewed, who has practiced in all four broad areas of
18 practice that come before the circuit court, civil
19 plaintiff and defense work and criminal prosecution and
20 defense work. She's deeply involved in a range of
21 community activities and in service to the South Carolina
22 Bar, including as coach of her local high school mock trial
23 team. And she retains zestful professionalism that makes
24 her both a talented mentor for younger colleagues and a
25 respected peer. The Committee recommends her,

1 enthusiastically and without reservation."

2 MS. MERRILL: Thank you.

3 BY MS. BAKER:

4 Q. I have a few housekeeping questions, Ms. Merrill.
5 Are you aware that as a judicial candidate, you are bound
6 by the Code of Judicial Conduct is found in Rule 501 of the
7 South Carolina Appellate Court rules?

8 A. Yes.

9 Q. Ms. Merrill, in submitting your letter of intent,
10 or have you contacted any members of the commission about
11 your candidacy?

12 A. I have not.

13 Q. Since submitting your letter of intent have you
14 sought or received the pledge of any legislator, either
15 prior to this date or pending the outcome of your
16 screening?

17 A. I have not.

18 Q. Are you familiar with Section 2-19-70, including
19 the limitations on contacting members of the General
20 Assembly regarding your screening?

21 A. I am.

22 Q. Have you asked any third parties to contact
23 members of the General Assembly on your behalf, or are you
24 aware of anyone attempting to intervene in this process on
25 your behalf?

1 A. I have not asked anyone. And I'm not aware of
2 anyone intervening on my behalf.

3 **Q. Have you reviewed and do you understand the**
4 **commission's guidelines on pledging in South Carolina Code**
5 **Section 2-19-70(e)?**

6 A. I do.

7 MS. BAKER: Mr. Chairman, I would note for
8 the record that any concerns raised during the
9 investigation by staff regarding the candidate were
10 incorporated into the questioning of the candidate today.
11 Mr. Chairman, I have no further questions.

12 CHAIRMAN RANKIN: Okay. Questions by
13 members of the commission?

14 (Hearing none.)

15 EXAMINATION BY CHAIRMAN RANKIN:

16 **Q. I want to just start, briefly. And I want -- I**
17 **appreciate you all being here, and you offering for**
18 **consideration. You are presently with Hawthorne Miller**
19 **Law?**

20 A. Hawthorne Merrill.

21 **Q. Excuse me. Merrill Law.**

22 A. That's okay. I understand. I have to keep
23 bumping my phone brightness up.

24 **Q. And Hawthorne Merrill includes who?**

25 A. Just myself. My maiden name is Hawthorne, and I

1 grew up in Greenwood.

2 Q. Okay.

3 A. So I use both names as part of my law firm name.

4 Q. All right. And the mix of your civil/criminal
5 practice, in your solo private practice, again, verify that
6 you've answered 15 percent civil, 50 criminal, 25 percent
7 domestic, and 10 other. Is that about the right mix?

8 A. That's about the right mix, yeah.

9 Q. Okay. And in the --

10 A. I think so.

11 Q. -- civil, you're including mediation practice.
12 Have you taken a jury trial, criminal or civil, to verdict
13 on your own as a -- or as lead counsel?

14 A. Yes. I've tried a murder case alone as defense
15 counsel. I've tried a murder case with co-counsel, and I
16 have tried a civil -- several civil cases to jury. And
17 I've tried other criminal matters as well.

18 Q. You list the cases that are significant, which
19 may include those. Tell me about the civil cases, what
20 type, and who did you represent. Not the exact party, but
21 the plaintiff/defendant business litigation, that flavor.

22 A. So when I was at McDonald Patrick in Greenwood, I
23 represented, typically, the defendant. And it was
24 typically insurance defense work. I also represented small
25 businesses when I was there. For example, I argued a

1 summary judgment motion for a small business when I was
2 there.

3 And then in my own practice, I've done
4 plaintiff's work. Primarily, I've done some car accidents,
5 one slip-and-fall, and a few things like that.

6 **Q. And, again, those are on behalf of both?**

7 A. I've done both plaintiff and defense work.

8 **Q. And the firm you were with before you opened your**
9 **own shop, was that mostly defense? Or was that mostly a**
10 **general mix?**

11 A. The one I was with before was mostly defense.

12 **Q. Not necessarily relevant to a circuit court**
13 **position, but you do list appellate cases that you've been**
14 **involved with doing veterans claims. Tell me about that.**

15 A. So I just have enjoyed doing those. I went to a
16 conference with another attorney, years ago, and kind of
17 found out about that. And so I occasionally do those for a
18 nonprofit organization.

19 And then if I'm successful, you can seek fees
20 through the Equal Access to Justice Act. And I've just
21 done those when they've asked me to do them.

22 **Q. Okay. And then, perhaps, finally, for me, but at**
23 **least for now the -- who in the bench, presently or retired**
24 **or gone to glory, would you want the world to see you**
25 **emulating, in terms of if you were successful in this race**

1 to be a judge? Who would you like to be compared to or
2 hold yourself to the standard of?

3 A. That's a tough question. Because I think South
4 Carolina has a lot of good judges, and I've been fortunate
5 enough to appear in front of a lot of good judges. I would
6 say our three local judges that I practice in front of the
7 most -- Judge Addy, Judge Griffith, and Judge Hocker --
8 each bring something different to the bench, in good ways
9 and positive ways. And so if I could take the best of each
10 of them, I think I would be an excellent judge.

11 Q. I know that the Bar will appreciate those
12 comments. And smart, politically. And those are good
13 examples of judges.

14 Temperament is a focus of this commission, and
15 has been for quite a while. In terms of your demeanor --
16 not who, but have you had an example where you have seen a
17 judge, perhaps, not exhibiting the judicial temperament
18 that you would have -- that you would exhibit yourself?

19 And I don't know -- I don't want to know the
20 details, but have you seen that ever in your life as a
21 lawyer or as a litigant?

22 A. I have as an attorney. And as I said earlier, I
23 think it goes back to what I think a judge always has to
24 remember, is how you make people feel is really important;
25 that's what people remember, and how you treat people.

1 And so I have seen that. And I've been in front
2 of a judge, where I felt like I was dressed down before,
3 maybe, when I didn't think was completely warranted in that
4 manner. And so I certainly don't think that's the best way
5 to handle things.

6 I think always been respectful to the litigants,
7 to the lawyers, to the court personnel, to the clerks --
8 everybody in the courtroom is very important.

9 **Q. And what would you do to maintain that, again,**
10 **yourself? Other than not wanting to do -- or have done to**
11 **others what you had done to you.**

12 A. I think I would just continue to try to be
13 respectful. I do that in practice. I mean, that's what I
14 do, and maintain decorum in the courtroom. Because I think
15 that's important.

16 CHAIRMAN RANKIN: Okay. Any questions of
17 any other members of the commission? Ms. Lucy Grey McIver.

18 MS. MCIVER: Thank you, Mr. Chairman.

19 EXAMINATION BY MS. MCIVER:

20 **Q. Ms. Merrill, I was just looking at your website,**
21 **Hawthorn Merrill Law, and I have looked at some of your**
22 **affiliations. Can you tell us more about the Greenwood**
23 **Women's Care.**

24 A. Yes. So Greenwood Women Care is an organization
25 that kind of was started out of the Greenwood County

1 Community Foundation, And I was on the board for the
2 Greenway County Community Foundation. And so it's women
3 who, collectively, essentially, donate money each year And
4 then we grant that out to different organizations.

5 So it's a little bit of a subset of the Greenwood
6 County Community Foundation. And our grants are smaller,
7 just because our funds are not as large. But that's what
8 it is.

9 **Q. You have three pictures that come up on the**
10 **website, and so I was -- well, actually, there's one --**
11 **three -- the first three and then the -- and one of them**
12 **appears to be a dog tag, and the next one appears to be a**
13 **fetus.**

14 **So I was curious if in any way this organization**
15 **has any ties to any organizations related to abortion**
16 **services or pro life services or anything like that.**

17 **A. No, they don't. It's not a political**
18 **organization. Greenwood Women Care is not a political**
19 **organization. We grant money to local schools or -- like a**
20 **local music program, Palmetto Girls Sing, which is a group**
21 **of 4th through, it's now 12th grade, female choir. That's**
22 **what we do. It has nothing to do with that.**

23 **And I do some work in family court with**
24 **representing -- I've got a handful of cases, where I've**
25 **done adoptions and also like in vitro fertilization-type**

1 cases. So that's where that -- that's why that's there.

2 But, yeah, Greenwood Women's Care is not a
3 political organization, and it's made up of women -- a
4 cross-section of the community.

5 **Q. Okay. So Crossroads Pregenancy Center, do you --**
6 **do you have any affiliation with that, either individually**
7 **or through Greenwood Women's Care?**

8 A. I do not. I can't -- I guess I need to double-
9 check Greenwood Women's Care, to see if perhaps there was a
10 grant. Because everybody votes on the grants, so I don't
11 want to mis-speak and -- but I personally don't. I'm not
12 even familiar with that organization.

13 **Q. Okay. Thank you very much. I didn't mean to**
14 **jump right into that, but when I went to your website, that**
15 **was the first picture that popped up and --**

16 A. No, that's fine. Those are all good questions.
17 And I can --

18 **Q. I wanted to address that head-on.**

19 A. Certainly. And I can look into that further with
20 Greenwood Women's Care, if that's a concern.

21 CHAIRMAN RANKIN: All right. Ms. Blackley.

22 EXAMINATION BY MS. BLACKLEY:

23 **Q. Just following up on that. Is that a 501(C)(3)?**

24 A. The Greenwood Women's Care?

25 **Q. Uh-huh.**

1 A. It is.

2 **Q. And it's more of a -- like a giving?**

3 A. It is a giving -- that's exactly what it is.
4 It's a giving organization of women in the community. And
5 we also sponsor -- like if there is a young woman in the
6 community, who may not be able to make the financial
7 donation, some people will anonymously sponsor and allow
8 them. But is it giving organization for local non-profits
9 or other things like that.

10 **Q. What is the mission of that organization, in**
11 **reference to giving? Like, where do you focus?**

12 A. So they -- there's not a specific --

13 **Q. The community?**

14 A. Community. As I say, the local -- Greenwood
15 County is the focus, so it's local. It's organizations
16 within Greenwood County. But it's community organizations.
17 And so anybody can write a grant and submit it, and then
18 that information is provided to the membership, and then we
19 vote on which organizations will be granted the funds.

20 **Q. But is a 501(c)(3).**

21 A. It is a 501(c)(3).

22 **Q. Thank you.**

23 A. Certainly.

24 EXAMINATION BY CHAIRMAN RANKIN:

25 **Q. And, finally, unless there are other questions --**

1 again, the good and the bad, we get all sorts. And so one
2 question does not suggest that, that is the theme or the
3 total narrative. So we recognize that with a -- and take
4 these with a grain of salt.

5 The question about experience and -- I don't know
6 how to say it. Well, just bottom line experience, you've
7 listed for me, I think, about five cases that have gone to
8 trial, including -- or in the civil cases, in addition to
9 the murder trial, how many total cases have you taken to
10 verdict? And I say that, recognizing we've come out of a
11 two-year lockdown, and nothing's happened for the longest
12 time for all of us.

13 Also, recognizing the mandatory mediation,
14 forcing much more cases to resolve than to go to trial.
15 And it's not a loaded question when I asked that, but --

16 A. So in the last, about a year and a half, I've
17 tried one civil case to jury. And I've tried three
18 criminal cases, two of those did not make it a jury because
19 of unusual issues that stopped it.

20 But I am -- and this is an approximation. I
21 think I've tried about 17 to 18 cases to jury in general
22 sessions, and about seven civil cases to jury. And, again,
23 that is an approximation. I understand I'm under oath, but
24 I've tried to think back and then I remembered another one
25 last night. And so I think that's about how many I've

1 done.

2 Q. So motions practice is perhaps far more of a
3 regular touch with the circuit courts. Is that a active
4 practice for you as well, where you have to go in and
5 either force or respond to some motion for discovery, etc.?

6 A. It is, yes. That, or motions for summary
7 judgment and things like that.

8 CHAIRMAN RANKIN: All right. Unless there
9 are other questions.

10 (Hearing none.)

11 CHAIRMAN RANKIN: Then at this point, Ms.
12 Merrill, we will close this portion of the screening
13 process. I need you, though, to remember, having done this
14 before, that the commission takes very seriously the --
15 both the spirit and letter of the ethics law. Any
16 violation by you, or the appearance of impropriety would be
17 deemed very serious and deserving of heavy deliberations by
18 this commission.

