



1226 Pickens Street
Columbia, South Carolina 29201
info@garberreporting.com
Telephone: (803) 256-4500 | Fax (803) 256-1999

SCREENING HEARINGS

November 13, 2023

2023 Judicial Merit Selection Commission

REPORTER: Jennifer Nottle

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF RICHLAND)

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5 JUDICIAL MERIT SELECTION COMMISSION

6 TRANSCRIPT OF PUBLIC HEARINGS

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8 BEFORE: MICAJAH PICKETT "MICAH" CASKEY, CHAIRMAN

9 SENATOR LUKE A. RANKIN, VICE CHAIRMAN

10 SENATOR RONNIE A. SABB

11 SENATOR SCOTT TALLEY

12 REPRESENTATIVE J. TODD RUTHERFORD

13 MS. HOPE BLACKLEY

14 MS. LUCY GREY MCIVER

15 MR. ANDREW N. SAFRAN

16 MR. PETE STROM

17 REPRESENTATIVE WALLACE H. "JAY" JORDAN

18 MS. ERIN CRAWFORD, CHIEF COUNSEL

19 * * * * *

20 DATE: November 13, 2023

21 TIME: 9:00 a.m.

22 LOCATION: Gressette Building

23 1101 Pendleton Street

24 Columbia, South Carolina 29201

25 REPORTED BY: JENNIFER NOTTLE, COURT REPORTER

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1 CHAIRMAN CASKEY: Morning, Ladies and Gentlemen. I'm
2 going to go ahead and call to order today's
3 session of the Judicial Merit Selection
4 Commission. We are at about 9:25. We're
5 scheduled to begin our first screening at 9:30.
6 We do, however, have need for Executive Session
7 to receive a quick legal briefing. I don't
8 anticipate it taking more than a couple of
9 minutes. But at this time, on motion of
10 Representative Jordan, seconded by Representative
11 Rutherford, the pending question is going into
12 Executive session. All in favor, signify by
13 saying aye.

14 (Ayes are hear.)

15 CHAIRMAN CASKEY: All opposed, nay.

16 (No reply is heard.)

17 CHAIRMAN CASKEY: They ayes have it and we will
18 briefly go into Executive Session and would ask
19 for those folks who can not be here for that to
20 step out. Thank you.

21 (EXECUTIVE SESSION)

22 CHAIRMAN CASKEY: All right, Ladies and Gentlemen. We
23 are back on the record now coming out of
24 Executive Session. For the record, while we were
25 in Executive Session, no decisions were made and

1 no votes were taken. We will now begin today
2 with our first screening for judicial office in
3 the State, and as he makes his way in, to the
4 podium. Good morning, Mr. Cole. How are you?

5 MR. COLE: Good morning, Mr. Chairman. I'm great. I
6 hope you are.

7 CHAIRMAN CASKEY: All right. Mr. Cole, my
8 understanding is you are here screening for Seat
9 1 of the 7th Judicial Circuit for the Circuit
10 Court bench; is that correct?

11 MR. COLE: That's correct.

12 CHAIRMAN CASKEY: If you would, sir, please raise your
13 right hand.

14 J. DERHAM COLE, JR., being duly sworn, testifies
15 as follows:

16 MR. COLE: I do.

17 CHAIRMAN CASKEY: Thank you. There should be some
18 documents in front of you. If you would, take a
19 second to look at those.

20 MR. COLE: Yes, sir.

21 CHAIRMAN CASKEY: Are those the Personal Data
22 Questionnaire and Sworn Statement that you have
23 submitted to the Commission?

24 MR. COLE: Yes, sir, they are.

25 CHAIRMAN CASKEY: Do any updates or corrections need

1 to be made at this time?

2 MR. COLE: No, sir.

3 CHAIRMAN CASKEY: Do you have any objection to our
4 making these documents a part of the record of
5 your sworn testimony?

6 MR. COLE: I do not.

7 CHAIRMAN CASKEY: Thank you, sir. I'll give staff an
8 opportunity to do that. The Judicial Merit
9 Selection Commission has thoroughly investigated
10 your qualifications for the bench. Our inquiry
11 is focused on the nine evaluative criteria and
12 has included a ballot box survey, a thorough
13 study of your application materials, verification
14 of your compliance with State ethics laws, a
15 search of newspaper articles in which your name
16 appears, a study of any previous screenings and a
17 check for economic conflicts of interest. We
18 have received no affidavits filed in opposition
19 to your election, and no witnesses are present to
20 testify. Before giving you the opportunity to
21 make a brief opening statement, if you would
22 like, if you would like to introduce any guests
23 you have with you, we would be happy to meet.

24 (Exhibit Number 1 was marked for identification
25 purposes - (15 pages) Personal Data Questionnaire for

1 J. Derham Cole, Jr.)

2 (Exhibit Number 2 was marked for identification
3 purposes - (2 pages) Amendment to Personal Data
4 Questionnaire for J. Derham Cole, Jr.)

5 (Exhibit Number 3 was marked for identification
6 purposes - (6 pages) Sworn Statement of J. Derham
7 Cole, Jr.)

8 MR. COLE: Yes. Thank you, Mr. Chairman and members
9 of the Commission. I am honored to have my wife,
10 Suzy, down here with me today. She was able to
11 get our children to school in world record time
12 and still make it in time. So she is a wonderful
13 wife, mother and the best lawyer I know. So I'm
14 honored to have her support in this jury and all
15 the others we've made together.

16 CHAIRMAN CASKEY: Outstanding. Thank you, Suzy, for
17 being here today. Mr. Cole, as I said, if you
18 would like to make a brief opening statement, we
19 would be happy to hear from you. Otherwise we'll
20 begin with questions from staff.

21 MR. COLE: Mr. Chairman, I will take that hint but I
22 would like to just thank the members of the
23 Commission for the time you invest in this
24 process. And I also want to thank Ms. Crawford
25 and Ms. Faulk and Ms. Putnam for their

1 professionalism and diligence during this
2 process.

3 CHAIRMAN CASKEY: Thank you, sir. At this time then
4 I'll recognize Ms. Faulk for some questions.

5 MS. FAULK: Thank you, Mr. Chairman.

6 MR. COLE - EXAMINATION BY MS. FAULK:

7 **Q. Good morning, Mr. Cole. It's good to see you**
8 **again.**

9 A. Thank you.

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

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

21 A. Thank you. First I will note that in four days I
22 will have been sworn in as a member of the bar
23 for 20 years, and it's been a wonderful
24 experience to be a South Carolina lawyer. And I
25 have practiced in large firms, smaller litigation

1 firms. I've also been a solo practitioner during
2 those 20 years, and, you know, I think all those
3 experiences would inform -- have informed where I
4 am today and would inform how I would execute my
5 duties on the bench. I've also been fortunate to
6 have other professional experiences I think would
7 aid me in serving on the bench, and those are
8 experiences like serving in public office. In
9 serving in public office, as you all know you,
10 meet a lot of different people, people that are
11 contacting you because you're their
12 representative. They are coming to you either
13 with policy issues for which they're advocating.
14 They're coming to you because they have issues
15 with state government. They have a variety of
16 issues for which you may be contacted, and I
17 think where -- you know, where lawyers and judges
18 and others that are in those types of positions
19 fall short is when those constituents, the
20 stakeholders, whatever the case may be, don't
21 feel like you're listening to their position.
22 And I think people are aware that everyone can't
23 win or one issue can't prevail over another. But
24 I think when people feel like you've been
25 listening to them they appreciate they've had a

1 fair opportunity to be heard. And that's been my
2 experience as a lawyer, as a public official in
3 my more recent experience, particularly as
4 interim chancellor at the University of South
5 Carolina Upstate. When you sit in that position,
6 people are coming to you with lots of different
7 questions, issues, things they want you to do or
8 not to do, and it's students, faculty, staff,
9 donors, stakeholders in the community. And, you
10 know, what I've tried to do throughout all those
11 experiences is really have the figurative and
12 literal open door and listen to the concerns that
13 people have and try to come find a solution to
14 their issues or at least make a decision that's
15 based on facts and an informed position. And I
16 think when you do that, people appreciate that
17 even if you don't always agree with their
18 position. So I think those experiences would
19 help me be an effective circuit court judge.

20 **Q. Thank you, sir. And you began to touch on this**
21 **just a little bit, but for the sake of clarity,**
22 **would you tell us in what ways, if any, do you**
23 **feel that having served as a state legislator**
24 **would influence your work as a circuit court**
25 **judge?**

1 A. I mean, it's certainly a completely different
2 position than the one I'm seeking now. I think
3 the way it would help is just that, hearing --
4 I'm used to hearing different positions,
5 different viewpoints, trying to reconcile those.
6 But in that case that's trying to come up with a
7 policy decision or a vote on legislation. Here
8 it's using that same skill set as a listener and
9 thinker, but using it to, you know, apply the law
10 to a set of facts before me or making a sound
11 legal decision rather than a policy decision.

12 **Q. The Commission received 762 ballot box surveys**
13 **regarding you with 67 total comments but only 46**
14 **comments regarding you and not your father. The**
15 **ballot box survey, for example, contained the**
16 **following positive comments: first, "Derham has**
17 **the legal aptitude and patience to be an**
18 **excellent judge." Next, "Mr. Cole would make an**
19 **excellent jurist. His temperament and**
20 **intelligence is perfect for the role." Finally,**
21 **"Derham is very smart and very principled, and**
22 **I'd like to give him a super well qualified on**
23 **temperament. He's one of the most even keeled**
24 **lawyers I know." Thirteen of the written**
25 **comments expressed some concerns. Seven comments**

1 **expressed concerns about the sufficiency of your**
2 **experience. What would you like to offer in**
3 **response to these concerns?**

4 A. Well, certainly I'm honored to hear the positive
5 ones. Certainly the ones as to experience, as I
6 mentioned earlier, I've been a licensed lawyer
7 for 20 years. I've spent 15 years in private
8 practice with different firms. I've served the
9 Bar association, served in legal organizations,
10 had extensive civil litigation experience as well
11 as some other business transactional experience.
12 And I have also -- I have a passion for the law
13 and learning about the law. And so even areas
14 where I have not practiced as much, I regularly
15 read the advance sheets. I take CLEs in a
16 variety of different areas of law including most
17 recently I did a criminal trial demonstration
18 CLE. I observed a med mal trial recently. And
19 I've taken some additional CLEs that are focused
20 on evidence and rules of procedure just because I
21 think you always have to be learning as well as
22 refreshing yourself, even if you think you
23 already know them. I had a mentor back in my
24 earlier days of practicing law who knew a lot of
25 rules with which he was dealing back and forth,

1 but always said just -- it never hurts to go back
2 and look at a rule or look and see what it says
3 just in case there is some nuance that applies to
4 the facts of that case. So there are areas in
5 which I would want to make myself a more well-
6 rounded lawyer and well-rounded judge, but I
7 enthusiastically welcome the opportunity to do
8 that because I do that now.

9 **Q. Four comments expressed concern that your**
10 **father's judgeship and your time at the**
11 **statehouse might give you an unfair advantage**
12 **over other candidates who might be equally as**
13 **qualified for the bench. How would you address**
14 **these concerns?**

15 A. Well, you know, I think this is a fair process in
16 which candidates who wish to offer themselves can
17 go through this process. I wouldn't say I would
18 have an unfair advantage in any way. I have to
19 go through the same process that anyone else
20 does, and I think my candidacy stands on its own
21 merits unrelated to those, you know, prior
22 experiences or relationships even though I value
23 those experiences and certainly value my
24 relationship with my father.

25 **Q. Thank you, sir. The final two comments question**

1 **the suitability of your temperament for the**
2 **bench. How would you respond to these concerns?**

3 A. I mean, certainly any comment that you would get
4 like that I would take very seriously and wonder
5 more about the context of it or what those
6 commenters -- they mean by it. I think there
7 were other comments that said I had a good
8 temperament and wonderful temperament for the
9 bench. And so, yeah, I would wonder more about
10 that, but it certainly -- you know, I certainly
11 take it seriously and would always strive to --
12 you know, to have an appropriate and dignified
13 and calm temperament on the bench and in my
14 everyday life.

15 Q. **Mr. Cole, your SLED report indicated your**
16 **involvement in four cases. First is Carter v.**
17 **Thompson. It was filed in 2004. Filed by an**
18 **inmate that was dismissed without service of**
19 **process. Can you tell us anything about that**
20 **case?**

21 A. I cannot. I'm not aware of that.

22 Q. **Next was Carter v. Cole. That was 1999. Again,**
23 **a suit by an inmate. Can you tell us anything**
24 **about that one?**

25 A. I cannot. That was my senior year of college, so

1 I'm pretty sure that was not me.

2 Q. Jeter v. Cole is again a -- it was a January 9th
3 case of this year actually. It's ongoing. It
4 was again filed by an inmate, and again, I'm
5 assuming that this was your father and not you --

6 A. I am not --

7 Q. -- is that correct?

8 A. Yes. I'm sorry to talk over you. I'm not
9 familiar with that one either.

10 Q. Finally your SLED report contained a case of
11 South Carolina v. Joseph Dwayne Cole. You have
12 no involvement in that as well, right?

13 A. That is not me.

14 Q. Very good, thank you.

15 MS. FAULK: I would note that the Upstate Citizens
16 Committee reported that Mr. Cole is well
17 qualified as to the evaluative criteria of
18 ethical fitness, professional and academic
19 ability, character, reputation, experience and
20 judicial temperament. Mr. Cole was also found to
21 be qualified in the evaluative criteria of
22 constitutional qualifications, physical health
23 and mental stability.

24 Q. Now I'll just move on to a couple of housekeeping
25 questions, and I'll hand things back over to Mr.

1 Chairman. Mr. Cole, are you aware that as a
2 judicial candidate you are bound by the Code of
3 Judicial Conduct as found in Rule 501 of the
4 South Carolina Appellate Court Rules?

5 A. I am.

6 Q. Since submitting your letter of intent, have you
7 contacted any members of the Commission about
8 your candidacy?

9 A. I have not.

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

14 A. I am not.

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

18 A. I am.

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

23 A. I am not.

24 Q. Have you reviewed and do you understand the
25 Commission's guidelines on pledging and South

1 **Carolina Code 2-19-70(E)?**

2 A. Yes.

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

9 CHAIRMAN CASKEY: Thank you, ma'am. Do members of the
10 Commission have questions for Mr. Cole. Mr.
11 Jordan.

12 REPRESENTATIVE JORDAN: Thank you, Mr. Chairman.

13 MR. COLE - EXAMINATION BY REPRESENTATIVE JORDAN:

14 Good morning.

15 A. Good morning.

16 Q. So it doesn't seem like that long ago but in
17 reality it was that long ago. I can remember
18 walking over to the statehouse in the garage with
19 you. I was brand new here. We didn't know each
20 other. But I asked you if you had any advice --
21 and you probably don't even remember this
22 conversation, and I don't know why we remember
23 some things and not others, but you told me two
24 things: number one, be honest with people. Be
25 straight with them about your yes is your yes,

1 and your no is your no, and treat people right.
2 Those are the two things that you advised me of
3 as a freshman legislator. I bring that up,
4 first, I think it's a demonstration of a person's
5 character the kind of advice they give. And
6 secondly, I agree with your answer a minute ago
7 that these are two very, very different things,
8 being a state representative and now being a
9 judge. But I wonder how would you take your own
10 advice over to the bench should you be successful
11 in this endeavor?

12 A. I hope I would follow it. And I would follow it
13 because it's -- I mean, those are kind of
14 fundamental to who I am, and I think those are
15 just as important to service on the bench as they
16 are in everyday life. Be honest, be
17 straightforward with people so they know what to
18 expect, even if it's something that's, you know,
19 uncomfortable, they might not want to hear, and
20 just treat people with -- treat people right.
21 Treat people with courtesy and respect. And then
22 that's just how I've tried to live my life
23 personally and professionally, and how I would
24 continue to do it.

25 Q. And I certainly observed that. We didn't spend a

1 ton of time together. As I remember, you sat
2 with Representative Tallon, and that prohibited
3 me coming around your desk for the large part.
4 That's a joke.

5 A. You know, we probably had some conversations
6 going on.

7 Q. I've heard this argument before about serving in
8 the General Assembly and then potentially running
9 for judgeship. But I will say this, it does seem
10 like an opportunity to observe someone and how
11 they treat people. And the advice you gave me
12 did bear out as it did in your case. So thank
13 you for putting your name forward, and thank you
14 for answering my questions today.

15 A. Well, thank you. And I just want to be clear. I
16 did not think you would do anything other than
17 that so I'm glad you didn't mind my unsolicited
18 advice there.

19 CHAIRMAN CASKEY: Other members of the Commission,
20 questions?

21 MR. STROM: Thank you, Mr. Chairman. Good morning.

22 MR. COLE: Good morning.

23 MR. STROM: I just wanted to say that, you know, I'm
24 thankful that you're offering. I mean, all of us
25 know your father and what a great job he did with

1 integrity on the bench, and a lot of people have
2 stood up here. I wonder if they know what
3 they're getting themselves into when they go on
4 the bench because it's a hard job and a lot of
5 pressure, tough on the family. We all know that,
6 and I think it gets harder every year. So I just
7 wanted to thank you for offering, and I know you
8 would do an outstanding job.

9 MR. COLE: Well, thank you so much. I mean, I
10 certainly have a role model in him. But also the
11 other judges in Spartanburg and Cherokee Counties
12 and around the state, so thank you.

13 MR. STROM: I do question your relationship with Eddie
14 Tallon, but --

15 CHAIRMAN CASKEY: Representative Rutherford.

16 REPRESENTATIVE RUTHERFORD: Yeah, I just want to join
17 my fellow Commissioners because part of this is
18 people looking at you assuming that you're doing
19 this because you were a former legislator and
20 saying that this isn't fair because you're able
21 to just essentially almost walk into a seat. But
22 obviously you know that there's a vote ahead, and
23 there's a vote in this Committee. But what your
24 service has done is allow us to get to know you
25 and -- those of us from Columbia to know a lawyer

1 from Spartanburg, to know that you are
2 unflappable, that I've seen you under stress,
3 that I've seen you in stressful situations and
4 know that the comment about your composure was
5 not you, obviously. That's just not you. You're
6 always even-keeled, and I've dealt with you in a
7 number of situations. And again, I'm not the
8 arbiter of who makes a good judge but I certainly
9 can get a sense of who somebody is after having
10 served years with them. How long have you been
11 out of the General Assembly?

12 MR. COLE: Five years.

13 REPRESENTATIVE RUTHERFORD: Five years. And how long
14 did you serve?

15 MR. COLE: Ten years.

16 REPRESENTATIVE RUTHERFORD: Okay. And so ten years
17 of your life dedicated to a job that paid you
18 \$10,000 a year. I don't view that as something
19 that should be a negative. And those people that
20 were your constituents that will soon live in the
21 same city where, if you're successful, you're a
22 judge, have also had the opportunity to get to
23 know you, to see you in community meetings, to
24 throw hard questions at you to see how you voted
25 on the gas tax, which Eddie Tallon just lost his

1 seat over, possibly. And so all those things
2 that matter and that mattered then that still
3 matter now give them a chance to see who you are
4 as a person and hopefully who you will become as
5 a judge. And my advice is that you keep taking
6 your own advice that you gave to a freshman
7 annoying legislator all those many years ago,
8 because I think that's who you are. And I've
9 known you long enough to believe that that's who
10 you are. And I just tried a murder case in front
11 of your father. He was the same judge that I've
12 known him to be for the last 25 years that I've
13 been a lawyer. Hadn't changed and won't change
14 for anybody. But I just simply encourage you to
15 do the same and not change and continue to be who
16 you are. So thank you for putting up for this.

17 MR. COLE: Thank you, Mr. Rutherford. I appreciate
18 your comments.

19 CHAIRMAN CASKEY: Senator Talley.

20 SENATOR TALLEY: Good morning, sir.

21 MR. COLE: Good morning.

22 SENATOR TALLEY: We've obviously known each other for
23 a long time outside of political ties and legal
24 ties. And I can say with certainty you and I
25 both married well above ourselves. So I'm glad

1 Suzy's here today. It was interesting when I
2 started reading these comments, and obviously as
3 Madison pointed out, those that would question
4 your temperament don't know you. I've worked
5 with you in the General Assembly. I've worked
6 with you on legal cases before and obviously
7 spent a lot of time with you. So one of the
8 things that I think gives me great pride in
9 seeing you ascend to this position hopefully is
10 knowing that what we have talked about in here is
11 exactly what's going to play out in your
12 courtroom. People are going to walk in. They're
13 going to get a fair shake, they're going to get a
14 listening ear, they're going to get a very
15 intelligent judge that's going to do his best to
16 follow the law and provide justice. So I'm glad
17 you're seeking this seat. It's going to be a
18 good thing for Spartanburg, for our circuit and
19 for the State of South Carolina. So appreciate
20 you doing that.

21 MR. COLE: Thank you, Senator Talley.

22 CHAIRMAN CASKEY: Ms. Blackley.

23 MS. BLACKLEY: Good morning. How are you doing?

24 MR. COLE: Good morning.

25 MS. BLACKLEY: I'm glad to see you and Suzy. I know

1 we go way back --

2 MR. COLE: Well, it's good to see you too.

3 MS. BLACKLEY: -- legal world and professional world
4 and private world. So I just adore your
5 children. I, too, want to just kind of chime in
6 on -- I've dealt with you on many different
7 levels, and there have been some times where
8 probably it wouldn't have been as positive based
9 on some things that happened when I was Clerk,
10 but your temperament has always been the same.
11 I've never seen you act out of character or be
12 anything but kind, courteous and nice, and that's
13 what I appreciate about you. And I think you
14 would be less likely than probably many other
15 candidates to have robitis, because you're the
16 only candidate for this job. So I appreciate
17 your temperament. I don't know who wrote that,
18 but obviously they don't know you, and I wish you
19 the best of luck.

20 MR. COLE: Thank you so much.

21 CHAIRMAN CASKEY: Mr. Safran.

22 MR. SAFRAN: Thank you, Mr. Chairman.

23 MR. COLE - EXAMINATION BY MR. SAFRAN:

24 Q. Candidly, having known you at least to some
25 extent over a number of years and looking at the

1 comments that are contained in the surveys, I'm
2 convinced that the temperament had to relate to a
3 different Derham Cole. I'm not expecting that it
4 was you because, frankly, I just never have seen
5 that in you. That said, there was a very wide
6 array of comments about your dad. He is, by
7 every indication, his own man. And he does it
8 the way he wants to do it. That said, what do
9 you say in response more or less that, hey, I
10 love my dad, that's not necessarily me. What
11 would you kind of tell us in terms of what your
12 philosophy is going to be, how you may maintain a
13 courtroom as opposed to maybe the model that your
14 dad set. Because I guess everybody is going to
15 grow into the job. You come in with a different
16 background and certainly with, I believe, a very
17 different demeanor. How would you feel like, you
18 know, a lot of these things that are said aren't
19 necessarily going to be reflective of you.

20 A. I mean, good question. And I think it is really
21 some of the things we've talked about. You know,
22 treating people with respect and being
23 straightforward with them. That goes a long way
24 towards, you know, promoting, you know, mutual
25 respect. I mean, a judge has to maintain, you

1 know, order in the courtroom. So there are times
2 where you have to be firm, but you can do that,
3 you know, with an appropriate demeanor and an
4 appropriate temperament and still accomplish that
5 goal. And so that's how I would approach it.
6 And I think the, you know, specific nuance of
7 style would evolve based on how I -- if I'm
8 fortunate to be elected -- when I get in there
9 and develop relationships with -- you know, with
10 lawyers and, you know, courtroom personnel, the
11 Clerks of Court. And, you know, I think it's
12 just those relationships that, you know, kind of
13 promote that mutual respect and maintaining order
14 without having an issue with temperament.

15 **Q. Well, and I think we've seen over the course of**
16 **the time I've been here that some of the most**
17 **revered judges are ones that never have to raise**
18 **their voice, that never have one iota of comment**
19 **negatively about their temperament. So obviously**
20 **you've seen -- and it's been proven that you can**
21 **maintain a very firm control without necessarily**
22 **being overbearing, and I'm assuming you've run**
23 **into that before; is that fair?**

24 **A. You mean in --**

25 **Q. Yeah, in court.**

1 A. -- in court. Yes. I mean, you run into
2 different, you know -- different days, sometimes,
3 you know, different things happen. I mean,
4 people have different styles so certainly I've
5 run into that.

6 Q. Well, and I guess from what I gather, you know,
7 somebody who has had an opportunity at least to
8 have exposure to a lot of different judges,
9 different personalities, try to grab the best
10 from all of them and just try to make their best
11 part of yours. And I have no doubt you're going
12 to do that, and I appreciate your being here and
13 offering.

14 A. Thank you.

15 CHAIRMAN CASKEY: Senator Sabb.

16 SENATOR SABB: Thank you, Mr. Chairman.

17 MR. COLE - EXAMINATION BY SENATOR SABB:

18 Q. And good to see you.

19 A. Thank you.

20 Q. So the first thing I want to do is defend
21 somebody who has been assaulted. I want the
22 record to reflect that I came in to the General
23 Assembly with former Representative Tallon. He
24 was the president of our class. It's the
25 greatest class to ever hit the General Assembly,

1 and so I want the record to reflect all of that
2 and the fact that our candidate's an excellent
3 basketball player and a wonderful teammate. So I
4 want to, though, have the record reflect a
5 conversation relative to criminal law. And so
6 one of the things that I worry about in our state
7 right now is what I believe is politicalization
8 by some as it relates to the judiciary. You
9 served in the House as a member of the Republican
10 party. It's easy for Todd and I to say, because
11 we both served with you, that you were fair, you
12 were focused and easy to work with. And we all
13 know the nature of the politics is that in the
14 Assembly we agree on 80 percent of the issues,
15 maybe even 90 percent, but there's that other
16 small percent that there are philosophical
17 disagreements on. Speak to South Carolinians, in
18 general, about how a Judge Cole would approach
19 sentencing as it relates to persons appearing
20 before him.

21 A. Senator, thank you for that question. The way I
22 would approach sentencing is, you know, taking
23 into account, you know, what the law, what the
24 General Assembly has prescribed in terms of
25 sentencing and look at the nature of the offense,

1 making sure that, you know, the victims are
2 notified and involved, taking into account the
3 positions of the, you know, solicitor and the
4 defense and the defense attorney and making a
5 decision based on what the law is and not -- you
6 know, not what the politics are being debated in
7 the General Assembly. I mean, that's a job that
8 I left behind that you all are thankfully still
9 doing. But those debates, those policy debates,
10 will stay here, and my job would be to apply the
11 law as it exists at the time of the sentencing.

12 **Q. Appreciate that answer. You mentioned a group**
13 **that I'm kind of curious about. I'm trying to**
14 **understand the solicitors in our state right now.**
15 **And what I've witnessed is sort of warring**
16 **between some of our judges and the solicitors.**
17 **And frankly, and this is hearsay and observation,**
18 **there appears to be the idea that the solicitors**
19 **are the ones that essentially do the sentencing.**
20 **So they size the situation up and they just**
21 **constantly come before judges with**
22 **recommendations after recommendations after**
23 **recommendations. And depending on the response**
24 **to judges on recommendations, then there is this**
25 **atmosphere that's created. Have you had an**

1 opportunity to observe those kinds of
2 interactions between solicitors and judges. And
3 if so or if not, how do you approach that?

4 A. Have not specifically, but I would strive to have
5 a good working relationship with all parties that
6 come in the courtroom and not be unduly
7 influenced by one or the other. It's just taking
8 the facts and circumstances as they would be
9 before me and making my own decision, not, you
10 know, being unduly waived one way or the other.

11 Q. Thank you, sir.

12 SENATOR SABB: Thank you, Mr. Chairman.

13 CHAIRMAN CASKEY: Thank you, sir.

14 MR. COLE - EXAMINATION BY CHAIRMAN CASKEY:

15 Q. Mr. Cole, I do have a couple of questions for
16 you. Because I think in some ways it's incumbent
17 on us as we sit here and fulfill our
18 responsibilities to make sure that we have
19 thoroughly vetted your candidacy, the fact that
20 you're the only candidate for this position
21 notwithstanding. And I guess the first thing I
22 want to just offer by way of suggestion to you is
23 being mindful of, you know, your relative lack of
24 criminal experience something that I -- I don't
25 recall if it was Todd or I, had mentioned to a

1 candidate who was similarly positioned with
2 respect to criminal experience, is I would
3 impress upon you take advantage of opportunities
4 to go and sit in plea court and perhaps even in
5 front of different judges to help ground your
6 experience or your thoughts with respect to what
7 sentencing should look like, because sentencing
8 is not something that is necessarily intuitive.
9 I think without having touched it or been a part
10 of it, it's hard to orient and calibrate one's
11 own sense of what sentences are appropriate in
12 what circumstances. I don't know how to
13 accelerate that learning other than to suggest
14 spending time with it, not just in a CLE context,
15 but actually there in a courtroom. So I share
16 that with you for whatever value it may have.
17 The other thing that I think is appropriate to
18 ask and certainly appropriate to have you address
19 is any concern that you -- because you were in
20 the legislature, that other folks decided not to
21 offer this seat as well, that you had crowded out
22 the field, in effect. And so I'll just put it to
23 you directly. Have you in any way at any point
24 intimated or explicitly said to anyone that they
25 should not take this opportunity to run for the

1 **seat because this is your seat?**

2 A. Mr. Chairman, thank you for the question. No, I
3 absolutely have not. I respect this process too
4 much. I haven't tried to influence in any way
5 other than, you know, submit my materials and be
6 here and, you know, try to prevail on my own
7 merit. I haven't tried to put a phone on the
8 process in any way nor am I aware of that being
9 done or anyone who was dissuaded from running at
10 all. I mean, I don't know that one way or the
11 other. It certainly wasn't me and I just -- you
12 know, I think there's just -- I respect this
13 process too much to have done that. And to your
14 earlier question, I thank you for the suggestion.
15 I plan to do just that, observe as much court as
16 I can, including, you know, plea court, trials
17 and even additional civil trials.

18 Q. **I just want to say then or add to that for people**
19 **who might think and look at this -- and**
20 **oftentimes these are cynical observations not**
21 **grounded in lived experience, but instead a**
22 **cynicism that in some ways is bordering on**
23 **pathological these days. But the fact that other**
24 **people chose not to run should not, in my**
25 **estimation, be held against you in any way unless**

1 you were to say to us that you had discouraged
2 them from doing so. And given your comments,
3 then I think you've satisfied that element for me
4 as I look at it. We should evaluate your
5 candidacy on its own merits, and the fact that
6 others may have self-censored or self-evaluated
7 the race to determine that they couldn't be
8 successful. Well, you know, you can't win a race
9 unless you run. And so I thought it appropriate
10 to address that. And the second and last point I
11 want to offer to you, because we had an
12 opportunity to screen another candidate this last
13 week who had previous experience in the
14 legislature, and the concern remains -- and what
15 I'd like you to do is respond to this concern --
16 and you've addressed it in other ways with other
17 questions, but if you're successful, there may
18 come a day where a matter before you necessarily
19 implicates political or partisan affinities. I
20 noted in your remarks, or the ballot box survey
21 results, that the word partisan or political
22 didn't come up insofar as there's an allegation
23 that you would act in such a way. But it doesn't
24 take too much creativity to imagine that one day,
25 should you take the bench, that an issue would be

1 presented to you. And the detractors or a losing
2 side might allege that you would be arriving at
3 your decision because of your political
4 motivations. And because this hearing is now
5 streamed -- or, excuse me, it's not streamed,
6 it's recorded and will later be available, when
7 that day and if that day should come, I would
8 like the public to be able to look back at your
9 comments here and now to know what your thought
10 process is and what your commitment is to the law
11 and fairness. And so I would ask you to respond
12 to this long-winded diatribe on my end. Because
13 the people of South Carolina, when that decision
14 comes that one day, may say why did you guys ever
15 elect him, why did that happen, and just to put a
16 marker on where your thoughts are on November
17 13th of 2023. I want to give you that
18 opportunity to do that.

19 A. Thank you, Mr. Chairman. One of the reasons, or
20 probably the main reason I became a lawyer, is
21 because I have the utmost respect for the rule of
22 law. And the rule of law is how it stands, you
23 know, at any given moment in time, including a
24 matter that would be before me in court. And the
25 law is not what I might hope it is or what I wish

1 it was. It's what the law is, you know, based on
2 the constitution, based on decisions that
3 legislators make in the General Assembly and
4 based on binding precedent, and that's how I
5 would approach those issues. It's not a
6 political position or a way for me to achieve
7 some agenda. It's applying the law as it stands,
8 whatever that may be.

9 **Q. Thank you, sir. I appreciate that.**

10 CHAIRMAN CASKEY: Any other questions or comments from
11 Commissioners? Seeing none, then I will extend
12 my thanks to you for being here, for your service
13 to the state and for offering for further service
14 as a part of our judiciary. I do need to take
15 this moment to remind you that pursuant to the
16 Commission's evaluative criteria the Commission
17 expects candidates to follow the spirit as well
18 the letter of the ethics laws and that we will
19 view violations of the appearance of impropriety
20 as serious and potentially deserving of heavy
21 weight in the screening deliberations. On that
22 note, and as you know, the record will remain
23 open until the formal release of the Report of
24 Qualifications, and you may be called back at
25 such time if the need were to arise. I thank you

1 Questionnaire and Sworn Statement that you have
2 submitted to the Commission?

3 JUDGE SALVINI: They are.

4 CHAIRMAN CASKEY: Are there any changes or updates
5 that need to be made at this time?

6 JUDGE SALVINI: There are not.

7 CHAIRMAN CASKEY: Do you have any objection to us
8 entering those as a part of the record of your
9 sworn testimony?

10 JUDGE SALVINI: I do not.

11 CHAIRMAN CASKEY: Thank you, ma'am. We'll give staff
12 an opportunity to do that. All right. The
13 Judicial Merit Selection Commission has
14 thoroughly investigated your qualifications for
15 the bench. Our inquiry is focused on the nine
16 evaluative criteria and has included a ballot box
17 survey, a thorough study of your application
18 materials, verification of your compliance with
19 state ethic laws, a search of newspaper articles
20 in which your name appears, a study of previous
21 screenings and a check for economic conflicts of
22 interest. We have received no affidavits filed
23 in opposition to your election and no witnesses
24 are present to testify. If you would like to
25 offer a brief opening statement, we would be

1 happy to hear from you. Otherwise, we will go to
2 questions from staff counsel.

3 (Exhibit Number 4 was marked for identification
4 purposes - (23 pages) The Honorable Jessica Ann
5 Salvini)

6 (Exhibit Number 5 was marked for identification
7 purposes - (12 pages) Sworn Statement of The Honorable
8 Jessica Ann Salvini)

9 JUDGE SALVINI: I'm happy to answer any questions that
10 y'all have.

11 CHAIRMAN CASKEY: Thank you, ma'am. At this point
12 then I would recognize Mr. Hinson.

13 JUDGE SALVINI - EXAMINATION BY MR. HINSON:

14 **Q. Good morning, Judge.**

15 A. Good morning.

16 MR. HINSON: Chairman, I would note for the record
17 that based on the testimony contained in the
18 candidate's PDQ, which has been included in the
19 record with the candidate's consent, Judge
20 Salvini meets the constitutional and statutory
21 requirements for this position regarding age,
22 residence and years of practice.

