

JUDICIAL MERIT SELECTION COMMISSION
Sworn Statement to be included in Transcript of Public Hearings

Circuit Court
(New Candidate)

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1. Why do you want to serve as a Circuit Court judge?

I want to serve as a Circuit Court Judge, because I believe it would provide me a unique opportunity to serve the public and give back to the community. Also though, as humbly as I can say this, I want to be a Circuit Court Judge, because I believe that I would be great at it.

Both of my parents dedicated their lives to public service. My father, Dr. W.F. Gibson, worked in civil rights fighting to ensure equal and fair treatment for all people. He worked his way up the ranks of the National Association for the Advancement of Colored People (NAACP) from President of the Greenville Branch to President of the South Carolina Chapter to being the Chairman of the National Board of Directors. My mother, Lottie Gibson, also worked in civil rights but later transitioned to elected office serving as a member of Greenville County Council for over 20 years. In addition to her service on County Council, she tirelessly worked through various boards, commissions, and non-profit agencies to help those who needed it most. She did this work without regard to race or any other factor. If you needed help, no matter who you were, she would be there for you.

I'm extremely proud to say that my parents instilled their dedication to help others, particularly the least among us, in me.

Over the years, I have served my community in multiple and varied capacities. As a graduate of West Point, I joined the Army as an officer and fought during Desert Shield/Storm in Saudi Arabia, Kuwait, and Iraq. Later, I served on various boards and commissions, and most recently I have served as a member of the Greenville City Council.

Through all of this I have learned that there is far more that binds us than divides us and that every person's perspective no matter how disparate from mine is legitimate and has value. I've also learned that everyone, no matter what your station in life or what you may have

done deserves to be treated with respect.

I believe that we are better when we can come together and thus, I try to seek consensus and common ground whenever I can. But I also know what is right, and when such consensus can't be achieved, I have the courage to stay focused and determined to ensure that right is done.

I believe that that the mix of the lessons learned from my parents, my education, my military service, and my extensive work in both the civil and criminal sides of the law make me uniquely qualified to serve as a Judge.

2. Do you plan to serve your full term if elected? Yes.

3. Do you have any plans to return to private practice one day?

I'm unsure. I am approaching the position with the mindset that if I am elected, I will be there until I am forced out for age. At that point I will still consider myself a young man, so it is possible that I would then return to private practice. But I may also find some other way to serve my community that is just as fulfilling.

4. Have you met the Constitutional requirements for this position regarding age, residence, and years of practice? Yes.

5. What is your philosophy regarding *ex parte* communications? Are there circumstances under which you could envision *ex parte* communications being tolerated?

I think as a general rule they should not happen, but there are some exceptions. For instance, *ex parte* communications are allowed when indigent counsel may need the Judge to sign an order allowing for additional expenditures, investigation or expert consultation and testimony without divulging defense counsel's strategy. Accordingly, I can imagine other circumstances where in the interest of justice such communications should be allowed. But those circumstances should be rare and not on the ultimate issues in dispute. And never allowed when such communications would unduly prejudice the other party.

6. If you disclosed something that had the appearance of bias, but you believed it would not actually prejudice your impartiality, what deference would you give a party that requested your recusal? Would you grant such a motion?

As a general rule, I would be inclined to grant it. The public and parties to a dispute are not only entitled to a Judge that can be impartial, but they are also entitled to the full

and unfettered *perception* of impartiality. The parties to a dispute and the public as a whole should be able to have faith that the decisions that are made were made because of the facts, not because the Judge in the case had some bias toward one side or another.

7. How would you handle the appearance of impropriety because of the financial or social involvement of your spouse or a close relative?

I would recuse myself from the matter once I became aware of the potential conflict.

8. What standards would you set for yourself regarding the acceptance of gifts or social hospitality?

I would try to only accept gifts or social hospitality from long term social friends or family that I knew were in no way given to curry any favor from me as a Judge. I would avoid situations of accepting any gifts or social hospitality from litigants before me or their counsel. I would diligently report any gifts or social hospitality that I did accept. And finally, to the extent that I did accept such a gift or social hospitality I would recuse myself from any matters involving the givers of such items or disclose it to all potential litigants and entertain any requests by either of the parties for me to recuse.

9. How would you handle a situation in which you became aware of misconduct or appearance of infirmity of a lawyer or of a fellow judge?

I would first address the matter with the lawyer or Judge, either privately or ex parte. I would bring my perceptions to their attention and inquire as to whether there were some extenuating circumstances that I was missing that may have caused me to misperceive the situation.

If there were none, in the case of infirmity, I would ensure that they were taking steps to either get better or depending upon the extent of the infirmity to remove themselves from practice until it was rectified. If they refused, I would then have to consider whether the infirmity was substantial enough to justify my taking further action such as either employing others who may hold more sway with them to persuade them to take the necessary corrective actions or more aggressively to report them to the Bar or Court Administration.