19 In the unlikely event that, that were to
20 occur, you understand that we could call you back because -
21 - and I will need a verbal affirmation of this -- you know
22 that the record is not closed until the formal release of
23 the report of qualifications, correct?

24 MS. MERRILL: I understand that.

25 CHAIRMAN RANKIN: And we don't expect to see

1 you, but you now have acknowledged it. And so ladies --
2 lady and gentlemen, we thank you for your presence and,
3 again, the willingness to offer for this position.

4 MS. MERRILL: Thank you. Thank all of you.

5 (Candidate excused.)

6 CHAIRMAN RANKIN: Mr. Witherspoon.

7 MR. WITHERSPOON: Yes, sir.

8 CHAIRMAN RANKIN: Welcome.

9 MR. WITHERSPOON: Thank you, sir.

10 CHAIRMAN RANKIN: Raise your right hand, if
11 you will.

12 WHEREUPON,

13 WILLIAM K. WITHERSPOON, being duly sworn and
14 cautioned to speak the truth, the whole truth and nothing
15 but the truth.

16 CHAIRMAN RANKIN: You've got two documents,
17 a sworn statement and a PDQ. Are those ready to go into
18 the record --

19 MR. WITHERSPOON: They are.

20 CHAIRMAN RANKIN: -- without objection?

21 CHAIRMAN RANKIN: I also have an amendment
22 that I supplied.

23 CHAIRMAN RANKIN: Very good. All of those,
24 you have no objection to them being included?

25 MR. WITHERSPOON: I do not.

1 CHAIRMAN RANKIN: If you'll hand them over
2 to the court reporter.

3 (EXHIBIT NO. 15 - JUDICIAL MERIT SELECTION
4 COMMISSION PERSONAL DATA QUESTIONNAIRE OF WILLIAM
5 K. WITHERSPOON)

6 (EXHIBIT NO. 16 - AMENDED PERSONAL DATA
7 QUESTIONNAIRE OF WILLIAM K. WITHERSPOON)

8 (EXHIBIT NO. 17 - JUDICIAL MERIT SELECTION
9 COMMISSION SWORN STATEMENT OF WILLIAM K.
10 WITHERSPOON)

11 CHAIRMAN RANKIN: We will now proceed to
12 some questions. You understand, in our investigation of
13 your qualifications to serve on the bench, we focus on nine
14 evaluative criteria, including the ballot box survey, a a
15 thorough study of your application materials, verification
16 of your compliance with the state ethics laws, a search of
17 newspaper articles in which your name appears, a study of
18 previous screenings, and a check for economic conflicts of
19 interest.

20 No affidavits in opposition to your
21 election, and no one is here to testify for you or against
22 you, except you. And so I will turn the floor over to you,
23 with the suggestion that, given our late start and -- for
24 which we apologize, you can forego that and answer
25 questions now.

1 You'll have the right to make a closing
2 statement or add anything at the end, if you so choose.

3 MR. WITHERSPOON: I will waive. I would say
4 thank you for the opportunity to be here. You have a great
5 staff, Ms. Crawford, Ms. Wilkinson, and Ms. Putnam. And so
6 with that, I will yield.

7 CHAIRMAN RANKIN: Super. Ms. Wilkinson,
8 take it away.

9 MS. WILKINSON: Thank you, Mr. Chairman.
10 I note for the record that based on the testimony contained
11 in the candidate's PDQ, which has been included in the
12 record, with the candidate's consent, Mr. Witherspoon meets
13 the constitutional and statutory requirements for this
14 position regarding age, residence, and years of practice.

15 EXAMINATION BY MS. WILKINSON:

16 **Q. Mr. Witherspoon, how do you feel your legal and**
17 **professional experience thus far renders you qualified and**
18 **will assist you to be an effective circuit court judge?**

19 A. I think my career has taken a very long path. I
20 began as a police officer, before I went to law school,
21 which gave me the input to go to law school.

22 I've clerked with two very fine state judges,
23 Judge Bell and Judge Perry. I've worked in private
24 practice, doing civil administrative work. I've done some
25 criminal defense.

1 And for the last ten -- 20 years, I've done
2 criminal prosecution. So I think I have a very wide array
3 of experience, which I think helps -- would help me, if I
4 am so chosen.

5 Q. Mr. Witherspoon, the commission received 317
6 ballot box surveys regarding you, with 52 additional
7 comments. The ballot box surveys contained an overwhelming
8 number of positive comments, which include:

9 "Mr. Witherspoon is an experienced litigator with
10 superior trial skills. He would be an asset to our
11 judicial system. William is a super, all around excellent
12 candidate. He is smart, kind, thoughtful, and a real
13 gentleman. He is a very intelligent attorney. William is
14 an outstanding judicial candidate. He is a brilliant
15 attorney, an exceptional friend, and a formidable legal
16 adversary. He would make a fantastic judge."

17 And, lastly, "I have had the pleasure of working
18 directly with William, over the last four years. He
19 epitomizes the intellectual, ethical, and temperamental
20 characteristics that citizens of this great state would
21 expect in a member of the bench. I wholeheartedly put my
22 support behind William, and I believe he would make an
23 excellent judge."

24 There were eight negative comments with centered
25 around two concerns: temperament and experience. Mr.

1 **Witherspoon, how would you respond to concerns about your**
2 **temperament?**

3 A. The first thing I would say is that it -- it
4 hurts that someone had those bad comments. Not because
5 they have them, but simply because I allowed myself to be
6 put into place where someone felt I was not sensitive,
7 compassionate, professional. And so I'm just disappointed
8 in myself for allowing that.

9 Having said that, I know I have to work harder
10 now in my profession, in my day-to-day, to make sure those
11 eight comments -- or those eight persons or -- do not feel
12 that way.

13 I understand, as a prosecutor, sometimes that
14 stance I take on when I'm -- in my cases, people don't like
15 the positions that I take because of that. So I work hard
16 -- I will work hard to make sure I rectify that.

17 Clerking with Judge Perry, one of the things he
18 used to always say is, "No matter who the litigant is,
19 that's someone's son, that's someone's daughter, that's
20 someone's mother, that's someone's father, and someone's
21 sister or brother, and that you have to work -- work hard
22 to make sure that they feel respected, that they are
23 wanted."

24 As lawyers, we're in the courtroom almost every
25 day; but for litigants, that's their one and only time that

1 they're there. And they need to be heard. They need to
2 feel like someone is listening to them. I accept those
3 comments, and I will work extremely hard to make sure I
4 rectify those issues.

5 **Q. There were a few comments regarding your lack of**
6 **experience in state and civil courts, as you have been a**
7 **federal prosecutor for the last 22 years. How would you**
8 **respond to the concerns regarding your lack of experience**
9 **in state and civil court?**

10 A. In civil court, I think most people will think
11 that I only have done federal prosecutions. But prior to
12 going to the federal court, I worked in state court. I did
13 automobile wreck cases. I did medical malpractice cases.
14 My firm also represented the insurance reserve fund. So I
15 have done civil work.

16 As far as being in federal court, there is a
17 difference; it's not a lot. I think trial work is trial
18 work. Having said that, also I will certainly work harder
19 to make sure I get the experience, or read the advance
20 sheets and make sure I'm aware of that. Find mentors on
21 the bench who could help me when issues arrive.

22 So I've started to go, recently, to attending
23 civil cases in state court here. Two weeks ago, I watched
24 a medical malpractice case with Judge Lee. And so I'm
25 making every effort to make sure I rectify those problems.

1 Q. Mr. Witherspoon, there has been one lawsuit filed
2 against you since you were last screened, it was Daniels v.
3 Curry. What can you tell me about that, please?

4 A. Mr. Daniels was a defendant that I prosecuted in
5 2003/2004. He was arrested and charged in Kershaw County,
6 Richland County, and Berkeley County. And we prosecuted
7 him, federally. He went to trial and was convicted, his
8 latest sentence was in federal court.

9 After being sentenced he filed a 42 U.S. 1983
10 action against Judge Curry, who was the judge of his case,
11 myself, the DEA agent who was involved in arresting him,
12 the United States Marshals who were involved in arresting
13 him, the Richland County Sheriff's Department, which was
14 involved in arresting him, and Kershaw County, who was
15 involved. A suit was filed. It was never served. It was
16 dismissed.

17 MS. WILKINSON: I would note for the record,
18 that the Midlands Citizens Committee reported William
19 Witherspoon as qualified in constitutional qualifications,
20 physical health and mental stability. And further reported
21 that Mr. Witherspoon is well qualified in ethical fitness,
22 professional and academic ability, character, reputation,
23 experience, and judicial temperament. Mr. Witherspoon
24 received the highest level of qualification for every
25 category.

1 Additionally, the committee commented in
2 their summary, that Mr. Witherspoon made a great impression
3 on the committee, especially the attorneys.

4 BY MS. WILKINSON:

5 Q. Mr. Witherspoon, I have a few housekeeping
6 issues.

7 A. Yes, ma'am.

8 Q. Are you aware that as a judicial candidate, you
9 are bound by the Code of Judicial Conduct as found in Rule
10 501 of the South Carolina Appellate Court rules?

11 A. I am.

12 Q. Since submitting your letter of intent have you
13 contacted any member of the commission about your
14 candidacy?

15 A. I have not.

16 Q. Since submitted your letter of intent have you
17 sought to receive the pledge of any legislator, either
18 prior to this date or pending the outcome of your
19 screening?

20 A. I have not.

21 Q. Are you familiar with Section 2-19-70, including
22 the limitations on contacting members of the General
23 Assembly regarding your screening?

24 A. I do.

25 Q. Have you asked any third parties to contact

1 members of the General Assembly on your behalf, or are you
2 aware of anyone attempting to intervene in this process on
3 your behalf?

4 A. I have not.

5 Q. Have you reviewed and do you understand the
6 commission's guidelines on pledging in South Carolina Code
7 Section 2-19-70(e)?

8 A. I do.

9 MS. WILKINSON: Mr. Chairman, I would note
10 for the record that any concerns raised during the
11 investigation by staff regarding the candidate were
12 incorporated into the questioning of Mr. Witherspoon today.
13 And I have no further questions.

14 EXAMINATION BY CHAIRMAN RANKIN:

15 Q. Mr. Witherspoon, do you have a nickname?

16 A. Yes, I do.

17 Q. Do you mind putting on the record, what that
18 nickname is?

19 A. My nickname is "Spoon."

20 Q. And that is a -- that was affectionately given to
21 you by who?

22 A. I think it's a family nickname. We have a --
23 there are a lot of Witherspoons in the part of state, the
24 Lancaster-Rock Hill area. And so it's an affectionate
25 name that a lot of us have. And most of my friends here in

1 Columbia, and in law school, have affectionately known me
2 as "Spoon."

3 Q. I want to highlight a couple of things in your
4 past -- and, obviously, we got this. You mentioned two of
5 them, Matthew Perry of course, and Randall Bell. I
6 remember Mr. Bell's -- Judge Bell's greeting to my first
7 year of law school days -- and you got a couple of 2L's
8 back behind you here, who didn't have the pleasure of
9 having the forks, knives, and spoons scared out of you.

10 Randall Bell, when he Mister -- the guy on Paper
11 Chase, John Houseman. Law school is different.

12 A. Yeah.

13 Q. But anyway, obviously, a wonderful mark of a
14 judge. And I remember his election to the ultimate Court
15 of Appeals, so -- and then of course Judge Perry, everyone
16 knows of his grand, grand contribution to our State.

17 You've listed them. I'll invite you to name any
18 other that you would like to, if you're successful in this,
19 who would you hold yourself to -- most to be considered to
20 be like when you're wearing the robe?

21 A. First of all, let me just say about Judge Bell
22 and Judge Perry, both were very fine gentleman. Judge Bell
23 taught me a lot, not only about the practice of law, but
24 about life.

25 A lot of people were not aware -- were not aware

1 that he was a very religious man. And I remember, you
2 know, five o'clock in the afternoon, after we shut down,
3 we'd start talking about life and religion. And he always
4 has been a mentor to me. And we sadly lost him too early.

5 Judge Perry was a history -- a walking history
6 book, that we -- I spent time with. It was a privilege for
7 me. I clerked with him, one year, and was gone for three
8 years. And he had a clerk to leave early, and he called
9 and asked me if I would come back. Which I think -- I take
10 it as a high honor that he would ask me, when he could ask
11 anybody to come work for him.