23 **Q. Judge Salvini, how do you feel your legal and**
24 **professional experience thus far renders you**
25 **qualified and will assist you to be an effective**

1 **Circuit Court judge?**

2 A. I believe that my legal experience in private
3 practice and then as a city judge and then now as
4 a Family Court judge has helped me tremendously.
5 I have been doing a general -- up until my
6 election in 2019, I had a general practice. I
7 started practicing in 2000 so I have just about
8 almost 20 years under my belt. I did quite a bit
9 of -- I did everything when I was a lawyer. I
10 loved to have a mix of things. So I handled
11 cases in Circuit Court. I did Court of Common
12 Pleas. I did General Sessions. I did a lot of
13 criminal defense, a lot of jury trials. I did a
14 ton of domestic work. I had a lot of practice on
15 the City Court bench presiding over jury trials
16 and preliminary hearings. So I think that helps
17 me tremendously for the Circuit Court bench. On
18 the criminal side I can't tell you how many jury
19 trials, jury selections, motions hearings I held
20 as a City Court judge. Because now as a Family
21 Court judge I get to make all the decisions and
22 the jury doesn't. And so being on the Family
23 Court bench has taught me how to manage the
24 docket and my docket time efficiently and
25 effectively, how to handle lawyers, difficult

1 ones. There are some and I don't mind saying
2 that. And my colleagues know that I would say
3 that. I'm kind of a play poker with my cards
4 face up. Everybody knows I'm a worker and that
5 we're going to get in and we're going to make
6 sure that this is a fair process and that
7 litigants feel like they were heard, lawyers felt
8 like they were heard and got a fair shake from
9 me. So I feel like my background puts me in a
10 good position to be an effective and fair Circuit
11 Court judge because I've had a lot of practice, a
12 lot of practice for a long time.

13 **Q. Thank you, Judge. Judge Salvini, the Commission**
14 **received 539 ballot box surveys regarding you**
15 **with 95 additional comments. Some of the ballot**
16 **box surveys contained the following positive**
17 **comments: "A great judge and would be an asset on**
18 **the Circuit Court." Another stated, "the most**
19 **amazing inspiring lawyer and judge I have ever**
20 **seen." Another said you were very smart and well**
21 **tempered and just what you want in a judge.**

22 **MR. HINSON:** I would note that of the 95 written
23 comments none of them raised any concerns. I
24 would report the Citizens Committee report found
25 -- the Upstate Citizens Committee reported that

1 Judge Salvini is qualified in the area of
2 constitutional qualifications, reputation, mental
3 stability and well qualified as to ethical
4 fitness, professional and academic ability,
5 character, reputation, experience and judicial
6 temperament.

7 Q. A few housekeeping questions. Judge, are you
8 aware that as a judicial candidate you are bound
9 by the Code of Judicial Conduct as found in Rule
10 501 of the South Carolina Appellate Court Rules?

11 A. Yes, sir, I am.

12 Q. Since submitting your letter of intent, have you
13 contacted any members of the Commission about
14 your candidacy?

15 A. I have not.

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

20 A. I have not.

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

24 A. I am.

25 Q. Have you asked any third parties to contact

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

4 A. I have not and I'm not aware of anyone.

5 Q. Have you reviewed and do you understand the
6 Commission's guidelines on pledging and S.C. Code
7 2-90-70(E)?

8 A. Yes.

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

14 CHAIRMAN CASKEY: Thank you, sir. And Judge Salvini,
15 let me just admit I think I misspoke when
16 introducing you. You are a Family Court judge,
17 and you are running for a Circuit Court seat?

18 JUDGE SALVINI: Yes.

19 CHAIRMAN CASKEY: So let me apologize to any
20 Commissioners or any members of the audience or
21 folks who watch later. I made a mistake and
22 luckily I have a lot of lawyers to help me get
23 fixed. So I apologize for any confusion I may
24 have offered. Do any Commissioners have
25 questions or comments for Judge Salvini? Mr.

1 Safran.

2 MR. SAFRAN: Thank you, Mr. Chairman. I remember when
3 you came through the first time. You were never
4 in the legislature, right?

5 JUDGE SALVINI: No, never was, no, sir.

6 MR. SAFRAN: You were never even -- I mean, you
7 weren't from South Carolina were you?

8 JUDGE SALVINI: I was not.

9 MR. SAFRAN: You practiced in California for a while -
10 -

11 JUDGE SALVINI: I did, but I --

12 MR. SAFRAN: -- and then you relocated.

13 JUDGE SALVINI: That's true, I did.

14 MR. SAFRAN: Well, the reason I'm asking the question
15 is is that you didn't have some long deep roots
16 here. You didn't have participation in the
17 legislature, but yet you are unopposed right now,
18 aren't you?

19 JUDGE SALVINI: I am.

20 MR. SAFRAN: Okay. So I mean, it doesn't mean that
21 you have to be from being in the Columbia
22 situation and all the politics to be able to be
23 considered a good person, a good judge and enough
24 that nobody feels like they need to run against
25 you, right?

1 JUDGE SALVINI: That's correct.

2 MR. SAFRAN: And so, I mean, I think the situation
3 from what I'm seeing, too, is is that you've
4 proven yourself from what I'm reading by these
5 ballot box comments that -- I mean, there's
6 nothing negative said about you.

7 JUDGE SALVINI: And I -- y'all, I've got to tell you.
8 I mean, it almost makes me feel like I would tear
9 up. Gosh, the Bar has been so good to me. I
10 mean, but I try to be good to them. And also it
11 is very important to me to do an excellent job.
12 Nobody is perfect. I mean, I'm not perfect. I
13 know I make mistakes. I probably offend people
14 sometimes with my comments. I don't mean to but
15 I remember what it was like to be a lawyer. I
16 know what I want that courtroom to look like and
17 how people feel when they leave it, like they got
18 justice. And I want to do my state proud and the
19 General Assembly proud, people that support me,
20 legislators that supported me for this position
21 even though I didn't grow up here. I didn't know
22 anybody in the General Assembly but a few
23 lawyers. And the Bar just was so supportive when
24 this position opened about, you know what, you're
25 perfect for this. Do this, do this. You're

1 going to be a great judge for us. We cannot wait
2 until you're there and helping us. And that's
3 what I tried to do in Family Court and on the
4 City Court bench, and I was shocked that my Bar
5 survey had not a single negative comment because
6 I'm a worker. I make lawyers work. If I say I'm
7 going to be in court at 9:00 a.m., my butt is in
8 the chair at 9:00 a.m.. And I expect every
9 lawyer to be there, ready to go, ready to try a
10 case and not waste a single minute. And then
11 when I served as the chief administrative judge,
12 I mean, I felt like I worked lawyers and
13 litigants hard. We worked hard to get the
14 Greenville docket up to speed, especially with
15 Covid. It was tough. And I felt like maybe the
16 Bar survey would come back and say oh, my gosh,
17 you didn't give us a breath at all. I mean, I
18 was calling lawyers in constantly. But if I was
19 there and they were there, we were going to work
20 together. And so I'm pleasantly surprised and I
21 feel humble.

22 MR. SAFRAN: What sticks out to me is the fact that
23 despite driving people as hard you say you did
24 there are still these comments about she never
25 forgot where she came from. She remembers how it

1 was to be a lawyer. She is aware of, kind of,
2 what the demands are out there. So apparently in
3 the four years, which in some situations we've
4 seen people literally become different folks
5 altogether, you haven't changed. And I'm
6 assuming you don't intend on it any time soon.

7 JUDGE SALVINI: No, sir. And like I said, what you
8 see is what you get. I tell lawyers when they
9 walk in. I play poker with my cards face up.
10 Here we go. Let's get started. Let's get
11 started and let's work this case. And nothing
12 has ever changed. I mean, I even say in court
13 sometimes I may be wrong. This may be the wrong
14 decision but it's the best decision I can make
15 for you right now. And I'm happy to admit it. I
16 don't have an ego. I just -- gosh, I just -- I
17 love the court process so much.

18 MR. SAFRAN: Well, it's obvious you're enthusiastic.
19 And along that same comment you made they said,
20 you know, she may not like what the law is, but
21 she does apply it. So even in situations where
22 you might have doubts, you're basically sticking
23 to what you understand you're supposed to be
24 doing.

25 JUDGE SALVINI: Yes, sir.

1 MR. SAFRAN: Thank you for offering and appreciate
2 your comments.

3 CHAIRMAN CASKEY: Ms. Blackley.

4 MS. BLACKLEY: Good morning.

5 JUDGE SALVINI: Good morning.

6 MS. BLACKLEY: For me I think you exhume exactly what
7 a candidate should for how a candidate should
8 present themselves. And you are -- I've heard
9 about you. I've never met you but these comments
10 are out of the box, and you should be proud.

11 JUDGE SALVINI: Thank you.

12 MS. BLACKLEY: And at the end of the day I think what
13 these comments exude is respect, whether you have
14 ruled and maybe made somebody not happy.
15 Somebody's going to leave one way or the other
16 not happy. But to not have a negative comment --
17 and I mean, these comments are probably some of
18 the best I've seen since I've been on the
19 Commission and how you are just ultimately a fair
20 judge. That is impeccable, and I don't have any
21 questions. I just wanted to commend you on what
22 job you've done and what job you will do.

23 JUDGE SALVINI: Thank you.

24 MS. BLACKLEY: Continue being who you are.

25 JUDGE SALVINI: I will. Thank you. It means a lot to

1 me, y'all.

2 CHAIRMAN CASKEY: Other members of the Commission.

3 Senator Talley.

4 SENATOR TALLEY: Good morning, Judge.

5 JUDGE SALVINI: Good morning.

6 SENATOR TALLEY: I may be the only member of the
7 Commission that's been in your courtroom numerous
8 times.

9 JUDGE SALVINI: Oh.

10 SENATOR TALLEY: But I would just say ditto to all
11 that's been said. And so you're aware -- and
12 these are not negative comments. But there are
13 many in the Family Court Bar that are glad to see
14 you offer for this position, but also realize the
15 void that will leave in the Family Court because
16 you have done such a good job, not only managing
17 the courtroom, but as you say, with the docket in
18 Greenville, which I daresay is probably one of
19 the most convoluted in the entire state in the
20 number of cases that are there. So glad you're
21 offering for this position and wish you the best.

22 JUDGE SALVINI: Thank you, Senator Talley.

23 CHAIRMAN CASKEY: Mr. Rutherford.

24 JUDGE SALVINI - EXAMINATION BY REPRESENTATIVE RUTHERFORD:

25 **Q. Good morning, Judge. How are you?**

1 A. Good morning. I'm well.

2 Q. Good. And I share my enthusiasm over the
3 comments. Not just the fact that people said
4 nice things about you, but the volume that they
5 wrote, paragraph after paragraph. And if you
6 just look at the number of sentences that people
7 were willing to write about you, it's a lot and
8 all of them good. Tell me how you deal with --
9 because I find -- I don't do any divorces or
10 anything like that. But I am in Family Court
11 doing juvenile stuff, but how does that translate
12 to a General Sessions docket where all of a
13 sudden you're going to multiple day, sometimes
14 multiple week, criminal cases with a failure by
15 the government or the state to turn over
16 discovery and a lawyer asking for a continuance
17 because their child has a program at school? How
18 do you translate or how do you make that move
19 from Family Court to a General Sessions docket
20 where it may not be as adversarial in terms of
21 lawyers arguing over who is going to get the dog,
22 but it is equally contentious dealing with
23 someone's life and dealing with lawyer schedules
24 and a solicitor trying to move a docket? And
25 thankfully you're in Greenville. Y'all have a

1 good solicitor. But in other parts of the state
2 where some solicitors are just evil and don't
3 want good judges and want to make sure that if
4 you are a good judge, you don't come there. How
5 do you go from one to the other successfully and
6 not worry that the drive becomes something that a
7 solicitor may be using against the criminal
8 defense lawyers in his circuit?

9 A. Okay. So If I think I -- if I understand your
10 question correctly -- and if I'm answering the
11 wrong question --

12 **Q. It was kind of convoluted but that's all right.**

13 A. No, I want to make sure I'm answering exactly
14 what you're asking me. In terms of making the
15 transition, I feel like the transition would be
16 fairly easy. And I know that I have to travel be
17 in other counties other than Greenville, and I'm
18 very familiar with the Defense Bar, the
19 prosecutors in Greenville. So they know me.
20 They know exactly how I operate. Many of those
21 attorneys have been before me when I was a City
22 Court judge, and I did that for about 11 years.
23 And so we handled a lot of discovery issues and a
24 lot of continuance requests. And one thing I
25 think every lawyer at least in the Greenville Bar

1 know is that I don't -- I cannot stand -- and
2 maybe I need to work on this a little bit, down
3 court time where we have a full jury that's
4 already been selected, we have all these people
5 that have spent all this time to be here, and
6 then we're going to show up the morning of trial,
7 and y'all are going to tell me I'm sorry, this
8 can't go forward because I've got x, y and z or I
9 didn't receive this from the prosecution. And
10 I'm a very fair judge but I'm also a hold your
11 feet to the fire judge. I'm going to make you
12 work. When I was a City Court judge I didn't
13 grant continuances liberally, but I also
14 remembered if somebody had a sick child at home
15 or their wife was going straight to the hospital
16 because she didn't feel well that morning, we
17 were going to figure out how to work this out so
18 that the docket time didn't get lost if I had to
19 continue a case. I have dealt with discovery
20 issues, and I kind of pulled back from when I was
21 a lawyer and how those judges that I really
22 respected handled how they either excluded
23 evidence because the prosecution failed to give
24 it to me or where we dealt with it in the
25 courtroom. And so I feel like I can pull from my

1 experience on that. I've tried as a lawyer -- I
2 mean, I think I tried a three-week bank fraud
3 case. And there were a lot of issues that came
4 up about documents that weren't turned over to
5 us. And I've looked at that judge, and he
6 handled it very fairly. He said well, I'm sorry
7 you're not going to get to use that but we are
8 going to help out the defense team here because
9 everybody deserves a fair trial, but the case was
10 not continued. We just had to adjust and we
11 worked hard.

12 **Q. And see part of the issues that I have is that**
13 **it's -- in Family Court things are scheduled.**

14 **A. Yes, sir.**

15 **Q. And it's not -- one side does not have the**
16 **advantage of being able to use the schedule as**
17 **their advantage the way that a solicitor does,**
18 **because solicitors still call the docket and**
19 **schedule things knowing that the other side may**
20 **need more time, but they get the benefit of**
21 **calling that schedule. And so I think that it**
22 **presents a different dynamic when you're having a**
23 **schedule that is set by a clerk or a schedule**
24 **that is simply set because that's the way it's**
25 **set, not by one side or the other who has that**

1 advantage and then uses that advantage against
2 the other side if they have a judge that is going
3 to just push, push, push for it to get done just
4 because the solicitor said so. And so, yeah,
5 that's a bit of my concern. I'm hoping you can
6 address that, because it just gives, again, the
7 State, the solicitors so much of an advantage
8 being able to call the case and having a judge
9 that's going to say if the solicitor calls it,
10 you're going to try it rather than the solicitor
11 calling it only because they know it gives them
12 an advantage over the defense attorney. And so
13 how do you take that one mantra and move it over
14 to a different court where one side does have an
15 advantage by being able to schedule things?

16 A. Well, and I do think that being in Greenville I
17 do have an advantage of having a great --

18 Q. A good solicitor. You do, you do.

19 A. I've got a great solicitor.

20 Q. Yeah.

21 A. Walt Wilkins and I tried cases against each other
22 when he was in private practice.

23 Q. And he is a good solicitor and --

24 A. He's a good solicitor.

25 Q. Yeah, yeah.

1 A. And so --

2 **Q. And also has a good system for doing that, but in**
3 **other parts of the state it doesn't exist, so ...**

4 A. I agree. And I don't know about other parts of
5 the state.

6 **Q. Yeah.**

7 A. And I know that that's a hard transition from
8 leaving a county where I know I've got a
9 solicitor who is going to sit down with the Court
10 and with the Defense Bar, and we're going to run
11 through and pre try cases and identify issues,
12 and nobody's going to walk into the courtroom
13 knowing that they're behind the eight ball and
14 that the judge is going to say you're going to go
15 forward even though, you know, the solicitor's
16 put you in this position and now you're not ready
17 to go. How that translates to another county I
18 don't know, except I know that I've never put
19 anybody in a bad position to have to try a case
20 when they're not ready to go forward and there's
21 a legitimate reason. And that was even when I
22 was on the City Court bench. And on the Family
23 Court bench I know it's different. But even in
24 Greenville when I was the chief administrative
25 judge, I took a look at the trial docket and the

1 backlog that we had as a result of Covid, and I
2 basically just said y'all we've got to get ready
3 to try these. I'm not going to put you in a
4 position to where you have to if you're not ready
5 but you should know it's coming. And what I did
6 is I took most of my own personal time, chamber's
7 days. I have people show up at 8:30 in the
8 morning and I pre tried. I pre tried almost
9 every case that went to trial. I brought the
10 lawyers in. I brought the guardians in and said
11 y'all, I'm looking at this file. You haven't
12 touched it in over a year, not a single filing,
13 not a hearing, not anything has been filed, and
14 this is coming up on the trial docket like now.
15 What's the problem? What do we need to do? What
16 do you need? How much time do you need to get
17 this finished? I see that there's a motion to
18 compel, never been scheduled. You need
19 discovery? You can't show up the day of trial
20 and tell me that you're going to have to ask for
21 a continuance because you don't have it yet. No,
22 we're getting this scheduled now. How about in
23 five days I'm going to hear that motion for you?
24 I'll put it on my docket at 9:00. And I know
25 every judge can't do that, but I'm a worker bee.

1 I will work. And so if I go to another county
2 and I've got a huge trial docket -- I mean, when
3 I'm scheduled now to go to another county I've
4 got a great administrative assistant. We pull
5 every file. She starts making note sheets. With
6 the electronic filing at SCCMS, I mean, it is
7 awesome to be able to pull up -- I can see the
8 status of the case, where we are at. I try to
9 identify issues beforehand. So before I even get
10 there, before I even get to that county, I know
11 this is going to be a problem. I've got to
12 address that. And when I can -- when I can I
13 send out an email to all the lawyers and say I
14 see in this file we've got this big issue. I've
15 got a trial for y'all. I'm not going to address
16 -- in Family Court mostly it's a motion to compel
17 discovery. What are you missing? We're going to
18 hold that hearing -- hope y'all are ready Friday
19 afternoon at 4:00 o'clock. Let's talk about
20 this. Because on Monday morning we're ready to
21 go. And if you don't have what you need, then I
22 want the next case in line to be ready to go so
23 we don't lose the docket time. So I'm not a -- I
24 wouldn't say I'm so hard that I don't -- that I'm
25 not fair. Because I remember trying cases as a

1 lawyer and showing up and somebody walks in with
2 a binder of documents I've never seen before.
3 The judges were always fair. Now I feel like
4 even when I was on the City Court bench I was
5 able to move the docket without putting defense
6 attorneys or prosecutors in a bad position.

7 Q. The --

8 A. I hope I answered your question. I'm trying.

9 Q. Well, you did, you did. But again, going
10 backwards, moving the docket.

11 A. Yes.

12 Q. The issue also becomes this, what I would call,
13 antiquated notion of when a case is old, when a
14 criminal case is old.

15 A. Okay.

16 Q. In Civil Court, let's say it's car accident. A
17 person has a car accident today. They go see
18 their lawyer two years from now, hire a lawyer at
19 that point. The lawyer files within the statute
20 of limitations at the three-year mark. In
21 Richland County probably comes up on the docket
22 probably about a year later, so the case is, at
23 that point, four years old before it comes up,
24 which is, at that point, pretty reasonable. But
25 a criminal case is considered old at the one-year

1 mark. And when I first started practicing you
2 had a -- my supervisor handed me a file. There
3 was nothing in it. I've told this story multiple
4 times. There's nothing in the file and said,
5 here, go try this DUI case. Well, I had a
6 failure to stop a blue light case two weeks ago
7 in Chester -- three weeks ago, and went to try it
8 and looked at the file and realized we didn't
9 have any dash cam. Called the solicitor. What's
10 the deal? Oh, there was no dash cam. It was a
11 narcotics car. Well, what's the car look like?
12 Oh, we'll get it to you. I'm driving up, show me
13 the car. It turns out that wasn't the car. That
14 was the day before trial. So the dynamics of
15 trying a case now are vastly different than they
16 were when I first started in 1996. You couldn't
17 just, in 2023, grab a file and run out the door
18 and go try a case. You've got dash cam. You've
19 got body cam. You've got audio that may have
20 been recorded. You have all these things that
21 now take a simple speeding ticket and take it
22 into well, there's a dash cam. There's a body
23 cam, as he certified. All of those things that
24 go to why is this case considered old at the one-
25 year mark and an accident case is not even old at

1 the four-year mark. And how do you balance that
2 when the Supreme Court is under, again, in my
3 opinion, this antiquated notion that we've got to
4 move everything at the one-year mark. And you've
5 got murder cases in my file that fill banker's
6 boxes. How is it that a judge then turns and
7 says well, you've got to be ready to try this
8 case this week, this case next week? There's no
9 way, and how do we recognize that as judges that
10 it used to be a lawyer was being lazy when he
11 wasn't up to speed and ready to try these cases,
12 but now -- and those of us that do federal work
13 as well, I've got federal cases with 30,000
14 documents with pole cameras that they left up and
15 running for a year and the client is in jail that
16 I have to review all this stuff. How is it that
17 we balance moving a docket with a recognition
18 that the practice of law has changed dramatically
19 as more information has been created, as meta
20 data has been created, not just the fact that
21 there's a picture, but who took it, what camera
22 were they using, what phone were they using, how
23 many pictures did they take, which one did they
24 select? How do you balance running a docket with
25 a recognition that most of the time now in

1 General Sessions Court when lawyers are asked did
2 you go over all the discovery, the answer is yes.
3 But the reality is you did not go over every
4 single dash cam and every single body cam with
5 the eight officers that were out there. How do
6 we balance that with running a docket and a
7 lawyer being able to have a life that is not
8 consumed by going over video and audio with a
9 client that's in jail?

10 A. No, I know exactly what you're talking about. I
11 mean, I did federal criminal defense work as
12 well. So there was plenty of times I showed up
13 and I had about ten CDs, which had about like,
14 you know, 50,000 documents. And I've got one
15 paralegal and myself and a law partner and
16 thinking about trying to hire somebody to help
17 you start to go through it and go to the jail to
18 go through all those documents with your client.
19 But I think -- and I -- and hopefully this would
20 translate on the Circuit Court bench, and
21 hopefully I'm answering your question. I think
22 the only way to do it for me -- from my
23 perspective right now, having now been a Circuit
24 Court judge is to be hands on. And it's not like
25 I can look at every single case, but if I can

1 take the Family Court docket and the trial docket
2 and go through 300 files with the help of my
3 administrative assistant and another judge's
4 administrative assistant and know what's going --
5 being to put my hand on a checklist of saying
6 okay, this is where we are at in this case. What
7 do you need to be able to balance your personal
8 life -- because y'all -- it's hard being a
9 lawyer. It is really hard. It's sucks the life
10 out of you. I know. I did it for almost 20
11 years. There were days I would come home and
12 think this is it. I am done. I am quitting
13 today. Because our client's problems you take
14 them on. I mean, I felt the weight of them on me
15 whether they were criminal or family or civil.
16 And there's five million phone calls about how
17 come you haven't done x, y or z, and it's because
18 you don't have it yet, and you're also trying to
19 balance everything else. So I hope that lawyers
20 felt like I tried to balance their life. I mean,
21 I would say to every lawyer that I would call
22 before on a pre-trial if you are drowning, tell
23 me now. Because I'm getting ready to set these
24 trials and I don't want them to be continued.
25 But if you tell me that you're dying, I'll move

1 it. I'll give you a breather. And I actually
2 had one lawyer say judge, me, I'm drowning.
3 Please don't take offense to this. I've got a
4 five-day trial before you. I've got a ten-day
5 trial in Spartanburg. I've got to go over to
6 Pickens. I've got a criminal case I've got to
7 deal with and my kid's graduating. I said great,
8 let's talk about how we're going to give you a
9 breather. And I think the only way that it
10 translates is to be a hands-on judge. That's
11 they way I've been on the Family Court bench.
12 That's the way it was on the City Court bench.
13 Sometimes I felt like I was drowning a little
14 bit, but I've got -- I mean, I've done it long
15 enough that when -- my administrative assistant I
16 may lose. I don't think she gets paid enough,
17 but she's a paralegal, and she likes working with
18 me. And when I said to her and another
19 administrative assistant let's dig in on this --
20 go down to the Clerk's office. I want the
21 physical file. I don't want to see the
22 electronic version that conference room over
23 there, put all 500 of those files in there, go
24 grab some other clerks. And I want a checklist
25 on every file, tell me who the lawyers are, let's

1 see how often they're scheduled and then I
2 statused everything. And the only way I know how
3 to do it right now for Circuit Court is to go in
4 and see how is it working and what the problem
5 is. But I've never -- I've never put a lawyer in
6 a bad position to try a case even over the
7 objection of someone else. Whether it's -- I
8 mean, on the City Court bench, you know, my
9 officers or the prosecutor might, you know, judge
10 this is unfair. This case has to go forward.
11 Well, no it doesn't, because you didn't turn over
12 the body cam. And recently in Spartanburg I had
13 one lawyer come up and say, you know, I work well
14 with these solicitors, but, judge, look at this
15 discovery packet. This case is supposed to be on
16 your docket for today. This says that there's a
17 video. Where is my video? And it was a body
18 cam. And I just looked right over to the other
19 side of the room. Where's their body cam? We're
20 not going forward without it. They can't even
21 advise their client if they don't see. But --
22 and I know it's different. I don't know how to
23 fix it around the other part of the state, but,
24 you know, in the Upstate our prosecutors are --
25 you know, they're -- I've got a great solicitor

1 who's going to work, who's willing to work and to
2 make sure that, you know, people have what they
3 need. In other parts of the state the only thing
4 I can say right now until I do it is I'm hands
5 on. I'm hands on. Maybe it's -- people would
6 kind of warn me don't go back in chambers. Have
7 everything on the record. I'm a chambers kind of
8 judge. When I show up in a county and I've got a
9 huge docket, I'm pulling lawyers in, and I'm
10 saying all right, we're getting ready to get
11 started. All right. You got an issue? Do you
12 have an issue? Do you have an issue? Do you
13 have an issue? Okay, you do. Let's talk about
14 what that is. Everybody else step out, please.
15 Let's see if we need to go on the record on this
16 before we even get started with the docket. It
17 makes it move so much easier. I know right away
18 if I've got a problem that I've got to deal with.
19 And sometimes I'll even say you know what, that
20 is big problem. You're off my docket. We're
21 going to need to reschedule this. And there's
22 been some cases I'll hold onto and say okay,
23 listen, I've given you a deadline. I mean, I'll
24 actually issue an order that says this is your
25 deadline to turn this over. I want to reconvene.

1 I'm not letting you go. Because I don't want to
2 kick it down to another judge and all of a sudden
3 it just keeps snowballing and moves down and gets
4 older and older and older. So that would be the
5 only way I think right now I could answer your
6 question is to just say -- I mean, for me I'm
7 hands on. I like -- I mean, I know that, I
8 guess, technically I'm the judge but I like the
9 team approach. I want to call people in and say
10 tell me what your issue is and let me see if I
11 can help fix it. And if I can't well we'll
12 figure this out but I've never put a lawyer in a
13 bad position. And I probably made other lawyers
14 upset because I said okay, we're not trying this
15 case today. This is how we're just going to do
16 it. But in those instances in Family Court I
17 know it's different. Those older cases are --
18 these are civil cases, not criminal cases. Our
19 juvenile dockets move pretty well, but ultimately
20 I've either held onto it or I've said we're going
21 to have another status hearing or we're going to
22 hold for -- for Family Court I would say you know
23 what, I know I'm putting you in a bad position.
24 Somebody is receiving a ton of alimony. And if I
25 kick this down and I continue it today and kick

1 it down the road, they're going to receive more
2 alimony for the next year, because you're not
3 going to get back on the docket because this is a
4 five day trial.

5 CHAIRMAN CASKEY: Thank you, ma'am.

6 JUDGE SALVINI: Sorry.

7 CHAIRMAN CASKEY: Any other Commissioners other
8 questions.

9 REPRESENTATIVE RUTHERFORD: He usually cuts me off.

10 JUDGE SALVINI: I was trying to answer his question.
11 I'm sorry.

12 CHAIRMAN CASKEY: Yes, ma'am. And I think you did
13 comprehensively. Do other Commissioners have
14 questions? And Judge, I certainly didn't intend
15 any disrespect to you, truly.

16 JUDGE SALVINI: I took no disrespect.

17 VICE CHAIRMAN RANKIN: He certainly is trying to move
18 this train along.

19 JUDGE SALVINI: He is. I'm sorry, y'all.

20 VICE CHAIRMAN RANKIN: Not at your expense, but
21 perhaps to the Commission's with me now asking a
22 question or two. And these are --

23 JUDGE SALVINI: I'll keep it short. I'll keep it
24 short.

25 VICE CHAIRMAN RANKIN: Thank you. And please feel

1 free to look at Representative Rutherford while
2 you're speaking shortly to him. My observation
3 of you is one like we had with another candidate
4 last week, doesn't matter who, but what energy
5 you have, what incredible enthusiasm you have.
6 And I've looked back with the help of staff how
7 many times we've met you here, twice, I think.
8 This may be the third. I may be missing one, but
9 a Circuit Court race before, then a Family Court
10 race, found qualified in both. And certainly I
11 think you Bar recognizes that you are head and
12 shoulders above perhaps any other would-be
13 candidate who chose for whatever reason not to
14 run. And so I want to just applaud you for the
15 depth of the answer you gave to Representative
16 Rutherford. I think he was looking for a yes or
17 no. But as we typically look to him for, but he
18 never gives us what we want either, but it is
19 infectious. And as we are feeling, though the
20 record won't record any vibes in the room, I just
21 want to echo. I think Mr. Safran's earlier
22 comment about, again, the plaudits you get from
23 those who have taken the time to anonymously
24 comment on you -- one negative, who in my book,
25 would be probably considered an irregular person

1 in the face of all those others who
2 overwhelmingly say star, hard worker, going
3 places, lawyer's lawyer, judge's judge. And so
4 I'm just impressed and I just have to say that,
5 and I hope you keep that energy. Hope you can
6 smile at those who you will turn down, your best
7 friends, whether it's the solicitor's office or
8 the Defense Bar or the plaintiffs or the Defense
9 Bar. And smiling at them will help but for a
10 fact you ain't nobody's fool, correct?

11 JUDGE SALVINI: That's correct.

12 VICE CHAIRMAN RANKIN: And you're not running and
13 hopefully will be appointed to be someone's
14 judge?

15 JUDGE SALVINI: That's correct.

16 VICE CHAIRMAN RANKIN: Your eyes are cast upon the
17 facts and the law before you, not going to award,
18 not going to punish, and you're not there to be
19 anybody's best friend, correct?

20 JUDGE SALVINI: That's exactly right.

21 VICE CHAIRMAN RANKIN: That's all I have.

22 JUDGE SALVINI: Thank you.

23 CHAIRMAN CASKEY: Thank you, Senator. And thank you
24 Judge. I'll just echo the comments that you've
25 heard so far. Your ballot boxes uniquely tells a

1 story of someone who has earned a reputation for
2 her intellect, for her ethical fitness, for her
3 judgment, temperament, really the nine evaluative
4 criteria that we look for in this Commission. So
5 I think you should be rightly proud that you're
6 certainly a credit to the state, a credit to the
7 judicial branch. You know, I'd be remiss if I
8 didn't make the observation seeing the nexus
9 between Judge Leticia Verdin and yourself insofar
10 as you are running to take the seat that she once
11 held and the fact that it seems that the female
12 jurists in Greenville are setting the standard in
13 the state. And so kudos to you.

14 JUDGE SALVINI: Thank you.

15 CHAIRMAN CASKEY: Judge, this concludes this portion
16 of our screening process. I need to take a
17 moment to --

18 VICE CHAIRMAN RANKIN: I want to do one thing if I
19 can.

20 CHAIRMAN CASKEY: Well, let me stop right there and
21 recognize Senator Rankin.

22 VICE CHAIRMAN RANKIN: Judge, we've got some law
23 clerks behind us and I want them to stand up.
24 Y'all stand up, please. And y'all holler your
25 names out for the record so the Court Reporter

1 can hear you.

2 MS. JOHANSSON: I'm Abby JOHANSSON.

3 MS. HALL: I'm Ashley Hall.

4 MS. ERRETT: I'm Ashley Erod.

5 MS. REGISTER: I'm Madison Register.

6 VICE CHAIRMAN RANKIN: Judge, you are unopposed. And

7 I want you to take this opportunity as a graduate

8 of law school, as a judge in both the municipal,

9 family. And now absent some incredible hiccup,

10 you have the opportunity to speak to four female

11 lawyers in the making who, if they succeed in

12 school, pass the Bar, get to stand in your

13 courtroom. Tell them what you think they need to

14 know to get to the other and to inspire them.

15 And don't look at Todd Rutherford. Look at those

16 law students if you will.

17 JUDGE SALVINI: I'll keep it brief.

18 CHAIRMAN CASKEY: Mr. Vice Chairman, with great

19 respect, I'm going to ask the Judge perhaps if

20 she would take some moments to do that after the

21 conclusion of this hearing.

22 VICE CHAIRMAN RANKIN: Actually I want these on the

23 record because I think these are instructive to

24 the world that will see this. You have a unique

25 opportunity --

1 CHAIRMAN CASKEY: Briefly.

2 VICE CHAIRMAN RANKIN: -- under oath, so briefly.

3 JUDGE SALVINI: I'll keep it to one sentence.

4 CHAIRMAN CASKEY: Take the advantage of wisdom and
5 experience.

6 VICE CHAIRMAN RANKIN: Please and you don't have to
7 be one word in your answer.

8 JUDGE SALVINI: No, that's okay. All right.

9 VICE CHAIRMAN RANKIN: But speak into the mike so the
10 Court Reporter can hear you.

11 JUDGE SALVINI: Okay. My best advice for y'all would
12 be is never compromise your values. Don't let
13 anybody put pressure on you, not the court, not a
14 judge, not another lawyer. Be true to yourself,
15 and never take anything personally. These fights
16 are not your fight. You are fighting for
17 someone. You're fighting to give them justice
18 and to help them with their problem and resolve
19 their problem, but it's not your battle. Just
20 remember that. This is not -- you go home at
21 night, you put it away. Show up the next day.
22 You don't compromise. You be true to yourself.
23 You treat everybody respectfully, success.
24 There you go.

25 LAW CLERKS COLLECTIVELY: Thank you, Judge.

1 VICE CHAIRMAN RANKIN: Boom shakalaka (ph) boom.

2 Unless there are any other odd requests from any
3 other odd member of this screening Commission, I
4 will now, Judge, thank you and remind you with
5 the absence of our chair, who's got another
6 engagement, you know how this works. You know
7 how seriously we take both the spirit of the law
8 and the black letter law in terms of any ethical
9 violations. The appearance of such would warrant
10 our calling you back. You are familiar with this
11 process, correct.

12 JUDGE SALVINI: Yes.

13 VICE CHAIRMAN RANKIN: And you understand that this
14 record will not be closed until the formal
15 release of the Report of Qualifications, correct?

16 JUDGE SALVINI: Correct.

17 VICE CHAIRMAN RANKIN: In the unlikely event that
18 there would be some questions, you know that we
19 can call back, but again, we don't expect that to
20 happen. Thank you for your words to us and to
21 the Bar, whether they're law students, whether
22 they're male or female. Thank you for your
23 energy, and this concludes this portion of our
24 hearing.

25 JUDGE SALVINI: Thank y'all very much. Thank you.

1 (Off the Record)

2 VICE CHAIRMAN RANKIN: Good morning. We're back on
3 the record with Mr. Caraker. If you will raise
4 your right.

5 DAVID PIERCE CARAKER, JR., being duly sworn,
6 testifies as follows:

7 MR. CARAKER: Yes, sir. I do.

8 CHAIRMAN CASKEY: You have before you the PDQ and the
9 sworn statement that you prepared; is that
10 correct?

11 MR. CARAKER: Yes, sir.

12 CHAIRMAN CASKEY: Any changes or additions need to be
13 made to those before we put them in the record?

14 MR. CARAKER: Other than the amendments I've already
15 submitted, no, sir.

16 CHAIRMAN CASKEY: Okay. If you'll hand those to Lindi
17 they'll go in the record without objection. This
18 is your first screening, correct?