If there were no such extenuating circumstances in the case of misconduct, I would then have to assess the severity of the conduct and whether it would need to be reported to the authorities or the bar. If it was a lawyer and the misconduct occurred in a case before me, I would then also have to consider sanctions within the case itself.

10. Are you a member of any organization or association that, by policy or practice, prohibits or limits its membership on the basis of race, sex, religion, or national origin? If so, please identify the entity and explain if this organization practices invidious discrimination on any basis. No.

11. Have you engaged in any fund-raising activities with any political, social, community, or religious organizations? Please describe.

Yes. I have raised funds for election campaigns for myself and others. Additionally, I have assisted my children with various fund-raisers that were held for their respective schools.

12. Do you have any business activities that you would envision remaining involved with if elected to the bench? No.

13. If elected, how would you handle the drafting of orders?

On simple issues I would be inclined to use the Judicial Form 4 and issue the order in that manner.

On more complicated issues, I would as a general practice ask the prevailing attorney to draft an order and circulate it with opposing counsel to ensure that the order accurately reflected what I had decided. I would then review the proposed order and if sufficient, I would sign it and make it the written order of the Court. If not sufficient, I would either edit it so that it was sufficient or return it to the parties with instructions to fix.

On some issues though, especially those where my rulings would be more complex or fractured or on issues that I believed were more significant, I would utilize my staff and draft the order myself.

14. If elected, what methods would you use to ensure that you and your staff meet deadlines?

As I do in my law practice, we would employ a calendaring system that identified all deadlines and gave regular reminders/ticklers to progress towards meeting them. We would break large projects into manageable tasks that would ensure sufficient progress towards timely completion.

15. What is your philosophy on "judicial activism," and what effect should judges have in setting or promoting public policy?

I believe, particularly at the Circuit Court level, that Judges should be calling balls and strikes on cases. I would see my role as doing that and not trying to set or promote public policy.

16. Canon 4 allows a judge to engage in activities to improve the law, legal system, and administration of justice. If elected, what activities do you plan to undertake to further this improvement of the legal system?

That's an issue that I haven't really given a great deal of thought. I imagine that if and when I am elected to the bench my first and primary objective will be just to become acclimated to the role and be successful in that. In Greenville, I know that we currently have a huge backlog of criminal cases, so my first intentions will be to hit the ground running and try to reduce that backlog.

I'm sure though that after I've been in the role for enough time to feel like I have my sea legs so to speak that I will want to venture further and work towards those goals. But at present I can in no way say what form that would take.

17. Do you feel that the pressure of serving as a judge would strain personal relationships (i.e., spouse, children, friends, or relatives)? How would you address this?

I don't feel that in my case it would. As an elected public servant, I have been juggling my responsibilities as a council member with my relationships to family and friends for years. Maybe, I am naïve and missing some aspect of the job, but I can't imagine that being a Judge would subject me to some greater pressure in that regard.

18. The following list contains five categories of offenders that would perhaps regularly appear in your court. Discuss your philosophy on sentencing for these classes of offenders.

- a. Repeat offenders:
- b. Juveniles (that have been waived to the Circuit Court):
- c. White collar criminals:
- d. Defendants with a socially and/or economically disadvantaged background:
- e. Elderly defendants or those with some infirmity:

I view each of these categories as merely single factors of a vast tapestry that should be considered when fashioning a sentence for an offender. I do not believe that any

of these categories necessarily dictate either a harsher or more lenient sentence. I, do however, believe that each of these categories, with the exception of “White Collar criminals,” indicate specific additional concerns that the Court should consider when fashioning a sentence.

With that in mind, I address the individual categories as follows:

a. Repeat Offenders:

With repeat offenders the biggest concern that the Court needs to have when sentencing is whether the history of the defendant and the prior sentences that he has had are effectively communicating to the defendant that he needs to stop committing criminal acts. The general rule of thought though is that a repeat offender, absent substantially mitigating circumstances, deserves a harsher sentence than a first-time offender.

b. Juveniles (that have been waived to the Circuit Court):

In the case of juveniles, it is especially important to explore ways to try to give them the tools that they need and try to reintegrate them back into society. Because of their age, their lack of experience with at least the adult criminal justice system, and their developing brains they are generally more receptive to responding to rehabilitative efforts. With that said, this is sometimes a difficult balance to achieve. The very fact that they have been waived to the Circuit Court indicates that the crimes at issue are serious ones. So, the Court has to look at all of those factors as well. But as a general rule, we should be trying to rehabilitate rather than merely punish juvenile offenders.

c. White Collar Criminals:

For the purposes of sentencing, I don't believe that the mere title White Collar crime dictates either a harsher or more lenient sentence or indicates any additional specific concerns related to sentencing. I think you address white collar crime under the same framework in which you address all crime. You have to look at the crime itself, its impact upon its victims, and the individual facts and circumstances of the offender to fashion a fair and just sentence. I've seen instances where meth addicts have counterfeited fake \$20s on their home printer to afford a fix. And then I've seen the crimes of someone like Bernie Madoff and the devastating effect it had upon the victims in the case. In the world of criminal law, these are both considered white collar crimes, but the appropriate sentences in these two cases are vastly different.

d. Defendants with a socially and/or economically disadvantaged background:

It is important to not only consider whether a defendant has a socially and/or economically disadvantaged background but also to consider if and how that background caused the defendant to become involved in crime. This doesn't necessarily mean that a defendant with such a background should receive either a stiffer or more lenient sentence. But it can

help the Court to assess the level of criminal intent involved and to know what things in addition or alternative to jail time should be considered. I believe that a fundamental goal of sentencing should be to place the defendant in a situation where they can get the tools that are necessary to allow them to leave a life of crime. You cannot properly do that without fully considering the background and life of the Defendant.

e. Elderly defendants or those with some infirmity:

Elderly defendants or those with some infirmity can give rise to a number of concerns with regard to sentencing.

One such concern is whether the nature of the infirmity is such that SCDC will be able to one, provide proper care and then two, provide such care at a reasonable cost to the taxpayer relative to the crime. In cases where the answer to either of those questions is in the negative, it may be prudent to explore an alternative sentencing arrangement such as home incarceration or probation and to allow the offender to continue receiving care through his current health care provider.

With concern as to the age of the defendant, the Court needs to be cognizant of the impact of the sentence in relation to the offender's remaining life expectancy. A 5-year sentence for an 80-year-old Defendant is far more punitive than a 5-year sentence to a 20-year-old man. In the former case, you may be very well issuing a death sentence to the Defendant, which under the circumstances may not be appropriate, fair, and just.

Another issue that arises when you have such defendants is that studies show that elderly offenders are far less likely to reoffend than younger ones. So, if one of the purposes of a Judge's sentence is to protect the community from further acts, this becomes less of a concern with elderly defendants.

Again, none of these categories automatically indicate that a Court should render a harsher or more lenient sentence. But they can give rise to issues that the Court should further explore when rendering judgment.

19. Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality? No.

20. Would you hear a case where you or a member of your family held a *de minimis* financial interest in a party involved?

No. Even if I could be absolutely impartial, the potential for perception of bias is too great.

21. Have you met the mandatory minimum hours requirement for continuing legal education courses for the past reporting period? Yes.

22. What do you feel is the appropriate demeanor for a judge and when do these rules apply?

As the Code of Conduct for United States Judges dictates, I believe that Judges should be patient, dignified, respectful and courteous. I believe that this applies not only when a Judge is on the bench, but in their everyday dealings as well.

23. Do you feel that it is ever appropriate to be angry with a member of the public, especially with a criminal defendant? Is anger ever appropriate in dealing with attorneys or pro se litigants?

In response, I'm going to parse this question a little. Anger is an emotion and as such it is primarily an involuntary response to the circumstances you find yourself within. I believe that while you can certainly minimize your chances at anger by rethinking various beliefs and rules you have for yourself, you can never eliminate any chance of being subject to the involuntary response.

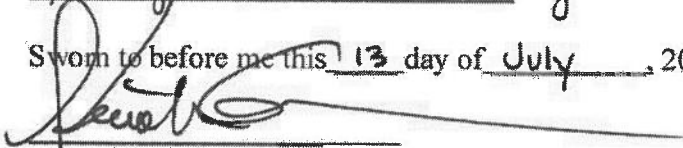
I have pretty much lived in courtrooms for the past twenty plus years primarily doing criminal defense work. And in those experiences, I have witnessed defendants, attorneys, witnesses, victims, and spectators that would exhaust the patience of Job. In those instances, I have seen Judges get angry and have rarely felt as though it was inappropriate for them, under the circumstances, to at least feel that emotion.

What I do think, however, is that it is inappropriate for a Judge to then act on that emotion. A Judge should not let anger affect how he treats anyone in his courtroom. And he certainly should not allow it to affect how he rules. That goes for criminal defendants, attorneys, pro se litigants, witnesses, victims, or spectators. If the Judge has to take a break to cool his or her head, he or she should call for a short recess and do so. At all times, it is incumbent upon the Judge to treat everyone before the Court in a patient, dignified, respectful and courteous manner.

I HEREBY CERTIFY THAT THE ANSWERS TO THE ABOVE QUESTIONS ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

Sally M. Weissenburger (Notary Public)

Sworn to before me this 13 day of July, 2023.



(Signature)

Sally M. Weissenburger

(Print Name)

Notary Public for South Carolina

My Commission Expires: April 23, 2029



Sally M Weissenburger
NOTARY PUBLIC
State of South Carolina
My Commission Expires
April 23, 2029