12 So I think those two are very good mentors for
13 me. And they both have gone so early. I think, you know,
14 this position is a position that Judge Newman has held for
15 20 years or so. I think he's a wonderful judge of high
16 marks. Everyone thinks very highly of him. And so I think
17 Judge Newman would also be a person I would look towards.

18 I practiced in front of Judge Currie. One of the
19 things that we'd always say about Judge Currie, she knows -
20 - when she comes on the bench, she knows all the issues,
21 she's researched all the issues. And that's what I would
22 want to do, is to make sure when I came to the bench, that
23 I was prepared for every issue that came about.

24 You mentioned Judge Bell and that comment, "Look
25 to your left, look to your right. One of you won't be --

1 only one of you will be here at the end."

2 Having to clerk for him, I've heard that speech
3 many a times.

4 Q. I remember it well. One other thing, and then
5 I'll turn it over to others, if there are questions. But
6 you have an endorsement by Carl Solomon, who I recognize
7 that -- as the father of a 2L -- again, you get two behind
8 your, a Mr. Cooper -- and I'm going to do this, hopefully,
9 correctly. Take a look. You're going to meet them before
10 you're done here.

11 But anyway, you are a mentor to law students, I
12 believe. And I think I know one who may have a very
13 similar name to my own, that you may be involved with.

14 A. And I think it was difficult to mentor him. But
15 obviously --

16 Q. You and I share alike. Your road is much shorter
17 than mine.

18 A. That's true

19 Q. But as pointed out by Carl Solomon, who likewise
20 is very engaged with the law school students, I want to
21 commend you for putting yourself out there to teach the
22 great lawyers.

23 The great judges are made and -- or described as
24 such because of what they do to give back to raise the bar,
25 to educate and continue to try to make us what Judge Bell

1 and Judge Perry would want us to be, what the true spirit
2 of being a lawyer is about. So I want to commend you.

3 A. Well, thank you. My father is 91 years old, and
4 up until ten years ago, he was a volunteer firefighter. So
5 he instilled in us to always be part of public service. As
6 a police officer or working for the courts, working for the
7 budget and control board, teaching at the law school.

8 I taught -- I taught a course at Benedict
9 College, being a mentor to law students, and just students
10 in general. It's just part of my core. It's just
11 something my mom and dad very much taught us, that you have
12 to always give back. "To whom much is given, much is
13 required."

14 Q. All right. You've been here before. You have
15 been -- before our time before -- perhaps, unless Mr.
16 Safran was involved. And I don't think you were.

17 A. I'm not sure.

18 Q. You've screened --

19 A. 2011 was the last time I was here.

20 Q. Yeah. So these are newbies to you. But you know
21 how this works, in terms of how -- what we look at what we
22 are focused on. And if there's any area of your past, that
23 we've talked about today, that you would say distinguishes
24 you, or that you have improved on since you were last here,
25 11 years ago, what would you want this record to include --

1 not that you need more -- but that as you have seasoned
2
3 in this business, that you think we should hear?

4 A. Well, I think that's the key word there,
5 "seasoned." Over those last 11 years, I have gone from,
6 as Judge Perry used to say, a young whippersnapper
7 prosecutor to a more seasoned lawyer, to realize that --
8 as again, it goes back to everybody deserves to have their
9 day in court, to be heard, to have a -- their opportunity
10 to make their pitch, whatever it is.

11 And so I think that's the -- that's the big thing
12 is, that I have seasoned over the last 11 years. I have
13 tried hard to make sure I treat people with the respect
14 that I want.

15 Sometimes, you know, as a criminal prosecutor,
16 people feel that -- you know, that I take a hard stance.
17 But people don't realize that I, too, have family members -
18 - close family members who are a part of the judicial
19 system.

20 And I've always asked myself if that was my
21 brother or a sister or a family member, how would I want
22 them to be treated? And so that's the standard I hold
23 myself to.

24 CHAIRMAN RANKIN: Representative Caskey.

25 REPRESENTATIVE CASKEY: Thank you, Mr.

1 Chairman.

2 EXAMINATION BY REPRESENTATIVE CASKEY:

3 Q. Mr. Witherspoon, thank you for being here today.

4 A. Yes, sir. Thank you.

5 Q. And your patience is appreciated. So a long and
6 noble tradition here in the Gressette Building, it takes a
7 long time to do anything. So we're glad to be able to get
8 to you.

9 As I was reading through your letters of
10 recommendation, there are several that stood out to me,
11 because I'm familiar with the attorneys, Stanley Myers and
12 Brad Kirkland. And as Brad noted in his letter, one of the
13 things that he had experienced was your collegiality and
14 cooperation as he was learning federal practice.

15 And he made a note about how federal criminal
16 defense is quite unlike state defense, the extremely rigid
17 nature of sentencing alone can take years to master; that
18 sentencing, obviously in the federal system, being much
19 more complex.

20 Having not practiced in state court with respect
21 to criminal law, or at least not in quite a while, what
22 could you tell us about how you would approach sentencing
23 in criminal matters in state court, if you were to become a
24 judge?

25 A. I think you have to look at the whole picture.

1 You have to consider if there's a victim in the case,
2 considering the victim issues. You have to take a look at
3 if the -- what the criminal history of the person is that
4 you're sentencing. You have to take into consideration
5 what -- if there's a prior sentence that has happened. You
6 have to take and consider all of that, and you have to then
7 try to fashion the crime that he's been -- he or she has
8 been charged with. You have to then fashion -- or I think
9 fashion, as the court says, something sufficient but not
10 exceedingly to -- in that regard.

11 So you take a look at their background, you know,
12 their criminal history, their education, their work
13 history, how long has it been between the -- a prior
14 offence, if they've had a prior offense, and this offense.
15 You'd have to take -- you take all of that into
16 consideration, and try to come -- fashion a proper
17 sentence.

18 Q. Do you have any concern about, I think to be
19 accurately described as, an unequal amount or a different
20 amount of information that is presented to the judge for
21 sentencing in state court than it is in federal court?

22 A. Do I have a --

23 Q. Do you have any concern about -- about that --
24 when you would be sitting on the bench -- you know, a
25 federal judges has got a whole lot more in front of him or

1 her. But with the state court, you don't always have all
2 of that when fashioning sentences.

3 A. And I think as a -- as a judge, you need to ask
4 the questions. You know, "Mr. Defense Attorney, tell me
5 about your client. Tell me about your client's history.
6 Tell me about this."

7 "Mr. Prosecutor, tell me about the victim. Tell
8 me about the circumstances of that."

9 I think you can get that same information, by
10 asking the questions to the litigants so -- have them to
11 provide that information to you. Whereas, in federal court
12 we have this written report. But I think you can get all
13 those answers from the same way.

14 Q. And so to those who would say, "Well, I get
15 that," state court, though -- particularly during a plea
16 term -- is a lot faster. I mean, the volume -- if you're
17 not -- if you're not turning 30, 35 cases in a pleas -- in
18 a week -- or in a day, you know, during a big -- a busy
19 plea week, it tends to clog things up -- or could clog
20 things up.

21 Do you have any concerns about that? And maybe
22 that number is -- skews higher, to be fair. But compared
23 to federal court, it is a lot different.

24 A. It is a lot different. You know, in federal
25 court, a sentence could take 15 minutes or it could take an

1 hour. I think you should ask the judge. I think you have
2 to slow down and make sure you treat each case -- give it
3 its own weight. And if that means you come in early or
4 stay late or short of lunch, I think -- I think you have to
5 do that.

6 You do not in a state court, you do not have all
7 that information. But I think you have to make the best
8 decision, based upon all the information you do have.

9 **Q. Thank you. I appreciate it.**

10 CHAIRMAN RANKIN: All right. Representative
11 Jordan.

12 REPRESENTATIVE JORDAN: Thank you, Mr.
13 Chairman.

14 EXAMINATION BY REPRESENTATIVE JORDAN:

15 **Q. Mr. Witherspoon, thank you for being here today.**
16 **And thank you for putting your name in the hat. As I've**
17 **said to the candidates, it's a -- it takes some courage to**
18 **jump into this arena, including this arena you're facing**
19 **today.**

20 Let me get -- let me start off with some of the
21 good things. Number one, I'm super-impressed by pieces of
22 your resume. Very, very impressive. Also, I sort of lit
23 up on the inside, I think it's always very important who
24 you look to, to emulate. And you pointed out some of the
25 Who's who's in my book of judges, in referencing some of

1 your judicial heroes, or some of my judicial heroes. So
2 I'm very impressed by that.

3 Let me go a little bit further into this million-
4 dollar question to me, which is this lack of state criminal
5 experience. Have you ever represented an individual,
6 criminally, on a state charge?

7 A. I have. When I worked for Berry, Adams,
8 Quakenbush & Stewart for a short time, Joe McCullough was a
9 part of that office. And so I got to work with Joe
10 McCullough, and so I have represented persons in state
11 court on criminal matters.

12 Q. In what kind of criminal matters? Are we talking
13 murder cases? Shoplifting?

14 A. I've done DUIs and I've done drug case -- I
15 mean, yeah, drug cases.

16 Q. And any of those go to trial or --

17 A. No.

18 Q. Do you think -- and I know -- I recognize this as
19 a little bit of an unfair question. Do you think you've
20 missed anything -- missed out on anything in your
21 preparation to potentially be a judge, by not having a
22 little more broad defense experience?

23 A. No, I don't. Because I think there is the fact
24 that I don't have a broader defense posture -- criminal
25 defense posture, I think that's -- that's something I can't

1 speak -- I have to admit.

2 But I think the fact that I have prosecuted, I've
3 been a police officer, I've had this other defense work, I
4 think certainly helps fill in the gap. I have --
5 certainly, when I went to the federal court, I didn't have
6 federal court experience. And so what I did to make up for
7 it was burn the midnight oil, to make sure I was prepared
8 to go to court.

9 And that's something I promise to you, that no
10 matter -- even though I may not have the experience now, I
11 certainly will work hard to get that experience. I
12 certainly will also find mentors, judges in that regard, to
13 help me in that area.

14 And that's something I did in federal court,
15 finding mentors, finding people who you can help -- could
16 help you, when you have those questions.

17 **Q. Let me ask you this, sort of another step in that**
18 **same dialogue. You referenced your law enforcement**
19 **experience and your prosecution experience. How do you see**
20 **yourself gravitating back towards the neutral?**

21 I guess you'd say you've been on one side where,
22 obviously, we have an adversarial system. If someone had
23 concerns about you being that more neutral party, how would
24 you address that?

25 A. One of the reasons I went to law school was, as a

1 police officer -- I don't know if anybody's been a police
2 officer -- you're given arrest warrants, and you're told,
3 "Here's an arrest warrant. Go out and arrest Mister X or
4 Miss Y."

5 And one day, I had to arrest a person. In
6 talking to him, I really felt he didn't commit the crime.
7 But I had an arrest warrant and I had to serve it. At that
8 point, I told myself I needed to get into a position where
9 I can make those decisions.

10 As a prosecutor, that's what I have. People
11 don't realize the cases where I choose not to prosecute a
12 person because the evidence is not that strong, or I don't
13 think the person deserves the extensive sentence he or she
14 would get.

15 I have a letter on my desk now where -- I get a
16 letter about once every quarter from a person who I've
17 prosecuted, who thanks me for what I've done. And the last
18 letter, I have that on my desk, says that when he gets out,
19 the one thing he wants to do is to hug me. Because I
20 helped change him.

21 So as far as being prosecution-oriented, that's
22 my last 20 years. But I'm more people-oriented. And as I
23 said earlier, I have family members who are in the penal
24 system. And I always ask myself, if that was my person, my
25 family member, how would I want me to treat them? And so

1 that's the way I want to treat everybody.

2 Q. Let me -- let me transition just a little bit,
3 but it's a similar vein. To having been in government
4 practice now for an extended period of time, talk to me a
5 little bit about -- as someone in my practice, who's a sole
6 practitioner, and I handle lots of different kinds of
7 cases, and I'm thinking about lawyers that -- I think some
8 of my colleagues might agree -- perhaps the law hadn't
9 gotten any easier, between managing a firm and the
10 colleagues within your office, and your staff and court
11 schedules and all the different things that go into the
12 practice of law.