19 (Exhibit Number 6 was marked for identification
20 purposes - (18 pages) Personal Data Questionnaire for
21 David Pierce Caraker, Jr.)

22 (Exhibit Number 7 was marked for identification
23 purposes - (1 page) Amendment to Personal Data
24 Questionnaire for David Pierce Caraker, Jr.)

25 (Exhibit Number 8 was marked for identification

1 purposes - (6 pages) Sworn Statement of David Pierce
2 Caraker, Jr.)

3 MR. CARAKER: Yes, sir, it is.

4 VICE CHAIRMAN RANKIN: All right. And you are aware
5 of our process now. You get to comment on it
6 shortly if you like. But you know that our
7 investigation focuses on nine evaluative
8 criteria, which includes a ballot box survey,
9 thorough study of your application materials,
10 verification of your compliance with state ethics
11 laws, search of newspaper articles in which your
12 name appears. And, for you, since there's been
13 no prior screenings, the other is the check for
14 economic conflicts of interest. No affidavits
15 have been filed in opposition of your candidacy,
16 no witnesses are here to testify against you.
17 You have with you someone that I know to be your
18 wife, but for the record would you like to
19 introduce her?

20 MR. CARAKER: I would. Mrs. Kate A. Caraker, my
21 beautiful wife.

22 VICE CHAIRMAN RANKIN: Very good.

23 MS. CARAKER: Thank you for seeing us today.

24 VICE CHAIRMAN RANKIN: And welcome, Ms. Caraker. And,
25 sir, I think I -- you can sit down now. So you

1 have the opportunity for an-ever-so-brief opening
2 statement. But if you'd like not to, we have
3 questions awaiting.

4 MR. CARAKER: I'll be happy to waive that, thank you,
5 sir. I know you guys are very busy.

6 VICE CHAIRMAN RANKIN: Very good, thank you.

7 MR. CARAKER - EXAMINATION BY MS. SYMMES:

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

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

19 A. Thank you. I guess I'll start chronologically
20 with my business experience first. I've been in
21 the private sector. I started working when I was
22 fourteen, in the restaurant business. I held
23 every position imaginable, in that field of
24 endeavor, from sweeping up floors and taking out
25 trash cans before I was allowed to be a cook. I

1 was too young. All the way up to general manager
2 and owner where I had to, you know, handle all
3 the things in the daily life of a restaurant
4 owner, the hiring and firing, marketing,
5 accounting, inventory, taxes. I know what it is
6 to run a business. It was, however, always my
7 dream, even as a small child, to be a police
8 officer. That's what I always wanted to do, and
9 I kind of found myself in a spot where it was
10 time to do that in my life. And I got hired on
11 with the Horry County police department, made
12 detective in under a year with that police
13 department. And from the moment that I walked
14 into the court room for the first time it kind of
15 hit me that that's sort of where the rubber meets
16 the road. You can do a lot of good as a police
17 officer, but you can do more as -- in the
18 practice of law. And I found out, as I came to
19 learn, as a judge. A judge has a profound effect
20 on the administration of justice in this state.
21 And, you know, it is the judge that allows people
22 to be heard. It is the judge that allows the
23 sides to make their argument. And so it's the
24 judge that holds a very important spot in there.
25 And all that being said, in my legal practice, I

1 started out right out of law school as a civil
2 plaintiffs lawyer. I worked for the Hyman Law
3 Firm. I worked doing you know, personal injury
4 cases. I worked doing workers' compensation
5 cases. I did social security disability and
6 things like that. I tried cases in all those
7 fields to include one in Federal Court where I
8 was co-counsel as well. If I do get lucky enough
9 to be elected a judge, I will bring all of that
10 with me to the bench. It is -- knowledge is one
11 thing, and I think that only a lifetime of work
12 can give you the wisdom that you need to be a
13 judge. And so that being said, that's what I'll
14 bring with me to the bench every day.

15 **Q. Thank you. Mr. Caraker, the Commission received**
16 **111 ballot box surveys regarding you, with 33**
17 **additional comments. The ballot box survey, for**
18 **example, contained the following positive**
19 **comments, "I've worked with Dave for many years**
20 **both as a civil attorney and as a criminal one.**
21 **He is a good, solid attorney, right temperament**
22 **and knowledge of the law. He's just an overall**
23 **great person. Dave is a smart and fair attorney.**
24 **He is extremely ethical and always takes care to**
25 **examine both sides of issues. He would be a huge**

1 asset to the judicial community. David is
2 extremely intelligent and also has a great heart.
3 He knows the law and he follows it. He also
4 believes in rehabilitation and listens to
5 opposing counsel when making decisions. He is
6 always so kind. And even when making an
7 argument, does so professionally and with care."
8 Five of the written comments expressed concerns.
9 Three comments indicated concerns regarding your
10 experience with civil matters. What would you
11 like to offer as a response to these concerns?

12 A. I certainly understand that. I imagine without
13 knowing that most of the ballot box comments came
14 from folks in Horry County. My civil practice
15 was in Florence County. When I first came out of
16 law school I worked with the Hyman law firm in
17 Florence County. And that's where -- that's
18 where I did all of my work. I certainly
19 understand that. But I would just counter with -
20 - I have done civil work in the past. Obviously
21 not recently, but I have done civil work in the
22 past.

23 Q. Thank you. The second concern indicated that you
24 would have poor judicial temperament, and not be
25 open minded regarding defendants. What response

1 **would you offer to this concern regarding your**
2 **temperament.**

3 A. I would say I would like to think that's someone
4 who doesn't really know me that well, who hasn't
5 had a case with me, frankly. I know these
6 surveys are anonymous. But I could offer this,
7 that in my day-to-day practice, as a prosecutor,
8 I've developed a relationship with the Defense
9 Bar in Horry and Georgetown County, to the point
10 where there are defense attorneys that trust me
11 to talk to their clients. They allow that to
12 happen. And not only do they allow that to
13 happen, sometimes they allow that to happen
14 without the attorney present. They understand
15 the perspective that I can bring. I can talk to
16 folks on their level. Between my experience in
17 the restaurant business and my experience in law
18 enforcement, I think that's really given me an
19 ability to do that. And honestly a lot of the
20 defense attorneys that have reached that point
21 with me encourage their clients to speak with me.
22 Because it helps me to see the client as a human
23 being, as a person. And if I'm thinking one way
24 and I can speak to this person and really get a
25 feel from where they come from and where they

1 stand, maybe we can come up with something
2 different that sort of helps the administration
3 of justice.

4 **Q. Thank you, Mr. Caraker.**

5 MS. SYMMES: I would note that the Pee Dee Citizens
6 Committee found Mr. Caraker qualified in the
7 evaluative criteria of constitutional
8 qualifications, physical health and mental
9 stability and well qualified in the criteria of
10 ethical fitness, professional and academic
11 ability, character, reputation, experience, and
12 judicial temperament.

13 **Q. Mr. Caraker, are you aware that as a judicial**
14 **candidate you are bound by the Code of Judicial**
15 **Conduct as found in rule 501 of the South**
16 **Carolina appellate court rules?**

17 A. Yes, ma'am, I am.

18 **Q. Since submitting your letter of intent, have you**
19 **contacted any members of the Commission about**
20 **your candidacy?**

21 A. In my amendment, if you'll note, I did send out a
22 mass mailing to all the members of the General
23 Assembly and in my haste to do that, my wife and
24 I were stuffing envelopes, I did not remove those
25 letters to the members of the Commission. So in

1 that regard, yes, but in no other regard.

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

6 A. No, ma'am.

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

10 A. Yes, ma'am, I am.

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

15 A. No, ma'am, to both of those.

16 **Q. Thank you. Have you reviewed and do you**
17 **understand the Commission's guidelines on**
18 **pledging and South Carolina code section 2-19-**
19 **70(E)?**

20 A. Yes, ma'am.

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

1 further questions.

2 VICE CHAIRMAN RANKIN: Okay. Thank you. Question by
3 members of the Commission? Representative
4 Jordan.

5 MR. CARAKER - EXAMINATION BY REPRESENTATIVE JORDAN:

6 Q. Thank you, Mr. Chairman. Good morning Mr.
7 Caraker, how are you?

8 A. Good morning Mr. Jordan.

9 Q. I was going to ask you some questions about your
10 civil experience, but actually during your
11 discussion I remembered your time in Florence at
12 the Hyman law firm which of course is now
13 Hatfield Temple --

14 A. Yes, sir.

15 Q. -- which is a very, very well respected firm in
16 Florence and so I don't any concerns or questions
17 about your civil experience based on your time in
18 that firm. But I do want to talk to you about
19 you've been with the solicitor's office for an
20 extended period now, and seemed to have excelled
21 there. But when you're in that role as a
22 solicitor, you're obviously representing the
23 government.

24 A. Yes, sir.

25 Q. Now you're seeking to transition to intermediary,

1 a neutral party, for lack of a better term. Tell
2 me the process, how you're going to work through
3 should you be successful going from one day being
4 very much on one side of the fence, not just on
5 one side of the fence, but essentially a leader,
6 a manager to some degree on that side of the
7 fence, and then positioning yourself to now to be
8 between the parties on either side of that fence.

9 A. Yes, sir. So I would go back a little bit, if I
10 may, to my time in law enforcement for that.
11 When I was working there and made the transition
12 from police officer to lawyer, and working in the
13 prosecutor's office. I heard a lot of voices,
14 and legitimately so, being concerned that I had
15 this law enforcement background so therefore I
16 must have a particular mind set. And therefore I
17 must want everyone in prison or under the jail,
18 or you know, what have you. I think that my
19 experience in working cases with folks has sort
20 of borne out that that's not the case. I have --
21 just in that realm, I have no problem calling out
22 police officers when they make a mistake. I have
23 no problem dismissing cases. And I'll tell them
24 why I'm dismissing it. And I make the people
25 that work for me, when they have to do that, they

1 do that as well. It's not just an outright
2 dismissal, but we also try to take that as a time
3 to educate the police officers. And I wish that
4 you could kind of sort of drop in on the
5 conversations that I have with other solicitors
6 in my office. Because the bottom of it, you
7 know, we have our own set of ethics outside of
8 just being lawyers. We have -- we have the
9 ethical duty to be a minister of justice. And
10 that means a lot of different things to a lot of
11 different people. But, at the end of the day,
12 you're talking about a person's liberty
13 sometimes. And if you're going to try to take a
14 person's liberty, in whatever capacity that is,
15 you must be righteous when you do it. And so
16 that for me is the driving force. And as a
17 judge, if I'm sitting as an intermediary between
18 the two sides, I think that gives me a really
19 good perspective on what to look for. What to
20 call out, what to be aware of, and to know if
21 something else is going on behind the scenes that
22 maybe I need to get to the bottom of.

23 **Q. Tell me, to that end, so as you're stepping into**
24 **that middle ground there. How do you see the**
25 **Court, perhaps you, serving in the role as we now**

1 -- I don't say it's no man's land, but we
2 certainly are in a different world than we used
3 to be when it comes to, for instance, docket
4 management. You're obviously familiar with that.

5 A. Yes, sir.

6 Q. You run the docket. How do you see the Court
7 participating in that discussion between the
8 solicitor and law enforcement on one side, and
9 the defense on the other about when a case is
10 ready and, you know, we hear a lot here in this
11 room about -- There's a perfect recipe, I guess.
12 Or maybe not a perfect recipe, but there's a
13 right recipe insofar as you can't let a case sit
14 forever, but at the same time, you can't rush it
15 so that justice isn't found either. How do you
16 see the court in your -- or you sitting in the
17 court in that role?

18 A. So with regard to -- I'm assuming you mean maybe
19 criminal cases. So with regard to criminal
20 cases, there's kind of two ways to look at it.
21 One, you have a non-jury terms, where motions are
22 heard and where pleas are usually heard during
23 that term. The plea docket is a consent docket.
24 Both parties have agreed that this case is ready
25 to move and it's kind of like, okay, we're going

1 to move forward and the State is going to ask for
2 this, and the defense is going ask for this. And
3 then the judge is going to make his or her ruling
4 based on that. So that sort of moves forward on
5 its own. Over here on the other side, you have
6 the trial docket. And what's really important
7 there is -- a couple considerations is one I
8 think the lawyers probably know a lot better than
9 the judge when a case is ready, or if something
10 can move. And two, what a judge can do, and I
11 think what a judge should do, is incorporate
12 status conferences into maybe chambers week, non-
13 jury term, what have you. But a judge can be
14 given that time to bring the parties in, let's
15 ascertain has, discovery been turned over? Do we
16 have any witnesses that need to be located? This
17 sort of thing. Check the status of the case and
18 say, okay, this case is now 545 days old.
19 Because there's a certain threshold there,
20 certain threshold at 365 and a certain threshold
21 at 180. And where does this case fall in there,
22 and can it and should it be brought forward at
23 the time? And once you have the buy in from both
24 sides, there is no reason not to go ahead with
25 the case.

1 Q. So I guess what I'm hearing is there's not a
2 mandate at a certain age that a case has to go
3 forward, it depends on the particulars? I'm not
4 trying to put words in your --

5 A. No, I think you're right, I think it can. And
6 that certainly has to drive it. But if you let
7 it lag -- if you let it lag for too long, by
8 human nature, it would just kind of drag along
9 there. And so if it starts doing that, I think
10 it is up to the judge to maybe light a fire and
11 say okay ladies and gentlemen, we need to get
12 this thing moving because it's X number of days
13 old. But the -- you know, ultimately, if the
14 attorneys are being honest with the judge, and
15 they should be, they have a duty to be, they'll
16 know when that case is ready to move. And the
17 solicitor, because they have most control of the
18 docket at this point, should be putting those
19 cases up.

20 Q. And I think I'm hearing this, but let me just
21 back up a second. So when I first started
22 practicing. And it hasn't been that long ago,
23 but it's been a while. But when I first started
24 practicing it was not uncommon, especially on the
25 criminal side but on the civil side too, for the

1 docket to come around and lo and behold lawyer A
2 has three cases up out of five this week. We
3 don't see that much anymore, thankfully. But
4 let's say that happens to you, how do you deal
5 with that situation?

6 A. As a judge, I would be very hard pressed to make
7 an attorney try more than one case in a week.
8 It's -- on the defense side, I don't know that
9 you're upholding your duty as a lawyer to all of
10 your clients if you can't give them your
11 attention for that week. And, you know,
12 everybody is intelligent and everybody is smart
13 and this is nobody's first rodeo. But it's
14 important because it might not be your only case
15 as a lawyer, but that's the only case that person
16 has going forward. And so it's important to them
17 that they get your full attention. And as far as
18 the solicitor goes, you know, they owe the people
19 of the state of South Carolina and particularly
20 our county that same duty. They have to give it
21 their full and undivided attention too because
22 it's important to them. If it's in the
23 courtroom, some issue has come up that can't be
24 agreed upon by the parties. And so it has to be
25 tried and we have to have a jury's opinion on it.

1 Q. Thank you very much.

2 A. Yes, sir.

3 VICE CHAIRMAN RANKIN: Any questions? Senator.

4 MR. CARAKER - EXAMINATION BY SENATOR SABB:

5 Q. Thanks, Chairman, and thank you Mr. Caraker.

6 A. Yes, sir.

7 Q. For offering. I just want to follow up on a few
8 of representative Jordan's questions relating to
9 your role as solicitor. And I appreciate a
10 couple of things that I heard from you. One, I
11 believe I heard you say that the prosecutor's job
12 is not to win or lose, it's the administration of
13 justice?

14 A. That is correct, sir.

15 Q. And the other is the idea of talking with
16 defendants. Because it helps you to get a sort
17 of a feel for who they are. I prosecuted for 20
18 years over in the 3rd Circuit. And literally can
19 count on one hand the number of evil people that
20 I met. But I'm satisfied that they were evil
21 people. And obviously you might agree with me on
22 this, one of our responsibilities as prosecutors
23 really is to separate those from society. That
24 if they are not separated, your ability to walk
25 freely and your friends and neighbors ability to

1 walk freely is imperiled because of the nature of
2 those persons.

3 A. Yes, sir.

4 Q. But I'm curious, stepping back, about how you all
5 kind of operate as a circuit. And I heard you
6 speak with Representative Jordan about docket
7 management. I'm curious about -- well let me
8 make sure I understand. So you not only manage
9 the docket, you actually try cases and you
10 negotiate pleas?

11 A. Yes, sir.

12 Q. Okay. How do you utilize the chambers in your
13 practice? The judges chambers, how do you --

14 A. It depends on the judge, quite frankly. Some
15 judges don't like to do anything in chambers.
16 They want everything out on the record. And sort
17 of the philosophy is, is if you can say it to me
18 in chambers you can say it to me on the record
19 and we'll come to -- I'll make a ruling or we'll
20 come to a decision one way or the other. The way
21 it's done quite often for the judges that do
22 allow it is the two attorneys or however, you
23 know, attorneys from each side will go into the
24 back and talk to the judge about what they have
25 going on that day. What it is -- you know,

1 judges don't like to be surprised, especially in
2 open court. And so if there's a unique issue or
3 some sort of novel issue, or something that's
4 going to really take some working through, I
5 think it's in everyone's best interest to give
6 the judge a heads up. Maybe he or she may not be
7 familiar with the case or with a particular area
8 of law. And then they have to go maybe try to
9 look something up, or have the clerk try to find
10 something for them. So they go into court
11 prepared. So that's sort of the two ways that
12 they're using in reality.

13 **Q. Given your observation of the judges and how they**
14 **do it, how would you approach it if you were a**
15 **judge?**

16 **A.** I would honestly welcome a mix of both. I think
17 that my chambers would be open to the parties,
18 obviously both at the same time. But if there's
19 an issue that they need to bring to my attention,
20 I would welcome them to come in and do it. But
21 then, once we get it worked out, I want to go out
22 and put it -- the fact that we had an in-chambers
23 conference on the record. And then what was
24 discussed in chambers, and have that on the
25 record. Because there's no -- there has to be

1 transparency. There shouldn't be any secrets.
2 So there needs to be some transparency out there.
3 So that -- we owe that to the public, we owe that
4 to the defense and to the victims in particular
5 cases as being criminal cases, that's how we need
6 to operate.

7 **Q. What would -- and what percentage of your guilty**
8 **pleas would you say there are recommendations**
9 **from the solicitor's office?**

10 A. 85 to 90.

11 **Q. Do you believe that that percentage of**
12 **recommendation overreaches into the courts**
13 **province as being the ultimate sentencer, or**
14 **what's your view of that?**

15 A. So a recommendation is just that. It's a
16 recommendation from the solicitors office. The
17 judge is free to take that recommendation, or do
18 something completely different as he or she sees
19 fit. A negotiated plea is just that, the judge
20 can either take it or not. And when they take
21 the negotiation, that's what it is. And a lot of
22 defense attorneys for whatever reason -- I don't
23 know if it has to do with the judge, or the
24 charge, or the particular defendant. There's
25 also another way to plead a case and we kind of

1 colloquial call that as straight up, or without
2 negotiation or recommendation. And a lot of
3 defense attorneys are afraid to do that, because
4 there's not sort of like this guide rail for the
5 judge to follow. They don't like the unknown,
6 the defendant doesn't like the unknown. And so
7 they ask for a recommendation for us. And so
8 that's usually how that proceeds.

9 Q. Yeah. And of course, I appreciate what you've
10 just shared. I think it's probably very edifying
11 for those who are somewhat unfamiliar with the
12 criminal justice system but I am. And I guess my
13 question is -- so, we all know that judges are
14 free to accept recommendations or not accept
15 recommendations. And, you know, they let the
16 defendants know that on the record before they
17 accept their plea. You understand that this is
18 recommendation, I can accept it or not. I can
19 give you less or I can give you more, I mean ---

20 A. Yes, sir.

21 Q. Judges go through that with defendants. But,
22 well, what would your philosophy of it be?

23 A. Judicially?

24 Q. Yes, sir.

25 A. As to whether take recommendations?

1 **Q. Yes, sir. How would you approach it?**

2 A. I would welcome either a negotiation, a
3 recommendation, or a straight-up plea without
4 either. Because honestly just the recommendation
5 itself doesn't -- it doesn't mean anything until
6 you hear what's going on with the case. You need
7 to know the facts of the case. And then you need
8 to hear any mitigation that might be presented by
9 either side, frankly. Sometimes the solicitors
10 office will present mitigation on behalf of the
11 defendant but it's really the defense attorney's
12 job to do that. Sometimes the mitigation can
13 overcome any recommendation -- excuse me, any
14 recommendation that the solicitor's office makes.

15 **Q. Yeah. So as an -- I'm sorry.**

16 A. No, I'm sorry, go ahead.

17 **Q. So as an assistant solicitor, when you make a**
18 **recommendation to the judge and the defense**
19 **attorney then tells the judge, that's the**
20 **recommendation but, your honor, we would prefer**
21 **that you give them less time. Y'all don't have a**
22 **problem with that in your circuit?**

23 A. No, sir. That's how a lot of -- frankly how a
24 lot of business gets done. When the defense
25 attorneys are free to argue for whatever it is

1 they want, and a judge is free to accept or not
2 accept it. That honestly keeps things moving
3 along. And everyone is sort of comfortable with
4 it. But what's more importantly is the defendant
5 and the defense attorney, in a criminal setting,
6 is usually most comfortable with that, at least
7 in our circuit.

8 **Q. How do you measure consistency in your circuit?**
9 **One of the things that we see, that we hear, is**
10 **that one person pled guilty and got this**
11 **recommendation, another person pled guilty under**
12 **similar circumstances and got a higher**
13 **recommendation. How do you all measure**
14 **consistency in your circuit?**

15 **A.** So what solicitor Richardson has done in our
16 circuit is broken things out into prosecution
17 teams to try to give some consistency to that.
18 The vast majority of the drug and gun cases go
19 through a team, the sexual assault cases go
20 through another team, the violent crime cases go
21 through another team. It's kind of set up in
22 that way. And those teams are managed by a
23 senior attorney in sort of -- kind of a directive
24 is kind of sent down from solicitor Richardson to
25 the senior attorney and then carried out on that

1 team. And that's not to say -- certainly not
2 perfect by any means at all. But, you know, just
3 the difference in a small bit of criminal history
4 in a criminal case can make a difference in a
5 recommendation. Some mitigation that's offered
6 by the defense attorney prior to a plea can
7 sometimes change the mind of a solicitor. That's
8 one of the reasons why I really like to talk to
9 folks if I get the opportunity to do it. And
10 that way it's for me and the folks on my team,
11 that I've got them trained to listen to these
12 folks, see what they have to say, see what
13 they're coming from, try to meet them on their
14 level so we can kind of figure out the best thing
15 to do in that situation.

16 **Q. Do you believe a part of the judge's role as it**
17 **relates to what comes before him or her during**
18 **the course of the week is to look at consistency?**
19 **And if you were a judge, and you saw**
20 **inconsistencies, how would you handle it?**

21 **A.** I believe that consistency is important. And to
22 that end, I would want to enquire from the bench
23 as to what's going on with this particular case.
24 Not just the facts of this case but again with
25 the person. What are the -- what's the

1 mitigation here? And if something is really out
2 of line, I'm going to want to know why. Because
3 I really think we should be feeding everybody
4 from the same side of the bowl. I think that's
5 important. Because otherwise it just sort of
6 undermines the whole process.

7 **Q. Thank you, sir.**

8 VICE CHAIRMAN RANKIN: Other questions?

9 MR. CARAKER - EXAMINATION BY VICE CHAIRMAN RANKIN:

10 **Q. Mr. Caraker, I don't know that I've ever met you.**
11 **Forgive me if we have met. I'm old, you're not.**
12 **But I want to just ask a few questions.**

13 A. Yes, sir.

14 **Q. And starting with your restaurant experience that**
15 **you mentioned.**

16 A. Yes, sir.

17 **Q. I don't know that I see that anywhere. Forgive**
18 **me if I've overlooked it. Where, and when, and**
19 **what did you do?**

20 A. I made a sort of a generalized type thing on my
21 information because it was a long history,
22 starting at age 14. My first job at age 14 was
23 as a -- sweeping floors and taking out trash, at
24 Chick-fil-A. That's where most a lot of kids get
25 their, you know, first jobs. From there I went

1 on to be a cook at a steakhouse. I then, out of
2 college --

3 **Q. Which steakhouse?**

4 A. Ryan's Steakhouse in Florence. After that I
5 worked at Michael's Italian Restaurant in
6 Florence, if any of you guys are familiar with
7 that. It was an establishment that was around
8 for a long time. Then when I graduated from
9 college I bought a restaurant and bar. Ran that
10 for a little while, sold it and made some money,
11 went to work for Enterprise. As you see the
12 Enterprise on there. Did well there and, you
13 know, it just was decided to get back into the
14 business, you know. And then had an opportunity
15 to come in and open a restaurant there in Myrtle
16 Beach. And we had Shuckers Raw Bar, we
17 eventually had four locations, two at the beach,
18 one in Florence, and one in Columbia. That --
19 the one in Columbia ultimately never got opened,
20 because the majority partners couldn't get their
21 act together, quite frankly. And they couldn't
22 even -- they couldn't agree on cups, believe it
23 or not.

24 **Q. Does that experience suit you better to be a**
25 **Family Court judge, or? Don't have to answer**

1 **that.**

2 A. I think a referee at a wrestling match, honestly.
3 And then, you know, I always felt that calling
4 into law enforcement. And I felt that calling
5 into service. When I was a kid, I was involved
6 heavily in boy scouts. I got my eagle scout. I
7 did a lot of teaching, you know, I hold several
8 black belts in several different martial arts.
9 And so part of my service to my community then
10 was to bring in kids that really didn't have much
11 of an opportunity. We brought them into the
12 school and sort of taught them that. Taught them
13 the discipline, gave them the confidence and
14 hopefully to try to kind of, you know, move on
15 with their lives and do a little better than
16 maybe they could have. And then law enforcement
17 in 2000 and the rest as they say is history.

18 **Q. And with the city of Myrtle Beach --**

19 A. Horry County Police Department.

20 **Q. But not city of Myrtle Beach?**

21 A. No, sir.

22 **Q. Okay.**

23 A. I know one of the letters of recommendation said
24 that. I think Mr. Hazard just had it backwards.

25 **Q. Yeah. Still a glowing letter of endorsement.**

1 A. I appreciate him taking the time to do that.

2 **Q. The work as the special US attorney, how is that**
3 **appointed or how did you get that position?**

4 A. So originally, it sort of came by happenstance.
5 One of the ATF agents that I policed with at the
6 county police department sort of brought the idea
7 to me when I got hired on as a solicitor. And so
8 I started exploring it. And you have to go
9 through quite an extensive application process,
10 and a security check, and all that. And then
11 once you get sworn in you work pretty well just
12 like any other solicitor except, as I'm sure you
13 guys know at the federal level you have
14 declination thresholds that you have to check
15 off. And you also have the ability, and frankly
16 the expectation, to sort of pick and choose your
17 cases. If you see something that you don't like
18 about a case you don't have to take it. And if
19 you see a case that's really good you can bring
20 it up and go through the grand jury process and
21 take it from there.

22 **Q. In this role, and I trust you've read prior**
23 **screenings of other candidates for various**
24 **positions and you know what we look at as ask at**
25 **the outset in terms of these evaluative criteria,**

1 the temperament. And I'm curious how you view
2 that focus, again, if you appreciate or agree
3 that that is one of the focuses that this
4 Commission has given great deference to.

5 A. I certainly understand that.

6 Q. How do you view that? And what does that
7 analysis mean to you? What is you appreciate for
8 your part.

9 A. Temperament -- temperament for a judge I think is
10 extremely important. In my experience both in
11 law enforcement and now as an attorney appearing
12 before judges, a judge among probably no one else
13 has the ability for this profound effect on a
14 person. You know, different branches of the
15 government affect people in different ways. And
16 obviously, you know, laws are made. Laws are
17 enforced. But it's in court, it's in the
18 courtroom where an average Joe or an average Jane
19 gets to be heard. And if the judge is doing his
20 or her job, they get to be heard fully and they
21 might rule against that person, or not give them
22 everything they want. But I think, just in my
23 experience, if just a person can be heard out
24 then they feel like at least they've had their
25 day, they got their fair shake, from a fair

1 judge, who didn't jump down their throat and make
2 them afraid to say something that they were
3 feeling in court. That is extremely important,
4 and that has a tremendous effect on those people.
5 And honestly sort of it's -- to do otherwise
6 would sort of undermine confidence in the whole
7 thing. So I think it's extremely important.

8 **Q. You've been before great judges, and you've been**
9 **before great judges. Some of whom might be just**
10 **a hair less great or greater than others. Who**
11 **that we will know, or perhaps not, would you**
12 **recommend us as your example of how to and what a**
13 **judge is supposed to be like, act like, and**
14 **serve?**

15 A. I tell you if I had to pick one, and I think
16 that's what you're asking me --

17 **Q. You get three. No particular order.**

18 A. Well, if had to pick one, I would have to put
19 Billy Seals at the top of the list. He knows the
20 law, he is one of the nicest people in the world,
21 and you know it's something intangible. The air
22 is different in his courtroom. You're allowed to
23 speak, but he still demands the respect and the
24 integrity and the decorum that the court room
25 deserves. But he does it in such a -- just a

1 quiet, understated kind of way. It's like you
2 don't even notice it. It's like getting a shot
3 from a really good doctor or nurse, you don't
4 even know you're getting the shot. And before
5 you know it, it's gone. That's how Judge Seals
6 runs his court room. I think if I could come
7 close to that as a judge, if given the
8 opportunity, I think I'd be doing pretty well.

9 Q. Quick, and then I'm going to wrap it up unless
10 other questions. Temperament as well, I can't
11 help but harken back to your restaurant
12 experience. Obviously you handled it well,
13 recognized good leadership when others couldn't
14 get their act together. And tagging that to your
15 management of the docket, which some of have
16 called your attention to your successfully doing.
17 Lot of pressure from court administration I
18 think, or whoever is managing the docket now,
19 these cases got to go.

20 A. Yes, sir.

21 Q. You got to get rid of these cases, whether it's a
22 civil or a criminal backlog. More and more I
23 guess it's this criminal now. With less and less
24 cases actually coming before a judge to try --

25 A. Yes, sir.

1 Q. -- with the advent of mediation. Who or to what
2 altar will you pledge your troth if you're put
3 between the numbers or the person? And the
4 person perhaps might not be ready, who is not a
5 frequent offender of I'm not ready, I need a
6 continuance, type person, lawyer or litigant?

7 A. Yes, sir. I think there's a lot in that
8 question. And I think some of that question, or
9 some of the answer, you know, besides just the
10 cut and dry I would do X this way is tied to the
11 business of the practice of law. As -- you know,
12 as a solicitor, I go to my office every day and I
13 get my cases ready and whether I do one or a
14 hundred in a week, it doesn't affect anything too
15 much for me, personally. I'm there, I show up
16 and, you know, I work all day and I work at night
17 sometimes and on the weekends. But as someone
18 who's on the other side, a defense attorney, a
19 plaintiff's lawyer who has possibly hundreds or
20 maybe even thousands of clients depending on who
21 they work for or if it's a big firm and they're a
22 sole practitioner. Some of that has to be
23 considered when you're talking about you're
24 quote/unquote making people get cases ready. Now
25 if it's the habit -- like you said, a habitual

1 offender, maybe a little fire needs to get lit
2 under either side. Because the State will let
3 cases drag just as badly as anyone else on a
4 given day. If they don't like a particular
5 witness -- there's nothing wrong with the case,
6 they just don't want to put a particular witness
7 on the stand because they don't think they're
8 going to perform that well, or what have you.
9 You know, the State can do that just as well as
10 any defense attorney or any civil plaintiff's
11 attorney. So there has to be -- you have to
12 strike this balance between moving things along,
13 and giving people, the litigants, a fair shake.
14 And giving the attorneys fair opportunity to
15 prepare their cases and bring them forward. And
16 I know there's plenty of ways to do it wrong.
17 And, you know, not being on the bench or sitting
18 in the chair that you men and women are sitting in
19 right now I'm not as close to it as you are. So
20 I mean, I don't have all the answers. I'm sure
21 there has to be a happy medium in there
22 somewhere. And I like to think that I find a
23 happy medium in my cases almost every day,
24 between State and defense. I like to think that
25 I would be able to find something in the middle

1 there if I was a judge.

2 VICE CHAIRMAN RANKIN: Other questions from members of
3 the Commission? All right, sir. Thank you so
4 much, Mr. Caraker. It is a pleasure seeing you
5 again, or meeting you. And let me tell you that
6 your wife does not miss an opportunity to be
7 healthy. I have seen her accidentally --

8 MR. CARAKER: That's for sure.

9 VICE CHAIRMAN RANKIN: -- twice, me walking to one of
10 our dogs that my wife entrusted me, which is a
11 risky thing. Anyway, with that, unless there are
12 other questions I want to again thank you for
13 your offering for this position.

14 MR. CARAKER: Thank you.

15 CHAIRMAN CASKEY: I do note and just include you've
16 got wonderful letters of reference in here on
17 your behalf. Only the 15th Judicial Circuit
18 solicitor can write a letter for nearly everybody
19 but put something uniquely appropriate to your
20 candidacy in. So I wanted to comment on that as
21 well.

22 MR. CARAKER: Thank you.

23 VICE CHAIRMAN RANKIN: So, with that, we will now wrap
24 this portion of the criteria and the examination
25 up. You know that we are very sticklers for both

1 the spirit and the letter of the law. Any
2 ethical violations will be deemed very serious on
3 our part. You know that we have the opportunity
4 and right to call you back in the unlikely event
5 such a violation or appearance of violation would
6 occur; do you not?

7 MR. CARAKER: Yes, sir.

8 VICE CHAIRMAN RANKIN: Okay. And you know that this
9 report will not be formally closed, the record
10 not closed until the release of the report of
11 your qualifications. In that unlikely event we
12 would be able to call you back.

13 MR. CARAKER: Yes, sir.

14 CHAIRMAN CASKEY: With that, Mr. Caraker, Ms. Caraker,
15 thank you all both so much for being here. And
16 that will conclude this portion of your hearing.

17 MR. CARAKER: Thank you all very much.

18 (Off the Record)

19 CHAIRMAN CASKEY: All right. Ladies and Gentlemen,
20 good morning still. We are ready to proceed with
21 our screening of the next candidate, Mr. Joshua
22 Holford, who I understand to be a candidate for
23 Seat 3 for the Circuit Court of the Fifteenth
24 Judicial Circuit. Do I have that right, Mr.
25 Holford?

1 MR. HOLFORD: That's correct.

2 CHAIRMAN CASKEY: All right. If you would please
3 raise your right hand.

4 JOSHUA D. HOLFORD, being duly sworn, testifies as
5 follows:

6 CHAIRMAN CASKEY: Sir, thank you. There should be
7 some documents there in front of you. If you
8 would take just a moment or two and review those.

9 MR. HOLFORD: Yes.

10 CHAIRMAN CASKEY: Are those the personal data
11 questionnaire and the sworn statement that you
12 have submitted to the Commission?

13 MR. HOLFORD: That's correct.

14 CHAIRMAN CASKEY: Do you -- are there any updates or
15 changes that need to be made?

16 MR. HOLFORD: Not to these documents.

17 CHAIRMAN CASKEY: All right. Do you object to our
18 making these documents a part of the record of
19 your sworn testimony?

20 MR. HOLFORD: I do not.

21 CHAIRMAN CASKEY: Thank you, sir. I'll give staff a
22 chance to do that. All right. The Judicial
23 Merit Selection Commission has thoroughly
24 investigated your qualifications for the bench.
25 Our inquiry is focused on the nine evaluative

1 criteria and included a ballot box survey,
2 thorough study of your application materials,
3 verification of your compliance with state ethics
4 laws, search of newspaper articles in which your
5 name appears, study of previous screenings, and a
6 check for economic conflicts of interest. We
7 have received no affidavits filed in opposition
8 to your election, and no witnesses are present to
9 testify. Before giving you the opportunity to
10 make any brief opening remarks that you would
11 like to, certainly want to give you the chance to
12 acknowledge the beautiful young lady who's joined
13 you here today.

14 (Exhibit Number 9 was marked for identification
15 purposes - (18 pages) Personal Data Questionnaire for
16 Joshua D. Holford)

17 (Exhibit Number 10 was marked for identification
18 purposes - (10 pages) Sworn Statement of Joshua D.
19 Holford)

20 MR. HOLFORD: Yes. Just briefly, definitely, thank
21 you Commission, staff for this process. I know
22 I'm one of many. I would like to thank my wife
23 Jenna Holford. She's been with me through this
24 entire process. As you well know, public service
25 is a family commitment and I'm greatly

1 appreciative of her and our young son who is
2 about to be three. Although he doesn't know it,
3 he definitely supports Dada in this endeavor.

4 CHAIRMAN CASKEY: Outstanding. At that point then --
5 as this point then, I would recognize Mr. Hinson
6 for some questions.

7 MR. HOLFORD - EXAMINATION BY MR. HINSON:

8 MR. HINSON: Good morning.

9 MR. HOLFORD: Good morning.

10 MR. HINSON: Mr. Chairman, I would note for the record
11 that based on the testimony contained in the
12 candidate's PDQ which has been included in the
13 record with the candidate's consent, Mr. Holford
14 meets the constitutional statutory requirements
15 for this position regarding age, residence and
16 years of practice.

17 **Q. Mr. Holford, how do you feel your legal and**
18 **professional experience thus far renders you**
19 **qualified and will assist you in being an**
20 **effective Circuit Court judge?**

21 A. Thank you. I had the great opportunity to clerk
22 for a judge, Judge Cottingham. I got to do that
23 for two years. I believe that that experience
24 has helped me see it from the side of the bench.
25 I've done a number of trials in the criminal

1 court. I've done a little bit of civil. As we
2 all know here, if you've read through my PDQ,
3 that's certainly my deficiency in this situation.
4 However, I've been in court -- I'm in court all
5 the time. I've also assisted our office with the
6 scheduling of court. I run a team. I've been
7 involved in the trial publication for our county.
8 I've been involved with working with judges for
9 scheduling court matters as well as trial
10 calenders. I believe that all of that would
11 assist me in doing the job as a judge on the
12 bench. This is something that I've worked hard
13 for, for a long time. I am thankful also to my
14 boss Jimmy Richardson. He's very supportive of
15 me in this endeavor. You know, he and I have had
16 these conversations over the last couple years.
17 And so I certainly wouldn't be standing here as a
18 senior assistant solicitor now running for judge
19 without his support. And I'm appreciative of
20 that.

21 **Q. Thank you. Mr. Holford, the Commission received**
22 **141 ballot box surveys regarding you, with 39**
23 **additional comments. The ballot box survey for**
24 **example contained the following positive**
25 **comments. One said you would be an outstanding**

1 judge. Another said you were very well liked and
2 respected. Another said you have the best
3 characteristics of those judges from whom they
4 served and appeared before. A few of the written
5 comments did express some concerns. You've
6 touched on this briefly but I'll give you a
7 chance to expand on it. But it was regarding
8 your experience, and particularly your civil
9 experience or lack thereof. How would you
10 respond to that?

11 A. When I was clerking with Judge Cottingham, you
12 know, we held criminal and civil court. So I got
13 to see the civil side of it, certainly. As many
14 of you are aware the civil matters, in our county
15 at least, are about half as many as the criminal.
16 Over those two years we probably had, I don't
17 know, ten to twelve criminal trials and maybe two
18 civil trials. I have the ability. I know the
19 rules. I know the law as it pertains to the
20 civil side of things. And I certainly have the
21 ability to shore up any deficiency I might have.
22 You know, I've worked with kids in high school,
23 mock trial. We do civil and we do criminal
24 cases. I briefly worked for a private firm,
25 Senator Goldfinch and Tom Winslow at the time, in

1 which I had experience in some civil matters but
2 I'm not going to stand before you here today and
3 say I'm an expert in the civil law.

4 **Q. Thank you. And another -- and this was just a**
5 **couple that mentioned it, but another mentioned**
6 **your temperament. How would you respond to those**
7 **concerns?**

8 A. I think anyone who would talk about my
9 temperament would say that I'm pretty even keel.
10 I don't think there's a whole lot that shakes me.
11 In our world, with criminal things, we see the
12 worst of it. I had a conversation with my wife
13 yesterday, we were driving, you know, into town.
14 And we like to listen to crime podcasts even
15 though that's what I do every day. And we were
16 talking about a situation I had to respond to on
17 Sunday night that involved the death of a young
18 lady and a person accused of that. Those are the
19 situations I deal with on a daily business. I
20 don't take it home. I don't take it personally,
21 and I don't take that outside of my job. And so
22 I think any comments in regard to my temperament
23 I would hope would be positive. I would say --
24 this question came up briefly when I was talking
25 to the members of the SC Bar. There was one

1 comment that seemed out of line with all of the
2 rest. And I think I would say to this committee
3 -- or this Commission that anyone who said
4 anything otherwise, probably hasn't known me in
5 the last decade. You know, after I clerked for a
6 judge, man I thought I was something. You know,
7 I came out of law school. I thought I knew a
8 lot. And I went in to trial that way. And so I
9 might have had -- I might have some people rubbed
10 the wrong way. You know, in the last ten years
11 I've done a lot of reflecting. I've done a lot
12 of changes in my own personal life. And so
13 that's not the same person you have before you.
14 You know, the person you have now is someone who
15 is even keeled, even temperament. Respectful of
16 all parties in any case.

17 **Q. Thank you. You indicated in your PDQ, and this**
18 **also is reflected on your SLED report, a reckless**
19 **driving conviction in 2014. Can you explain the**
20 **circumstances surrounding that?**

21 A. That was about ten years ago, almost to the day
22 probably. I was arrested for a driving under the
23 influence in Myrtle Beach. I ultimately pled to
24 a reckless driving, as we all know, the DUI gets
25 ripped up and the reckless is what's imposed. I

1 had attorneys for that. I have made some changes
2 since then. It wasn't immediate. I wish I could
3 stand before you and say, man, that was the thing
4 that changed it all. And it wasn't. It was
5 about six months after that. I've been sober for
6 nine and half years now. So that's not a concern
7 that this Commission nor anyone in the public or
8 the private sector should have.

9 **Q. Thank you. And going back to that time frame,**
10 **you also -- you just touched on some of the**
11 **changes, but you also had a suspended license in**
12 **2015 for cancellation of insurance, and in 2016**
13 **for failure to pay ticket. Can you just**
14 **elaborate a little bit on those?**

15 **A.** I'm not exactly sure about the failure to pay a
16 ticket. I think that the cancellation of
17 insurance has to do with this time. I would say
18 that in 2013 and into early 2014 was a pretty
19 chaotic time in my life. Although I was high
20 functioning, I was completing a job, I was doing
21 well, I certainly was failing in my own personal
22 aspects. Those are some changes that I quickly
23 made in 2014. It was May of 2014 that, you know,
24 I've had the last drink hopefully of my life, at
25 least up until today. And so some of those

1 issues definitely followed me. Those are --
2 those are things that I've had to deal with. You
3 know, not only into 2013, 2014 and 2015 but, you
4 know, the consequences of my actions have
5 followed me since then and I'm continuing to make
6 up for some of that. You know, as I stand before
7 you today, I don't feel the effects of them
8 anymore. But it was a process I had to go
9 through to really change some things, to take a
10 hard look at what I was doing, and what I wanted
11 to do with my life. And I made those changes, I
12 made those -- really turned around. So there was
13 a long time where I didn't feel like I would be a
14 good candidate for this position. I finally feel
15 like I've made that step. And I'm in a good
16 position. I've been in a good position for, you
17 know, the last eight or nine years.

18 MR. HINSON: Thank you for that. Mr. Chairman, at
19 this time I would like to request that we go into
20 executive session to handle a matter.

21 CHAIRMAN CASKEY: Thank you, sir. On Motion of Mr.
22 Jordan, Seconded by Senator Rankin, the pending
23 question is going into Executive Session. All in
24 favor signify by saying aye. Aye.

25 (Ayes are heard)

1 CHAIRMAN CASKEY: All opposed, nay.

2 (No replies are heard.)

3 CHAIRMAN CASKEY: The ayes have it. At this time we
4 will go into Executive Session to discuss a legal
5 matter. And we kindly ask that those of you are
6 not permitted to be here to please step out.

7 Thank you.

8 (EXECUTIVE SESSION)

9 CHAIRMAN CASKEY: Good afternoon ladies and Gentlemen,
10 we are back on the record, as we have come out of
11 Executive Session. For the record, while we were
12 in executive session receiving a legal briefing,
13 no decisions were made and no votes were taken.
14 And we will resume with the screening of the
15 candidate before us, Mr. Josh Holford. And Mr.
16 Hinson is recognized.

17 MR. HINSON: Thank you, Chairman. Chairman I would
18 note that the Pee Dee Citizens Committee reported
19 that Mr. Holford is qualified as to
20 constitutional qualifications, physical health
21 and mental stability, and well qualified in the
22 areas of ethical fitness, professional and
23 academic ability, character, reputation,
24 experience and judicial temperament. I would
25 note that the SC Bar found Mr. Holford to be

1 overall qualified.

2 Q. Mr. Holford, are you aware that as a judicial
3 candidate you are bound by the Code of Judicial
4 Conduct as found in rule 501 of the South
5 Carolina Appellate Court rules?

6 A. I am.

7 Q. Since submitting your letter of intent, have you
8 contacted any members of the Commission about
9 your candidacy?

10 A. I have not.

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

15 A. I have not.

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

19 A. I am.

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

24 A. I have not -- I have not asked anyone to.

25 Q. Have you viewed and do you understand the

1 commissions guidelines on pledging and SC code 2-
2 9-70(E)? Regarding pledging --

3 A. Can you repeat that please?

4 Q. 2-19-70(E).

5 A. I'm aware.

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

11 CHAIRMAN CASKEY: Thank you, sir. Do members of the
12 Commission have questions for Mr. Holford?
13 Senator Rankin.

14 VICE CHAIRMAN RANKIN: Thank you, Mr. Chairman. Mr.
15 Holford, you have an incredible perspective. And
16 naming your child as you did stands out to me,
17 the Marcus Aurelius meditations that was gifted
18 to me years ago. And your, I guess, embrace of
19 history as a way to live forward -- I'm not sure
20 whose line it is, if you ignore it you're deemed
21 to repeat it. I'm not sure whose line that was
22 but effectively you see that and are living that
23 out, correct?

24 MR. HOLFORD: That's correct.

25 VICE CHAIRMAN RANKIN: The -- some of these cases that

1 you have prosecuted, anyone in our media market
2 would know them well and you have certainly shown
3 your mettle in the court room. And I want to
4 commend you for that. And then letters of
5 reference that you have from others that sing
6 your praises that again talk about who you are
7 now, I guess. As you are living and serving both
8 the state through the solicitor's office and as a
9 role model to your child, partner to your wife,
10 they are all saying great things about you.
11 Former probate judge Kathy Ward, public defender
12 Eric Fox and then Philip Thompson. Not the least
13 of which is the last is Jimbo Richardson who we
14 all recognize as a great guy. So you don't --
15 you come in here with great attributes, great
16 endorsements, and folks that know you and see you
17 and serve with you sing your praises. Harken
18 back to something, commend you for your daily
19 walk to battle what you to know to be a nemesis
20 and the devil in your life. Everybody walks with
21 the devil in some form or another. Holding them
22 back, holding them back, I want to commend you
23 for nine plus years of successfully holding back
24 the demons of addiction. You made a comment about
25 effectively that as your marker. That anyone

1 reading this, or anyone in this Commission
2 hearing that as a problem that effectively that's
3 not a worry. That shouldn't be a consideration
4 for us. But is it a consideration for you in how
5 you daily battle that demon?

6 MR. HOLFORD: It's a consideration. It's one that
7 I've taken and not lightly. That is something
8 that goes into my decision of what I do every
9 single day. As to the letters of recommendation,
10 the sheriff, the public defender, my boss,
11 they've known me for the past eleven years, and
12 some thirteen. And so they've known me not only
13 in the dark time but since then. And so I don't
14 think that they would write those letters of
15 recommendation lightly if they thought that I was
16 still back there. I think they see what I see in
17 my life, and that's a story of redemption. It's
18 a story of obstacles and trials, and not allowing
19 those obstacles and trials to get me down and say
20 that I can't continue to achieve and do great
21 things, and serve the public, but that I can go
22 even beyond that. And I think they've recognized
23 that and I hope that this Commission will
24 recognize that as well.

25 VICE CHAIRMAN RANKIN: That's all the questions I

1 have.

2 CHAIRMAN CASKEY: Any other commissioners?

3 SENATOR SABB: Mr. Chairman.

4 CHAIRMAN CASKEY: Senator Sabb.

5 SENATOR SABB: I just wanted to express my

6 appreciation for your work in drug court. I know

7 it's voluntary and it's a success story around

8 the state. It doesn't get off the ground without

9 folks who are willing to volunteer and help. And

10 I think in light of what you've experienced, what

11 we've talked about here today for you to do that

12 I think is commendable just want the record to

13 reflect that I've got an appreciation for that,

14 as I'm certain other members of the Commission.

15 MR. HOLFORD: Thank you. And if I could give a shout

16 out, I think drug court and the mental health

17 courts are the best programs that our, you know,

18 criminal justice system has. I watch people

19 completely change their lives. People who've

20 been to prison three, four, five times come into

21 the program with their own battles and their own

22 struggles, and they are successful. And they

23 quickly rise to managers, leaders within their

24 organizations, wherever they are, whether it be

25 at McDonalds or whether it be at a business that

1 they start with their family. The success
2 stories that we see, and the lack of recidivism
3 that we see --

4 SENATOR SABB: Yeah.

5 MR. HOLFORD: -- s the most positive thing that have
6 in our criminal justice system.

7 SENATOR SABB: I think so, too. And I think it's
8 classic example and evidence of the fact that we
9 ought to believe in second chances. And in a lot
10 of incidences, third and fourth chances. And I
11 think that's what happens in those kinds of
12 arenas. And so yeah, yeah, I share your view on
13 that. Thanks.

14 MR. HOLFORD: Thank you.

15 CHAIRMAN CASKEY: I'll just add to that and say I
16 think you -- let me start again. I applaud your
17 courage in coming forward and being willing to
18 offer for public service in light of the
19 challenges that you've experienced. Because in
20 my life, the folks who have undertaken -- or
21 undergone adversity and persevered through those
22 times come out the other side with a greater
23 humanity. A greater sense of mercy, a greater
24 sense of justice from a position of empathy. And
25 I am not someone who thinks that we ought expect

1 perfection from people. In fact, it is because
2 of the trials and tribulations that one undergoes
3 that can make one most human. Which is one
4 critical element in how we should evaluate those
5 who aspire to be on the bench. So I applaud you
6 for that and thank you again for coming forward.
7 If -- least of not to say to other folks. You
8 ought not self censor or self -- you ought not
9 stop yourself from pursuing opportunities when
10 you are somebody who addresses the challenges and
11 problems in one's own life. This doesn't
12 preclude you from further contribution, at least
13 in my view. So again, I commend you for that.
14 The one question though that I think is worth us
15 spending just a bit more time on is your relative
16 lack of experience in the legal field with
17 respect to civil litigation. I want to give you
18 the opportunity to address that. Because it's
19 something we see, you know, shading both ways in
20 our hearings here. Sometimes a lawyer comes
21 forward and they've got no criminal experience.
22 Sometimes a lawyer comes forward and they've got
23 no -- effectively no civil experience. What
24 would you say to those critics -- and know this
25 is a question Mr. Hinson put to you, but I want

1 to again hear you more fully on this. What do
2 you say to those who think you should not be on
3 the bench because you don't have significant
4 civil experience?

5 MR. HOLFORD: If I can start with just some of the
6 stats at least for our circuit, since I'm running
7 for the resident circuit, there are over two
8 times as many pending criminal matters as there
9 are civil matters right now. That's consistent
10 across the state as well. I say that
11 respectfully, knowing that many of you do civil
12 law. Those are conversations that I've had to
13 have before. But if you look at the state, if
14 you look at the back log, if you look at the
15 issues that we face, there are often five to ten
16 times as many criminal trials in a year in any
17 given circuit than there are civil trials. That
18 does not mean that the civil is less important,
19 that's not my point. My point is that there is a
20 vast number of criminal issues that would be
21 undertaken. How I can shore up some of that
22 civil lack that I have is the rules of evidence
23 are the same. Mostly. There are a couple
24 differences. But when you talk about in a court
25 room ruling on evidentiary matters, those are

1 things that I've done day in and day out. Those
2 are issues that I've addressed. Those are things
3 that I've argued, motions I've argued in trial.
4 I've argued the rules of evidence. And so I'm
5 fully aware and able to handle those issues. As
6 it comes to, you know, some of the motions
7 practice in your civil day-to-day. I've a had a
8 number of conversations with judges, and they're
9 largely rules based. Where in the criminal law
10 you might have a situation that is in flux, or
11 discretion is allowed. Some of the civil rules
12 are pretty cut and dry. You know, I am an avid
13 reader. I did well in school and academics. And
14 the Rules of Civil Procedure I don't find that
15 would give me any difficulty. I think that that
16 is something that I can, just like the criminal
17 law, pick up pretty quickly. There are CLEs that
18 are available. Certainly you see before you
19 typically someone either has civil -- more civil
20 experience or more criminal experience. It
21 benefits me that I'm advocating that someone with
22 more criminal experience is just as qualified. I
23 stand before you today saying that I'm fully
24 qualified and competent and able to handle not
25 only a criminal docket, but a civil docket. I

1 think some of the benefits I also bring as it
2 comes to the civil is I've had experience in
3 running status conferences, trial dockets,
4 motions practice. Those are things that could be
5 beneficial, and would be beneficial to clearing
6 up some of the things that linger on, at least
7 within our circuit that I see.

8 CHAIRMAN CASKEY: Thank you, sir. Any other
9 Commission members have questions? All right.
10 Mr. Holford that will conclude this portion of
11 the screening process. I need to take the
12 opportunity to remind you that pursuant to the
13 Commission's evaluative criteria, the Commission
14 expects candidates to follow the letter as well
15 as the spirit of the law, and that we would view
16 any violations or any appearance of impropriety
17 as serious and deserving of heavy weight in our
18 screening deliberations. As you know, the record
19 will remain open until the formal release of the
20 Report of Qualifications, and should the need
21 arise, you could be called back in to talk with
22 us. I thank you for your service to the state of
23 South Carolina so far, and thank you for offering
24 for continued service, albeit on the bench, here
25 South Carolina. So thank you, sir. Thank you

1 Jenna. Thank you for being here, and I wish you
2 all the best.

3 MR. HOLFORD: And thank you all. Thank you for being
4 here, and thank you for this service. Mr. Hinson
5 I know he walked out, you know, thank you to him
6 and Ms. Crawford and Ms. Putnam for the service
7 that you provide to us.

8 CHAIRMAN CASKEY: Much appreciated. That will
9 conclude this screening hearing.

10 (Off the Record)

11 CHAIRMAN CASKEY: Ladies and Gentlemen, we will resume
12 our screening process. Before us we have our
13 next candidate, a Mr. Douglas Zayicek, if I'm
14 saying that correctly?

15 MR. ZAYICEK: Yes, sir.

16 CHAIRMAN CASKEY: All right. You are a candidate for
17 Seat 3 of the 15th circuit on the Circuit Court;
18 is that correct?

19 MR. ZAYICEK: Yes, sir.

20 CHAIRMAN CASKEY: If you would please raise your right
21 hand.

22 DOUGLAS M. ZAYICEK, being duly sworn, testifies
23 as follows:

24 CHAIRMAN CASKEY: There should be some papers in front
25 of you, if you'd take just a moment to review

1 those.

2 MR. ZAYICEK: Yeah.

3 CHAIRMAN CASKEY: Are those the personal data
4 questionnaire and the sworn statement that you
5 have submitted to the Commission?

6 MR. ZAYICEK: Yes, sir, appear to be.

7 CHAIRMAN CASKEY: Are they correct? Do they need to
8 be changed or updated?

9 MR. ZAYICEK: They are correct. I do not know of
10 anything that needs to be updated.

11 CHAIRMAN CASKEY: Thank you, sir. Do you object to
12 our making these documents a part of the record
13 of your sworn testimony?

14 MR. ZAYICEK: No, sir. I don't object, no.

15 CHAIRMAN CASKEY: Yes, sir. I'm going to give staff
16 an opportunity to --

17 MR. ZAYICEK: Oh, okay. I don't need to sign
18 anything?

19 MS. PUTNAM: No, I'm sorry. It's confusing.

20 (Exhibit Number 11 was marked for identification
21 purposes - (16 pages) Personal Data Questionnaire for
22 Douglas M. Zayicek)

23 (Exhibit Number 12 was marked for identification
24 purposes - (7 pages) Sworn Statement of Douglas M.
25 Zayicek)

1 CHAIRMAN CASKEY: Like everything, I pause to make
2 sure that our court reporter has an opportunity
3 to record everything that we're doing.

4 MR. ZAYICEK: Yes, sir. And I know I'm the last one
5 before lunch so I'm going to talk really fast.

6 CHAIRMAN CASKEY: You will hear no objection from this
7 seat. But no, we will take as much time as we
8 need to. We have the benefit of being able to
9 control our own schedules so don't feel any
10 pressure in any way that we do have to move in
11 any particular rush. We're going to take as much
12 time as the process requires. So let me note
13 that the Judicial Merit Selection Commission has
14 thoroughly investigated your qualifications for
15 the bench. Our inquiry is focused on the nine
16 evaluative criteria and has included a ballot box
17 survey, thorough study of your application
18 materials, verification of your compliance with
19 state ethics laws, search of newspaper articles
20 in which your name appears, study of previous
21 screenings, and a check for economic conflicts of
22 interest. We have received no affidavits filed
23 in opposition to your election, and no witnesses
24 are present to testify. If you would like to
25 make a brief opening statement, you're certainly

1 welcome to do that at this time. Otherwise we
2 will go straight to some questions from staff
3 counsel.

4 MR. ZAYICEK: Two things very, very quickly. First I
5 want to thank you all. I know how much time,
6 effort, and energy you all put in. I can't
7 imagine how much work you've done just to get to
8 this point. And I know you're not even close to
9 being done yet. And the second thing I want to
10 specifically mention, Erin Crawford and Lindi
11 Putnam. They are great to work with, and you all
12 are very fortunate to have them on your team.
13 That's all, Mr. Chairman.

14 CHAIRMAN CASKEY: Okay. At this time would recognize
15 Ms. Ross for some questions.

16 DOUGLAS M. ZAYICEK - EXAMINATION BY MS. ROSS:

17 MS. ROSS: Good afternoon. I note for the record that
18 based on the testimony contained in the
19 candidate's PDQ, which has been included in the
20 record with the candidate's consent, Mr. Zayicek
21 meets the constitutional and statutory
22 requirements for this position regarding age,
23 residence and years of practice.

24 **Q. Mr. Zayicek, how do you feel your legal and**
25 **professional experience thus far renders you**

1 **qualified and will assist you to be an effective**
2 **Circuit Court judge?**

3 A. I started my legal career by being a judicial law
4 clerk for the honorable John Breeden, in Conway,
5 in the 15 Circuit. So I think that experience,
6 along with the 27 years that I've had practicing
7 litigation since that time, have well prepared
8 me. I've also been -- had the opportunity to
9 work in a judicial capacity in several respects.
10 I've been a special referee in about fifty cases.
11 Been pretty successful so far. I've only been
12 appealed once and that appeal was dismissed by
13 the Court of Appeals. I've been on the fee
14 dispute resolution board for many years. I've
15 been a chairman of several panels there. I've
16 also been on the Commission for Lawyer Conduct,
17 and been fortunate enough to be chairman on
18 several panels there. So I think have the legal
19 education and the background, and the experience.
20 I've also -- I'll just point out quickly, I'm the
21 personnel shareholder at the Bellamy law firm.
22 We have about 45 employees. I've been in that
23 position for about eight years. So hopefully
24 I've had a chance to develop some good personal
25 skills and can maneuver around those issues as

1 well.

2 Q. Thank you. Mr. Zayicek, the Commission received
3 137 ballot box surveys regarding you, with 30
4 additional comments. The ballot box survey for
5 example contained the following positive
6 comments, "An outstanding candidate for the
7 bench, has the exact temperament to be a judge.
8 He is patient, extremely intelligent, and
9 experienced. I can not say enough good. He has
10 been a learned adversary. Doug is rock solid in
11 every way and will make an exemplary judge. He
12 is of course extremely smart and is also
13 conscientiously fair, considerate and even
14 affable." Nine of the written comments expressed
15 concerns. Some negative comments expressed
16 concerns regarding your temperament. What
17 response would you like to offer?

18 A. I take full ownership and responsibility. When I
19 finished my clerkship and I went to work at the
20 Bellamy law firm I was trained by Skeets Bellamy
21 and Henrietta Golding. And they trained me to be
22 that prototypical bulldog that everybody seems to
23 want when they call a law firm and want an
24 attorney. It took me a little bit of time to
25 figure out, I guess, they were setting me up to

1 be the bad cop so they could be the good cop.
2 But all of that is well behind me. So I hope a
3 lot of those complaints are actually from a long
4 time ago. I understand completely that being an
5 advocate for a litigant in a contested litigation
6 matter is the exact opposite of being a judge,
7 and being a neutral. So -- and I've had a fair
8 amount of experience being a neutral and I think
9 people have seen both sides and I think most of
10 those comments I think will go away. I take full
11 responsibility of being that bulldog attorney
12 when I was young.

13 **Q. You really just kind of touched on this, but my**
14 **next question was just what would you -- how**
15 **would you respond to some comments expressing**
16 **concerns related to your lack of impartiality,**
17 **which I think is what you were just saying.**

18 **A.** Yeah, I don't know of any concerns that would
19 affect my impartiality at all. I'm not sure who
20 I'd be impartial towards or against to be honest
21 with you. But -- I don't know of any issues
22 whatsoever. I don't have any cliques, never been
23 an overtly political person, so I don't know who
24 I would be partial to.

25 **Q. Finally, others raised lack of criminal law**

1 **experience as a concern. How do you respond to**
2 **that?**

3 A. Well, as I said, I was a clerk for a Circuit
4 Court judge and actually most of what he was
5 scheduled to do while I worked with him was
6 criminal work. And the ironic thing is I
7 actually wanted to practice criminal law when I
8 came out of law school. I was fortunate enough
9 to get a judicial clerkship, so that kind of
10 stood in the way of that. And while I was a
11 clerk I even wrote an article for South Carolina
12 magazine that was about guilty pleas. So I had
13 every intention of actually practicing criminal
14 law when I was a clerk for a Circuit Court judge.
15 But then I got a couple of great offers and had
16 to accept them doing civil litigation. I've done
17 a couple of guilty pleas through the years. In
18 the last several months I have watched a double
19 murder trial with Morgan Martin. I have also
20 spent a couple of days watching motion hearings
21 in criminal court, in General Sessions. I've
22 also taken two CLEs in the last couple of months.
23 And if I'm fortunate enough to be elected I plan
24 on spending plenty of time in the next several
25 months in General Sessions court, watching and

1 observing. And the solicitor has promised me
2 that learning criminal law is a whole lot easier
3 than learning civil law, so I'll take his word
4 for it.

5 MS. ROSS: I would note that the Pee Dee Citizens
6 Committee reported that Mr. -- that -- reported,
7 sorry, that Mr. Zayicek is qualified in the
8 evaluative criteria of constitutional
9 qualifications, physical health, mental
10 stability, and judicial temperament and well
11 qualified in the evaluative criteria of ethical
12 fitness, professional, and academic ability,
13 character reputation, and experience. The
14 Committee has no summary related comments. Now
15 let's move on to a few housekeeping questions.

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

20 A. Yes, ma'am.

21 **Q. Mr. Zayicek, since submitting your letter of**
22 **intent have you contacted any members of the**
23 **Commission about your candidacy?**

24 A. I have not.

25 **Q. Since submitting your letter of intent, have you**

1 sought or received the pledge of any legislator
2 either prior to this date or pending the outcome
3 of your screening?

4 A. I have not.

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

8 A. I am.

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

13 A. No, I do not -- have not.

14 Q. Have you -- sorry.

15 A. I'm sorry.

16 Q. Have you reviewed and do you understand the
17 commissions guidelines on pledging and SC code
18 section 2-19-70(E)?

19 A. Yes, ma'am.

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

25 CHAIRMAN CASKEY: Thank you, ma'am. Do members of the

1 Commission have any questions for Mr. Zayicek?

2 VICE CHAIRMAN RANKIN: Mr. Chairman.

3 CHAIRMAN CASKEY: Chairman Rankin.

4 MR. ZAYICEK - EXAMINATION BY VICE CHAIRMAN RANKIN:

5 Q. Doug, welcome back.

6 A. Hello, Senator.

7 Q. And I murder your name, invariably.

8 A. There's debate in my family as to how to
9 pronounce my name.

10 Q. Zayicek or Zayicek?

11 A. I have one brother that says Zayjack (ph), I say
12 Zaycheck (ph), my dad used to say Zayicheck (ph),
13 so it's open to debate.

14 Q. How do you?

15 A. I take no offence, I say Zaycheck (ph).

16 Q. Zay. And for the record, there will be no
17 difference in how she types this, but for the
18 hearing ear, Zay like day, correct?

19 A. Yes, sir. I leave the I silent. Zayicek.

20 Q. Obviously, I know you. We screened you two years
21 ago I think.

22 A. Yes, sir.

23 Q. Was it two years ago? And that was your first
24 screening.

25 A. Yes, sir.

1 Q. That you had participated in. I did not pay
2 attention then as much as I have now about your
3 past and your degrees and undergrad. That's just
4 scary to me.

5 A. I was a double major, math and computer science,
6 in undergrad. And I've always had a pride in
7 myself on my analytical skills and my problem-
8 solving ability, whether that's right or wrong,
9 or good or bad. And that's actually one of the
10 things I really enjoyed when I was a law clerk
11 was, you know, getting those opposing orders in
12 and doing the research, and figuring things out,
13 and helping the judge make the right decision.
14 So I've -- I don't know how I ended up. I could
15 not work in a back room working at a computer all
16 day. So I had to find something else, so to
17 speak.

18 Q. But your MITRE and then data somebody?

19 A. I worked for the --

20 Q. From South Carolina, tell us about that and what
21 turned the switch from analytical to perhaps
22 analytical in a different, legal context.

23 A. I worked when I graduated college, I went to work
24 for the MITRE corporation in Boston, it was a
25 defense contractor. And I had a secret clearance

1 working on some government projects there. I
2 then came actually to Columbia. Both of my
3 brothers had moved to Columbia. I came to
4 Columbia for Christmas one year and I was wearing
5 shorts. And I said that's -- I'm never spending
6 another winter up north. So I moved down here, I
7 got a job working at a small firm in Harbison
8 called Data Systems Technology. I worked there
9 for a couple of years, and again, just decided
10 that I couldn't sit in a back room and just work
11 on a computer all day. I wanted to be out there
12 working with people, helping people. And I
13 decided law school would be the best scenario for
14 me.

15 **Q. And then South Carolina, undergrad, I mean law**
16 **school, correct?**

17 **A. Yes, sir. USC law school, yes, sir.**

18 **Q. Have you -- Judge Breeden can not be the answer**
19 **to my next question, because we all know him,**
20 **perhaps everyone knows him. Actually it can be,**
21 **but he of course, as well as Stan Cross the**
22 **former Master-in-Equity have written glowing**
23 **letters about you. Other than those two, who**
24 **would you want to be most compared with, if**
25 **you're successful during your tenure on the**

1 **bench?**

2 A. Judge Hyman, who also wrote a letter for me.
3 Judge Larry Hyman, and Judge Cindy Graham Howe
4 who also wrote a letter for me, the last Master-
5 in-Equity. So I've got four judges, fortunately,
6 who wrote me letters of recommendation. All four
7 of them I consider not only mentors but actually
8 friends. I've been to Judge Cross's house many
9 times for dinner and love the man.

10 **Q. And what is it about those four -- and again I**
11 **know them, and many do. But for the record what**
12 **is it about their demeanor or their wearing the**
13 **robe do you find most attractive?**

14 A. Well as you just mentioned, actually, their
15 demeanor. Judge Breeden, I know you didn't want
16 him to be the answer to any questions, but --

17 **Q. No, he can be. But --**

18 A. I thought he was the most patient, kind,
19 considerate, and compassionate judge I've ever
20 witnessed in 27 years of practicing law. And he
21 is my mentor, he's written me two letters of
22 recommendation. I've spent a weekend with him
23 just a couple of months ago. We went into a
24 wedding together with my fiancée down in
25 Charleston. He's just a wonderful human being.

1 Along with Judge Hyman. The same way. Both of
2 them have great common sense, are passionate, but
3 compassionate at the same time. Very, very
4 knowledgeable, great problem solvers, and really
5 knew how to deal with people and defuse
6 situations, and come to the right conclusion more
7 often than not.

8 **Q.** In terms of your, you said bulldog style, good
9 cop, bad cop, invariably you have impressed and
10 then perhaps beaten someone, you, who might be
11 saying these negative comments to you about you.
12 And we don't know who they are. But that is the
13 far and away minority view of you. But do speak
14 to the sense of past being prologue. If there
15 are more than a couple that are saying you have
16 or had an abrasive style, help us with how you
17 will wear the robe, and as you said earlier,
18 initial questioning that's behind you, how will
19 you keep that behind you?

20 **A.** Yes, sir. I think a lot of the problem stems --
21 again, I take full responsibility for actions in
22 the past. But I think a lot of it also stems
23 from the clients that I represented. I
24 represented a lot of banks in the past, and I've
25 represented a lot of big landlords and shopping

1 centers. And, for example, with regard to banks,
2 you know, they have their underwriting
3 requirements, they have auditors to come in, they
4 have certain things that they can do with regard
5 to debt-to-income ratios and loan-to-value
6 ratios, and there's really not a lot of room for
7 negotiating. And the same thing has been true
8 for the landlords that I've represented. I've
9 represented, you know, Northwoods Mall, Coastal
10 Grand Mall. They're both run by CBL out of
11 Chattanooga. Magnolia Mall in Florence is run by
12 PREIT out of Philadelphia. Even the local folks,
13 Murrells in Chapin, Broadway at the Beach, and
14 Barefoot Landing. And the Tanger Outlets. They
15 all kind of have their own legal departments and
16 I was more or less the spokesperson for them and
17 didn't really have a lot of negotiating ability a
18 lot of times. So I don't think it was an
19 unwillingness to deal with anybody. But a lot of
20 times it was an inability. Because I was
21 quote/unquote kind of the mouth piece for those
22 clients. So I think a lot of that is related to
23 the clients and not really reflective of my
24 personality in any way shape or form. I can see
25 how some people could take it the wrong way. And

1 again, I take full responsibility.