13 Not that you've been -- well, you have been
14 insulated, to some degree, from that type of experience for
15 quite some time. How do you see yourself reacting to --
16 and let me just give you a couple examples -- lawyers
17 needing to continue a case based on, "Judge, I need to --
18 need vacation time," or "I need -- I have other issues I
19 need to take up"? How do you foresee yourself interacting
20 with the Bar on the issues like that?

21 A. Well, working with a Bar, I often meet with
22 lawyers and understand that the practice of law is not
23 easy. I always tell people nobody ever tells you that when
24 you go to law school, that the practice of law is easy.

25 It's hard. I think you have to -- as a lawyer,

1 you have to take care of yourself first. And what I mean
2 by that, if you need that vacation, you have to take care
3 of yourself. Because if you don't take care of yourself,
4 you can't help your clients.

5 I think as a judge you have to be cognizant of
6 that, that lawyers do -- especially members of the General
7 Assembly -- have a second life or a third life or a second
8 job. And you have to be very aware of that and give them
9 as much leeway as they can.

10 However, you can't stop the court -- the court
11 from continuing on. You have to find ways to adjust that.

12 **Q. And I'll wrap up with this, because I've seen**
13 **this a little bit in the past: So as someone who has a**
14 **tremendous amount of federal background at this juncture,**
15 **coming into the state system, do you think there are ways**
16 **the state system needs to be more like the federal system?**
17 **And I'll qualify that -- that's a trap question.**

18 A. I understand. I think they're -- each system has
19 its own good parts and bad parts. And I think the federal
20 system is more regimented. You know, when you filed a
21 case, the deadlines -- you know, you have deadlines that we
22 have to meet -- I think having deadlines -- hard and fast
23 deadlines. We have a speedy trial clock that we actually
24 have to abide by. So there are some differences.

25 I think another difference is, you know, a case

1 is assigned to a judge, and the judge runs that case as he
2 or she sees fit.

3 On the civil side, there are a -- discovery
4 practices that judges have to follow and that litigants
5 have to follow. So there are differences. I'm not saying
6 one is better than the other. There are differences. It
7 seems like the state system has ran -- it could be, you
8 know, tweaked here and there. But it has worked.

9 Q. Thank you.

10 CHAIRMAN RANKIN: Okay. Mr. Safran.

11 MR. SAFRAN: Just a quick one.

12 EXAMINATION BY MR. SAFRAN:

13 Q. Let me just touch on that. There's no question,
14 I think you've been -- have a good, distinguished career in
15 the federal system. And I mean, I know the folks who've
16 written letters for you. Obviously, they -- I know Mr.
17 Myers does defense work all the time. And so, obviously,
18 he is adverse to you, in many cases, and seems to come away
19 feeling very comfortable working with you.

20 I just want to know -- in that response to that
21 last question, you know, I clerked at the federal level,
22 too, many, many, many moons ago. And one thing I learned
23 after walking away was, I don't want to be here.

24 And, you know, I think there are too many strict
25 guidelines, there are too many things that they make you

1 hop through. I like the practice in circuit court, you
2 know, to the extent I do it, because again, you know,
3 you're not really on the time clock constantly.

4 Are you going to feel, you know, some urge to
5 want to, basically, start implementing a little more of
6 those things, you know, in a more relaxed setting that we
7 have in the circuit court down here?

8 A. No. I mean, even though there's guidelines,
9 that's still -- the judge still controls his or her docket.
10 And so even though there's a 70-day clock from indictment
11 to finishing it -- I just finished a case in August, that
12 had been indicted in 2018. It took about four years to get
13 it done, for a lot of reasons.

14 And the judge was very willing to continue the
15 case in that regard, to make sure when the trial came
16 about, everybody had their ample opportunity to be well
17 prepared.

18 So, no, I'm not going to say I'm going to go in
19 and, you know, hit the clock, you know, 70 days we're going
20 to get rid of the case. No, I think, again, it's -- a lot
21 goes into it. Judges travel, and so one case doesn't stay
22 with the judge for the entire time period.

23 Q. Well, and that was the next point, particularly -
24 - you know, whether it be on the civil or the criminal
25 side, in state court, you know, you're going from place to

1 place. Or even if you stay in one locale, those files
2 aren't staying with you.

3 A. Exactly.

4 Q. You know, you may get several different hands on
5 it, in the course of a matter of months. And so I guess
6 how does that transition kind of appear to you at this
7 point?

8 A. Well, I mean, that's -- that's the system we
9 have. You have to use the system we have. Unless the
10 General Assembly or someone else makes it change, that's
11 the system we have. And we just have to use that -- if the
12 case goes from one person to that -- to one judge to
13 another judge.

14 But the thing is, when it comes to you, you have
15 to resolve whatever the issue is in front of you at that
16 time.

17 Q. Well, and what I can tell you is Representative
18 Jordan really, just a minute ago, alluded to something that
19 I know in the years I've been on here, has been a very,
20 very focused point, in that lawyers nowadays -- you know,
21 they've got it coming and going.

22 And, you know, I'm not going to tell you don't
23 work hard when you're in a government situation, but it
24 ain't the same as being in private practice. And I know
25 you touched a bit of that, back with with the Berry law

1 firm.

2 And guess the thing is, is that we're very
3 sensitive to the idea that, basically, people have to have
4 lives too. And I've sat in here and listened on several
5 occasions to prospective judges talking about things like,
6 Oh, yeah, you know what? I'm going to bring them to --
7 and, actually, one of them was a magistrate at the time --
8 "I'm bringing them over to my court on Saturday, the day of
9 the Carolina/Clemson game, and they're going to come try
10 their cases."

11 I had one here the other day, that made a comment
12 to the effect that, "If I'm going to dress somebody down,
13 I'm going to do it right in the middle of the courtroom."

14 I mean, those things to me are rather foreign to
15 what I think is reasonable. Now, I think the point is, is
16 that it's easy for anyone -- and I'm certainly not picking
17 on you -- to come in here and say, "Oh, yeah, I'm going to
18 be very flexible."

19 But, you know, let's be honest about it; people
20 get in there, the court's on top of them, we got to move
21 those cases, court reporters are scarce, so there's a lot
22 of reasons to kind of want to hold people's feet to the
23 fire.

24 And I guess how do you deal with that balancing
25 act, where somebody legitimately -- not somebody who's

1 coming to you all the time and saying, "I got to take off.
2 I need another continuance." You know, but somebody that
3 does legitimately come ask you, and you're also getting
4 those other pressures about, you know, we got to get these
5 cases turned during the term, don't want to dump it on the
6 next guy coming in. I mean, how do you handle that?

7 A. Well, we have that problem now or -- and that's a
8 problem, we have that happen in federal court now, defense
9 attorneys will ask, William, I need a continuance for --
10 I'm going out of town with my son's first soccer
11 tournament, can we have it -- fine.

12 My standard answer is: If you need a continuance,
13 you can always just say, "William agrees to the
14 continuance."

15 Because you do have -- we do have, you know,
16 lives outside this, you know, four walls of our offices.
17 For any judge to say, "I will bring you in on the Saturday
18 of a Carolina/Clemson game," I think that's unheard of.
19 That's something you never hear William.

20 Q. No, and I wouldn't suspect that it would be.

21 A. Yeah, but you have to -- you have to -- problems
22 happen. We're human. Your wife will get sick -- my wife
23 is not here because she's not feeling well. You have
24 children who are sick. You got children -- my son plays
25 soccer. You've got soccer games, you've got piano

1 recitals, you got dance recitals. All the things go into
2 making a lawyer, and you have to -- as a judge, you have to
3 be -- realize that, you know, there's another part of that
4 person's life, and that you -- that you have to be willing
5 to bend so you can -- they can have that -- the other part
6 of their life.

7 Q. All right. You know, and I think you talked
8 earlier -- you know, I didn't know Judge Bell particularly
9 well. I mean, he was a professor at the law school, I
10 think, when I started. And he could be a scary guy.

11 A. Trust me. Working for him is even scarier.
12 Trust me about that.

13 Q. And, you know, but I respect him. Because he was
14 -- you know, he was a brilliant man. And he basically did
15 tell you, you're not here to play, you know, this is a
16 profession, you're going to learn how to do it the right
17 way.

18 But I guess -- you know, the question that I'm
19 kind of looking at is -- you know, we've had a lot of
20 issues in terms of temperament. And, you know, you come
21 across as a very nice, even-tempered, fair-minded guy. But
22 we've heard that before. We've had people come back here,
23 and you act as if the person that you heard initially about
24 and the guy that you're seeing, it's like Jekyll and Hyde.

25 I mean, it's happened. It really has. And, you

1 know, something -- periods on on the bench can change
2 people, I mean. And I think we've seen that occur.

3 And I guess what I want to make sure is, is that
4 once you get past us, if you're fortunate enough to get on
5 the bench, at that point some people -- the mind clicks a
6 little different, and says, "You know what? I'm here. I
7 can do it any way I want."

8 What are you going to do to basically safeguard
9 against those moments, where somebody really kind of irks
10 you in the courtroom, and you say like, you know, "I don't
11 want to put up with this"?

12 I mean, you've run into -- I'm sure, even on the
13 federal bench, there have been some judges who, you know,
14 put their tempers out there on the sleeve, and they'd let
15 it go. Because I've seen them myself. How do you combat
16 that?

17 A. Well, I think if you look at my background, you
18 know, I've been in Bar associations and -- leadership
19 position in the Bar association's other organizations --
20 excuse me -- where that has never been the issue, or at
21 least never was an issue.

22 I think, as a judge, you have to always remember
23 -- as I said -- as Judge Perry said, that, that's
24 somebody's -- that's somebody's child in front of you. You
25 may be having a bad day -- you, being a judge, may be

1 having a bad day. But don't take it out on the persons or
2 the people in the courtroom, the lawyers, the staff, the
3 litigants. That's just something that you just have to
4 deal with.

5 You've got to always remember that it is their
6 only day in court. And you've got to make sure that when
7 they leave there -- they may not be happy with the
8 decision, but at least they can -- be happy to say, "I've
9 been heard and I've had my say."

10 **Q. And to close out -- you know, from the lawyer**
11 **perspective, I think I've asked this of some judges: Do you**
12 **remember getting your behind chewed out by judge? And**
13 **almost to a man, or a woman, they remember. And they say**
14 **it's something that never left them. And, obviously, it**
15 **wasn't something they fondly remembered. So I'm assuming**
16 **you've been there.**

17 A. With Judge Perry. And I had him -- I was
18 standing in front of him one day, and made a comment that I
19 should not have made. And he allowed me to know that, that
20 comment should never be made again. And it's never been
21 made again.

22 **Q. So I mean, you understand how the lawyer could**
23 **perceive it.**

24 A. Oh, I've been there.

25 **Q. All right. Well, thank you very much.**

1 A. Yes, sir.

2 CHAIRMAN RANKIN: Any other questions?

3 (Hearing none.)

4 CHAIRMAN RANKIN: All right. Mr.

5 Witherspoon, thank you. And this concludes this portion of
6 our screening process. Again, I want to remind you, the
7 commission takes very seriously, both the letter and the
8 spirit of the ethics law. Any violations or appearance of
9 propriety of that law by you, would be deemed very serious
10 and worthy of our bringing you back.

11 This record is not closed until the formal
12 release of the report of qualifications. In the unlikely
13 event of the violation of an appearance thereof -- of the
14 ethics law, you understand we can call you back, correct?

15 MR. WITHERSPOON: Yes, sir.

16 CHAIRMAN RANKIN: Very good. All right.

17 Mr. Witherspoon, thank you so much. We are going to go off
18 the record just for a moment. And you are free, finally,
19 to go.

20 MR. WITHERSPOON: Thank you very much for
21 your service.

22 (Off the record.)

23 CHAIRMAN RANKIN: All right, Mr. Young.

24 MR. YOUNG: Afternoon.

25 CHAIRMAN RANKIN: Welcome. First, let me

1 get you to raise your right hand.

2 WHEREUPON,

3 S. BOYD YOUNG, being duly sworn and
4 cautioned to speak the truth, the whole truth and nothing
5 but the truth.

6 CHAIRMAN RANKIN: You have before you, two
7 documents that you have prepared. And my question to you
8 is, are they ready to go in the record? And do you have
9 any objection to them being put in?

10 MR. YOUNG: They are ready. And I do not
11 have any objection.

12 CHAIRMAN RANKIN: Very good. We will put
13 them in.

14 (EXHIBIT NO. 18 - JUDICIAL MERIT SELECTION
15 COMMISSION PERSONAL DATA QUESTIONNAIRE OF S. BOYD
16 YOUNG)

17 (EXHIBIT NO. 19 - JUDICIAL MERIT SELECTION
18 COMMISSION SWORN STATEMENT OF S. BOYD YOUNG)

19 CHAIRMAN RANKIN: You are familiar with this
20 process and our investigation of your qualifications to
21 serve on the bench. And I just want to put on the record,
22 the nine evaluative criteria we look at in our
23 investigation includes the ballot box survey, a thorough
24 study of your application materials, verification of your
25 compliance with the state ethics laws, a search of

1 newspaper articles in which your name appears, a study of
2 previous screenings, and a check for economic conflicts of
3 interest.

4 No affidavits have been filed in opposition
5 to your campaign. No witnesses are present to testify. I
6 do note that you brought with you -- or someone is
7 following you around. If you'd like to introduce --

8 MR. YOUNG: Yes, sir.

9 CHAIRMAN RANKIN: -- that person.

10 MR. YOUNG: I'd like to introduce my wife,
11 Laura Young.

12 CHAIRMAN RANKIN: Very well. Welcome.
13 Welcome. All right. You have the opportunity to make a
14 very brief opening statement. But given this late hour,
15 which we've held you up, you can defer that until the end,
16 and make any closing remarks you'd like. And we will turn
17 it over --

18 MR. YOUNG: I'll waive any opening
19 statement.

20 CHAIRMAN RANKIN: Very good. Very good.
21 All right. You will now be asked some questions by
22 Breeden, and we will then open it to the commission.

23 MR. YOUNG: Thank you, sir.

24 CHAIRMAN RANKIN: Thank you.

25 MR. JOHN: Thank you, Mr. Chairman. Mr.

1 Young, good afternoon.

2 MR. YOUNG: Good afternoon, Mr. John.

3 MR. JOHN: I'd note for the record, that
4 based on the testimony contained in the candidate's PDQ,
5 which has been included in the record, with the candidate's
6 consent, Mr. Young meets the constitutional and statutory
7 requirements for this position regarding age, residence,
8 and years of practice.

9 EXAMINATION BY MR. JOHN:

10 Q. Mr. Young, how do you feel your legal and
11 professional experience thus far renders you qualified and
12 will assist you to be an effective judge?

13 A. Well, so I started my legal career, sort of
14 before law school in -- at The Citadel, as a member of the
15 Honor Corps, where I wasn't intending to go to law school.
16 But having had that experience, it set me up to go to law
17 school.

18 While in law school, I met a judge who was a good
19 friend of mine, and went to clerk for him. Having had that
20 experience, I then became a public defender in Charleston.
21 And after 22 years of trying cases around the State of
22 South Carolina and -- with my science background from The
23 Citadel, and my dedication to service to South Carolinians
24 -- I feel like it would be a good fit for me.

25 Q. Very good. Mr. Young, the commission received

1 260 ballot box surveys regarding you, with 44 additional
2 comments. The ballot box survey, for example, contained
3 positive comments, noting your great temperament, your
4 brilliant legal mind, and that you are an ideal candidate
5 for the bench. Four of these comments did express concerns
6 regarding your lack of civil experience. How would you
7 address those concerns?

8 A. Well, I have done a lot of work to -- I can't get
9 civil experience as a -- as a member of the South Carolina
10 Commission of Indigent Defense. I can't practice civilly.
11 But I've done a lot of work in attending a lot of civil
12 CLEs, and watching a lot of the civil court.

13 And when I was attending those CLEs, and started
14 watching a lot of the civil court, it occurred to me that
15 in doing death penalty litigation for the past 15 years,
16 that civil cases are a lot like the penalty phase of a
17 death penalty case, where you're trying to figure out the -
18 - or present that "but for" reasons that an individual
19 ended up in a particular situation.

20 And so while it's true, I don't have civil trial
21 experience, I do feel that I'm well prepared for that.

22 Q. Very good. And in your PDQ, you indicated that
23 there was a federal lawsuit filed against you, many years
24 ago as a public defender in Charleston County. Can you
25 explain the nature of that lawsuit and what --

1 A. Sure. I was co-counsel with Lori Proctor in a -
2 - I believe it was a post office armed robbery case that
3 our client was not happy with the result and he filed a
4 federal lawsuit. I believe it was -- I had never met with
5 anybody. It was pretty immediately dismissed.

6 **Q. Right. Yeah, I think it was filed against you**
7 **and the other --**

8 A. And the judge and the prosecutor -- I think
9 everybody was included.

10 **Q. That's right. Very well.**

11 MR. JOHN: I will note that both the
12 Midlands Citizens Committee and the South Carolina Bar's
13 Judicial Qualifications Committee reported that Mr. Young
14 is well qualified as to ethical fitness, character,
15 professional and academic ability, experience, reputation,
16 and judicial temperament. Both committees likewise found
17 Mr. Young qualified as to constitutional qualifications,
18 physical health and mental stability.

19 Overall, Mr. Young was found well qualified
20 by the Bar committee, and the citizens committee noted that
21 Mr. Young -- or noted Mr. Young as being exceptionally
22 qualified.

23 BY MR. JOHN:

24 **Q. Mr. Young, are you aware that as a judicial**
25 **candidate, you are bound by the Code of Judicial Conduct as**

1 found in Rule 501 of the South Carolina Appellate Court
2 rules?

3 A. I am

4 Q. Since submitting your letter of intent have you
5 contacted any members of the commission about your
6 candidacy?

7 A. I have not.

8 Q. Have you sought or received the pledge of any
9 legislator, either prior to this date or pending the
10 outcome of your screening since submitting your letter of
11 intent?

12 A. I have not.

13 Q. Are you familiar with Section 2-19-70, including
14 the limitations on contacting members of the General
15 Assembly regarding your screening?

16 A. Yes.

17 Q. Have you asked any third parties to contact
18 members of the General Assembly on your behalf or --

19 A. I have not.

20 Q. -- are you aware of any?

21 A. No.

22 Q. Have you reviewed and do you understand the
23 commission's guidelines on pledging in South Carolina Code
24 2-19-70(e)?

25 A. I have.

1 MR. JOHN: Mr. Chairman, I will note for the
2 record that any concerns raised during the investigation by
3 staff regarding the candidate were incorporated into the
4 questioning of the candidate today. I have no further
5 questions.

6 CHAIRMAN RANKIN: All right. Questions by
7 members of the commission?

8 (Hearing none.)

9 EXAMINATION BY CHAIRMAN RANKIN:

10 Q. Mr. Young, excuse me, I recall you yesterday --

11 A. It seems like yesterday.

12 Q. No, let me tell you a day is a month -- no, a
13 half a day is a month here. We have been here for nearly
14 eights months since Monday.

15 A. Right.

16 Q. So forgive my -- forgive my error there. But
17 last time --

18 A. Yes, sir.

19 Q. -- you screened, and I recall your presentation
20 then in -- I don't know -- I didn't go back and look at the
21 actual transcript itself, but your CV, etc. -- the
22 Goldilocks, though -- the term Goldilocks, in our effort to
23 find just the right mix of -- and I don't know that it was
24 you, but I -- it may well have been.

25 You have so much experience in the criminal vein,

1 you just answered Breeden's question about the inability to
2 try civil cases, given your role. Though, you've likened a
3 lot of what you do in the plea side to civil -- which is,
4 perhaps, no different.

5 But again, a year later, to those who say he does
6 not have enough civil experience, give us your best
7 rebuttal to that.

8 A. Well, I think that -- that's not correct.
9 Because what we do in particular -- particularly in the
10 penalty phase -- capital cases is a lot like a civil case,
11 in that we are finding out what happened to this person.
12 Maybe it wasn't a physical injury like a car wreck, but
13 maybe it was a car wreck. Maybe it was a head injury, and
14 trying to present the changes in that person's life
15 situation.

16 And while we're not asking for damages, what we
17 are asking for is some understanding from a jury or a -- or
18 a judge who's the senator -- sentencer in that particular
19 case, about how this person got to be this way and why --
20 maybe there are extenuating circumstances which would -- I
21 would equate, pretty regularly, to a civil tort, where
22 we're trying to make somebody whole again.

23 Q. Your various stripes comments about you,
24 "Thoughtful, interesting, and sharp. Would make an
25 excellent judge. Highest integrity. Exceptional.

1 Qualified in every way. Great mentor and very
2 knowledgeable."

3 Which again sounds great, right? And one note
4 that I saw of interest, that I don't recall the last time,
5 your teaching at these trial advocacy -- or a two-week
6 program here, or a week-long program there for the last 11,
7 12, 13 years? Is that right?

8 A. Yes, sir. Since 2009, I've been teaching at the
9 National Criminal Defense College. When I moved back to
10 South Carolina in 2008, we started a public defender
11 training program.

12 Because the solicitors had one, and the public
13 defender's did not, so we ended up doing a three-part
14 PD101, 102, and 103 trainings. Which is now run by the
15 South Carolina Commission of Indigent Defense, and is now
16 required -- it was voluntary and free when we started it.
17 But it's now required and -- they actually pay for lodging
18 and meals and stuff for people that attend.

19 But I enjoy teaching. Especially young
20 attorneys. What I have learned from my mistakes and when I
21 was a younger attorney, and what I try and impart on them,
22 is that South Carolina is a very small legal community;
23 you're not doing your clients any favors when you set up
24 fights and arguments and accusations against people on the
25 other side, no matter what side you're on, and to always

1 try and be respectful of the other side.

2 And there's -- you're not doing your clients any
3 favors when you start picking those kind of fights.

4 **Q. Represents the indefensible and those who have no**
5 **ability to pay and no ability to barter with an attorney,**
6 **how do you have your passion and/or -- obviously, you're**
7 **paid, right?**

8 A. Yes, sir. A salary by the state.

9 **Q. A salaried position. But how do you bring**
10 **freshness and/or passion to each case, as if they were**
11 **paying you the Dick Harpootlian, Jack Swerling, Todd**
12 **Rutherford rates?**

13 A. I mean, I think that's a good question. And it's
14 not always easy. Particularly, in the cases where -- that
15 I've appeared in, usually it's something very horrific has
16 happened. I try and approach -- each case has its own
17 opportunities, and I learn so much every time I have a new
18 case.

19 But each client is different. And I try and get
20 to know them and their family and -- that is where sort of
21 I find my calling, in getting to know them as a person, and
22 being an advocate for that person.

23 **Q. Very good.**

24 CHAIRMAN RANKIN: All right. Questions by
25 other members of the commission?

1 (Hearing none.)

2 CHAIRMAN RANKIN: All right. Don't take the
3 lack of any further questions as a ding. We have -- we
4 have looked at your stuff, and we appreciate your filing
5 and submitting to these questions and spending time with
6 Mr. John and participating today.

7 Let me remind you, as you know, this portion
8 of the screening process will conclude. However, given our
9 adherence to both the letter and the spirit of the ethics
10 law in South Carolina, any violation by you or the
11 appearance of impropriety would be very seriously
12 considered by us. The record is not closed. You know that
13 we -- until the record of qualifications is released, we
14 could call you back in the unlikely event there were to be
15 a brush of the ethical laws, correct?

16 MR. YOUNG: Yes, sir.

17 CHAIRMAN RANKIN: All right. Mr. Young,
18 thank you and your -- Mrs. Young for joining us. And we
19 are now off the record.

20 (Candidate excused.)

21 CHAIRMAN RANKIN: On the motion of Ms.
22 Blackley, seconded by Ms. McIver, we are going to go into
23 executive session.

24 (Off the record.)

25 CHAIRMAN RANKIN: We are back on the record.

1 And for the record, during executive session no votes were
2 taken and no decisions were made. We will now proceed to a
3 ballot on the circuit court races. And now we will hear
4 the names called. And the question is --

5 MS. CRAWFORD: Mr. Chairman, this is for the
6 Circuit court, At-Large, Seat 3. The first consideration
7 is the qualification of each candidate.

8 MS. CRAWFORD: The remaining candidates,
9 Patrick Fant, III, Doward Keith Karvel Harvin, Charles J.
10 McCutchen, Jane H. Merrill, William K. Witherspoon, S.
11 Boyd Young.

12 REPRESENTATIVE CASKEY: Mr. Chairman, I
13 would move that these candidates be phone qualified.

14 CHAIRMAN RANKIN: Seconded by Senator
15 Talley. All in favor say "aye."

16 (At this time the members audibly say "aye.")