2 **Q. You were with a very successful practice.**
3 **Everyone knows the firm, I know the attorneys**
4 **that you're with. And some would say why in the**
5 **world would Doug Zayicek want to leave that firm**
6 **and had the opportunity to make, continue to**
7 **make, a healthy living. Why would he -- thus my**
8 **question to you, that's rhetorical, why would you**
9 **want to give that up?**

10 **A. I think that is a fair question. And as I said**
11 **when I was a law clerk that's when I really**
12 **decided that ultimately I wanted to be a judge.**
13 **I went to law school in part because I wanted to**
14 **be a public servant in some way, shape or form.**
15 **And I can't do what you all do. I admire you all**
16 **for putting your names on the ballots and doing**
17 **that but I can't. I'm just not that kind of a**
18 **personality. So being a nerd, being a computer**
19 **science math major, you know, I wanted to do that**
20 **analytical work. And that's what I've always**
21 **wanted to do. And I think the time is right**
22 **personally and professionally. I would -- in all**
23 **honestly I'd be taking a little pay cut, but that**
24 **doesn't -- that doesn't concern me. I've got a**
25 **fiancee and three dogs, my house is almost paid**

1 for, I'm good. I'll be okay. Plenty of money in
2 the bank.

3 **Q. That's all I have. Thanks.**

4 CHAIRMAN CASKEY: Mr. Safran.

5 MR. ZAYICEK - EXAMINATION BY MR. SAFRAN:

6 **Q. Thank you, Mr. Chairman. Just a couple of quick**
7 **things.**

8 A. Yes, sir.

9 **Q. I understand that sometimes folks lose sight of**
10 **the fact that an advocate is one thing, a judge**
11 **is another. That people sometimes get hurt**
12 **feelings in the context of advocacy. Cases can**
13 **get a little bitter sometimes. But, you know, I**
14 **guess what I want to make sure is is you**
15 **understand the difference.**

16 A. Yes, sir. I understand there's two different
17 hats and they're actually almost completely
18 opposite. And as I said, I've had the
19 opportunity to be a special referee in about
20 fifty cases so far. So several people have
21 referred cases to me and had confidence that I
22 would be fair and impartial.

23 **Q. Well obviously, don't both sides have to agree**
24 **when they do that?**

25 A. Yes, sir.

1 Q. Okay.

2 A. Yes, sir.

3 Q. At least on both sides of the case, they felt
4 comfortable that you do the right thing.

5 A. Yes, sir.

6 Q. Let me ask you also, as far as -- do you -- have
7 you found, as you say, there are times when you
8 might want to do something different but you've
9 got a client that's saying hey, this is the way
10 it's got to be. You really don't have a lot of
11 wiggle room. I mean, has that really happened
12 probably more than you'd like it to in the past?

13 A. Yes. They clients will always listen. But what
14 it comes down to for example, representing banks.
15 You know, it's kind of surprising, and sometimes
16 it's, you know, it's kind of heart breaking.
17 When a borrower will say, you know, I don't --
18 can I pay \$500 a month for the next two years and
19 then I'll pay off the balance. And the bank just
20 has to say no. There's really no wiggle room.
21 If they carry bad debt on their books, the
22 auditors coming in, you know, are going to
23 increase their cash reserves and anybody who's
24 got a checking account or a savings account is
25 going to make less money. So the banks actually

1 have a fiduciary responsibility to get rid of all
2 that bad debt. And sometimes it's heart
3 wrenching, to see the effect that it has on some
4 people. But -- so there's nothing that either
5 the bank can do or that I can really do in that
6 situation. And I've -- in all honesty, I've
7 been, probably there's been a couple of times
8 when I've given people extensions to answer and
9 done some things, and not scheduled depositions
10 for a little while to hopefully allow some things
11 to work themselves out. But sometimes they just
12 can't.

13 **Q. Okay. Thank you very much.**

14 **A. Thank you, Chairman.**

15 **CHAIRMAN CASKEY: Senator Sabb.**

16 **Q. Thank you, Mr. Chairman. Thank you, Mr. Zayicek.**

17 **A. Thank you, Senator.**

18 **Q. Just a couple questions about jury trials. I**
19 **noted on your PDQ that you indicated five**
20 **significant civil trials, and one is the Catawba**
21 **Indian Tribe of South Carolina versus the City of**
22 **North Myrtle Beach.**

23 **A. Yes, sir.**

24 **Q. I think that's a 2000 case. Was that -- did that**
25 **case involve a jury trial?**

1 A. That was not a jury trial.

2 **Q. Okay.**

3 A. And I believe -- going back that far. And I
4 think -- are you looking at the appeals? Those
5 might be the appeals only, my top five appeals.
6 I don't believe that was a jury trial, that was
7 ruled on in Federal Court, summary judgement I
8 believe.

9 **Q. Okay. What about the Wooten versus South**
10 **Carolina Coastal Council case?**

11 A. That was a -- no that was a Master-in-Equity
12 matter as well.

13 **Q. All right, city of Myrtle --**

14 A. My supervising attorney, the week before it was
15 scheduled to be heard by the South Carolina
16 Supreme Court he said you go ahead and argue that
17 appeal. I said I knew that was kind of a dead
18 loser right then and there.

19 **Q. All right, well let me see, I might be in the**
20 **wrong area then. So City of Myrtle Beach versus**
21 **Jewel Corp and Gay Dolphin, Inc., was that a jury**
22 **trial?**

23 A. No, sir. That was a bench trial involving the
24 zoning ordinances of the City of Myrtle Beach.

25 **Q. Brewer versus Myrtle Beach Farms company?**

1 A. I'm sorry?

2 **Q. Brewer versus Myrtle Beach Farms Company,**
3 **Incorporated?**

4 A. That was scheduled to be a jury trial but I got
5 the Trial Court to grant summary judgement. I
6 represented the pavilion amusement park with
7 regard to an accident that occurred on a roller
8 coaster. And the Court granted summary
9 judgement, and the Court of Appeals Affirmed.

10 **Q. Wachovia Bank versus Tamasco?**

11 A. That, no, that was also summary judgement
12 fortunately that we won in the trial court, and
13 it was appealed.

14 **Q. All right. And so when's the last time you tried**
15 **a civil case involved in a jury to verdict?**

16 A. In Circuit Court probably about two years. I've
17 had a ton of jury trials in Magistrates Court in
18 landlord tenant matters. But in Circuit Court
19 it's been a couple of years.

20 **Q. Would you consider yourself an experienced civil**
21 **litigator?**

22 A. Yes, sir. And sometimes can't help when cases
23 settle. I mean that's what you want as a
24 litigator, for a case to settle.

25 **Q. Oh, sure. And I know with mediation and all of**

1 that we're trying fewer and fewer cases. I mean
2 that's the case in my practice, I think in most
3 of our practices. And so as I understand it
4 you've tried approximately ten cases of verdict I
5 assume those cases are Circuit Court cases? Or
6 did you include Magistrate Court cases on that?

7 A. No, if Magistrate Court cases were included, it'd
8 be probably triple --

9 Q. You'd have a ton of them, right?

10 A. Triple or quadruple that.

11 Q. Sure. All right, so ten civil cases to verdict
12 and no criminal cases to verdict; is that
13 correct?

14 A. Yes, sir. Where was probably first chair I sat
15 in on several as second chair with -- when I
16 first started practicing.

17 Q. All right. Thank you.

18 CHAIRMAN CASKEY: Other questions?

19 MR. ZAYICEK - EXAMINATION BY CHAIRMAN CASKEY:

20 Q. Mr Zayicek, I apologize again for the name messed
21 up.

22 A. You didn't mess it up, no, sir.

23 Q. Easier one, but as someone with an atypical name
24 I have a great deal of sympathy for that. I
25 don't want to be unduly persnickety in asking

1 this question, but I noticed that your writing
2 samples were both from your time as a law clerk.
3 I was curious as to why you didn't submit any
4 writing samples more reflective of your legal
5 practice.

6 A. I didn't really put kind of any thought into it,
7 to be honest with you. I didn't know if anybody
8 wanted to read appellate briefs or anything like
9 that, or legal memorandum. So those were just
10 what came to mind. There was no thought that was
11 really put into it one way or the other.

12 Q. Certainly, and I understand that, I just try to
13 be diligent and make my way through the
14 materials. And it stood out to me as a question,
15 so. I don't have anything beyond what my
16 colleagues have asked of you. So that will
17 conclude this portion of our screening process.
18 I want to thank you for offering for service. I
19 also need to remind you that pursuant to the
20 commission's evaluative criteria, the Commission
21 expects candidates to follow the spirit as well
22 as the letter of the ethics laws. And that we
23 will view violations or the appearance of
24 impropriety as serious and potentially deserving
25 of heavy weight in our screening deliberations.

1 As you know, the record will remain open until
2 the formal release of the Report of
3 Qualifications and should the need arise you
4 could be called back for further inquiry. Again,
5 thank you for offering and thank you for your
6 service to the state of South Carolina. This
7 will conclude this portion of our screening
8 process.

9 A. Thank you Mr. Chairman, thank you everyone.

10 **Q. Thank you.**

11 A. Go have lunch.

12 CHAIRMAN CASKEY: With that prompting, given the late
13 hour on motion -- we will go into executive
14 session and enjoy some lunch as we receive a
15 legal briefing. So on Motion from Representative
16 Jordan, seconded by Senator Rankin, the question
17 is whether or not to go into Executive Session.
18 All in favor signify by saying aye, aye.

19 (Ayes are heard.)

20 CHAIRMAN CASKEY: All opposed nay.

21 (No replies are heard.)

22 CHAIRMAN CASKEY: the ayes have it, we will now go
23 into Executive Session for a legal briefing and
24 lunch.

25 (Executive Session)

1 CHAIRMAN CASKEY: Good afternoon Ladies and Gentlemen.

2 We will resume this afternoon's hearing by coming
3 out of Executive Session. For the record, while
4 we were in Executive Session, receiving a legal
5 briefing and having a bite to eat, no votes were
6 taken and no decisions were made. And so with
7 that we will resume our screening process.

8 Before us is Judge Johnson who is applying to
9 Seat 4 of the Circuit Court bench for the 13th
10 Judicial Circuit. Do I have that correct, sir?

11 JUDGE JOHNSON: That's correct.

12 CHAIRMAN CASKEY: All right. Good afternoon and thank
13 you for being here.

14 JUDGE JOHNSON: Thank you.

15 CHAIRMAN CASKEY: If you would please raise your right
16 hand.

17 THE HONORABLE ISAAC "IKE" JOHNSON, being duly
18 sworn, testifies as follows:

19 CHAIRMAN CASKEY: Thank you, sir. If you wouldn't
20 mind, please look at the documents in front of
21 you.

22 JUDGE JOHNSON: Okay.

23 CHAIRMAN CASKEY: Are those the personal data
24 questionnaire and sworn statement that you have
25 submitted to the Commission?

1 JUDGE JOHNSON: Yes.

2 CHAIRMAN CASKEY: Are there any updates or changes
3 that need to be made to those?

4 JUDGE JOHNSON: No.

5 CHAIRMAN CASKEY: Do you have any objection to ours
6 making those a part of your -- a part of the
7 record of your sworn testimony?

8 JUDGE JOHNSON: Not at all.

9 CHAIRMAN CASKEY: Thank you, sir. Give staff a moment
10 to do that. All right. The Judicial Merit
11 Selection Commission has thoroughly investigated
12 your qualifications for the bench. Our inquiry
13 is focused on the nine evaluative criteria and
14 has included a ballot box survey, thorough study
15 of your application materials, verification of
16 your compliance with state ethics laws, search of
17 newspaper articles in which your name appears,
18 study of previous screenings, and a check for
19 economic conflicts of interest. We have received
20 no affidavits filed in opposition to your
21 election and no witnesses are present to testify.
22 Do you have any opening statement that you would
23 like to offer, or we can begin with questions
24 from staff counsel?

25 (Exhibit Number 13 was marked for identification

1 purposes - (15 pages) Personal Data Questionnaire The
2 Honorable Isaac "Ike" Johnson)

3 (Exhibit Number 14 was marked for identification
4 purposes - (6 pages) Sworn Statement of The Honorable
5 Isaac "Ike" Johnson)

6 JUDGE JOHNSON: Given the hour, no need to make an
7 opening statement, ready to go.

8 CHAIRMAN CASKEY: All right, sir. Then I will
9 recognize Ms. Webb.

10 JUDGE JOHNSON - EXAMINATION BY MS. WEBB:

11 MS. WEBB: Thank you Mr. Chairman, and good afternoon
12 Mr. Johnson.

13 JUDGE JOHNSON: Good afternoon.

14 MS. WEBB: All right. I note for the record that
15 based on the testimony contained in the
16 candidate's PDQ, which has been included in the
17 record with the candidate's consent. Judge
18 Johnson meets the constitutional and statutory
19 requirements for this position regarding age,
20 residence, and years of practice.

21 **Q. Judge Johnson, how do you feel your legal and**
22 **professional experience thus far renders you**
23 **qualified and will assist you to be an effective**
24 **Circuit Court judge?**

25 A. Thank you. I've been a lawyer for 37 years, I've

1 been a municipal judge for 15 years. I started
2 out as a prosecutor in the 8th Circuit, and I was
3 there for four years. I went home to Greenville
4 and was state prosecutor in Greenville for four
5 years. I've been in private practice. I've been
6 in civil practice and criminal defense. I was a
7 state prosecutor -- I mean a federal prosecutor
8 for eight years. I've been a municipal judge for
9 going on fifteen years now. In my career I've
10 tried civil cases but I've tried numerous
11 criminal cases. I've tried everything from DUI
12 all the way up to murder. I sat at the
13 prosecution's table in two death penalty cases.
14 I have represented persons charged in General
15 Sessions court with very serious offenses.
16 There's little that I have not either presided
17 over or tried in my -- presided over or
18 participated in, either the prosecution or
19 defense of individuals for 37 years now.

20 **Q. Thank you, Judge Johnson. And you currently as**
21 **we discussed in your initial interview with me,**
22 **you currently balance many jobs in addition to**
23 **your municipal judge role. So how would you**
24 **balance your Circuit Court docket and insure that**
25 **the docket moves along?**

1 A. Based on my experience, you have to be proactive
2 in managing a docket. First thing is I've
3 noticed that you have to be prompt. You have to
4 be on time. You have to keep your staff updated.
5 You have to be abreast as to the age of your
6 docket. You have to have a good relationship
7 with the solicitor's office and make sure the
8 solicitor's office is moving the cases. You have
9 to have a good working relationship with the
10 attorneys and your circuit. And there would have
11 to be a system of review with your staff and a
12 tickler system to make sure that your staff is
13 reminded as to the age of any cases. And really,
14 you just have to be diligent. There's no
15 substitute for hard work. And in my 37 years --
16 and in one of the circuits where I practice
17 there's this system called a rocket docket where
18 cases are put on the docket every 90 days. And
19 that seems to work. Because honestly, as a
20 prosecutor and a defense lawyer, I know that --
21 you know, I don't know that it's common nature
22 but lawyers have a tendency to stall and to try
23 to sweat a case out. And as a lawyer, that's a
24 probably a good practice. But it's not good for
25 the courts, because it will back courts up to the

1 point that courts will become unmanageable. And
2 so I just thing you have to really stay abreast
3 as to what's going on, and be diligent about
4 making sure that cases do not become stale and
5 begin to back up the system.

6 Q. Thank you. And Judge Johnson, the Commission
7 received 158 ballot box surveys regarding you,
8 with 12 additional comments. The ballot box
9 survey for example contained the following
10 positive comments, "The 13th Circuit would be
11 well served to have Judge Johnson on the bench"
12 and "Judge Johnson has an outstanding legal mind
13 and fantastic judicial temperament." Three of
14 the written comments expressed concerns. Some
15 expressed concerns that you might not be the best
16 choice for this position. What response would
17 you like to offer to this concern?

18 A. Certainly. Attorneys are certainly entitled to
19 their opinions and I don't contest the system.
20 But I would imagine that in 37 years there have
21 been an array of lawyers that have had an
22 opportunity to work with me as a lawyer, and as a
23 judge. And, you know, that's kind of an open-
24 ended question as to why I might not be the best.
25 Because I'm not sure why he or she would have

1 said that. But I can tell you one thing. That
2 when I take the bench and I try to be prepared, I
3 try to be courteous. I know that but for the
4 grace of God I could be on the other side of the
5 bench. So I try to treat everyone courteously,
6 and fairly, and have a calm demeanor and to be
7 competent. In 37 years I've been a state
8 prosecutor, federal prosecutor and certainly
9 don't bemoan someone saying that about me. But I
10 certainly don't feel that way about myself.
11 Couldn't have gotten to the level of that I've
12 gotten by not being competent and fully prepared,
13 and zealous in my endeavors.

14 MS. WEBB: Thank you, Judge Johnson. I would note
15 that the Upstate Citizens Committee reported that
16 Judge Johnson is qualified in the evaluative
17 criteria of constitutional qualifications,
18 physical health and mental stability. And they
19 found him well qualified in the evaluative
20 criteria of ethical fitness, professional and
21 academic ability, character, reputation,
22 experience and judicial temperament.

23 **Q. Now just for a few housekeeping issues. Judge**
24 **Johnson, are you aware that as a judicial**
25 **candidate you are bound by the Code of Judicial**

1 Conduct as found in rule 501 of the South
2 Carolina Appellate Court rules?

3 A. Yes.

4 Q. And Judge Johnson, since submitting your letter
5 of intent, have you contacted any members of the
6 Commission about your candidacy?

7 A. No.

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

12 A. No.

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

17 A. Yes.

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

22 A. No.

23 Q. And have you reviewed and do you understand the
24 commissions guidelines on pledging in South
25 Carolina code 2-19-70(E)?

1 A. Yes.

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

8 CHAIRMAN CASKEY: Thank you, ma'am. And thank you
9 Judge Johnson. Do members of the Commission have
10 questions for the candidate? Senator Sabb.

11 JUDGE JOHNSON - EXAMINATION BY SENATOR SABB:

12 Q. Thank you, Mr. Chairman. Judge, good to see you.

13 A. Good to see you.

14 Q. I was trying to think of whether or not I know
15 you. Don't know whether or not I pass across
16 because you're in the upstate and I'm down in the
17 low country so I guess I've missed you. But I've
18 enjoyed the information that I reviewed on your
19 PDQ. And a number of a ways, our lives kind of
20 tracked each other. I note that you were born on
21 September the 15th of '58. I was September the
22 2nd of '58. You graduated from law school in
23 '86. I graduated in '87. You got married in
24 '87. I got married in '88, and so it's just kind
25 of interesting for me to review all of that. And

1 I note from an experience standpoint that one
2 would classify you as being very experienced when
3 it comes to criminal matters. Some experience
4 when it comes to civil matters. And
5 unfortunately we run into a lot of that, where
6 there aren't many of us now that kind of dabble
7 and dabble at the same time in both arenas. And
8 so for those who would say, well wait a minute,
9 he really doesn't do enough civil work, what
10 would your response be?

11 A. You know, it's -- in 37 years I have -- I would
12 probably say I don't know quite how you would
13 define dabble. But I have participated in
14 representing the Department of Transportation
15 when I was an associate with a law firm. I have
16 tried civil cases before.

17 Q. And if I might interrupt, so with the Department
18 of Transportation, would those be like the
19 condemnation cases where people actually have a
20 right to a jury trial, or which ones?

21 A. Personal injury cases, negligence cases, cases
22 where one stands out where there was a family
23 that was a Clinton High School football game.

24 Q. Yeah.

25 A. And I forget whether it was the mother or a child

1 but someone injured themselves while leaving the
2 football stadium and they sued the Department of
3 Transportation and the case was settled. So -- I
4 represented Bojangles, Ingles, participated in
5 litigation, certainly mediation, depositions,
6 interrogatories. Actually I've tried several
7 civil cases to the point of a jury verdict coming
8 back. And each time the jury came back for the
9 defense -- I've tried traffic cases --

10 **Q. I'm not going to hold that against you.**

11 A. Well, well -- traffic, traffic violations and
12 several of those to trial and each time got a
13 defense verdict. And there have been other cases
14 that I've handled from a civil standpoint. But
15 it would be ludicrous for me to try to say that
16 my civil and criminal experience balance each
17 other. Because I've been pretty much a public
18 servant my whole legal career.

19 **Q. Yes, sir.**

20 A. And I've enjoyed it. And it was something that I
21 was good at, and I enjoyed it. And I stuck with
22 it.

23 **Q. And you've seen a lot of course along criminal**
24 **lines. And I'm curious as to whether or not**
25 **you've developed a -- and judges have told me**

1 that a part of their -- well one of the most if
2 not the most difficult part of their job is
3 sentencing. Has that been something that you've
4 sort of focused on, developed any philosophies
5 that you'd care to share?

6 A. I will tell you this, I've been a prosecutor for
7 20 years, maybe. And one would think that I
8 would be -- I would have a bent towards
9 prosecution, and I would have a propensity to
10 look at someone before me in that vein or with
11 those eyes as a former prosecutor.

12 **Q. Yeah.**

13 A. That's not the case. I've represent criminal
14 defendants. And I have a contract with the State
15 now where I represent persons in post-conviction
16 relief actions. I don't really know that -- to
17 answer your question, that I have a philosophy.
18 I've had hundreds of persons charged before me,
19 and I've prosecuted hundreds. I would hazard to
20 take a guess. And I don't know that there's any
21 rhyme or reason as for a sentencing. You have to
22 take a myriad of things into account. You have
23 to look at the individual, look at their --
24 whether there is a -- whether they're a
25 recidivist. You have to look at the nature of

1 the offense. You have to consider the -- balance
2 the interest of the State and the defense. You
3 have to take the victim's interest into
4 consideration. There's just a myriad of things.
5 And you know, there's a strange thing about --
6 well not strange, but in the world of criminal
7 court, General Sessions court and the role of a
8 judge, you have -- because of the volume of
9 cases, you have, often times, mere minutes in a
10 guilty plea to determine what the proper sentence
11 should be. And it honestly comes through just
12 the ability to digest the facts. And I wouldn't
13 say that it's a -- it's something that is innate.
14 But often times when I'm on the bench some -- I
15 will harken back to a case that I heard years ago.
16 And I just think it would be a mistake to develop
17 some kind of system of sentencing people. I
18 think you have to take each case individually and
19 examine that case in a short period of time, and
20 determine what you think is the fair and proper
21 sentence for that person. I just would hate to
22 go in and say, you know, my tendency is to do
23 this, to do that. I've never developed that.

24 **Q. I understand. Well, and you just disclosed**
25 **something else that we have in common. I**

1 prosecuted for 20 years as well, so -- from 1990
2 to 2010. Anyway.

3 A. And you know the interesting thing is -- because
4 that's no secret. When police officers come
5 before me they think that I have a propensity to
6 be a harsh sentencer, to find someone guilty
7 because of my background. But I've made it a
8 point not to do that. And I've often times --
9 not often but there have been times when I've
10 disappointed them. They thought that I would --
11 because being a former prosecutor that I would
12 find someone guilty. But if the case -- if the
13 facts aren't there beyond a reasonable doubt, I
14 have no problem and no hesitancy to find someone
15 not guilty.

16 Q. Thank you, sir. Thank you Mr. Chairman.

17 CHAIRMAN CASKEY: Yes, sir. Other members of the
18 Commission that may have questions or comments
19 for Judge Johnson? Seeing none, then, Judge
20 Johnson, this will conclude this portion of our
21 screening process. I will just note here that
22 please don't intuit too much from the lack of
23 questions. I think that we've seen candidates
24 who have demonstrated such aptitude and
25 experience on their resume or on their PDQ as it

1 CHAIRMAN CASKEY: Good afternoon, Mr. Dunbar.

2 MR. DUNBAR: Good afternoon, Chairman Caskey.

3 Pleasure meeting you.

4 CHAIRMAN CASKEY: Thank you for being here with us and
5 apologies for the delay in scheduling. We try to
6 move our way through these screenings as best we
7 can but we have a fidelity to purpose so
8 apologies for the late efforts.

9 MR. DUNBAR: No apologies necessary, sir. None
10 whatsoever.

11 CHAIRMAN CASKEY: All right. We have a, as best as I
12 can tell, a rocket control system over here that
13 I inadvertently cut off the microphones of a
14 second ago. Mr. Dunbar, if you would please
15 raise your right hand.

16 VERNON DUNBAR, being duly sworn, testifies as
17 follows:

18 CHAIRMAN CASKEY: Would you please take a look at the
19 documents there in front of you?

20 MR. DUNBAR: I've reviewed them.

21 CHAIRMAN CASKEY: Are those the personal data
22 questionnaire and the sworn statement that you
23 have submitted to the Commission?

24 MR. DUNBAR: Yes, it is.

25 CHAIRMAN CASKEY: Are there any updates or changes

1 that need to be made?

2 MR. DUNBAR: None other than what's been presented in
3 the packet that's before me.

4 CHAIRMAN CASKEY: All right. And do you object to our
5 making these documents a part of the record of
6 your sworn testimony?

7 MR. DUNBAR: I do not.

8 CHAIRMAN CASKEY: Thank you, sir. I want to give
9 staff a minute to do that. The Judicial Merit
10 Selection Commission has thoroughly investigated
11 your qualifications for the bench. Our inquiry
12 has focused on nine evaluative criteria and has
13 included a ballot box survey, through study of
14 your application materials, verification of your
15 compliance with state ethics laws, search of
16 newspaper articles in which your name appears,
17 any previous screenings and a check for economic
18 conflicts of interest. We have received no
19 affidavits filed in opposition to your election
20 and no witnesses are present to testify. Do you
21 have any brief opening statements that you would
22 like for us to have -- or to hear or would you
23 prefer to go right to questions from staff
24 counsel?

25 (Exhibit Number 15 was marked for identification

1 purposes - (16 pages) Personal Data Questionnaire for
2 Vernon F. Dunbar)

3 (Exhibit Number 16 was marked for identification
4 purposes - (3 pages) Amendment to Personal Data
5 Questionnaire for Vernon F. Dunbar)

6 (Exhibit Number 17 was marked for identification
7 purposes - (5 pages) Sworn Statement of Vernon F.
8 Dunbar)

9 MR. DUNBAR: Since there's time constraints, Mr.
10 Chairman, I can defer an opening statement.

11 CHAIRMAN CASKEY: Thank you, sir. We certainly
12 appreciate that as we try to get on schedule.
13 But take as long as you need to answer any of the
14 questions fully, so that we -- we're not going to
15 be rushed into making decisions. But we do
16 appreciate you extending that. So, with that,
17 I'll recognize Ms. Baker for some questions.

18 MR. DUNBAR - EXAMINATION BY MS. BAKER:

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

1 Q. Good afternoon, Mr. Dunbar. How do you feel your
2 legal and professional experience thus far
3 renders you qualified and will assist you to be
4 an effective Circuit Court judge?

5 A. You know I thought about that question and -- for
6 a long time and you come up with these answers
7 and a lot of times the answers are quite trite.
8 You've probably heard them all before. But I
9 think in my situation, it's simply this. I've
10 lived and practiced so long that I've acquired
11 the experience to be an effective Circuit Court
12 judge. I wasn't born to be a scholar so I've
13 acquired knowledge over the years. I've worked
14 very hard. I've been in private practice for 37
15 years. And I've dealt with people as a workers'
16 compensation commissioner. But I think, probably
17 the most recent development in my life is working
18 as a mediator and cultivating relationships and
19 understanding people, communicating with people,
20 being patient, being reasonable with people has
21 provided me with the necessary skills to be a
22 effective Circuit Court judge. I don't think it
23 happens overnight. I think, at least in my
24 situation, I needed that time to reach that
25 maturity. So, it didn't happen overnight,

1 probably was a revelation, just a few years ago
2 that Vernon finally you've made it, enough. You
3 have enough experience, enough maturity, you've
4 been in a lot of courts to be an effective
5 Circuit Court judge.

6 **Q. Thank you. And Mr. Dunbar are there any areas of**
7 **the law that you would need to study to prepare**
8 **for the bench if you were elected? And how would**
9 **you prepare?**

10 A. Well, the law is always changing. It's an
11 evolving creature, so I don't think you ever know
12 it. I think you will always have to study it, so
13 that I'm prepared to do. And a matter of fact, I
14 was in the office this weekend. Missed all the
15 footballs getting ready for, preparing a brief.
16 I think probably the most legitimate concern that
17 a lot of people would have about me is my lack of
18 criminal experience. My criminal experience is
19 pretty much relegated to when I worked for about
20 four-and-a-half months in the Aiken County
21 Solicitor's Office, prosecuting juveniles. I've
22 handled some appeals since that time. Of course,
23 when you clerk with the Supreme Court, you see a
24 lot of criminal cases, so I did write. Lots of
25 dissent from Justice Finney, particularly in

1 death penalty cases. But you do see those as
2 well. Now, in all candor, have I been looking at
3 the advance sheets when it comes to criminal law?
4 No, because my practice has been pretty much
5 civil. And civil being workers' compensation
6 trial work and things such as that. So, what I
7 would need to brush up on would be criminal law.
8 So, I've already signed up. I'm at the South
9 Carolina Bar Convention. I'm speaking on
10 mediation. So, I've signed up to attend the
11 criminal law seminar. But given the fact that I
12 would not, if I'm fortunate enough to be selected
13 -- or elected as a Circuit Court judge, I would
14 not take office until much later so I can really
15 sit in on a lot criminal court cases to see how
16 they're conducted from a trial court experience.
17 So, aside from that -- and the advance sheets are
18 always filled with criminal law cases. So,
19 there's always a big body of work when it comes
20 to understanding criminal law. And that's what I
21 plan to do. So, CLEs, studying the advance
22 sheets and observing criminal courts in General
23 Sessions.

24 **Q. Thank you. Mr. Dunbar, the Commission received**
25 **386 ballot box surveys regarding you with 73**

1 additional comments. The ballot box survey, for
2 example, contained the positive comments,
3 "Excellent and an experienced attorney with good
4 judgement and demeanor, extensive experience,
5 great temperament, always fair, cordial and
6 intelligent." Seven of the written comments
7 expressed concerns which you've somewhat
8 addressed. These comments included concerns that
9 you do not have the necessary experience for
10 Circuit Court. What response would you offer to
11 those concerns?

- 12 A. The only thing I could say, early in my career, I
13 spent a lot of time in Circuit Court. And since
14 I've been in Greenville I go to Circuit Court,
15 but not as much as I did when I was in Columbia.
16 I practiced with Turner Padgett for about 16 years
17 and did a ton of wreck cases. So, the judges I
18 appeared before, of course, Judge Pleicones,
19 Judge Keesley, Judge Kinard, Judge McKellar,
20 Judge Peeples, Judge Lee, the list goes on.
21 Judge Jimmy Williams in Orangeburg. So, I do
22 have a vast amount of experience. I've tried
23 cases all over the Midlands, in terms of
24 automobile wreck cases, some negligence cases,
25 food contamination cases, things such as that.

1 So, with regard to Circuit Court experience, I do
2 have a great deal of that. I've appeared in
3 Federal Court, most recently, had Federal Court
4 case in 2021, which we resolved on the courthouse
5 steps. I have a case now pending in Richland
6 County and just resolved a Circuit Court matter
7 in Greenville, as of yesterday, well, this
8 weekend. The lawyer and I were talking.

9 **Q. Thank you. Mr. Dunbar, in the course of our**
10 **investigation, your SLED report indicated that**
11 **you were named in four lawsuits, along with**
12 **Governor Beasley, Mr. DePass and other**
13 **commissioners of the State Election Commission.**
14 **They were filed in US District Court by the**
15 **Natural Law Party, the Reform Party, Leonard and**
16 **Bathchelder, respectively. Please explain the**
17 **nature and the disposition of these lawsuits?**

18 **A.** Well, until it was brought to my attention, I had
19 no idea that there were four matters. I do
20 remember receiving maybe two when Rusty DePass
21 and I were both on the State Election Commission,
22 also Sam Howell, who was chair at the time. And
23 usually those complaints dealt with the fact that
24 we had ruled probably unfavorable to the person
25 who was filing that particular lawsuit. But I

1 think all those cases were dismissed because a
2 lot of the times, the State Election Commission
3 would send us a note saying that there was no
4 merit and the case had been dismissed by the
5 Court.

6 **Q. Thank you.**

7 MS. BAKER: I would note that the Upstate Citizens
8 Committee reported that Mr. Vernon Dunbar is
9 qualified in the evaluative criteria of
10 constitutional qualifications, physical health
11 and mental stability. And well qualified in the
12 evaluative criteria of ethical fitness,
13 professional and academic ability, reputation,
14 character, experience and judicial temperament.

15 **Q. Mr. Dunbar, I have a few housekeeping questions.**
16 **Are you aware that as a judicial candidate you**
17 **are bound by the Code of Judicial Conduct as**
18 **found in Rule 501 of the South Carolina Appellate**
19 **Court Rules?**

20 A. I am aware of that rule.

21 **Q. Mr. Dunbar since submitting your letter of**
22 **intent, have you contacted any members of the**
23 **Commission about your candidacy?**

24 A. I have not.

25 **Q. Since submitting your letter of intent, have you**

1 sought or received the pledge of any legislator,
2 either prior to this date or pending the outcome
3 of your screening?

4 A. No, I have not.

5 Q. Are you familiar with section 2-19-70, including
6 the limitations on contacting members of the
7 General Assembly regarding your screenings?

8 A. I am aware of that.

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

13 A. No, I'm not.

14 Q. Have you reviewed and do you understand the
15 Commission's guidelines on pledging in South
16 Carolina code, section 2-19-70(E)?

17 A. I completely understand.

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

24 CHAIRMAN CASKEY: Thank you, ma'am. Do Commissioners
25 have any questions or comments for Mr. Dunbar?

1 Mr. Safran.

2 MR. SAFRAN: Good afternoon, Mr. Dunbar.

3 MR. DUNBAR: Good afternoon, sir.

4 MR. SAFRAN: Never thought I would be on the other end
5 of a microphone like this one, did you?

6 MR. DUNBAR: No, I did not. You're absolutely correct
7 about that.

8 MR. SAFRAN: Let me say this, I've known Mr. Dunbar
9 for most of those 37 years that you've been
10 practicing. And I keep reading in the ballot box
11 that there's this perception that you had never
12 done anything other than workers' comp defense,
13 and I know otherwise. I think, as you've
14 indicated you were here in Richland County trying
15 a lot of cases in Circuit Court, as I recall. Do
16 you remember that?

17 MR. DUNBAR: I do remember that.

18 MR. SAFRAN: I knew about that because at some point.
19 I said, why are you trying so many cases. But
20 when you told me what they were paying you, I
21 said, no wonder. You're effectively getting a
22 free defense. I guess, the thing is this, it is
23 really a misconception that you just come into
24 this purely from having a workers' comp
25 background; is that fair?

1 MR. DUNBAR: That is more than fair, thank you.

2 MR. SAFRAN: I think in addition to trying a lot of
3 personal injuries stuff and granted, from the
4 defense side, you've been involved in other cases
5 in both the state and the federal courts. Has
6 that continued up until now, basically?

7 MR. DUNBAR: Yes, it does continue.

8 MR. SAFRAN: Okay. So really, comp is one thing, but
9 you've never limited yourself to that, have you?

10 MR. DUNBAR: No, as a matter of fact, every
11 opportunity that I could get to try cases in
12 other courts, even the appellate matters, you
13 know, very well that I would take that
14 opportunity. Because I think, as a lawyer, you
15 need to expand your horizons. You need to be
16 knowledgeable in as many areas as you can. Now,
17 of course, a general practitioner really no
18 longer exists as we saw it in Perry Mason. But,
19 I think to be a well-rounded lawyer in order to
20 prepare yourself to work as a Circuit Court
21 judge, you do need to have that experience. So,
22 every opportunity I had to try a wreck case or
23 even represent a big company, Tom Salane and I
24 represented a defendant company in Aiken for
25 breach of security where a person went in and

1 killed four people. We settled that case before
2 Judge Khoury after we had done some things. But
3 yes, every opportunity I've ever been afforded to
4 go in the court whether it's Federal Court,
5 State court, Appellate Court, I do it.