17 CHAIRMAN RANKIN: All opposed?

18 (Hearing none.)

19 CHAIRMAN RANKIN: Unanimously, with the
20 proxies of Representative Rutherford and Pete Strom. All
21 right. And Senator Sabb has abstained himself from all
22 votes on this slate of circuit court candidates.

23 MS. CRAWFORD: Mr. Chairman, I'll now call
24 out the names of each of the candidates in alphabetical
25 order. Each commission member has three votes. Any

1 candidate who receives six or more votes for qualified and
2 nominated will be considered qualified and nominated at the
3 end of that vote, unless there's a tie, and then we would
4 go to the next ballot. Any candidate that does not get any
5 ballot votes will be removed from consideration from
6 subsequent ballot votes.

7 Okay. The first candidate, Patrick Cleburn
8 Fant, III.

9 (The commission members vote.)

10 CHAIRMAN RANKIN: All right. That would be
11 by a vote of nine to nothing.

12 MS. CRAWFORD: Doward Keith Karvel Harvin.

13 (The commission members vote.)

14 CHAIRMAN RANKIN: By the same vote of nine
15 votes.

16 MS. CRAWFORD: That's nine to zero.

17 CHAIRMAN RANKIN: Nine to zero.

18 MS. CRAWFORD: Charles J. McCutchen.

19 (The commission members vote.)

20 MS. CRAWFORD: Zero votes. Jane H.
21 Merrill.

22 (The commission members vote.)

23 MS. CRAWFORD: Zero votes. William K.
24 Witherspoon.

25 (The commission members vote.)

1 MS. CRAWFORD: Three votes. And S. Boyd
2 Young.

3 (The commission members vote.)

4 MS. CRAWFORD: Five. So on the next ballot,
5 we have -- with Patrick Fant receiving nine votes, and
6 Doward Keith Karvel Harvin receiving nine votes, those are
7 both qualified and nominated. But we need to go to a
8 second ballot. And McCutchen receiving zero and Jane H.
9 Merrill votes, they cannot be considered in the next
10 ballot.

11 So the next ballot we have William K.
12 Witherspoon. For the second ballot, William K.
13 Witherspoon.

14 (The commission members vote.)

15 MS. CRAWFORD: Three. S. Boyd Young.

16 CHAIRMAN RANKIN: With Strom voting for
17 Young.

18 (The commission members vote.)

19 MS. CRAWFORD: So S. Boyd Young is also
20 qualified and nominated.

21 CHAIRMAN RANKIN: And for the record, Trish,
22 I want to make sure that I'm correctly stating that Mr.
23 Sabb is not voting today in this race. Real quick off the
24 record.

25 (Off the record.)

1 REPRESENTATIVE CASKEY: We're on the record.
2 Good afternoon. Thank you very much for being here today.
3 My name is Micah Caskey. I don't know that we've had the
4 pleasure of getting acquainted. But thank you for being
5 here today. I know we are well behind scheduled, so your
6 patience is very much appreciated. Is it Mr. Harjehausen?

7 MR. HARJEHAUSEN: Correct. Yes.

8 REPRESENTATIVE CASKEY: If you will, please,
9 raise your right hand.

10 WHEREUPON,

11 MR. HARJEHAUSEN, being duly sworn and
12 cautioned to speak the truth, the whole truth and nothing
13 but the truth.

14 REPRESENTATIVE CASKEY: All the PDQ and the
15 sworn statements before, you documents that you've
16 submitted to the commission? And are they correct?

17 MR. HARJEHAUSEN: Yes.

18 REPRESENTATIVE CASKEY: Is there any updates
19 or amendments needed?

20 MR. HARJEHAUSEN: I submitted an updated
21 confidential financial statement. I don't know if that's
22 what you're asking about, but that's the only amendment
23 that I submitted -- that needed to be submitted,
24 apparently.

25 REPRESENTATIVE CASKEY: Any objection to

1 submitting that into the record, along with your testimony
2 today?

3 MR. HARJEHAUSEN: No.

4 REPRESENTATIVE CASKEY: Thank you very much.

5 (EXHIBIT NO. 20 - JUDICIAL MERIT SELECTION
6 COMMISSION PERSONAL DATA QUESTIONNAIRE OF JOHN D.
7 HARJEHAUSEN)

8 (EXHIBIT NO. 21 - JUDICIAL MERIT SELECTION
9 COMMISSION SWORN STATEMENT OF JOHN D.
10 HARJEHAUSEN)

11 REPRESENTATIVE CASKEY: The Judicial Merit
12 Selection Commission has thoroughly investigated your
13 qualifications for the bench. Our inquiry has focused on
14 the nine evaluative criteria, and has included a ballot box
15 survey, a thorough study of your application materials,
16 verification of your compliance with state ethics laws, a
17 search and newspaper articles in which your name appears, a
18 study of previous screenings, and a check for economic
19 conflicts of interest.

20 We've received no affidavits filed in
21 opposition to your election. No witnesses are present to
22 testify. And if you would like, you are welcome to give a
23 brief opening statement, though, certainly not required.
24 And given the late hour, you'd have any opportunity to work
25 in whatever you have to say in the balance of our

1 discussion here today.

2 MR. HARJEHAUSEN: I appreciate that. I
3 think that my information in the personal PDQ is quite
4 extensive. I'd be happy to answer any questions that
5 anybody has.

6 REPRESENTATIVE CASKEY: Great. Then I'll
7 turn it over to Ms. Webb.

8 MS. WEBB: Thank you. Good afternoon. So I
9 note for the record that based on the testimony contained
10 in the candidate's PDQ, which has been included in the
11 record with the candidate's consent, John D. Harjehausen
12 meets the statutory requirements for this position
13 regarding age, residency, and years of practice.

14 EXAMINATION BY MS. WEBB:

15 Q. Mr. Harjehausen, how do you feel your legal and
16 professional experience thus far renders you qualified and
17 will assist you to be an effective Master-in-Equity?

18 A. I have 25 years of experience over a variety of
19 different disciplines. The Master-in-Equity can handle any
20 matter that is referred to it by the circuit court. I
21 practice in circuit court, and have for the past 15 years
22 in South Carolina, extensively, on everything from HOA
23 foreclosure actions to class action construction defect,
24 personal injury litigation.

25 And I've handled appeals to the Alaska Supreme

1 Court, the Wyoming Supreme Court, the South Carolina Court
2 of Appeals. I haven't had the privilege of yet arguing an
3 appeal to the South Carolina Supreme Court. But that's on
4 my to do list.

5 So I've had jury trials, bench trials. I've
6 litigated matters in front of the Master-in-Equity to
7 trial, Chuck Simmons. That matter went up on appeal --
8 argued it on appeal to the South Carolina Court of Appeals,
9 it involved an easement issue, one that actually arose out
10 of attorneys that probably could have done a better job.
11 But we got the easement recognized and -- due to some
12 ambiguity. And I think that, that qualifies me for the
13 position.

14 **Q. Thank you. And continuing along that line, can**
15 **you please briefly describe your experience in handling**
16 **complex property matters as well as financial matters?**

17 A. Yeah. As far as complex property matters, I'm
18 currently involved in a subdivision litigation that has
19 been complex. It's been going on for six years. It ended
20 up in bankruptcy. It involved whether or not covenants are
21 applicable to certain lots that the developer failed to
22 follow the proper procedure, so it involves quiet title
23 actions.

24 As a Master-in-Equity, I know that title issues
25 are often involved sometimes. I mean, foreclosures --

1 obviously, you're determining, you know, the amount of the
2 debt that is due and/or selling the properties, but
3 sometimes title issues come up as well. And so I do have
4 experience in litigating those types of issues.

5 Complex financial matters -- you know, we handle
6 civil litigation all the time, including large exposure
7 cases. And so I'm not sure if that answers your question.
8 I'd be happy to offer more specifics, but I do feel
9 confident that I have the ability to handle financial
10 matters.

11 **Q. No, that answers the question. And then one**
12 **final question for you, Mr. Harjehausen. Why do you want**
13 **to serve as a Master-in-Equity, specifically in Pickens**
14 **County?**

15 A. Yeah, that's where I've made my home since I've
16 lived in South Carolina, 15 years. I've got one son who
17 went to USC, and one that's currently a senior at Clemson.
18 At one time, I lived in Anderson County, but it was just
19 across the property line.

20 So for me, Easley has been my home. It's where I
21 want to retire, when I'm done with the legal practice. If
22 I don't get this position, I will stay at my current firm
23 and continue to practice there. But I love my community.
24 They're good people. I think the other candidates that are
25 also applying for this position are good people.

1 So it's really my connection to the community.
2 Otherwise, I probably would have applied for a circuit
3 court position, at-large. But I really wasn't interested
4 in that. I want to stay local where I'm at. So that's the
5 reason that I've applied for this position.

6 **Q. Thank you. Moving on to ballot box questions.**
7 **Mr. Harjehausen, the commission received 59 ballot box**
8 **surveys regarding you, with three additional comments. The**
9 **ballot box survey, for example, contain the following**
10 **positive comments, that you are very smart and experienced,**
11 **and that even your opponents enjoy working with you, and**
12 **are impressed with your capabilities. None of the written**
13 **comments express concerns.**

14 MS. WEBB: I would also like to note that
15 the Upstate Citizens Committee found Mr. Harjehausen
16 qualified in the evaluative criteria of constitutional
17 qualifications, physical health and mental stability, and
18 experience.

19 The committee found him well qualified in
20 the evaluative criteria of ethical fitness, professional
21 and academic ability, character, reputation, and judicial
22 temperament. The committee did not share any related
23 comments.

24 BY MS. WEBB:

25 **Q. And, Mr. Harjehausen, just a few housekeeping**

1 issues to wrap up. Are you aware that as a judicial
2 candidate, you are bound by the Code of Judicial Conduct as
3 found in Rule 501 of the South Carolina Appellate Court
4 rules?

5 A. Yes.

6 Q. And since submitting your letter of intent have
7 you contacted any members of the commission about your
8 candidacy?

9 A. No.

10 Q. And are you familiar with Section 2-19-70,
11 including the limitations on contacting members of the
12 General Assembly regarding your screening?

13 A. Yes.

14 Q. And since submitting your letter of intent have
15 you sought or received the pledge of any legislator, either
16 prior to this date or pending the outcome of your
17 screening?

18 A. No.

19 Q. And have you asked any third parties to contact
20 members of the General Assembly on your behalf, or are you
21 aware of anyone attempting to intervene in this process on
22 your behalf?

23 A. No.

24 Q. And have you reviewed and do you understand the
25 commission's guidelines on pledging in S.C. Code 2-19-

1 **70(e)?**

2 A. Yes, I believe so.

3 **Q. All right. Thank you.**

4 MS. WEBB: Mr. Chairman, I would note for
5 the record that any concerns raised during the
6 investigation by staff regarding the candidate were
7 incorporated into the questioning of the candidate today.
8 And, Mr. Chairman, I have no further questions.

9 REPRESENTATIVE CASKEY: Thank you, ma'am. I
10 appreciate that. Having worked up on the slope myself, I
11 can understand why one would want to stay home in the
12 community there in Pickens County. Not that Alaska is not
13 a beautiful place.

14 MR. HARJEHAUSEN: But I still have family,
15 so I still have an excuse to get up there if I want to.

16 REPRESENTATIVE CASKEY: Great. Well, do any
17 members of commission have any questions for Mr.
18 Harjehausen? Senator.

19 EXAMINATION BY SENATOR TALLEY:

20 **Q. How are you doing?**

21 A. Good.

22 **Q. Good to see you. It's been a while since I think**
23 **I've seen you.**

24 A. It's been a while, yeah.

25 **Q. We've had a couple of cases together. And,**

1 obviously, I saw that you had applied, and was glad to hear
2 that. I've always enjoyed working with you.

3 I know this is a new position for Pickens County.
4 Is it a full-time position?

5 A. That's my understanding.

6 Q. Okay. All right. And I just asked. I know
7 we've had matters over there before. We've had Judge
8 Simmons, you know, serve a special referee, or things of
9 that nature.

10 But anyway, the things you mentioned, obviously,
11 quiet titles, foreclosures, non-jury matters, I know you're
12 well versed in those, just my knowledge of your practice
13 and having worked with you on certain things. So I guess I
14 would just ask -- but why now? You've got a good practice.
15 You've done well. You got a good reputation.

16 A. It's sort of the next step in my career. As I
17 mentioned, you know, I've done a lot of different things.
18 I've handled jury trial, bench trials, the appeals. I've
19 been at Clarkson Walsh for 15 years.

20 And I think since I was a law clerk -- and I had
21 a great clerkship and Sitka, Alaska. And a great example
22 of judge -- the judge that I clerked for, Larry Zervos, was
23 very inspiring. And so for me, it's sort of the next step
24 in a legal career.

25 I'm not sure what motivates each and every

1 individual to try to get a position in the judiciary, but
2 for me, it's sort of that next step, as I said, you know,
3 as far as a legal goal from where I'm at now.

4 Some things that have happened, that have been
5 interesting recently, is class action construction defect
6 lawsuits, which I hadn't previously been involved in or
7 done, or class action lawsuits at all.

8 So for me, it's just sort of the next legal
9 career step. And if it wasn't in Pickens County, I
10 wouldn't probably apply for it. But because it's in sort
11 of my home of Easley, that's why I applied for it.

12 **Q. Thank you.**

13 REPRESENTATIVE CASKEY: Any other questions
14 from members of commission?

15 (Hearing none.)

16 REPRESENTATIVE CASKEY: Seeing none. Mr.
17 Harjehausen, thank you very much for being here today. We
18 appreciate your patience and for offering for service.
19 This concludes this portion of the screening process.

20 I do have two things that I need to go over
21 with you real quick.

22 MR. HARJEHAUSEN: Sure.

23 REPRESENTATIVE CASKEY: I need to remind you
24 that pursuant to the commission's evaluative criteria, the
25 commission expects candidates to follow the spirit as well

1 as the letter of the ethics laws, and that we will view
2 violations or the appearance of impropriety as serious and
3 potentially deserving of heavy weight in screening
4 deliberations. You understand that?

5 MR. HARJEHAUSEN: Yes, sir.

6 REPRESENTATIVE CASKEY: All right. And on
7 that note, as you know, the record will remain open until
8 the formal release of the report of qualifications. And
9 should the need arise, you may be called back before the
10 commission at that point. Do you understand that?

11 MR. HARJEHAUSEN: Yes, sir.

12 REPRESENTATIVE CASKEY: All right. Great.
13 Thank you again. I appreciate you coming down today, and
14 your patience with us. Please drive safely.

15 MR. HARJEHAUSEN: Thank you.

16 REPRESENTATIVE CASKEY: And hurry back.

17 MR. HARJEHAUSEN: Thank you very much.

18 (Candidate excused.)

19 REPRESENTATIVE CASKEY: Mr. Lambert, thank
20 you for being here today.

21 MR. LAMBERT: Thank you.

22 REPRESENTATIVE CASKEY: I see you've brought
23 someone with you?

24 MR. LAMBERT: Yes.

25 REPRESENTATIVE CASKEY: If you'd like, you

1 can introduce her.

2 MR. LAMBERT: This is my wife, Stacy.

3 REPRESENTATIVE CASKEY: Stacy, thank you for
4 being here today. We apologize for the delay in getting to
5 these part of the hearings. There's been a couple of legal
6 issues we've had to take up, and it took up more time than
7 we anticipated.

8 So that all being said, Mr. Lambert, if you
9 would please raise your right hand.

10 WHEREUPON,

11 ADAM B. LAMBERT, being duly sworn and
12 cautioned to speak the truth, the whole truth and nothing
13 but the truth.

14 REPRESENTATIVE CASKEY: Are the personal
15 data questionnaire, the PDQ, and the sworn statement before
16 you, the documents that you submitted to the commission?

17 MR. LAMBERT: I believe so. Yes, sir.

18 REPRESENTATIVE CASKEY: Are there any
19 updates or amendments that need to be submitted at this
20 point?

21 MR. LAMBERT: Not to my knowledge.

22 REPRESENTATIVE CASKEY: Do you object to us
23 making those a part of the record, along with your
24 testimony today?

25 MR. LAMBERT: No, sir. No objections.

1 REPRESENTATIVE CASKEY: Thank you. We'll do
2 that now.

3 (EXHIBIT NO. 22 - JUDICIAL MERIT SELECTION
4 COMMISSION PERSONAL DATA QUESTIONNAIRE OF ADAM B.
5 LAMBERT)

6 (EXHIBIT NO. 23 - JUDICIAL MERIT SELECTION
7 COMMISSION SWORN STATEMENT OF ADAM B. LAMBERT)

8 REPRESENTATIVE CASKEY: The Judicial Merit
9 Selection Commission has thoroughly investigated your
10 qualifications for the bench. Our inquiry is focused on
11 nine evaluative criteria and has included a ballot box
12 survey, a thorough study of your application materials,
13 verification of your compliance with state ethics laws, a
14 search a newspaper articles in which your name appears, a
15 study of previous screenings, and a check for economic
16 conflicts of interest.

17 We've received no affidavits filed in
18 opposition to your election. No witnesses are present here
19 today to testify. If you would like, we'd be happy to hear
20 a an opening statement, if you want to make one. But given
21 the late hour, we'd certainly allow you to make whatever
22 comments you need to add to -- responsive to questions at
23 the end of your testimony.

24 MR. LAMBERT: I just like to thank everybody
25 for their time and attention. I know we're late here, so I

1 will stop with that.

2 REPRESENTATIVE CASKEY: Thank you, sir. If
3 you would, please, then answer questions from Mr. John.

4 MR. JOHN: Thank you, Mr. Chairman. Mr.
5 Lambert, good afternoon. I would note for the record, that
6 based on the testimony contained in the candidate's PDQ,
7 which has been included in the record, with the candidate's
8 consent, Mr. Lambert meets the statutory requirements for
9 this position regarding age, residence, and years of
10 practice.

11 EXAMINATION BY MR. JOHN:

12 Q. Mr. Lambert, how do you feel your legal and
13 professional experience thus far renders you qualified and
14 will assist you to be an effective Master-in-Equity?

15 A. I think not only being a litigator on the
16 plaintiff's side and the defendant's side, I have the
17 luxury of being appointed as special referee for Pickens
18 County for the last five years.

19 I think it's about over 200 to 250 cases I've
20 either heard, been appointed on, or served as a special
21 referee. I think that, coupled with experience on the
22 plaintiff's side types of cases that would appear before a
23 master, and also on the defense side.

24 So I think I have the trifecta, if you want to
25 call it, of seeing what the master court is from plaintiff,

1 defendant, and also from the bench already, serving as a
2 special referee for Pickens County.

3 Q. Very good. Mr. Lambert, the commission received
4 186 ballot box surveys regarding you, with 12 additional
5 comments. The ballot box contained comments noting your
6 very even temperament, sharp legal mind, and that you're
7 well qualified for this position.

8 Mr. Lambert, you indicated in your PDQ, that in
9 December 2012, you pled guilty to driving with an unlawful
10 alcohol concentration resulting in an arrest for DUI. We
11 did discuss this prior -- this was almost ten years ago.
12 Can you just tell us, briefly, a little bit about the
13 incident and where you've gone from there?

14 A. Yeah. It's probably not the most shining thing
15 in my life. It was a lapse in judgment at that time. I
16 thought I had waited enough time to where the BAC in my
17 system was -- I was certain that I was not impaired to
18 drive.

19 But like you said, it's been ten years ago.
20 Since that time -- that was very early on in my career.
21 I've since started working with Acker firm, and now it's
22 become the Acker Lambert Hinton, well known in my county,
23 well known in my area of expertise of real estate.

24 I have become married, a family man now. I've
25 been -- joined the church for the very first time in my

1 life. I've been baptized. And while it's not a good thing
2 in my life, I've tried to make the most of it and make it a
3 -- turned the negative into a positive.

4 **Q. Very good.**

5 MR. JOHN: Mr. Chairman, I would pause for a
6 moment, for anyone from the commission to ask followup
7 questions there.

8 REPRESENTATIVE CASKEY: Any members of the
9 commission have questions?

10 (Hearing none.)

11 REPRESENTATIVE CASKEY: Hearing none. Back
12 to you, Mr. John.

13 MR. JOHN: Mr. Chairman, I would like to
14 request that we now go into executive session to discuss a
15 few private matters.

16 REPRESENTATIVE CASKEY: Yes, sir. On motion
17 of Mr. Jordan, seconded by Senator Talley, we'll move now
18 into executive session.

19 (Off the record.)

20 REPRESENTATIVE CASKEY: We are now back. On
21 motion of Mr. Jordan, seconded by Mr. Talley, we've come
22 out of executive session. During executive session no
23 actions were taken and no decisions were made and no votes
24 were taken.

25 MR. JOHN: Mr. Chairman, the Upstate

1 Citizens Committee found Mr. Lambert well qualified in the
2 evaluative criteria of ethical fitness, character,
3 professional and academic ability, reputation, judicial
4 temperament. The committee found him qualified in
5 constitutional qualifications, physical health and mental
6 stability, and experience.

7 BY MR. JOHN:

8 Q. Wrapping up, Mr. Lambert. Are you aware that as
9 a judicial candidate, you are bound by the Code of Judicial
10 Conduct as found in Rule 501?

11 A. Yes, sir.

12 Q. Since submitting your letter of intent have you
13 contacted any members of the commission?

14 A. No, sir.

15 Q. Are you familiar with Section 2-19-70, including
16 limitations on contacting and members of the General
17 Assembly?

18 A. Yes, sir.

19 Q. Since submitting your letter of intent have you
20 sought or received the pledge of any legislator --

21 A. No, sir.

22 Q. Have you asked any third parties to contact
23 members of General Assembly, or are you aware of any --

24 A. No, sir.

25 Q. -- on your behalf? Have you reviewed and do you

1 understand the commission's guidelines on pledging in South
2 Carolina Code 2-19-70(e)?

3 A. Yes, sir.

4 Q. Thank you, Mr. Lambert.

5 MR. JOHN: Mr. Chairman, I would note for
6 the record that any concerns raised during the
7 investigation by staff regarding the candidate were
8 incorporated into the questioning of the candidate today.
9 I have no further questions.

10 REPRESENTATIVE CASKEY: Thank you, sir. Mr.
11 Lambert, just as we were coming out of executive session,
12 all of the snickering you saw me doing, is laughing at
13 myself for the clumsy way in which I executed the most
14 basic of procedural matters.

15 MR. LAMBERT: Totally fine. I've been there
16 and done that.

17 REPRESENTATIVE CASKEY: I appreciate that.
18 Thank you. Any questions from members of the commission
19 for Mr. Lambert?

20 (Hearing none.)

21 EXAMINATION BY REPRESENTATIVE CASKEY:

22 Q. Mr. Lambert, I just have one. Why now? Why now?
23 Why run for this seat?

24 A. One, this is the first time this seat's ever been
25 created. And for the last five years, like I stated, I've

1 been doing special referee work. Basically, I have been,
2 quote/unquote, the pseudo-master, if you want to call it.
3 I've been running the foreclosure sales monthly, running --
4 helping the clerk of court run the docket as far as
5 foreclosure sales. Doing the balancing, the compliance
6 with the bids, the signing of the documents, the
7 satisfaction.

8 So I've been training for five years now. And we
9 were waiting on the Census, and the Census hit. And here I
10 stand before you.

11 **Q. Fantastic.**

12 REPRESENTATIVE CASKEY: All right. Well,
13 thank you very much for being here today, and again for
14 your patience with us as we've gone through this. This
15 does conclude this portion of the screening process.

16 Two last things to go over with you, before
17 we get out of here, because I need to take this opportunity
18 to remind you, that pursuant to the commission's evaluative
19 criteria, the commission expects candidates to follow the
20 spirit as well as the letter of the ethics laws. And we
21 will view violations or the appearance of impropriety as
22 serious and potentially deserving a very heavy weight in
23 screening deliberations. Do you understand that?

24 MR. LAMBERT: Yes, sir.

25 REPRESENTATIVE CASKEY: All right. And on

1 that note, as you know, the record will remain open until
2 the formal release of the report of qualifications. And
3 should the need arise, you could be called back to resolve
4 any questions or issues that may come up if that were to
5 happen. Do you understand that?

6 MR. LAMBERT: Yes, sir.

7 REPRESENTATIVE CASKEY: All right. Thank
8 you again. We wish you safe travels.

9 MR. LAMBERT: Thank you all.

10 REPRESENTATIVE CASKEY: I hope you have a
11 great rest of your day. Stacy, thank you for your patience
12 as well.

13 (Candidate excused.)