6 MR. SAFRAN: Well, and I guess in response to the idea
7 that having come from basically a civil
8 background that you really wouldn't have what it
9 takes to be able to handle all the rigors of a
10 Common Pleas in General Sessions docket. I mean,
11 Judge Morgan worked with you didn't he?

12 MR. DUNBAR: Yes.

13 MR. SAFRAN: And Judge Morgan had no background
14 whatsoever in criminal before he went on the
15 bench, did he?

16 MR. DUNBAR: To my knowledge, he had absolutely none.

17 MR. SAFRAN: At least what I'm hearing is that he's
18 been very well accepted by both sides of the Bar
19 up in that area. Is that what you hear, too?

20 MR. DUNBAR: Yes, that's what I hear.

21 MR. SAFRAN: You know, I know dockets is all, very
22 well beyond us in a way. But, I mean, you know,
23 from a standpoint of what you have it in terms of
24 how you've learned things over the years. Do you
25 feel like you could make that same transition

1 smoothly?

2 MR. DUNBAR: Certainly. I would be able to and would
3 love to because that gives me a different
4 perception of the law. And, you know, it's
5 interesting. My wife's a Family Court judge, so
6 I hear about criminal matters from juveniles as
7 well. So, she educates me on a lot of this stuff
8 as well. And, you know, she always asks me why
9 did you want to practice criminal law. And I
10 said because when I would go to family reunions,
11 I would get deluged with questions. So, if I
12 say, I don't practice criminal law or family law,
13 I can eat in peace. And that is really, really
14 true. So, in church or at family reunions
15 certain practices you limit yourself to. But,
16 you know, as a judge I can say, yeah, I know
17 criminal law, but I can't help you.

18 MR. SAFRAN: Well, and let's take another step back,
19 even though it's been a while. I mean, you were
20 actually hearing cases, making rulings, having
21 to, not only, determine law, the factual issues
22 back when you were on the Commission for what,
23 six years over there?

24 MR. DUNBAR: Six and a half years.

25 MR. SAFRAN: And so, basically, in terms of, even

1 though they tell us in some of these appellate
2 decisions that evidentiary rules don't apply. We
3 still made objections. We still acted as if they
4 did, didn't they?

5 MR. DUNBAR: Yes. And they did because the thing about
6 workers' compensation, even though a lot of
7 people think the rules of evidence apply, the
8 bottom line is the case -- the hearing has to be
9 fair. And how do you ensure fairness, it's going
10 by the rules of evidence.

11 MR. SAFRAN: Well, and again, so you've actually kind
12 of sat in a similar seat having to do all those
13 hearings over a period of time as a comp
14 commissioner, didn't you?

15 MR. DUNBAR: Not only as a comp commissioner, but also
16 as a State Election Commissioner. We had to do
17 the same thing and I always said in a panel but
18 we had to hear those protests from elections.

19 MR. SAFRAN: Okay. So, I mean, the other thing is
20 this, why now? Why do you want to do it?

21 MR. DUNBAR: This is what occurred to me. An
22 independent judiciary is very important to
23 democracy. My kids are grown now, they're all
24 out of college. So, I'm not really chasing the
25 dollar. So I can pay for tuition, as I was when

1 I had three in college at the same time,
2 candidly. I can really concentrate on being the
3 best judge I can be. I mean, my kids are grown,
4 I'm still, always going to be a father. But I
5 don't have to nurture them up from when they were
6 teenagers, that critical point in time in their
7 lives and in my life. So, right now,
8 professionally, I'm fine. Personally, I am very
9 stable. And I think I've acquired enough
10 experience over the years to bring that levity to
11 court because now I would be seen as a elderly
12 person in the courtroom, the father figure, the
13 grandfather figure, which goes a long way to
14 making people calm and feel comfortable. I
15 think, sometimes, when judges are too young,
16 you've maybe -- you don't get that respect. I
17 got enough gray hair to probably get that respect
18 now. And I thought it was a good time for me to,
19 at least, have a foray into this arena.

20 MR. SAFRAN: Well, I'm glad that you've given us a
21 idea, at least me, that this gray hair is
22 actually is something beneficial. For some
23 reason, I looked at it the other day and was
24 thinking the opposite. But one thing I can
25 remember, and you've probably forgot. And it

1 means something because I think it goes towards
2 what truly, I guess, is important in a judge,
3 which is to call them like you see them but also
4 recognize that, you know, they're not infallible.
5 You and I had a case when you were you were a
6 commissioner many years ago. Mr. Dunbar ruled
7 against me on a case and I thought he was insane.
8 But ultimately, the other side submitted an order
9 and I think they actually went a little too far
10 in terms of wanting to bill some time because
11 that order went into a lot of depth. And I'll
12 never forget the day that Mr. Dunbar called us
13 and said, gentlemen, I've got to tell you
14 something. I've read that order and I made a
15 mistake. I think the other side should win. So,
16 Mr. Safran, I want you to draft me an order on
17 this one. And, you know, I never did forget that
18 because you were, at least, willing to say, you
19 know what, I may have had this gut ruling at
20 first, but after giving reflection, I've changed
21 my mind. So, you're not somebody that is
22 unwilling to recognize maybe, there's sometime
23 you change your mind.

24 MR. DUNBAR: Absolutely.

25 MR. SAFRAN: Thank you very much.

1 MR. DUNBAR: Thank you Mr. Safran.

2 CHAIRMAN CASKEY: Mr. Strom.

3 MR. STROM: Thank you, Mr. Chairman. But first, Mr.
4 Dunbar, let me apologize for coming in late. My
5 daughter was sworn in by the Court at the Koger
6 Center and I just got back so I'm sorry about
7 that.

8 CHAIRMAN CASKEY: Congratulations.

9 MR. STROM: Criminal experience. I'm the guy that's
10 practiced criminal law my whole career. When I
11 see somebody up there that hasn't practiced
12 criminal law, I worry about whether they have
13 compassion. I've have been in the solicitors
14 office and all they've done is civil defense, I
15 worry whether they have the compassion to do that
16 job. Because there's a lot of grace and
17 forgiveness that has to go along in criminal
18 court. I don't -- like Mr. Safran, I've known
19 you just about -- we've been friends just about
20 your whole career and no doubt in my mind that
21 you have that level of compassion. And Senator
22 Talley and Representative Jordan, I don't know if
23 you know this guy but when I think about him, the
24 words come in my mind, a class act. Because this
25 guy is just a first class guy and you're a class

1 act. And I'm delighted that you are offering
2 because I think you'll make an outstanding judge.

3 MR. DUNBAR: Thank you, sir.

4 MR. STROM: Thank you, Mr. Chairman.

5 CHAIRMAN CASKEY: Chairman Rankin.

6 MR. DUNBAR - EXAMINATION BY CHAIRMAN RANKIN:

7 Q. Class action or class act? Either way, you got
8 class.

9 A. Thank you, sir.

10 Q. And I could not help but chase that. I heard,
11 Commissioner Dunbar is really what I have known
12 you as, though I haven't seen you in a long time.
13 I recall your service in the early part of my
14 career. And you cite one of your seminal cases,
15 a case which was used against me on appeal and
16 that being the Crisp case on a TDI, damn you,
17 successfully served, successfully. I, too, want
18 to join the group who are singing your praises
19 for offering, again they're a host of candidates
20 in this race. I think 67, by my last count, it
21 seems. And kind of reaching the point which in
22 this, my term or having somebody else's over and
23 over again, years before, the Goldilocks
24 candidate, you are not looking for a pay raise.
25 You're not looking for the next step in a career

1 or perhaps an ascension to something at an early
2 stage in life. But one who really is a year
3 older than me, January of '61, I'm April of
4 '62. In some eyes reaching the twilight of your
5 career. And if you're successful, you ain't got
6 many on the bench, before we twilight you out and
7 sunset you out. But I want to commend you for
8 really just wanting to do it. You're associated
9 and have been associated with great practices
10 before and so I've got to commend your ability to
11 be a judge having been there, done that, as a
12 commissioner, lot those many years ago. So, I'm
13 curious in the mediation business and I didn't
14 see or maybe I glossed over it. You do a lot of
15 comp cases I trust. But also I think, did I read
16 civil litigation as well in meditations?

17 A. Yeah, when I first started mediating, probably 80
18 percent of my cases were workers' comp. Now,
19 it's more 60, maybe 55 percent workers' comp and
20 45 percent or 40 percent civil matters. On
21 Friday I mediated a case out of Charleston, we
22 did it virtual. But it was a automobile wreck
23 case. So, I do a lot of automobile wreck cases.
24 I've done some property disputes, things such as
25 that in terms of my civil meditations.

1 Q. How do you think, other than the evidence as you
2 alluded to earlier, the similarities of
3 conducting a hearing from your experience in
4 workers' comp, how do you think it's going to be
5 different on the bench if you're successful?

6 A. In a lot of ways it will be very similar, in
7 terms of the rulings and objections that are
8 expressed. I think what's going to be different
9 is just the amount of people that's in a
10 courtroom. You got the Clerk's office. You got
11 the clerks there. You have a law clerk there, as
12 the workers' comp commissioner, you're not used
13 to that. Also, you're going to have the
14 solicitor saying one thing and then you going to
15 have the defense attorney saying another thing
16 and then you have these reports you need to read
17 for sentencing. And it's just a lot coming at
18 one time. I think in workers' compensation it's
19 a little bit more laid back, not as many people.
20 It's just the court reporter and you and the
21 attorneys and the witnesses. That's the major
22 difference I see, it's just managing that
23 properly and knowing how to manage it. So, I
24 think that will be the biggest difference between
25 the two. But I think in terms of rulings,

1 witnesses, testimony, legal arguments that are
2 raised will be pretty much just the same. My
3 motions, we do all of that in workers'
4 compensation as well as -- as you're well aware
5 in Circuit Court as well. So, those are the
6 major differences that I see.

7 **Q. Being frazzled is probably not one of your**
8 **weaknesses, but do you recall commissioners**
9 **perhaps, some of whom we did zero to sixty fling**
10 **they're whatever glasses or judges, perhaps, that**
11 **you appeared before who similarly got frazzled.**
12 **How do you, from a temperament standpoint, if and**
13 **pray never that that were to occur, how do you**
14 **see yourself de-escalating backing away and**
15 **keeping your cool and a good demeanor? How do**
16 **you see --**

17 **A.** It's very important as a judge to have
18 temperament. It's very important to be always in
19 control of your emotions. And I always tell my
20 kids that I'm the product of the '60s and '70s
21 when cool was in style. You always maintained
22 your cool and your composure. I said, now, with
23 you guys cool is not a big thing. You get overly
24 emotional, you're too sensitive about things.
25 That's not my generation. I always want to stay

1 in control because once you let your emotions
2 take over, you do something that now I will call
3 stupid for lack of a better word. Maybe I should
4 use the term asinine. But when you lose control
5 things go haywire. And I'm at the age I don't
6 want to commit anything that's going to stop me
7 from reaching the pearly gates, that's the way I
8 look at my life now. I don't get upset if
9 someone cuts me off in traffic because I don't
10 want to explode and something bad happens because
11 it's only going to come down on me. So, as a
12 judge you've got to realize when you lose your
13 temper because someone's pressed you. The only
14 person that's going to look bad is you. So,
15 whatever it takes for you, if you have to take a
16 recess, walk out, go on the balcony and say a
17 prayer, get some fresh air, whatever the case may
18 be, that's what you need to do. Because it's
19 always going to reflect badly on the judge no
20 matter what someone does.

21 **Q. Finally, I can't help but note, but obviously we**
22 **know your wife and her practice or service on the**
23 **bench. In your earlier reasons why you might**
24 **run, to not know criminal practice, you didn't**
25 **have to talk criminal. You didn't have to talk**

1 **family. It occurs to me that you're a success**
2 **for you and your wife aren't going to talk about**
3 **the law. You got it, that's all. Thank you.**

4 CHAIRMAN CASKEY: Senator Sabb.

5 MR. SABB: Thank you, Mr. Chairman. And I like others
6 have known Attorney Dunbar for years and years
7 and years. But I just wanted to point out
8 something that I kind of pay attention to. And I
9 think it's extraordinary and that's the
10 percentages that are associated, was
11 qualifications. And there's usually almost
12 always a percentage of nos and qualified, and,
13 but his is really the, one of the higher ones
14 that I've seen as far as, well, constitutional
15 qualifications, 85 percent. No one says he's
16 constitutional unqualified, ethical fitness,
17 almost 80 percent, 79.8. Only point zero point
18 eight percent say that he's unqualified.
19 Literally, three people out of 380 regard to
20 professional and academic ability 75.9 percent.
21 Unqualified, two people. Character 78 percent
22 well qualified, two people says he's unqualified.
23 I mean, I just think when you look at his career,
24 reputation, three people say that he's
25 unqualified. Seventy-seven point 2 said he's

1 well qualified. Physical fitness, nobody says he
2 unqualified. Mental health, nobody says he
3 unqualified. And six people said he's
4 unqualified with regard to experience. And no
5 people with regard to judicial temperament. And
6 so, when you look at such a long and illustrious
7 career, I think it's commendable that you have so
8 few people that say that you're unqualified. So,
9 I just wanted to point that out for purposes of
10 the record, Mr. Chairman.

11 MR. DUNBAR: Thank you, very much.

12 CHAIRMAN CASKEY: Thank you, Senator. You took the
13 words right out of my mouth. So, seeing no
14 further questions, this will end this portion of
15 our screening process. Mr. Dunbar, I do need to
16 take this opportunity to remind you that pursuant
17 to the Commission's evaluative criteria, the
18 Commission expects candidates to follow the
19 spirit as well as the letter of our ethics laws
20 and we will view violations or if it appears of
21 impropriety as serious and potentially deserving
22 of heavy weight in our screening deliberations.
23 On that note, and as you know, the record will
24 remain open until the formal release of the
25 Report of Qualifications and you may be called

1 back at such time if the need were to arise. I
2 want to thank you for being here today. Thank
3 you for offering for service to the State of
4 South Carolina and wish you all the very best.
5 And that will conclude this screening. So, thank
6 you again, sir.

7 MR. DUNBAR: Thank you again, sir. And thank Ms.
8 Crawford and Ms. Baker and Ms. Putnam as well.
9 They helped me through this.

10 CHAIRMAN CASKEY: We will stand at ease until the next
11 candidate is available for that screening.

12 (Off the Record)

13 CHAIRMAN CASKEY: All right. Good afternoon. We will
14 resume our screening process. Before us we have
15 Mr. Ken Gibson, who is an applicant for Seat 4 on
16 the 13th circuit, the 13th Judicial Circuit
17 Court. Do I have that right, Mr. Gibson?

18 MR. GIBSON: Yes, sir, Seat 4.

19 CHAIRMAN CASKEY: Seat 4, Circuit Court, the 13th?

20 MR. GIBSON: Yes, sir.

21 CHAIRMAN CASKEY: All right, sir. If you would,
22 please sir, raise your right hand?

23 KEN GIBSON, being duly sworn, and deposes
24 testifies as follows:

25 CHAIRMAN CASKEY: If you would, please, take a look at

1 the documents right in front of you.

2 MR. GIBSON: Okay.

3 CHAIRMAN CASKEY: Are those the personal data
4 questionnaire and the sworn statement that you
5 have submitted to the Commission?

6 MR. GIBSON: Yes, sir.

7 CHAIRMAN CASKEY: Are they correct?

8 MR. GIBSON: Yes, sir.

9 CHAIRMAN CASKEY: You need to make any updates or
10 changes?

11 MR. GIBSON: No, sir.

12 CHAIRMAN CASKEY: Do you have any objection to our
13 entering them into the record as part of your
14 sworn testimony?

15 MR. GIBSON: Not at all.

16 CHAIRMAN CASKEY: Thank you, sir. Let me give staff a
17 moment to do that. All right. The Judicial
18 Merit Selection Commission has thoroughly
19 investigated your qualifications for the bench.
20 Our inquiry is focused on nine evaluative
21 criteria and has included a ballot box survey,
22 thorough study of your application materials,
23 verification of your compliance with state ethics
24 laws, search of newspaper articles in which your
25 name appears, study of previous screenings, if

1 applicable, and any checks for economic conflicts
2 of interest. We have received no affidavits
3 filed in opposition to your election and no
4 witnesses are present to testify. All right. Do
5 you have any brief opening remarks you'd like to
6 give or would you prefer that we go straight to
7 questions from staff counsel?

8 (Exhibit Number 18 was marked for identification
9 purposes - (20 pages) Personal Data Questionnaire for
10 Ken Gibson)

11 (Exhibit Number 19 was marked for identification
12 purposes - (9 pages) Sworn Statement of Ken Gibson)

13 MR. GIBSON: At some point I want to thank a bunch of
14 people, but I can do that at the end.

15 CHAIRMAN CASKEY: That'll be fine. So, that's when
16 I'll recognize Mr. Hinson.

17 MR. GIBSON - EXAMINATION BY MR. HINSON:

18 MR. HINSON: Good afternoon, Mr. Gibson.

19 MR. GIBSON: Good to see you again, Mr. Hinson.

20 MR. HINSON: Good to see you. I note for the record
21 that based on the testimony contained in the
22 candidate's PDQ, which has been included in the
23 record with the candidate's consent, Mr. Gibson
24 meets the constitutional and statutory
25 requirements for this position regarding age,

1 residence and years of practice.

2 **Q. Mr. Gibson, how do you feel your legal and**
3 **professional experience thus far renders you**
4 **qualified and will assist you to be an effective**
5 **Circuit Court judge?**

6 A. I think that my experience, not just legally, but
7 also in life make me uniquely qualified to be a
8 Circuit Court judge. And particularly, in the
9 circuit in the 13th Judicial circuit. I've been
10 practicing law now for over 28 years. All of
11 that has been in litigation, in some form or
12 another, either civil litigation or criminal
13 litigation. I have practiced within the courts
14 of the 13th circuit, within those particular
15 courts in both Common Pleas court and in General
16 Sessions court for well over 20 years. I have
17 done thousands of hearings. I've tried tens of
18 cases. I've represented hundreds of clients in
19 both areas in which a Circuit Court judge would
20 need to be proficient in. I believe that my
21 education is top notch. I went to the United
22 States Military Academy at West Point. I went to
23 Georgetown University and Law Center. I have
24 practiced at -- in addition to practicing in
25 Greenville, I've practiced at some of the largest

1 law firms in the world. I started my practice at
2 Jones, Day, Reavis and Pogue, a preeminent law
3 firm, in the Atlanta office. I worked there for
4 four years, working on complex civil litigation
5 matters, including also business contract
6 matters, contract disputes, product liability
7 cases, trademark cases, class actions, all of
8 that. After that I went to another preeminent
9 law firm, Greenberg Traurig, in their Miami
10 office, worked there for six months, did the same
11 thing I was doing at Jones, Day, Reavis and
12 Pogue. Came back home, which is where I'm from,
13 Greenville, South Carolina and worked at Womble
14 Carlyle for two years. Again, working on complex
15 matters, class actions, product liability cases,
16 construction cases, employment, employment non-
17 compete agreements, the whole genre, if you will,
18 of business litigation type matters. The kind of
19 matters that you would expect them to anticipate
20 and hope that a Circuit Court judge was familiar
21 with it and able to handle as a trial judge.
22 After that I worked and went out on my own. I've
23 continued to do civil litigation work throughout
24 that period, but I've also done, primarily,
25 General Sessions work. During that time frame,

1 I've done -- I've represented, I've been on the
2 public defender contract list for a number of
3 years representing hundreds of defendants on
4 that. I've also done private General Sessions
5 cases. I've tried cases. I've tried murder
6 cases. I've tried death penalty cases. I've
7 tried rape cases. I've tried pretty much any
8 kind of case that you're talking about, as far as
9 General Sessions case, I've tried. In addition
10 to that, I am from Greenville, South Carolina.
11 Born and raised, moved away for a little while,
12 but came back. I am currently an elected member
13 of City Council. And I point that out, because
14 not only am I -- do I believe that I'm well known
15 and well thought of from the legal community. I
16 also believe that I'm well known and thought of,
17 well thought of within the community at large. I
18 received a great deal of support from -- not just
19 from, you know, my fellow lawyers regarding my
20 candidacy, but also from members of the
21 community. And then I think that if I am
22 selected for this position, not only, will I have
23 the confidence of the lawyers who I go in front
24 of, I'll also have the confidence of the
25 community. So, to answer your question, I think

1 I'm extremely well qualified.

2 Q. Thank you, Mr. Gibson. Mr. Gibson, the
3 Commission received 166 ballot box surveys
4 regarding you with 31 additional comments. The
5 ballot box survey, for example, contained the
6 following positive comments. One noted that
7 you'd make an exceptional candidate and then you
8 will make a great judge. Another stated, you'd
9 make a great judge. You have the integrity and
10 are well respected, you bring us a strong sense
11 of fairness to the judiciary. A couple of the
12 comments expressed concern. One of those
13 concerns was temperament. How would you address
14 that concern?

15 A. I think I have a really good temperament to be a
16 judge. I don't take things personally. My
17 father used to have a saying, my father was a
18 civil rights worker for decades, Dr. William
19 Gibson out of Greenville, South Carolina was head
20 of the NAACP. And he had a saying, I don't have
21 permanent friends. I don't have permanent
22 enemies. I only have permanent interests. And I
23 try to take that same saying and apply it to
24 pretty much every aspect of my life. I don't
25 hold grudges. I don't get angry with people. I

1 try to be fair in all of my dealings with people.
2 So, I'm not sure where that temperament issue may
3 come from. I mean, I certainly am a zealous
4 advocate for my clients when that entails that.
5 But like I say, I deal fairly with everybody who
6 I have and who I deal with and I think my
7 temperament is very well, very good.

8 **Q. Thank you, Mr. Gibson. And you kind of went**
9 **through this a bit. But another of the concerns**
10 **was your knowledge of the law and your**
11 **experience. How would you address that?**

12 A. I think if anybody expressed a concern about my
13 knowledge of the law and experience, they don't
14 understand the full breadth of what I've done as
15 a lawyer. And I think a lot of people see me in
16 court and they think that I only do criminal
17 defense work. But that's not the case. I mean,
18 as I've sort of, you know, ticked through at the
19 beginning, I am extremely experienced in both
20 areas, both criminal and civil litigation. But,
21 like I say, a lot of people -- I don't talk about
22 myself a lot. So, there are a lot of people out
23 there who don't know a lot of things about my
24 background. But, again, I think I'm very
25 experienced in all the areas that will be

1 necessary for a Circuit Court judge.

2 **Q. Thank you, Mr. Gibson. Mr. Gibson, you were**
3 **named as a defendant in the matter of McGill Park**
4 **Condominium Association versus Kenneth Gibson.**
5 **Can you explain the nature and the disposition of**
6 **that lawsuit?**

7 **A. I had a condo, when I was at Jones Day, living in**
8 Atlanta, I owned a condo unit. And I had a
9 dispute with my homeowners association, in that
10 there was -- my condo unit was on the backside of
11 the building. And there was a known areas that
12 they were not properly maintaining. They were
13 not properly cleaning up. We lived in an urban
14 environment. I had two small kids. There would
15 be debris, glass and other dangerous materials
16 that were left out. One day I walked out there
17 with my bare feet and cut my foot. And I started
18 withholding my HOA dues so that they would start
19 doing what they were supposed to do. They filed
20 suit against me. I filed a counter suit against
21 them, ultimately we ended up resolving the
22 matter.

23 **Q. Thank you. And then going back to 2001, you were**
24 **named as a defendant in the matter of Preserve at**
25 **Woodlake versus Kenneth Gibson. And then another**

1 **suit, a separate suit, the following year. Can**
2 **you describe the circumstances and the deposition**
3 **of both of those suits?**

4 A. About the time that both of those suits happened,
5 I had just went out on my own, as far as starting
6 my practice. And as a lot of lawyers do when
7 they're just starting out, I had some money
8 issues. It was an apartment complex, as soon as
9 you missed the rent, within five days, they file
10 automatically. I had two situations where that
11 happened. The rent was paid in time and the
12 matter was resolved.

13 **Q. You were named as defendant, Elaine Hunt versus**
14 **Kenneth Gibson. Can you --**

15 A. I have no idea what that lawsuit is. I was never
16 served with it, nothing ever happened with it.
17 And I don't know an Elaine Hunt. There is
18 another Kenneth Gibson in town, so maybe that was
19 who she was trying to sue. But I don't know
20 anything about that lawsuit.

21 **Q. It would seem that there's Burt's versus**
22 **Greenville Clerk of Court where you were named.**
23 **This matter was dismissed in 2007.**

24 A. I don't know anything about that either.

25 **Q. All right. In 2011, Aubin Liberte versus Kenneth**

1 **Gibson.**

2 A. Aubin was a client of mine. He retained me do a
3 federal habeas action for him. The habeas action
4 was unsuccessful. He thought that I should --
5 that I should return some of the fees. We went
6 before the Fee Disputes Board. The Fee Disputes
7 Board found that the fees that I had received I
8 earned. He was not happy with the decision. He
9 appealed it, that was the lawsuit. And it was
10 ruled and it resolved in my favor.

11 **Q. Thank you. And then lastly, in 2013, there was a**
12 **suit by a Vonda Butler, can you describe that for**
13 **us?**

14 A. Vonda was also a client of mine. I represented
15 her in a litigation action between she and her
16 homeowners association. After we lost at trial,
17 she wanted to appeal. I said -- Vonda was
18 actually was a friend of mine. We went to high
19 school together. She was already behind on her
20 fees. I told Vonda, I said, listen, I'll help
21 you with the appeal but I'm not going forward or
22 front the cost for it. So, you're going to have
23 to pay me as we go a long, as far as the costs
24 are concerned. And initially, I need \$150 from
25 you for the filing fee. She gave me \$150, we

1 filed a lawsuit. Eventually, it came time to
2 order a transcript. I said, Vonda, I need the
3 money to order the transcript. She didn't have
4 the money as anybody, you know, if you don't
5 prosecute a court of appeals action in the proper
6 time frame, it gets dismissed. It got dismissed.
7 She sued me, saying that I had said that I would
8 handle the entire appeal including all costs for
9 \$150. She owed me a bunch of fees, I
10 countersued her for them. Eventually, we
11 resolved it with her paying me the fees that she
12 owed me.

13 **Q. Thank you, Mr. Gibson. In your PDQ stated you**
14 **paid a fine to the State Ethics Commission for a**
15 **late filing?**

16 A. Yes, sir.

17 **Q. Can you just describe that for the Commission?**

18 A. I am -- like I say I'm on City Council. When I
19 ran, I ran unopposed for my first, I've been
20 opposed for two times now. I was unopposed. I
21 initially had a campaign account, that campaign
22 account was closed fairly quickly. Given the
23 closing of the account, there were some reports
24 that I did not update the records properly to let
25 them know the account had been closed. They were

1 expecting various reports from me. Those reports
2 were not filed. Eventually, we resolved it all
3 and I got everything sort of, you know, up-to-
4 date, as far as what it should be, as far as the
5 account was concerned. As part of the late
6 filing fees though, they fined me the \$300, which
7 I paid.

8 MR. HINSON: All right. Thank you for that, Mr.
9 Gibson. Mr. Chairman, at this time I would to
10 ask that we go into Executive Session to handle a
11 matter.

12 CHAIRMAN CASKEY: All right on the Motion of Senator
13 Talley, seconded by Representative Jordan, the
14 pending question is going into Executive Session.
15 All in favor signify by saying aye.

16 (Ayes are heard.)

17 CHAIRMAN CASKEY: All opposed nay.

18 (No reply is heard.)

19 CHAIRMAN CASKEY: Ayes have it. At this time we will
20 go into Executive Session to discuss a legal
21 matter and would ask that nonessential personnel,
22 please step out. All right.

23
24 (EXECUTIVE SESSION)

25 CHAIRMAN CASKEY: Ladies and Gentlemen, we are back on

1 the record now, having concluded our Executive
2 Session. For the record, while we were in
3 Executive Session, no decisions were made and no
4 votes were taken. We are resuming with our
5 screening process and I recognize Mr. Hinson.

6 MR. HINSON: Thank you, Mr. Chairman. Chairman, I
7 would note that the Upstate Citizens Committee
8 reported that Mr. Gibson is qualified in the
9 areas of constitutional qualifications, physical
10 health and mental stability, and well qualified
11 in the areas of ethical fitness, professional and
12 academic ability, character, reputation,
13 experience and judicial temperament.

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

18 A. Yes, sir.

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

22 A. No, sir.

23 **Q. Since submitting your letter of intent have you**
24 **sought or received the pledge of any legislator,**
25 **either prior to this date or pending the outcome**

1 of your screening?

2 A. No, sir.

3 Q. Are you familiar with section 2-19-70, including
4 the limitations on contacting members of the
5 General 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
9 are you aware of anyone attempting to intervene
10 in this process on your behalf?

11 A. No, sir.

12 Q. Have you reviewed and do you understand the
13 Commissions guidelines on pledging and code -- SC
14 code 2-19-70(E)?

15 A. Yes, sir.

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

21 CHAIRMAN CASKEY: Thank you, sir. Members and
22 Commission have questions or comments for Mr.
23 Gibson? All right.

24 MR. Gibson, I will just take this opportunity to
25 commend you, while we cannot show you the

1 ballot box comments in full, given our
2 anonymity protections, you have certainly
3 earned a reputation as someone who is bright
4 and industrious and has acquitted yourself,
5 at least well enough to have had several
6 people remark on your friendliness and your
7 professionalism. And so, I think that is a
8 credit to you, given your wide range of
9 professional experiences. I think you stand
10 out as someone who, as members of the Bar,
11 we can all be very proud of and I thank you
12 for that. Seeing no further questions or
13 comments from Commission members. That will
14 conclude this portion of our screening
15 process. I do want to take this opportunity
16 --

17 MR. GIBSON: May I do the thank yous.

18 CHAIRMAN CASKEY: Oh, you're right. I promised you
19 that opportunity and I glad you remembered that
20 and so, yes, Mr. Gibson.

21 MR. GIBSON: Thank you, thank you. I just want to
22 thank all of the staff who helped me through this
23 process. I would not have been able to get this
24 application in without the help of, particularly,
25 Ms. Crawford and Ms. Putnam. They were

1 extremely, extremely helpful with this. And they
2 are a credit to the state and to the government.
3 I want to thank Mr. Hinson for helping me prepare
4 for this hearing. I appreciate that greatly. I
5 also want to thank all the people who encouraged
6 me to run and all the people in the community to
7 have supported me in this process. You don't --
8 I mean, I've been practicing now for 28 years and
9 I don't think I've ever actually taken the time
10 to actual sit back and reflect upon, you know, my
11 law practice. But this whole process has really
12 sort of allowed me to do that for the first time.
13 And it's been a really, really good experience.
14 It has been really, really affirming. So, I
15 thank you all for that. Thank you for your time.
16 Thank you for consideration and, hopefully, I
17 will be a judge.

18 CHAIRMAN CASKEY: You're not done quite yet. I have
19 the scary part of the script here because it is
20 important that I remind you that pursuant to the
21 Commission's evaluative criteria, the Commission
22 does expect candidates to follow the spirit as
23 well as the letter of the ethics laws. And we
24 will view violations or the appearance of
25 impropriety as serious and potentially deserving

1 of heavy weight in screening deliberations. On
2 that note, and as you know, the record will
3 remain open until the formal release of Report of
4 Qualifications. And you may be called back as
5 such time if that need arises. So, we do
6 appreciate all the kind words, appreciate you
7 offering for service and wish you all the best
8 and certainly hope that you travel safely home.
9 That will conclude this portion of the screening
10 process. Thank you, sir.

11 MR. GIBSON: Thank you, y'all take care. Good seeing
12 y'all.

13 CHAIRMAN CASKEY: We will stand at ease as staff
14 brings in our next applicant.

15 (Off the Record)

16 CHAIRMAN CASKEY: All right. Good afternoon. We are
17 back on the record to proceed with our screening
18 today. Of course we have Mr. Will Grove, who is
19 a candidate for Seat 4 on the 13th Judicial
20 Circuit Court bench. Do I have that correct?

21 MR. GROVE: Yes. Thank you so much, Mr. Chairman.

22 CHAIRMAN CASKEY: All right. If you would, please
23 raise your right hand?

24 WILL GROVE, being duly sworn, testifies as
25 follows:

1 CHAIRMAN CASKEY: There should be some documents in
2 front of you. If you would, please take a look
3 at those?

4 WILL GROVE: Yes, sir. Exhibits 20 and 21.

5 CHAIRMAN CASKEY: Are those the personal data
6 questionnaire and the sworn statement that you
7 submitted to the Commission?

8 MR. GROVE: They are.

9 CHAIRMAN CASKEY: Are there any updates or changes
10 that need to be made to those?

11 MR. GROVE: No, sir. I submitted supplemental
12 attachments to my financial disclosures. But
13 outside of that, I didn't submit any amendments
14 to my -- the publishable documents, I suppose.

15 CHAIRMAN CASKEY: Thank you, sir. The staff tells me
16 that we have that in the record. Do you have any
17 objection to us including these documents in the
18 record as part of your sworn testimony?

19 MR. GROVE: I do not.

20 CHAIRMAN CASKEY: Thank you. We'll give the staff a
21 second to do that. All right. The Judicial
22 Merit Selection Commission has thoroughly
23 investigated your qualifications for the bench.
24 Our inquiry has focused on nine evaluative
25 criteria and has included a ballot box survey,

1 through study of your application materials,
2 verification of your compliance with state ethics
3 laws, search of newspaper articles in which your
4 name appears, study of previous screenings, if
5 applicable, and a check for economic conflicts of
6 interest. We have no affidavits filed in
7 opposition to your election and no witnesses are
8 present to testify. Before we go any further
9 though, I want to give you an opportunity to
10 introduce these folks that have joined us.

11 (Exhibit Number 20 was marked for identification
12 purposes - (18 pages) Personal Data Questionnaire for
13 Will Grove)

14 (Exhibit Number 21 was marked for identification
15 purposes - (7 pages) Sworn Statement of Will Grove)

16 MR. GROVE: Sure. Sorry, but my right, your left, is
17 my wife, Katie Grove. She's a lawyer who also
18 practices in Greenville. And to my left, your
19 right, is my law partner, Matt Ozment.

20 CHAIRMAN CASKEY: It appears that Mr. Ozment has not
21 found a barber since we were in law school
22 together. But certainly welcome you here.
23 Katie, thank you also for making the trip. We
24 would know who that is.

25 MR. GROVE: My reputation only, senator.

1 CHAIRMAN CASKEY: We certainly invite you to make any
2 brief opening remarks if you'd like. Otherwise,
3 we can proceed to questioning from staff counsel.

4 MR. GROVE: I'm just grateful for the time of this
5 committee and I'm grateful for the opportunity to
6 be heard. Thank you.

7 CHAIRMAN CASKEY: Thank you, in which case I will go
8 ahead and recognize Ms. Crater.

9 MR. GROVE - EXAMINATION BY MS. CRATER:

10 **Q. Hello there.**

11 A. Good afternoon.

12 MS. CRATER: I will note for the record that based on
13 the testimony contained in the candidate's PDQ,
14 which has been included in the record with the
15 candidates consent, William "Will" Eugene Grove,
16 meets the constitutional and statutory
17 requirements for this position regarding age,
18 residence and years of practice.

19 **Q. Mr. Grove, how do you feel your legal and**
20 **professional experience thus far renders you**
21 **qualified and will assist you to be an effective**
22 **Circuit Court judge?**

23 A. I've had an opportunity and I looked on the
24 calendar. I'll start my 15th year of practice by
25 the end of this week. I was sworn in 2009, and

1 between 2009 and now, I've had an opportunity to
2 practice in a number of different counties in
3 this state. And I've had the opportunity to
4 practice in a number of different courts in this
5 state. I know that ability to gather, not just
6 Common Pleas and General Sessions experience, but
7 also, to gather an opportunity to be present in
8 front of judges from every corner of this state
9 has given me a unique opportunity to prepare
10 myself if I deemed appropriate to serve on the
11 bench.

12 **Q. Thank you. Mr. Grove, the Commission received**
13 **240 ballot box surveys regarding you, with 62**
14 **additional comments. The ballot box survey, for**
15 **example, contained the following positive**
16 **comments, "Extensive experience in General**
17 **Sessions and Common Pleas. Tremendous work ethic**
18 **and ability to view both sides fairly. Held in**
19 **high regard by colleague and members of the**
20 **judiciary. Extensive knowledge base in multiple**
21 **areas of practice fields. Even-keeled judicial**
22 **temperament" and finally, "Will is both**
23 **intelligent and gracious. He is even tempered**
24 **and remarkably cool under pressure. I have no**
25 **doubt he would be fair to all the sides and he**

1 would uphold the high ethical standards." Only
2 two of the written comments expressed concerns,
3 which both related to your experience in civil
4 matters. What response would you offer to those
5 concerns?

6 A. Well, I would one, point out that is two comments
7 out of I think 240 submissions. And so, I'm
8 pleased that that concern isn't, doesn't seem to
9 be more prevalent than that, certainly. But I've
10 had an opportunity in the last two and a half
11 years to get back into civil practice. I started
12 my career in Charleston doing civil work before I
13 became a public defender. And in the last two
14 and a half years since opening my firm Grove
15 Ozment, that's given me another opportunity to
16 revisit that area of the law. And I've had an
17 opportunity to learn leaps and bounds from what I
18 thought I originally knew. And that's been an
19 excellent opportunity for me to make preparations
20 to, hopefully, serve the state on the Circuit
21 Court bench.

22 Q. Thank you. Mr. Grove, you've indicated in your
23 PDQ that a lawsuit was filed against you in 2014
24 and the case the United States District Court by
25 Derrick L. Jones. Mr. Jones, as a plaintiff,

1 **appeared pro se. Would you please explain the**
2 **nature or disposition of this lawsuit?**

3 A. Sure. I actually did not know that existed until
4 I previously applied for a position in 2020 and I
5 was notified during the screening process. I
6 represented Mr. Jones in my capacity as an
7 assistant public defender in the 4 Judicial
8 Circuit. He had, if I remember correctly -- he
9 had already been sentenced in Federal Court and
10 then still had State Court charges that were
11 pending after my representation was over. He
12 filed wrongful incarceration in a 1983 action.
13 It was never served on me or any of the other
14 named defendants, all of whom were either, if I
15 recall correctly, prior lawyers who had
16 represented him in some capacity. I think the
17 director of the local detention center and
18 perhaps the judge, as well, I don't recall. But
19 that was the nature of that lawsuit. It was
20 never served though, it was dismissed prior to
21 being served.

22 MS. CRATER: I will note that the Upstate Citizens
23 Committee reported that William "Will" Eugene
24 Grove is well qualified as to the evaluative
25 criteria of ethical fitness, professional, and

1 academic ability, character, reputation,
2 experience, and judicial temperament and
3 qualified in the evaluative criteria of
4 constitutional qualifications, physical health
5 and mental stability. The Committee had no
6 related comments or summary statements. I just
7 have a few housekeeping notes for you. Mr.
8 Grove, are you aware that as a judicial
9 candidate, you are bound by the Code of Judicial
10 Conduct as found in Rule 501 of the South
11 Carolina Appellate Court rules?

12 A. I am.

13 **Q. Mr. Grove, since submitting your letter of**
14 **intent, have you contacted any members of the**
15 **Commission about your candidacy?**

16 A. No, ma'am.

17 **Q. Since submitting your letter of intent, have you**
18 **sought or received a pledge of any legislator,**
19 **either prior to this date or pending the outcome**
20 **of your screening?**

21 A. No, ma'am.

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

25 A. Yes, ma'am.

1 Q. Have you asked any third parties to contact
2 members of the General Assembly on your behalf or
3 are you aware of anyone attempting to intervene
4 in this process on your behalf?

5 A. No, ma'am.

6 Q. And have you reviewed and do you understand the
7 Commission's guidelines on pledging in South
8 Carolina code § 2-19-70(E)?

9 A. Yes, ma'am.

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

16 CHAIRMAN CASKEY: Thank you, ma'am. Representative
17 Jordan is recognized.

18 REPRESENTATIVE JORDAN: Thank you, Mr. Chairman. Mr.
19 Grove.

20 MR. GROVE: How are you?

21 REPRESENTATIVE JORDAN: So, I'm going to steal a semi-
22 quote from my colleague Mr. Safran, who asked a
23 candidate earlier today, could you have ever
24 imagined years ago, you'd be in a setting like
25 this and I'd be on the other end of this

1 microphone over here?

2 MR. GROVE: Any concerns that I might have had have
3 been over whelmed by the reality of this moment.

4 REPRESENTATIVE JORDAN: So, of course, we go way back
5 and saw you try cases years ago when you were in
6 Florence. And your ability, of course -- there
7 is no doubt in my mind, your ability to do what I
8 saw years ago in the courtroom. And the
9 reputation you garnered, even though you weren't
10 in Florence a long time, but is someone who was
11 very capable. In fact, I'd occasionally call you
12 when I had a question about a particular rule or
13 issue. But I want to talk to you a little bit
14 about the civil stuff that you address. I know
15 you're in practice with Mr. Ozment back there.
16 Maybe we can get Mr. Chairman to swear him in and
17 ask him questions, too. I particularly want to
18 ask him about his record versus me, that's
19 neither here nor there. So, you've been in
20 private practice now for a number of years; is
21 that right?

22 MR. GROVE: That's correct.

23 REPRESENTATIVE JORDAN: And having that civil
24 opportunity. I know you've talked a little bit
25 about it. But tell me some more about some of

1 the things you've had the opportunity to
2 participate in on the civil side.

3 MR. GROVE: Sure. So, not just the actual ongoing
4 unfiled pending traditional civil actions that
5 you might have. But actual litigation is
6 something that I've had an opportunity to
7 participate in. I looked it up this morning and
8 we opened our firm in May of 2021, so about two
9 and a half years ago. I'm listed as primary in
10 six different cases. Several of them have
11 settled, several of them are still active. Matt
12 and I are also handling together with a co-
13 counsel, a civil action that has since been
14 removed to Federal Court. But that opportunity
15 to engage in the discovery process, to engage in
16 mediation, to engage in motions practice. Those
17 things have produced dividends that I couldn't
18 even imagined, in terms of my experience and in
19 terms of the ability and the knowledge that it's
20 brought me to help prepare me for this kind of a
21 position. So, I'm thrilled to have been able to
22 entertain that opportunity, to open up this firm
23 and to practice in both Common Pleas and in
24 General Sessions. And I'm grateful for the
25 experience that it's brought me.

1 REPRESENTATIVE JORDAN: Let me change gears just a
2 little bit for a quick, real quick ??? with you.
3 So, you also are a lawyer that has had some
4 practice in across the state in a very rural area
5 in the 4th Circuit. And then a semi, what I
6 would call a semi rural area in the 12th Circuit.
7 And now you're in the big city. What's the
8 commonality and how do you think that'll serve
9 you, should you be successful being a circuit
10 judge?

11 MR. GROVE: Well, I've had the benefit of seeing two
12 constants. One of them is that the law is the
13 same everywhere in the state, whether you're
14 practicing in a small corner in Marlboro County
15 or you are here in Richland County or up in the
16 Upstate in Greenville. The law doesn't change.
17 But I've also had the pleasure of seeing judges
18 address individuals whether they are litigants,
19 whether they are parties, whether they are
20 witnesses. And that interaction does change,
21 that is sort of constantly changing. In a way
22 that you might explain a ruling to a pro se
23 litigant in Bennettsville would be different than
24 you might address a lawyer whose practicing here
25 in Richland County. And to have that varied

1 experience of practicing in so many different
2 parts of our state in so many different
3 capacities has really benefitted me in making
4 what I think is as complete application for this
5 kind of a position, as possible.

6 REPRESENTATIVE JORDAN: Thank you for putting your
7 name in the hat. Thank you, Mr. Chairman.

8 MR. GROVE: Thank you, good to see you.

9 CHAIRMAN CASKEY: Thank you, Mr. Jordan. We are under
10 no threat of putting Mr. Ozment under oath, I can
11 promise you that. Mr. Safran.

12 MR. GROVE - EXAMINATION BY MR. SAFRAN:

13 Q. Thank you, Mr. Chairman. I believe when you came
14 here last time, you were still doing public
15 defender work for the most part.

16 A. That's correct.

17 Q. And I think one of the things people suggested to
18 you was to try to go get some civil experience.
19 You've done that. And that is something that,
20 honestly doesn't go unnoticed. We've said that a
21 lot of times to people who have a great deal of
22 ability and talent that sometimes one of the
23 throwbacks -- or the drawbacks, rather, is it
24 that, you know, they kind limited, in terms of
25 the scope of their practice. Tell me this. I

1 mean, I'm assuming criminal is still a lot of
2 what you do right now?

3 A. Yes, sir.

4 Q. All right. And you can't turn it down because
5 you're out there actually having to make a
6 living, right?

7 A. That's right.

8 Q. All right. And so, it depends on what comes in
9 and kind of how you work it. And you don't tell
10 them no if, basically, the doors have to remain
11 open, right?

12 A. Exactly.

13 Q. What have you gleaned out of the experience
14 you've had in the civil context that maybe was
15 different than what you were doing day-to-day in
16 the criminal area?

17 A. I don't know if it's different necessarily, but
18 it was a different experience for me certainly.
19 Having to look so far down the road, in terms of
20 what is this case going to look like in a certain
21 amount of time. One of the things that I have
22 found is the life of a civil case can certainly
23 last as long as some General Sessions cases,
24 especially the more serious ones. And that
25 ability and that need to anticipate what will

1 this case be calling for 18 months from now,
2 right. And the requirement that you be thinking
3 that far ahead, in terms of how you are
4 establishing the foundation of your case. How
5 you are engaging in discovery. What is it that
6 you were looking for and how you are trying to
7 make sure that you're putting your client in the
8 best position possible. Those things were
9 outside of my comfort zone. I was used to that
10 in the criminal world because they're certainly
11 elements of that as well. But it was exercising,
12 sort of a different muscle, I suppose, to be able
13 to make that adaptation in the Court of Common
14 Pleas. I think that is easily transferable to
15 the role of a judge. And to be thinking far
16 enough ahead, in terms of how the rulings are,
17 how to manage a docket, when to conduct this
18 particular hearing or another, and how quickly to
19 get orders out, when you know that parties,
20 litigants are otherwise are waiting on those
21 resolutions. The ability to look far enough
22 ahead to make sure that what I'm doing today will
23 be creating an opportunity for success of
24 whatever variation that may appear down the road.
25 That's a skill that I've been able to establish

1 and I'm grateful to have it.

2 Q. You know I see in a lot of what we hear back from
3 the Bar or particularly the ballot boxes is that
4 temperament is not an issue for you. And that's
5 a big plus. Tell me this though, I mean, you
6 think maybe some people might have a tendency,
7 because of your good nature, to kind of want to
8 try to push the envelope with you?

9 A. Maybe, but there's certainly a distinction
10 between temperament and firmness.

11 Q. And I think we talked about this. And I'm sure,
12 because I want to ask you about it, but we heard,
13 for instance, earlier today that one of the
14 candidates was talking about a judge controlling
15 the courtroom. And he gave us an example and
16 said that the air, you breath it differently in
17 the courtroom when he's there. That basically he
18 doesn't have to raise his voice. He doesn't have
19 to hardly turn his head. But everything remains
20 under his control and everybody understands it.
21 So, I'm assuming that's kind of what you're
22 alluding to.

23 A. I think so. But I think if you're sitting as a
24 judge, you also need to be careful that doesn't
25 stifle the parties ability to adequately

1 represent either themselves or whomever it is
2 that they are there to advocate for. You want
3 things to run orderly and you want everyone to
4 know they're assignments, so to speak. But you
5 don't want to do that in a way that will become
6 overbearing. And I can think of a number of
7 judges who do it very well, where everything runs
8 in a orderly fashion and everyone knows exactly
9 what's expected of them when they make those
10 appearances. And that's a wonderful opportunity
11 to advocate for a person in a setting like that.

12 **Q. Well, and actually as a caveat to what that**
13 **little discussion was, I think what they also**
14 **said was, is it more so than any other judge**
15 **they'd ever appeared in front of, they let**
16 **everybody do what they want to do, as far as**
17 **making their case, really let them know that,**
18 **hey, we've had our presentation today. So, I**
19 **guess the question is this, it's possible**
20 **certainly to be able to be able to be kind and at**
21 **the same time maintain decorum, maintain control.**
22 **Is that what your experience has been?**

23 **A. Yes, sir. And I would hope to be able to present**
24 **that myself.**

25 **Q. Tell me, we always like to hear this. And**

1 obviously, I'm only asking you on the good side.
2 But if you had to pick one or a couple of the
3 judges that you've been in front of and,
4 obviously, you've been in front of plenty of them
5 over the time, who would you kind of identify as
6 at least someone you'd want to emulate, in terms
7 of how they conduct business in the courtroom?

8 A. I thought a lot about that, just over my years.
9 And I'm not sure I'll be as brief as possible.
10 But I'm not sure that I can limit it to only two.
11 Because I think of it as sort of a Frankenstein's
12 monster, right? And to make an amalgam of a
13 number of different wonderful qualities that I've
14 seen from my early times in the 4th Circuit where
15 Judge Howard King was coming from Sumter and was
16 our chief administrative judge for General
17 Sessions. I got to hear him lay as clean a
18 record as I have ever heard where he was citing
19 the rules. He was giving a thorough verbal
20 analysis of how he came to his conclusion. He
21 would cite cases, chapter and verse, without
22 looking them up, you know. And it wasn't until a
23 few months or even years later that I realized
24 one, what a difficult thing that is to be able to
25 do. But two, how important it is that there is a

1 clear record of how a judge came to a particular
2 conclusion in the event that that needed to be
3 reviewed. In the 12th Circuit, I've had the
4 benefit of seeing Judge Nettles and moments in a
5 courtroom where things can get tense and that
6 doesn't happen all the time, but it certainly
7 does happen. His ability to defuse that
8 situation, whether it's with a light-hearted
9 remark or a little sly joke, there's a bad time
10 to do those things, right. Like that is not
11 always appropriate, but he has this uncanny
12 ability to sort of set everybody back at ease.
13 And sort of reset the thermometer, so to speak.
14 And that is a skill that it looks natural and
15 effortless to him. I imagine it probably took a
16 lot of time and a lot of effort to become, to
17 make it look so normal and effortless. Up in
18 Greenville, I don't know, I think it would be
19 malpractice for me to stand in front of you
20 coming from Greenville and not mention Judge
21 Verdin. That she has hand over fist, the best
22 ability to make everyone feel at ease in a
23 courtroom while also running it very directly and
24 very deliberately. She, I think more than
25 anybody else and there are plenty of good ones

1 out there, leaves the parties knowing that they
2 were heard when they walk out of the courtroom.
3 Whether the results were good, bad or in between,
4 they know I had my day, I was fully and entirely
5 heard. And if it worked out great and if it
6 didn't, also great. But she has the ability to
7 really impress upon people how seriously she
8 takes it. Judge Kinlaw, whose seat that I'm
9 running for, he is who I thought of when you
10 mentioned control of the courtroom because when
11 he comes in, everybody knows it's time to get to
12 business. He's not overbearing about it. You
13 know, he isn't demanding. But he has developed
14 an ability to expect that from people and they
15 deliver it time and again. And so, those are
16 just a few I could go on. But those are some
17 wonderful qualities that I've seen from judges
18 all over our state that I would hope have at
19 least, by osmosis or just regularity, maybe
20 landed on me.

21 **Q. Well, and I could tell you that you've heard in**
22 **different situations very good things about all**
23 **of them. I could tell you Judge Verdin and I**
24 **have never seen anybody who has garnered the**
25 **respect, the admiration and actually the love of**

1 the Bar like she has. I mean, never seen a
2 negative word. And, you know, she's earned the
3 reputation that she's got. And, you know, I
4 think basically that's what you want walking out
5 of a courtroom is to be able to feel like, you
6 know what, she may not have gone with me, but she
7 listened to every word and gave me every benefit
8 of hearing what I had to say. I'm assuming that
9 stuck with you.

10 A. I've been on the wrong end of many of her
11 rulings, rightfully so. But every time I left -
12 - and even my clients, sometimes they were
13 getting a substantial sentence in my days as a
14 public defender in front of her. But they left
15 understanding how she came to that decision and
16 knowing that they had a fair shake. And that is
17 an invaluable thing as a practitioner to know
18 that you can count on from a judge.

19 Q. And I think you're asking us, and I think
20 certainly legitimately to say, you don't
21 necessarily overly weigh the fact that I may not
22 have had a ton of civil background, and more or
23 less focused on criminal because I think I can
24 pick it up. I think that's what I'm hearing from
25 you.

1 A. Sure. I think I am a quick study, certainly.
2 I've also sort of begun to establish a
3 foundational base of knowledge and I'm grateful
4 to have that. I'm now probably three and a half-
5 ish years worth of just civil experience and then
6 a hybrid of civil and criminal experience. And
7 my original -- my first job out of law school was
8 only civil litigation. It wasn't settlement
9 stuff, it was pending, active, filed litigation
10 cases in civil court. All of them in Common
11 Pleas and I did that for about 10 months and then
12 I started my career as a public defender. And
13 since May of 2021, have worn both hat, so to
14 speak. So.

15 **Q. That's in Charleston?**

16 A. Yes, sir.

17 **Q. I guess going back to my question, I guess the**
18 **converse could be true too, correct? You may**
19 **come in with almost no criminal background, but**
20 **if you're capable, you can basically really do an**
21 **outstanding job, i.e., like Judge Morgan.**

22 A. You took the words right out of my mouth. I
23 think he's done an exceptional job and I can tell
24 you that there's not a great, there's not a
25 single person in Greenville who's not grateful to

1 have him serving on our bench.

2 **Q. We appreciate your offering again and thank you**
3 **for answering my questions.**

4 A. Thank you.

5 CHAIRMAN CASKEY: Senator Rankin.

6 MR. GROVE - EXAMINATION BY VICE CHAIRMAN RANKIN:

7 **Q. Thank you Mr. Grove for filing again, right?**
8 **This is your second time?**

9 A. Yes, Mr. Vice Chairman.

10 **Q. And I am curious because I well recall you**
11 **before. Likewise running for a Circuit Court**
12 **seat, a different seat, but in the same judicial**
13 **circuit, correct?**

14 A. Yes, sir.

15 **Q. What is complex civil litigation?**

16 A. One of my submitted writing samples. It
17 references complex civil litigation. Matt and I
18 have an opportunity in a handful of different,
19 they sort of surround land dues actions. But the
20 one in particular is currently pending in Federal
21 Court. It involves landfill in the upstate area
22 and the citizens around it and we represent the
23 landowners who were there prior to the existence
24 of the landfill in an private action for public
25 nuisance. And if you --

1 Q. That's complex enough for me. So ...

2 A. If you have trouble sleeping at night, take that
3 writing several ways.

4 Q. I'm afraid you're going to ask me a question if
5 you continue going. That's very complex and I
6 appreciate the answer.

7 A. Absolutely.

8 Q. Thanks for running again and that's all I have.

9 CHAIRMAN CASKEY: Any other questions or comments from
10 Mr. Grove. Mr. Grove, I think I'd be remiss if I
11 didn't join in with my colleagues and commended
12 you for the reputation that you've earned within
13 the Bar. At least, as reflective in these ballot
14 box surveys, which, of course we can't share
15 directly with you because of anonymity concerns.
16 But at the risk of perhaps making Katie overly
17 prideful, I'll share with you that consistently
18 some of the words used here are respectful, keen
19 intellect, incredibly intelligent, patient, kind,
20 hard-working, diligent and I think that's a
21 credit to your self and to your hard work and
22 what you've done and you should be proud of that
23 because it makes all of us who are members of
24 this legal community proud that we have members
25 who are distinguishing themselves in that way. I

1 did not see anything about your willingness to do
2 projects around the house on the weekends, that
3 may be an opportunity for improvement in the
4 future. But seeing as how that is not one of
5 our nine evaluative criteria, we will have to
6 leave that to others to judge at the appropriate
7 time and place. This does however conclude this
8 portion of our screening process. I want to take
9 this opportunity though to remind you that
10 pursuant to the Commission's evaluative criteria,
11 the Commission expects candidates to follow the
12 spirit as well as the letter of the ethics laws
13 and that we will view violations or the
14 appearance of impropriety serious and potentially
15 deserving of heavy weight in the screening
16 deliberations. On that note and, as you know,
17 the record will remain open until the formal
18 release of the Report of Qualifications and you
19 maybe called back at such time if that need were
20 to arise. I want to, again, thank you for
21 offering for service to the State of South
22 Carolina. Thank you for your patience and timing
23 of today's hearing. And I commend you for your
24 willingness to serve the State of South Carolina
25 going forward. And with that, we will stand,

1 with this part of the process concluded. Thank
2 you, sir. We will take a brief five minute
3 recess so that everyone can prepare.

4 (Off the Record)

5 CHAIRMAN CASKEY: Ladies and Gentlemen, we are back on
6 the record as we proceed with our screening
7 process. Before us is Mr. Joseph Bias, who is a
8 candidate for Seat 11 of the Circuit Court bench,
9 which is an at-large seat. Do I have that
10 correct?

11 MR. BIAS: That's correct.

12 CHAIRMAN CASKEY: All right. Would you please, sir,
13 raise your right hand.

14 JOSEPH BIAS, being duly sworn, testifies as
15 follows:

16 CHAIRMAN CASKEY: All right. There should be some
17 documents there in front of you. If you would
18 take a moment to look at those.

19 MR. BIAS: Okay.

20 CHAIRMAN CASKEY: Are those the Personal Data
21 Questionnaire and Sworn Statement that you
22 submitted to the Commission?

23 MR. BIAS: They are, sir.

24 CHAIRMAN CASKEY: Are there any changes or updates
25 that need to be made?

1 MR. BIAS: Two minor ones. I believe at the time that
2 I filled out the Personal Data Questionnaire I
3 had not made any expenditures relating to this
4 candidacy. Since then I've bought name tags, and
5 I've bought paper, two for mailers type thing.
6 The other minor change is that when I originally
7 did the Personal Data Questionnaire it was
8 brought to my attention during my interview with
9 the JMSC staff attorney that I neglected to add a
10 -- I was a plaintiff in a civil matter when my
11 father passed away, and we had to evict the
12 resident from the home that we were renting out.
13 I filed a motion to vacate that -- nothing ever
14 came of it because we couldn't find the person.

15 CHAIRMAN CASKEY: All right. If I could, would you be
16 willing to supplement the record with that in
17 written form?

18 MR. BIAS: Absolutely, sir. Actually that was my
19 intent when this matter was going to be scheduled
20 for later on in the month. I wanted to submit
21 that as close to that time as possible, but I
22 will certainly do so following this hearing
23 today.

24 CHAIRMAN CASKEY: Fantastic. And despite the fact
25 that we have kept you waiting so long in the day,

1 I would ask that you do that certainly before
2 first thing in the morning so we have that in the
3 record available for tomorrow.

4 MR. BIAS: Absolutely.

5 CHAIRMAN CASKEY: Do you object to our making these
6 documents and those documents to come a part of
7 the record of your sworn testimony?

8 MR. BIAS: Not at all, sir.

9 CHAIRMAN CASKEY: All right. I will now give staff an
10 opportunity to do that. The Judicial Merit
11 Selection Commission has thoroughly investigated
12 your qualifications for the bench. Our inquiries
13 focus on nine evaluative criteria and has
14 included a ballot box survey, a thorough study of
15 your application materials, verification of your
16 compliance with state ethics laws, a search of
17 newspaper articles in which your name appears, a
18 study of any previous screenings and a check for
19 economic conflicts of interest. We have received
20 no affidavits filed in opposition to your
21 election, and no witnesses are present to
22 testify. Before recognizing you for an
23 opportunity to make any brief opening statement
24 should you wish to do so, I do want to give you
25 an opportunity to introduce this young lady who

1 has joined you here today.

2 (Exhibit Number 25 was marked for identification
3 purposes - (15 pages) Personal Data Questionnaire for
4 Joseph Bias.)

5 (Exhibit Number 26 was marked for identification
6 purposes - (1 pages) Amendment to Personal Data
7 Questionnaire for Joseph Bias.)

8 (Exhibit Number 27 was marked for identification
9 purposes - (7 pages) Sworn Statement of Joseph Bias.)

10 MR. BIAS: Well, I have two young ladies with me
11 today, sir. The -- I guess the youngest of the
12 two ladies --

13 CHAIRMAN CASKEY: We don't need to make time
14 judgments.

15 MR. BIAS: Sir, I have to leave here with both of
16 them. So I'm not going to make any comments.
17 The woman to my left is my mother, Mary Bias. My
18 mom was a school nurse at Richland School
19 District 1 for 28 years. And she recently
20 retired, I think at the perfect time, right
21 before the pandemic. Didn't have to be a school
22 nurse anymore. And now has a much more, I would
23 like to think, rewarding job of chasing around
24 two grandkids 13 months and less, one of ours and
25 my brother's. The other young lady is my wife,

1 Dr. Yasmin Gabr Bias. Dr. Bias and I have been
2 married for three years now, and she is the
3 mother of one of the aforementioned
4 grandchildren, who have brought joy into my life.
5 So anyway, they have been nice enough to join me
6 today, and I certainly appreciate their
7 appearance in front of this Committee.

8 CHAIRMAN CASKEY: Well, thank you for that, and
9 ladies, thank you for being here. I offer
10 apologies for not being able to see that far. So
11 sorry. Glad you're here joining Mr. Bias in this
12 process. And so, sir, if you would like to make
13 a brief opening statement. You're certainly not
14 obligated to, we would be happy to hear from you.
15 Otherwise, we will go straight to questions from
16 staff counsel.

17 MR. BIAS: To be honest, Representative Caskey, my
18 opening statement was going to be to introduce
19 these two women by me. I know you've got to be
20 listening to lawyers all day, so I'll waive an
21 opening statement today.

22 CHAIRMAN CASKEY: Thank you, sir. Then in that case,
23 I will recognize Ms. Benson.

24 MS. BENSON: Thank you, Mr. Chairman. Mr. Chairman, I
25 note for the record that based on the testimony

1 contained in the candidate's PDQ, which has been
2 included in the record and will be supplemented
3 with the candidate's consent, Mr. Bias meets the
4 constitutional and statutory requirements for
5 this position regarding age, residence and years
6 of practice.

7 MR. BIAS - EXAMINATION BY MS, BENSON:

8 **Q. Mr. Bias, how do you feel your legal and**
9 **professional experience thus far renders you**
10 **qualified and will assist you to be an effective**
11 **Circuit Court judge?**

12 A. Thanks for that question, Ms. Benson. So I
13 actually have a unique background in that I know
14 a lot of the candidates for this position are
15 solicitors, public defenders or have a trial-
16 based practice. Mine for the most part isn't. I
17 did do litigation for about seven years. I did
18 start my career as a public defender. So I do
19 think that I have a good mix of civil and
20 criminal experience. But I think that maybe sets
21 me apart from other candidates is that I also was
22 a general counsel, and today I serve as an
23 outside general counsel. What that means that in
24 a case that comes up where there's a contract
25 matter I've actually read contracts. In a case

1 that comes up where there's a real estate or
2 property matter, I've actually done real estate
3 closings. So I've wanted this job for a long
4 time. I did not think it would be this year that
5 I'd be running, but I'm sure we'll go into that.
6 But frankly, I think that everything that I've
7 done in my career makes me a great candidate for
8 this position. That's really why I'm excited to
9 be in front of you guys today.

10 **Q. I believe Mr. Bias, during our conversation, you**
11 **mentioned that you had been a clerk for Judge Lee**
12 **and that perhaps she was part of your**
13 **inspiration?**

14 **A.** Yes, ma'am. So I started off my career as Judge
15 Lee's law clerk. Again, as I touched on before,
16 I wasn't intending on running on for this
17 position this year, but I got a call earlier this
18 year saying, hey, this is the year. Are you
19 interested in it? And because I respect Judge
20 Lee so much and because of the impact she had on
21 me when I was working in that office, it only
22 seemed natural that I kind of put my other plans
23 aside to do this. I had an amazing experience
24 there, and frankly, she has been such an integral
25 part of my life where she actually officiated the

1 wedding of me and my wife here. So when I
2 started off this year I didn't think I'd be in
3 front of you guys, but now I'd rather be nowhere
4 else.

5 **Q. Mr. Bias, you mentioned and from your PDQ, you**
6 **have a diversity of experience, and you've had**
7 **numerous jobs. You've spent several years in**
8 **different places. If you are elected, are you**
9 **committed to serving a full term as a judge?**

10 **A.** Ms. Benson, if I'm elected, I'd like to retire as
11 a judge. I have -- this has always been in my
12 mind. My mom will tell you if you put her under
13 oath that, apparently, and I didn't know this, I
14 met Chief Justice Toal when I was younger, and I
15 told her that one day I'd want to take her job.
16 And while I don't have those aspirations anymore,
17 this job and this position is something that I
18 would retire doing.

19 **Q. Thank you. Mr. Bias, the Commission received 200**
20 **ballot box surveys regarding you, 37 of which had**
21 **additional comments. Many of them were very**
22 **complimentary stating that you're an excellent**
23 **writer, you have a very professional demeanor,**
24 **even-tempered and thoughtful, smart, incredibly**
25 **kind and humble and integrity unmatched. Two of**

1 **the comments expressed concern about your**
2 **experience. How would you respond to your**
3 **experience level?**

4 A. So I actually think the comments as were related
5 to me were valid. One of them was that I have a
6 dearth of criminal experience, and I don't know
7 if the person who wrote that knew that I was a
8 public defender. But I'll sit here in front of
9 you and tell you that, yeah, that was ten years
10 ago. So for things that I would challenge myself
11 in this position, I'd want to continue to bone up
12 on criminal law, to re-familiarize myself with
13 those things to be as effective as I can in that.
14 I believe the other was maybe a lack of actual
15 trial experience. The comment I would say to
16 that is I think that's valid, too. And that
17 because I haven't had a trial-based practice for
18 the majority of my career that's a true -- I
19 wouldn't say criticism -- a true comment. What I
20 will say is that I've coached a mock trial at
21 every level, college, high school and law school.
22 I continue to do that today. Part of the reason
23 I did that is because growing up and learning
24 about this career I learned that people weren't
25 trying as many cases anymore. So how could I

1 continue to keep my skills up, teach high-
2 schoolers, and they keep me humble, and also I am
3 familiar with the rules of evidence. When it
4 comes to the rest of the litigation thing, I'm
5 fortunate enough to be an instructor at the law
6 school, and so I teach as a civil litigation
7 capstone course instructor every spring for
8 there. And again, my class goes from our initial
9 client interview all the way up until mediation,
10 and then, you know -- and so we teach everything
11 from discovery and depositions and everything.
12 So even when I haven't been in courtrooms, which
13 would have been honestly the last four years, I
14 like to think that I'm pretty connected to the
15 courtroom atmosphere here in South Carolina.

16 **Q. Thank you.**

17 MS. BENSON: I would note that the Midlands Citizens
18 Committee reported that Mr. Bias is qualified in
19 the evaluative criteria of constitutional
20 qualifications, physical health and mental
21 stability and well qualified in the evaluative
22 criteria of ethical fitness, professional and
23 academic ability, character, reputation,
24 experience and judicial temperament. The
25 Committee also noted, "Will do well on trial

1 bench."

2 Q. Mr. Bias, a few housekeeping issues. Are you
3 aware that as a judicial candidate you are bound
4 by the Code of Judicial Conduct as found in Rule
5 501 of the South Carolina Appellate Court Rules?

6 A. I am.

7 Q. Since submitting your Letter of Intent, have you
8 contacted any members of the Commission about
9 your candidacy?

10 A. No, ma'am, I have not.

11 Q. Since submitting your Letter of Intent, have you
12 sought or received the pledge of any legislator,
13 either prior to this date or pending the outcome
14 of your screening?

15 A. No, ma'am, I have not.

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

19 A. Yes, ma'am, I am.

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

24 A. I have not, and no, I'm not aware of anyone.

25 Q. Have you reviewed and do you understand the

1 **Commission's Guidelines on Pledging and South**
2 **Carolina Code § 2-19-70(E)?**

3 A. Yes, ma'am, I am.

4 **Q. Thank you.**

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

10 CHAIRMAN CASKEY: Thank you, ma'am. Do members of the
11 Commission have any comments or questions for Mr.
12 Bias? Mr. Bias, let me first say that I noted
13 one of the comments, an appreciation for your
14 willingness to speak within the legal public --
15 or the public legal conversation vis-a-vis your
16 podcast direct examination. Is that something
17 that you're continuing to do?

18 MR. BIAS: No, sir. We ended that podcast basically
19 when my wife got pregnant. There's just not
20 enough time. I will say that I was pleased to be
21 asked by the South Carolina Bar to be on a panel
22 with Vincent Sheheen and I believe Mr. Lourie
23 regarding podcasts and their effects on trials
24 and on trial, you know, proceedings. That will
25 be in January at the Bar Convention, but as far

1 as my personal podcast or our podcast, excuse me,
2 it's no longer going forward.

3 CHAIRMAN CASKEY: Okay. Well, nonetheless, I will
4 commend you for being willing to undertake that.
5 I think that ours is a profession that oftentimes
6 is reluctant to take on new modes of
7 communication and willingness to try and reach
8 the public wherever they are. And by
9 implication, my implication, I will assume that
10 it was not my one appearance on one of the first
11 episodes that sunk that podcast, but is instead
12 attributable to your other time commitments. The
13 other thing I really do want to express to you is
14 in your response to questions from Ms. Benson
15 about your experience in the criminal context,
16 one of the challenges inherently in any candidacy
17 is the balance of experiences that one might
18 have. And so sometimes a candidate might appear
19 with only criminal or only civil experiences.
20 You have a mix of experiences, and I just want to
21 say I appreciated the humility with which you
22 answered the question. You have been in the
23 courtroom. You have significant criminal
24 experience, and yet your first response was to
25 say that it had been ten years ago and that you

1 need to return to that. That's the sort of
2 forthrightness that I certainly value. Because I
3 think sometimes it can be tempting as you stand
4 where you stand and see the questions come, and
5 there's a pressure that mounts sometimes to say
6 you have the answer to everything at all times.
7 And I find that encouraging that you would do
8 that. The last thing that I have -- and again,
9 other members of the Commission may have
10 questions or comments for you -- but I would be
11 remiss if I didn't share with you some of my
12 observations from the ballot box surveys, which
13 of course you can't see for reasons of anonymity.
14 But the comments with respect to, you know,
15 excellent judicial temperament, intelligence,
16 integrity, hard working, kindness and humility
17 appear again and again. And I think you should
18 be very proud of that as a credit to what you
19 have earned in terms of reputation. And as a
20 fellow member of the Bar, I think it's something
21 that I will say I am glad to see, you know,
22 colleagues who distinguish themselves in that
23 way. In fact, as far as I can tell, your biggest
24 weakness is that you're a Broncos fan.

25 MR. BIAS: It's a huge weakness I admit.

1 CHAIRMAN CASKEY: Chairman Rankin, did you have a
2 question or comment.

3 VICE CHAIRMAN RANKIN: When you're finished, sir.

4 CHAIRMAN CASKEY: Yes, sir.

5 VICE CHAIRMAN RANKIN: That would be the Denver
6 Broncos or Bronco, Ford Broncos?

7 MR. BIAS: No, that would be the Denver Broncos. So
8 very briefly, I went to Richland Northeast High
9 School. So I never wanted to buy the Northeast
10 stuff because I think it was too expensive, but
11 one day we saw an orange and blue jacket that was
12 the Broncos. And they happened to be really good
13 at the time, and so, yes, that's the worst
14 decision that I've made professionally, but I'll
15 continue to work on that. And I would not want
16 to curse my daughter to also be a Broncos fan, so
17 we need to figure something out.