14 REPRESENTATIVE CASKEY: Ms. Newton, I'm glad
15 to see you again.

16 MS. NEWTON: Good to see you, Mr. Caskey.

17 REPRESENTATIVE CASKEY: It's been quite a
18 while since I last saw you in law school.

19 MS. NEWTON: Yes.

20 REPRESENTATIVE CASKEY: But glad to have you
21 here today. If you would please raise your right hand.

22 WHEREUPON,

23 KIMBERLY S. NEWTON, being duly sworn and
24 cautioned to speak the truth, the whole truth and nothing
25 but the truth, testifies as follows:

1 REPRESENTATIVE CASKEY: Would you take a
2 look at those documents in front of you? Are the PDQ and
3 the sworn statement before you, documents that you
4 submitted to the commission?

5 MS. NEWTON: Yes, they are.

6 REPRESENTATIVE CASKEY: Are they both
7 correct? And do they need any update or amendment?

8 MS. NEWTON: No, they do not.

9 REPRESENTATIVE CASKEY: Do you have any
10 objection to us entering those into the record along with
11 your testimony today?

12 MS. NEWTON: No, I do not.

13 REPRESENTATIVE CASKEY: Thank you, ma'am.

14 (EXHIBIT NO. 24 - JUDICIAL MERIT SELECTION
15 COMMISSION PERSONAL DATA QUESTIONNAIRE OF
16 KIMBERLY S. NEWTON)

17 (EXHIBIT NO. 25 - AMENDED PERSONAL DATA
18 QUESTIONNAIRE OF KIMBERLY S. NEWTON)

19 (EXHIBIT NO. 26 - JUDICIAL MERIT SELECTION
20 COMMISSION SWORN STATEMENT OF KIMBERLY S. NEWTON)

21 REPRESENTATIVE CASKEY: We do appreciate
22 your patience in this process. We got held up earlier in
23 the day, as we have every single day. So I know the hour
24 is late, but I want to make sure that we have a full and --
25 a full opportunity for you to share your thoughts with us,

1 after we go through some questions.

2 The Judicial Merit Selection Commission has
3 thoroughly investigated your qualifications to the bench.
4 Our inquiry is focused on the nine evaluative criteria, and
5 has included a ballot box survey, a thorough study of your
6 application materials, verification of your compliance with
7 ethics laws, a search of newspaper articles in which your
8 name appears, a study of previous screenings -- that didn't
9 apply in this case -- and a check for economic conflicts of
10 interest.

11 We've received no affidavits filed in
12 opposition to your election. No witnesses are present to
13 testify. And if you would like -- we would give you the
14 opportunity to make an opening statement, if you would
15 like. Though, you don't need to.

16 MS. NEWTON: Given that I'm the last
17 candidate on the last day, I will waive my opportunity to
18 give an opening statement.

19 REPRESENTATIVE CASKEY: All right. Well, if
20 you need to, you'll have an opportunity to close with a
21 statement, if that were to arise. In the meantime, we have
22 some questions for you. Ms. Starnes.

23 MS. STARNES: Thank you, Mr. Chairman. Good
24 evening, Ms. Newton.

25 MS. NEWTON: Good evening.

1 MS. STARNES: I would like to note for the
2 record, that based on the testimony contained in the
3 candidate's PDQ, which has been included in the record,
4 with the candidate's consent, Kimberly Newton meets the
5 statutory requirements for this position regarding age,
6 residence, and years of practice.

7 EXAMINATION BY MS. STARNES:

8 **Q. Ms. Newton, how do you feel your legal and**
9 **professional experience thus far renders you qualified and**
10 **will assist you to be an effective Master-in-Equity?**

11 A. Well, for the past nine years, my practice has
12 focused primarily on real estate transactions. Through
13 that practice, I have a lot of issues that come before a
14 master, come before me.

15 I review title work, which means I review a lot
16 of foreclosure orders and hearing -- and foreclosure cases,
17 to make sure that they're done properly so that there's no
18 issues with the title to property.

19 I have filed several quiet title actions to clear
20 tax deeds in the chain of title. And just other issues
21 that come up with real estate have prepared me, I think, to
22 be a good master.

23 Prior to my current position at the Newton Law
24 Firm, I worked at Nelson Mullins in their litigation
25 department in Greenville. There, I filed several

1 commercial foreclosure actions. I also worked on several
2 pretrial motions, discovery motions, motions for summary
3 judgment and that sort of thing while I was there, and
4 researched several -- several legal issues that would arise
5 for the partners at Nelson Mullins.

6 And most importantly, in my opinion, I wish every
7 attorney had the opportunity to do a judicial clerkship.
8 It's such an invaluable experience to be able to clerk for
9 a judge. You get to see not only sort of a backstage pass
10 to what happens behind the court, and the inner workings of
11 the court, but -- you know, I've clerked for Judge Waites,
12 and in my humble opinion, he's one of the best judges
13 that's been in South Carolina.

14 And just being able to sit with him on a daily
15 basis, see how he approaches cases, how he analyzes the
16 law, applies it to the facts in front of him. And also his
17 temperament, how he deals with attorneys, on and off the
18 bench, and pro se litigants. Which is such an invaluable
19 experience.

20 Q. Thank you, Ms. Newton. The commission received
21 222 ballot box surveys regarding you, with six additional
22 comments. The ballot box surveys, for example, contained
23 the following positive comments:

24 "Great temperament. Would be a good candidate
25 for this judicial position. Very smart and a good real

1 estate attorney."

2 Only one of those written comments expressed
3 concerns about your experience level for this position.
4 What response would you offer to this concern?

5 A. Well, I think the only concern would be that I --
6 my practice has not lent itself to any litigation. And I -
7 - you know, like I said, for the past nine years, I've been
8 doing -- in a busy residential real estate practice, and it
9 would really have been a disservice to my clients if I also
10 tried to do litigation. Because litigation, of course,
11 pulls you to court. And I needed to be in the office to be
12 able to serve my clients.

13 So while I don't have a lot of litigation
14 experience, I feel like the issues that come before
15 attorneys that litigate are some of the same issues that
16 come before all attorneys.

17 I have to manage a very tight -- you know, I have
18 to deal with deadlines. I have to manage a very tight
19 caseload. I deal with those sorts of things, and I feel
20 like I -- you know, even though I haven't litigated per se,
21 I have the skill set necessary to perform this job.

22 Q. Thank you. Ms. Newton, you reported that a tax
23 lien was filed against you by the South Carolina Department
24 of Revenue, in March of 2016. Would you please explain the
25 nature and current status of this lien.

1 A. The one year my husband at the time decided to
2 file our taxes on his own, and there was a tax lien filed
3 that was quickly taken care of as soon as we were aware of
4 it. And I use an accountant now to file my taxes.

5 **Q. Thank you, Ms. Newton.**

6 MS. STARNES: I would note that the Upstate
7 Citizens Committee found Ms. Newton qualified in the
8 evaluative criteria of constitutional qualifications,
9 physical health, mental stability, and experience. The
10 committee found Ms. Newton well qualified in the evaluative
11 criteria of ethical fitness, professional and academic
12 ability, character, reputation, and judicial temperament.

13 BY MS. STARNES:

14 **Q. I did have a few housekeeping issues to go over.**
15 **Ms. Newton, are you aware that as a judicial candidate, you**
16 **are bound by the Code of Judicial Conduct, as found in Rule**
17 **501 of the South Carolina Appellate Court rules?**

18 A. Yes.

19 **Q. And since submitting your letter of intent have**
20 **you contacted any members of the commission about your**
21 **candidacy?**

22 A. No, I have not.

23 **Q. Are you familiar with Section 2-19-70, including**
24 **the limitations on contacting members of the General**
25 **Assembly regarding your screening?**

1 A. Yes.

2 Q. Since submitting your letter of intent have you
3 sought or received the pledge of any legislator, either
4 prior to this date or pending the outcome of your
5 screening?

6 A. No, I have not.

7 Q. Have you asked any third parties to contact
8 members of the General Assembly on your behalf, or are you
9 aware of anyone attempting to intervene in this process on
10 your behalf?

11 A. No, I am not.

12 Q. Have you reviewed and do you understand the
13 commission's guidelines on pledging in South Carolina Code
14 Section 2-19-70(e)?

15 A. Yes.

16 MS. STARNES: Mr. Chairman, I would note for
17 the record that any concerns raised during the
18 investigation by staff regarding the candidate were
19 incorporated into the questioning of the candidate today.
20 I have no further questions.

21 EXAMINATION BY REPRESENTATIVE CASKEY:

22 Q. Thank you, ma'am. Ms. Newton, I've noted in the
23 letter of recommendations submitted by Judge Waites, that
24 he made very glowing remarks that you were one of his best
25 law clerks of his career, that, you know, you had been

1 recruited by Nelson Mullins from his office -- or from his
2 chambers, and then had left Nelson Mullins only to pursue
3 the lifelong dream of practicing with your father.

4 The question I think I have then is, why now
5 for this position?

6 A. Well, you know, I turned 40 this year. And while
7 I don't feel like that's old, I feel like you hit these
8 milestone birthdays and you sort of get reflective of where
9 you are in your life, where you want to be in your life,
10 where you thought you would be in your life.

11 And, you know, I never really thought this
12 opportunity would come available at this time. But I think
13 it's an exciting opportunity to have a new master position
14 in Pickens County. And I would just feel honored to be
15 able to serve Pickens County in that position.

16 And really the timing of it for me, I'm just sort
17 of at that point in my career -- I'm very proud of my
18 career, but I'm at that point in my career where I'm sort
19 of ready for a new chapter.

20 My daughter is graduating high school this year,
21 so it's just the timing of this and just the fact that it's
22 a brand new opportunity that's come to this area of Pickens
23 County. It's just something that I really thought long and
24 hard about, but I really feel like it's something that I
25 would love to do and serve the community.

1 REPRESENTATIVE CASKEY: Do any commissioners
2 have questions for Ms. Newton?

3 (Hearing none.)

4 REPRESENTATIVE CASKEY: Well, thank you
5 again for offering. This concludes this portion of the
6 screening process, and so two last things to go over with
7 you. First, to remind you that pursuant to the
8 commission's evaluative criteria, the commission expects
9 candidates to follow the letter as well as the spirit of
10 state ethics laws, and that we will view any violations or
11 the appearances of impropriety as serious and potentially
12 deserving a very heavy weight in our screening
13 deliberation. Do you understand that?

14 MS. NEWTON: Yes.

15 REPRESENTATIVE CASKEY: And on that note, as
16 you know, the record will remain open until the formal
17 release of the report of qualifications. And if the need
18 were to arise, you could be called back to answer any
19 questions, again, if that situation were to present itself.
20 Do you understand that?

21 MS. NEWTON: Yes.

22 REPRESENTATIVE CASKEY: All right. Well,
23 thank you very much for your time. Thank you for offering
24 to serve in this capacity. And we wish you well in your
25 travels back home.

1 MS. NEWTON: Thank you. And thank you for
2 your time and dedication to this process.

3 REPRESENTATIVE CASKEY: Thank you, ma'am.
4 Have a good night.

5 MS. NEWTON: Thank you.

6 (Candidate excused.)

7 REPRESENTATIVE CASKEY: On motion of Mr.
8 Jordan seconded by Mr. Safran, we will go into executive
9 session.

10 (Off the record.)

11 REPRESENTATIVE CASKEY: We are back on the
12 record. While we were in executive session no decisions
13 were made and no votes were taken. The Motion from Mr.
14 Jordan is that we find the three candidates that we just
15 met with, who's names are John Harjehausen, Adam Lambert,
16 and Kimberly Newton, all be found qualified for the Master-
17 in-Equity position in Pickens County. That motion was
18 seconded by Senator Talley.

19 Any questions from anybody?

20 (Hearing none.)

21 REPRESENTATIVE CASKEY: All in favor say
22 "aye."

23 (At this time the members audibly say "aye.")

24 REPRESENTATIVE CASKEY: The ayes have it.
25 And with no further business before the commission, the

1 commission will stand adjourned.

2 (OFF THE RECORD AT 5:30 P.M.)

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CERTIFICATE OF REPORTER

I, PATRICIA G. BACHAND, COURT REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT CONSISTING OF 152 PAGES IS A TRUE, ACCURATE, AND COMPLETE RECORD TO THE BEST OF MY SKILL AND ABILITY.

I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE PARTIES CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY INTERESTED IN SAID CAUSE.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS 15TH DAY OF DECEMBER 2022.



PATRICIA G. BACHAND, COURT REPORTER
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