18 VICE CHAIRMAN RANKIN: My oldest child will be 26 in
19 January. And I'll never forget because there are
20 pictures, of his homecoming from the hospital,
21 Elway, John Elway --

22 MR. BIAS: Yes, sir.

23 VICE CHAIRMAN RANKIN: -- wins for Denver, the last
24 Super Bowl they won. And so that would be 26 --
25 I guess the Bowl is this January, right?

1 MR. BIAS: Yeah.

2 VICE CHAIRMAN RANKIN: Twenty-six years ago.

3 MR. BIAS: Well, not to correct you, sir, but we did
4 win one with Peyton Manning in 2015, but I will
5 say that it has been largely downhill from there.
6 And we're playing Monday night football. I say
7 we as if I'm ever going to be playing football.
8 But we'll be playing Monday night football
9 tonight, and I'll just ask that you not connect
10 my candidacy with our performance against the
11 Buffalo Bills.

12 VICE CHAIRMAN RANKIN: Well, you know, there's a team
13 called Kansas City that --

14 MR. BIAS: Well, I've heard of them, sir. And it's --

15 VICE CHAIRMAN RANKIN: Vanquished. You vanquished,
16 surprisingly.

17 MR. BIAS: And it adds insult to injury that my wife
18 behind me just thinks Patrick Mahomes is dreamy.
19 So every time we lose a football game to the
20 Chiefs I have to hear how cute Patrick Mahomes is
21 as well. So, yeah, it's --

22 VICE CHAIRMAN RANKIN: Super Bowl guys apparently.

23 MR. BIAS: That's right, that's right.

24 VICE CHAIRMAN RANKIN: Anyway, enough of that. I want
25 to just comment about your affect, your energy,

1 your spunk, not just for show. It's late. We've
2 had you sitting here icing you just to see how
3 spunky you get, purposefully. Chairman Caskey
4 said let's see what he can come up with. I say
5 that in jest, but your PDQ, your walk in life
6 professionally thus far, and to me as a Carolina
7 fan, your role with both Midlands Tech and the
8 University of South Carolina, is wonderful,
9 because you are projecting to them the upbeat
10 optimism of problem solving and public service.
11 And so running for this position, though the
12 earlier call than you expected perhaps, I think
13 the people that you touch will be proud of you as
14 your mother, young mama, and younger wife
15 likewise surely are here today. And so I want to
16 thank you for offering for this position.

17 MR. BIAS: Thank you, sir. I will say briefly that I
18 am here today -- and like I said, I mentioned
19 that I am a volunteer attorney coach for
20 Northeast High School. And as someone who
21 graduated from that high school I can tell my
22 students that I am here today because a lot of
23 people invested in me, you know, teachers and
24 attorneys and judges. They've all invested in
25 me, and of course, most of which is sitting

1 behind me. So that makes me feel good. I
2 appreciate you noting that, and my hope in this
3 position is to have that same impact on not only
4 the law clerks I would have for this position but
5 young attorneys and the general public to
6 hopefully maybe illuminate some of the areas of
7 law that we can to bring some public knowledge to
8 things and also to maybe de-mistify the process
9 as much as we can, so, thank you.

10 CHAIRMAN CASKEY: Senator Sabb.

11 SENATOR SABB: Thank you, Mr. Chairman. And I just
12 kind of wanted to pick up from there because I
13 recognize your contribution to the mock trial
14 team. And I had a mock trial team for a couple
15 of years and just really enjoyed the experience.
16 But I mean, it's preparation of an entire case
17 that you have to teach to our young ones and
18 teach them the rules of evidence and all of the,
19 you know, courtroom decorum stuff and all of
20 that. And so I know the time that it takes to
21 put into that, and for you to be doing it as long
22 as you're doing it I think it's a credit to you.
23 We had another person who is now on one of our
24 Family Court benches, Holly Wall, who coached the
25 team out of Johnsonville. And I never could get

1 past a certain level because we always ran up
2 against Holly's teams, and they performed so
3 extraordinarily, on a high level. And the other
4 thing that I just want to share with you, we've
5 got one of our other jurists, Judge Grace Knie,
6 who was holding court in Williamsburg County.
7 And I just happened to have my group there
8 watching, and the trial ended, and she had extra
9 time. And she noticed my group out there, and
10 she literally created a fact pattern on the fly
11 and, you know, named a judge, named some juries
12 and named some lawyers and some witnesses and
13 went through that exchange. And it was just
14 great for the kids. I mean, they literally still
15 talk about it. And so the other last point that
16 I'll make on it is we had a number of the kids
17 that were in those classes that are now aspiring
18 to be lawyers. And I just -- I mean, you can
19 really see the impact that you're having. And so
20 I just wanted to express my appreciation for you
21 and how it's clear that you don't view your role
22 as just being working in the office. You see the
23 impact that you can have on others, and quite
24 frankly, I believe that's a part of our
25 responsibility. It's not only about us and

1 earning a good living. It's about us and giving
2 back and inspiring and all those kind of things,
3 and you're doing that, and I appreciate it.

4 MR. BIAS: Thank you, Senator. I'm proud to say that
5 I started coaching high school mock trial while I
6 was still in law school and that two of my first
7 class of mock trial are actually practicing
8 attorneys now. Now that makes me feel really
9 old, but I'm thrilled for their progress and I'm
10 hopeful that they will -- you know, we'll
11 continue to have kids go for it and join this
12 profession.

13 SENATOR SABB: Absolutely.

14 VICE CHAIRMAN RANKIN: Other questions by anyone else?
15 Mr. Bias, you've already made an opening
16 statement I think, but if you would like to make
17 any other remarks, you can have the opportunity
18 to do that.

19 MR. BIAS: I appreciate you guys considering me
20 concerning this candidacy. This something,
21 again, that I touched on earlier that I've
22 dreamed of. This is a role -- I think if this
23 doesn't work out and I'm ever in front of your
24 guys again, you'll hear me say that I've always
25 wanted to be a judge. But for this particular

1 seat, for this particular person who's meant so
2 much to me, it just means the world. And so I am
3 thrilled that my wife gave me the thumbs up to
4 follow my dreams in this and that my one-year-old
5 baby gave me a high five. She didn't know what
6 she was agreeing to, sir, but she did high five
7 me. So I think that's a contract we can hold
8 over her for the rest of life. But, no, I'm
9 thrilled to be a part of this process and really
10 have enjoyed getting to meet all the other
11 candidates and, of course, getting to meet y'all
12 here today.

13 VICE CHAIRMAN RANKIN: Thank you so much. All right,
14 sir. This will conclude this portion of our
15 screening process. We want to remind you
16 particularly our adherence to both the letter and
17 the spirit of the ethics laws and that any
18 violation or the appearance of a violation of
19 those laws would be deemed very serious on our
20 part. In the unlikely event that that were to
21 occur, you understand that we would have the
22 right to call you back for further questioning,
23 correct?

24 MR. BIAS: Yes, sir.

25 VICE CHAIRMAN RANKIN: As you know, this record

1 remains open until the formal release of the
 2 Report of Qualifications, and again, we don't
 3 expect it, but for the record you know we can to
 4 that, correct?

5 MR. BIAS: Yes, sir.

6 VICE CHAIRMAN RANKIN: All right, sir. Thank you,
 7 your mother and your wife and your one year old
 8 for high-fiving you today, and we're going to
 9 high-five you adieu, and happy trails today.

10 MR. BIAS: Thank you all. Y'all have a nice evening.

11 (Off the Record)

12 VICE CHAIRMAN RANKIN: Good morning, Judge.

13 JUDGE HILTON: Good morning or good afternoon.

14 VICE CHAIRMAN RANKIN: What? It just seems like it's
 15 just started. Thank you for being here. Let me
 16 first have you raise your right hand.

17 THE HONORABLE RUSSELL D. HILTON, being duly
 18 sworn, testifies as follows:

19 VICE CHAIRMAN RANKIN: Thank you. You have before you
 20 documents that you prepared for us, a PDQ and a
 21 Sworn Statement. Are those ready to be entered
 22 in the record, or do you need to make any
 23 corrections?

24 JUDGE HILTON: There was an amendment that was filed
 25 as Exhibit 29, and that is in there, so those

1 appear to be ready to be entered in.

2 VICE CHAIRMAN RANKIN: Very good. All right. We will
3 put those into the record at this point without
4 objection. And Judge, you are a what type of
5 judge now?

6 (Exhibit Number 28 was marked for identification
7 purposes - (18 pages) Personal Data Questionnaire The
8 Honorable Russell D. Hilton.)

9 (Exhibit Number 29 was marked for identification
10 purposes - (2 pages) Amendment to Personal Data
11 Questionnaire for The Honorable Russell D. Hilton.)

12 (Exhibit Number 30 was marked for identification
13 purposes - (8 pages) Sworn Statement of The Honorable
14 Russell D. Hilton.)

15 JUDGE HILTON: I'm a Municipal Judge in Moncks Corner.
16 Please feel free to call me Russ.

17 VICE CHAIRMAN RANKIN: But also a Special Master?

18 JUDGE HILTON: I was a Special Referee for a brief
19 moment in time several years ago now.

20 VICE CHAIRMAN RANKIN: Very good. You have with you
21 someone that we would love for you to introduce
22 if you would like.

23 JUDGE HILTON: I do. This is my lovely wife, Beth.
24 We've been married for 17 years, and she's here
25 in support of me today.

1 VICE CHAIRMAN RANKIN: Very good. Welcome. Thank
2 you, and I apologize for the late hour here. We
3 are working to end this and appreciate your
4 patience. All right. You are familiar with our
5 process now having partially completed it,
6 correct? You've never applied for a position
7 before, correct?

8 JUDGE HILTON: That's correct.

9 VICE CHAIRMAN RANKIN: All right. You know that our
10 focus here is on the nine evaluative criteria,
11 which includes the ballot box survey, a study of
12 your application materials, verification of your
13 compliance with state ethics laws, a search of
14 newspaper articles in which your name appears and
15 then a check for economic conflicts of interest.
16 No statements or affidavits have been filed in
17 opposition to your campaign, and no one is here
18 to testify against you. You have the opportunity
19 to make a brief opening statement if you would
20 like. Otherwise, we'll turn it over to counsel
21 for questions. The floor is yours to make a
22 statement or to yield to questions.

23 JUDGE HILTON: I know y'all are behind time. Thank
24 you for what you do, and I will waive any
25 opening.

1 VICE CHAIRMAN RANKIN: All right. Mr. Triplett.

2 MR. TRIPLETT: Thank you, Mr. Chairman.

3 JUDGE HILTON - EXAMINATION BY MR. TRIPLETT:

4 **Q. Good evening, Mr. Hilton. How are you?**

5 A. I'm good.

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

13 **Q. Judge Hilton, why do you want to become a Circuit**
14 **Court judge?**

15 A. Well, I've been giving a lot of thought to that
16 lately, and the screening committee asked me that
17 question as well. You know, it's one of those
18 things when I worked in the solicitor's office I
19 enjoyed my time there. I enjoyed the public
20 service behind that. I've been in private
21 practice now for about going on 11 years, I
22 think, and I'm ready for a little bit of a change
23 to do something a little bit different. I
24 certainly love the law and practicing law and so
25 forth, and I was encouraged by a lot of people to

1 do this. And so I made my mind up to make an
2 attempt at it.

3 **Q. How do you feel your legal and professional**
4 **experience thus far renders you qualified and**
5 **will assist you to be an effective Circuit Court**
6 **judge?**

7 A. I've spent almost all of my career in Circuit
8 Court. I mean, I started out as a prosecutor,
9 did that for eight years, went into private
10 practice doing criminal defense work and some
11 civil work. I've handled just a number of cases
12 across the board as far as, you know, real
13 estate, contracts, lease agreements as well as
14 the criminal experience. And I've tried to make
15 clear throughout this process that certainly the
16 criminal experience that I have outweighs the
17 civil by an overwhelming amount, but I do have
18 that experience in both arenas. I've tried a lot
19 of cases. When I was a prosecutor I tried a lot
20 of cases. I tried a lot of murder cases, a lot
21 of felony cases. I've defended a lot of cases.
22 So I've done a lot of trials, and certainly that
23 experience I think will play into it. I've done
24 a lot of things that a lot of other people
25 haven't done necessarily, such as civil asset

1 forfeiture. When I was in the solicitor's office
2 we did a lot of that, that's drug forfeiture and
3 stuff like that. I'm familiar with it. Appeals
4 to the Circuit Court. So a lot of things that
5 the Circuit Court has done I have done over my
6 career and I've got experience that I can relate
7 to that.

8 Q. Thank you. The Commission received 146 ballot
9 box surveys regarding you with 33 additional
10 comments. The ballot box survey, for example,
11 contained the following positive comments: I
12 believe that Russell would make a great Circuit
13 Court judge. He has the utmost integrity and
14 common sense in addition to a keen understanding
15 of the law. Russ is one of the brightest
16 attorneys I've ever had the opportunity to be
17 around. He would be an incredible asset to the
18 bench and has a perfect demeanor for the same.
19 One of the smartest individuals I know, very fair
20 and has experience as a prosecutor, civil
21 litigator and in criminal defense. Well rounded
22 and excellent demeanor and calming individual.
23 I've seen him work professionally for nearly 20
24 years, and he has the highest moral ethics of any
25 lawyer or judge I know. He's the type of Circuit

1 **Court judge that we need in South Carolina.**

2 MR. TRIPLETT: I would note that the Lowcountry
3 Citizens Committee reported that Mr. Hilton is
4 well qualified in the evaluative criteria of
5 ethical fitness, professional and academic
6 ability, character, reputation, experience and
7 judicial temperament and qualified in the
8 remaining evaluative criteria of constitutional
9 qualifications, physical health and mental
10 stability. The Lowcountry Citizens Committee
11 noted that, "Mr. Hilton is extremely well
12 qualified, very deep trial experience, smart,
13 personable, diverse experience, impressive in
14 every way. Would make a great circuit judge."

15 **Q. A few housekeeping issues that need to be put on**
16 **the record. Judge Hilton, are you aware that as**
17 **a judicial candidate you are bound by the Code of**
18 **Judicial Conduct as found in Rule 501 of the**
19 **South Carolina Appellate Court Rules?**

20 A. I am aware.

21 **Q. Since submitting your Letter of Intent, have you**
22 **contacted any members of the Commission about**
23 **your candidacy?**

24 A. I have not.

25 **Q. Since submitting your Letter of Intent, have you**

1 sought or received the pledge of any legislator
2 either prior to this date or pending the outcome
3 of your screening?

4 A. I have not.

5 Q. Are you familiar with § 2-19-70, including the
6 limitation on contacting members of the General
7 Assembly regarding your screening?

8 A. I am.

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

13 A. I have not, and I'm not aware.

14 Q. Have you reviewed and do you understand the
15 Commissions Guidelines on Pledging in South
16 Carolina Code § 2-19-70(E)?

17 A. I have.

18 MR. TRIPLETT: Mr. Chairman, I would note for the
19 record that any concerns raised during the
20 investigation by staff regarding the candidate
21 were incorporated into the questioning of the
22 candidate today. And with that, Mr. Chairman, I
23 have no further questions.

24 VICE CHAIRMAN RANKIN: All right. Questions by
25 members of the Commission?

1 JUDGE HILTON - EXAMINATION BY VICE CHAIRMAN RANKIN:

2 Q. I will start if I may. We are late in the day,
3 and I appreciate your brevity here in your
4 responses. Is it Tri Walker that is Citizens
5 Committee Chair -- I would suggest rarely writes
6 such glowing terms about folks that they screen.
7 Now he may have done it before. He's certainly
8 not one to pass compliments along lightly, not in
9 his opinions only, but those on that Citizens
10 Committee. So I'm glad that was asked about.
11 You've had a solo practice for -- since '03?
12 Help me.

13 A. 2013 is when I left the solicitor's office.

14 Q. So a decade.

15 A. So I'm going on 11 years now.

16 Q. And your mix, I see 85 criminal. Did I do this
17 right? Ten civil, five other; does that give me
18 the 100?

19 A. Those were estimated numbers, but I went back and
20 looked at that even again, and those numbers are
21 fairly accurate.

22 Q. And your wife works with you there; is that
23 right?

24 A. She does.

25 Q. And would you like us to swear her now or later

1 to talk about y'all --

2 A. We're still married, so I think we're good.

3 Q. She looks mighty pleased for you to be applying
4 for other work. I will say that, so --

5 A. She's waiting on me to say you're fired.

6 Q. She's going to tell you I have all ideas. And I
7 appreciate that family practice and the work that
8 you're doing. As we look for folks to recommend
9 for 170 people to vote for, invariably you'll see
10 a young person or an older person, a middle aged
11 person. I will suggest to you, though your first
12 time, that you certainly bring a lot of
13 credentials to this as a lawyer practicing in an
14 area which largely, of late, has more times been
15 on the criminal docket than the civil, given the
16 advent other than motions, jury trials just going
17 away by mediation. So on the civil side itself,
18 tell us what you're doing because you list a
19 number of areas that your civil practice was
20 involved with. Describe more the day in and day
21 out type work on the civil order category.

22 A. As of very recently, for the last two weeks I was
23 serving as local counsel for an attorney in
24 Indiana who was admitted pro hac vice. It was a
25 business litigation case among two roofing

1 companies. I ended up getting off of that case.
2 That's a longer story, but needless to say, I'm
3 not on that case presently. You know, we do a
4 lot of personal injury -- I say a lot -- we do a
5 number of personal injury cases. I won't take
6 every personal injury case, but, you know, if
7 it's a worthy case, then we will take it.
8 Recently -- it's been a couple of years ago now,
9 but we resolved a products liability case in
10 Federal Court. And I did associate another
11 attorney on that but we certainly worked side by
12 side to bring that case to resolution. I mean,
13 that's a snapshot but that's what it amounts to.
14 So largely personal injury. If there is some
15 litigation like the two roofing companies, you
16 know, I got involved in that. I'm very
17 selective, and that's intentional. I mean, I
18 wanted to tailor my practice to more of a
19 criminal practice. Very briefly, one of the
20 first cases that I did when I got into private
21 practice was an adverse prescriptive easement
22 case that ended up being one of the two or three
23 percent that go to trial, and I learned real
24 quick I wanted to focus more in the criminal
25 area. So that's what I did, and that was with

1 intent. And that's kind of a snapshot of my day-
2 to-day civil practice.

3 **Q. Judge, it's good seeing you clerked with -- I**
4 **believe, correct -- or no, you were the Special**
5 **Referee?**

6 A. That's correct.

7 **Q. Okay. The top two judges that you would want to**
8 **be compared to if you were successful and you**
9 **were looking back on your first term or career on**
10 **the bench. Who do you hold up as I want to be**
11 **like?**

12 A. Well, if the question is regarding demeanor and
13 attitude and so forth, I mean, look at Cliff
14 Newman. I mean, I've practiced in front of him
15 before. Just a wonderful guy as far as his
16 demeanor and so forth. You gave me two, so leave
17 out Judge Goodstein, but, you know, Ed Dickson
18 was another one who is just wonderful to be in
19 front of. You could appear in front of any of
20 those people, and regardless of whether you were
21 right or wrong, they made you feel like you were
22 heard. And I think that that's what a Circuit
23 Court judge needs to be.

24 **Q. Your work as a solo practitioner or for hire**
25 **rather than working for the solicitor's office, a**

1 "public job" the ability to work with others if
2 they have a conflict, life gets in the way, and
3 repeat offenders are traditionally and
4 historically unprepared, how do you expect your
5 grace meter to run for those folks, whether it's
6 a litigant or a lawyer?

7 A. Well, I mean, life does get in the way. I mean,
8 I am well familiar with that as a private
9 practitioner, and, you know, sometimes things
10 happen. You obviously have to keep the docket
11 moving along too, but I do think that there's a
12 balance. I mean, you can't always continue a
13 case because of a little league, you know, ball
14 game, but, you know, if a parent is passing away
15 or something -- I mean, obviously there are
16 circumstances where I think a case would need to
17 be continued. And for whatever the circumstance,
18 you know, but I think a lot of factors have to go
19 into consideration. Your reputation of the
20 person comes into play as well. There are some
21 people that never ask for a continuance. I try
22 to be one of those people. Never ask for a
23 continuance, and so when somebody like that does
24 ask for one, it kind of gives a little more
25 credibility to that particular person.

1 VICE CHAIRMAN RANKIN: All right. Any other
2 questions by any members? All right. Mr.
3 Hilton, at this point this will conclude this
4 portion of your screening process. I thank you
5 and your wife for being here with us and again,
6 your patience. Pursuant to our evaluative
7 criteria, we expect candidates to both follow the
8 black letter or the ethics laws. Any appearance
9 of a violation of those will be considered a
10 serious violation regarding any conduct which we
11 would not expect out of you or anyone else, but
12 in that event, you do know, and I need a verbal
13 affirmation, that we can call you back in that
14 event, correct?

15 JUDGE HILTON: I'm aware.

16 VICE CHAIRMAN RANKIN: This record is not closed until
17 the formal release of the Report of
18 Qualifications. And at this time, Judge Hilton,
19 we appreciate your patience. Thank you so much.

20 JUDGE HILTON: Thank you for having me.

21 (Off the Record)

22 CHAIRMAN CASKEY: All right. Good afternoon. We are
23 back on the record to continue with our screening
24 process. Of course, we have Judge Kimpson, who
25 is a candidate for Seat 11, which is an at-large

1 seat of the Circuit Court. Do I have that right,
2 Judge?

3 JUDGE KIMPSON: That is correct, yes, sir.

4 CHAIRMAN CASKEY: If you would, please raise your
5 right hand.

6 THE HONORABLE MILTON G. KIMPSON, being duly
7 sworn, testifies as follows:

8 CHAIRMAN CASKEY: Thank you. There are some documents
9 that should be in front of you. Would you take a
10 look at those?

11 JUDGE KIMPSON: Yes, sir.

12 CHAIRMAN CASKEY: Are those your Personal Data
13 Questionnaire and Sworn Statement that you
14 submitted to the Commission?

15 JUDGE KIMPSON: They look to be. Let me just check
16 the last page. Well, the substance is there,
17 yes, sir.

18 CHAIRMAN CASKEY: All right. Are there any changes or
19 updates that need to be made to those?

20 JUDGE KIMPSON: No, sir. There were some
21 typographical errors that I didn't have time to
22 actually correct, but other than that, no.

23 CHAIRMAN CASKEY: Okay. Do you object to our making
24 these documents a part of the record of your
25 sworn testimony?

1 JUDGE KIMPSON: No objection, no, sir.

2 CHAIRMAN CASKEY: Thank you, sir. Let's give staff a
3 chance to do that now. You're good. The
4 Judicial Merit Selection Commission has
5 thoroughly investigated your qualifications for
6 the bench. Our inquiry is focused on the nine
7 evaluative criteria and has included a ballot box
8 survey, a thorough study of your application
9 materials, verification of your compliance with
10 state ethics laws, a search of newspaper articles
11 in which your name appears, a study of previous
12 screenings and a check for economic conflicts of
13 interest. We have received no affidavits filed
14 in opposition to your election, and no witnesses
15 are present to testify. And Judge, let me also
16 thank you for your patience in getting to you at
17 this late hour in the screening. It was
18 certainly not our intent to keep you waiting, but
19 as is the nature of this beast, sometimes we need
20 to take extra time to make sure we are as
21 diligent as we can and should be. And so with
22 that in mind, you are certainly welcome to make
23 any brief opening statements or remarks that you
24 would like, or I can recognize staff counsel for
25 questions directly.

1 (Exhibit Number 31 was marked for identification
2 purposes - (18 pages) Personal Data Questionnaire for
3 The Honorable Milton G. Kimpson.)

4 (Exhibit Number 32 was marked for identification
5 purposes - (7 pages) Sworn Statement of The Honorable
6 Milton G. Kimspon.)

7 JUDGE KIMPSON: If I may just say that the opportunity
8 to become a Circuit Court judge was unexpected.
9 There were some retirements. And while I have
10 thoroughly enjoyed my service as Administrative
11 Law Judge, I saw it as an opportunity to just
12 serve -- be of greater service to the state, an
13 opportunity to accept more responsibility and an
14 opportunity to touch more people here in our
15 state. So I'm looking forward to what will
16 hopefully be an opportunity to serve in that
17 capacity, and I will take questions.

18 CHAIRMAN CASKEY: Thank you, sir, appreciate that.

19 And I recognize Ms. Crawford.

20 MS. CRAWFORD: Hi, Judge. Mr. Chairman, I note for
21 the record that based on the testimony contained
22 in the candidate's PDQ, which has been included
23 in the record with the candidate's consent, Judge
24 Milton Kimpson meets the constitutional and
25 statutory requirements for this position

1 regarding age, residence and years of practice.

2 JUDGE KIMPSON - EXAMINATION BY MS. CRAWFORD:

3 **Q. Judge Kimpson, you touched on why you wanted to**
4 **be a Circuit Court judge. How do you feel that**
5 **your legal and professional experience thus far**
6 **renders you qualified and will assist you to be**
7 **an effective Circuit Court judge?**

8 A. I've had a varied career, lots of opportunities.
9 Of course I currently serve at the Administrative
10 Law Court where I serve both as a trial judge and
11 as an Appellate Court judge. It's interesting I
12 started off as general counsel at the South
13 Carolina Department of Revenue where I tried
14 cases at the administrative law court. So that
15 was the gist of my experience with ALJ, not only
16 to get there and not only try cases and decide
17 cases after trial, of course it's judge alone, so
18 I make the decisions, but also have a quite busy
19 appellate court docket, appeals from various
20 state agencies, appeals from the Department of
21 Corrections, Department of Probations. Prior, of
22 course, to being at the Administrative Law Court
23 I was general counsel for litigation at the South
24 Carolina Department of Revenue where I tried a
25 good bit of cases, mostly in the Administrative

1 Law Court, but some in the Circuit Courts. There
2 were class action suits that were filed against
3 the Department of Revenue. There were sales tax
4 cases that were filed against the Department of
5 Revenue, and we tried those cases not only to
6 jury verdict, but often to appeal as well. And I
7 handled many of those appeals myself before the
8 appellate courts. I love to mention a case in
9 Federal Court against CSX Railroad. We knew very
10 little about the particular law. We were going
11 against a firm that did this nationwide, and of
12 course we tried a case two or three days in
13 Federal Court and actually got a verdict in our
14 favor, which was overturned at the 4th circuit,
15 but at least I got a chance to go. Prior to the
16 general counsel at the Department of Revenue I
17 was in private practice, and then of course prior
18 to private practice I served in the United States
19 Jag Corps. I've done civil -- a lot of civil
20 law. I've done some criminal, have of course
21 been a military prosecutor. Even I authored a
22 chapter in military law that was published by one
23 of our Bar publications. Did some criminal law,
24 and that's one of the weaknesses, and I'll be
25 very up front, of my application. I don't have

1 recent criminal law experience except some -- a
2 bit of criminal law experience at the Department
3 of Revenue. When I was in private practice we
4 did some criminal law. I've acted as counsel.
5 However, I believe that what I bring is a
6 willingness to work hard, a willingness to study
7 in preparation for my Circuit Court application
8 and even so now preparation for this hearing.
9 I've done some CLE work to just try to make sure
10 that I understand what is the current trends in
11 criminal law. So all in all I think I've done a
12 number of things that would serve me well as a
13 Circuit Court judge.

14 **Q. Thank you, Judge. Judge Kimpson, the Commission**
15 **received 363 ballot box surveys regarding you**
16 **with 53 additional comments. Some of the**
17 **positive comments that we discussed, "A true**
18 **gentleman, excellent judicial temperament, quiet,**
19 **humble, thoughtful and deliberative, the best**
20 **candidate in the race." "Judge Kimpson is always**
21 **professional, polite and fair to the litigants**
22 **and counsel that appear before him. He is always**
23 **prepared and engaged during hearings. His**
24 **rulings and orders are well-written and reasoned.**
25 **It is a pleasure to try cases before him." And**

1 while many of the comments noted that you are
2 kind, thoughtful, deliberative, one concern was
3 raised as to the time it takes for you to issue
4 decisions. How would you respond to that
5 concern?

6 A. I take full responsibility for anything that goes
7 on in my office. I'm not somebody who points
8 fingers at anything. We have had an interesting
9 time in my office at the administrative law
10 court. My former law clerk, had, I believe, in a
11 span of four years three children, two of whom
12 required him to be out of the office for good
13 periods of time. Didn't have a staff attorney.
14 Then of course I even spent some time out of the
15 office under medical care. So we got behind, and
16 we're trying to catch up. It is important, I
17 have always believed -- and I thank you for
18 mentioning kind of my behavior toward litigants.
19 It has always been important in my mind to treat
20 everybody fairly, as I would want to be treated.
21 Now unfortunately this sometimes translates into
22 writing orders, because I try to be as meticulous
23 as possible. Sometimes even I'm doing additional
24 research just because I don't want to leave any
25 stones unturned. So sometimes that can make

1 orders -- make them a little more -- I don't want
2 to say slower but we can't get them out as
3 quickly as possible. So the combination of
4 personnel, the idea that I want to be as thorough
5 as possible, I think that's a reflection of why
6 things have taken so long.

7 **Q. Thank you, Judge.**

8 MS. CRAWFORD: Mr. Chairman, I would note that the
9 Midlands Citizens Committee reported that Judge
10 Kimpson is well qualified as to the evaluative
11 criteria of ethical fitness, professional and
12 academic ability, character, reputation,
13 experience and judicial temperament. He was also
14 found qualified in the evaluative criteria of
15 constitutional qualification, physical health and
16 mental stability. The Committee commented,
17 "Exceptionally well qualified."

18 **Q. Just some housekeeping questions. Judge Kimpson,**
19 **I know you are aware and you are a judge so you**
20 **are bound by the Code of Judicial Conduct as**
21 **found in Rule 501 of the Appellate Court Rules?**

22 A. Yes.

23 **Q. Since submitting your Letter of Intent, have you**
24 **sought or received the pledge of any legislator**
25 **either prior to this date or pending the outcome**

1 of your screening?

2 A. No.

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

6 A. Yes.

7 Q. Have you asked any third parties to contact
8 members of the General Assembly on your behalf?

9 A. No.

10 Q. Are you aware of anyone attempting to intervene
11 in the process on your behalf?

12 A. No.

13 Q. And have you reviewed and do you understand the
14 Commission's Guidelines on Pledging in South
15 Carolina Code § 2-19-70(E)?

16 A. I am.

17 MS. CRAWFORD: Okay. Mr. Chairman, I would note for
18 the record that any concerns raised during the
19 investigation by staff regarding Judge Kimpson
20 were incorporated into the questioning of the
21 candidate today. And I have no further
22 questions.

23 CHAIRMAN CASKEY: Thank you, ma'am. At this time I
24 would recognize Mr. Strom.

25 MR. STROM: Thank you, Mr. Chairman. Good afternoon,

1 Judge Kimpson.

2 JUDGE KIMPSON: How are you, sir?

3 MR. STROM: I'm well. I hope you are. Now let me
4 first ask you, did you go to Columbia High?

5 JUDGE KIMPSON: I did. I graduated in '79.

6 MR. STROM: Okay. I was '77. Of course, Judge
7 Michelle Childs went there, Judge Bruce Williams,
8 Craig Melvin.

9 JUDGE KIMPSON: Yes.

10 MR. STROM: We've got a pretty good history coming out
11 of that school. Not many people would think it.
12 Judge, I don't have questions for you. But I
13 want to tell everybody in this room, one of my
14 closest friends has practiced in front of you a
15 good bit, a guy with Parker Poe, David Summer.

16 JUDGE KIMPSON: Yes.

17 MR. STROM: And he's a tough SOB as far as a litigator
18 goes, you know, excellent writer, and he expects
19 things to be right. And I've heard him over the
20 years doing nothing but compliment you and your
21 demeanor and your hard work. You don't always
22 rule with him, but, you know, what you do he is
23 just so impressed with. And I'm looking through
24 these comments as well, and it's something that
25 this Commission's very concerned about in the

1 judiciary is the civilities and how litigants are
2 treated. And, you know, I'm just looking, you
3 know, impressed with this intellect, judicial
4 demeanor. I saw one a minute ago. When he would
5 go to court, not only is he prepared, but he knew
6 everyone by name we passed in the hallway from
7 the janitor to judge would take time to ask them
8 how their ailments and their relations were doing.
9 Even after taking time to speak with everyone, he
10 still arrived early for his hearings, and he was
11 prepared. And that's the reputation you enjoy is
12 that you're a kind person who is smart and well
13 prepared. And I'm somewhat familiar with, you
14 know, with what's gone on with your health. And
15 I'm delighted that all that is going well, and,
16 you know, I can say I don't have any question
17 about your work ethic. I know your work product
18 is great, and if you got a little bit behind on
19 some things, you know. I know you'll catch those
20 things up, because you always have, and you've
21 always done a great job. So, you know, I know
22 they're going to hate to see you go from that
23 court. Because that's a tough job listening to
24 these complex cases, and you do that, and you do
25 it with distinction. And so I hope it does work

1 out for you to make it to the circuit bench. And
2 just one last comment. You know, people are
3 often concerned about whether judges have
4 criminal experience. And you have a little bit
5 of it, but as I said earlier about someone, you
6 just have that demeanor. And I wouldn't hesitate
7 as a criminal defense lawyer taking a client in
8 front of you, because I know that you have that
9 compassion in your heart because you show it all
10 the time, 24/7. And so thanks for your service,
11 and I wish you the best in this.

12 JUDGE KIMPSON: Thank you so much.

13 CHAIRMAN CASKEY: Yes, sir. Thank you. Other
14 questions or comments for Judge Kimpson? Well,
15 seeing none, then that will bring us to the
16 conclusion of this screening. Judge, certainly
17 appreciate your patience again with scheduling.
18 Thank you for your service to the State of South
19 Carolina, and thank you for offering for
20 continued service in the judiciary, albeit in a
21 different role. I do need to take this moment to
22 remind you that pursuant to the Commission's
23 evaluative criteria, the Commission expects
24 candidates to follow the letter as well as the
25 spirit of the ethics laws and that we will view

1 violations of the appearance of impropriety as
2 serious and potentially deserving of heavy weight
3 in screening deliberations. On that note and as
4 you know, the record will remain open until the
5 formal release of the Report of Qualifications,
6 and you may be called back at such time if the
7 need arises. Again, thank you for all of your
8 service to the State of South Carolina and to the
9 country, and we appreciate you being here with us
10 tonight.

11 JUDGE KIMPSON: Thank you, sir.

12 CHAIRMAN CASKEY: Yes, sir. And with that, that will
13 conclude our hearings today. We will resume
14 tomorrow at 9:00 a.m. No further business on our
15 agenda. We will stand adjourned. Thank you.

16 (There being nothing further, the proceeding concluded at
17 5:35 p.m.)

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CERTIFICATE OF REPORTER

I, JENNIFER NOTTLE, COURT REPORTER AND NOTARY PUBLIC
IN AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, HEREBY
CERTIFY THAT I REPORTED THIS PROCEEDING, ON TUESDAY, THE
13TH DAY OF NOVEMBER, 2023, AND THAT THE FOREGOING 287
PAGES CONSTITUTE A TRUE AND CORRECT TRANSCRIPTION OF MY
STENOMASK REPORT OF SAID PROCEEDING.

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
16TH DAY OF JANUARY, 2024.



JENNIFER NOTTLE, COURT REPORTER

MY COMMISSION EXPIRES JULY 19, 2033

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14 closest friends has practiced in front of you a
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