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SCREENING HEARINGS

November 06, 2023

2023 Judicial Merit Selection Commission

REPORTER: Patricia Bachand

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: REPRESENTATIVE "MICAH" CASKEY, IV, CHAIRMAN

9 SENATOR LUKE A. RANKIN, VICE CHAIRMAN

10 SENATOR RONNIE A. SABB

11 SENATOR SCOTT TALLEY

12 REPRESENTATIVE J. TODD RUTHERFORD

13 REPRESENTATIVE WALLACE H. "JAY" JORDAN, JR.

14 HOPE BLACKLEY

15 LUCY GREY MCIVER

16 ANDREW N. SAFRAN

17 ERIN B. CRAWFORD, CHIEF COUNSEL

18 * * * * *

19 DATE: November 6, 2023

20 TIME: 9:00 a.m.

21 LOCATION: Gressette Building, Room 105

22 1101 Pendleton Street

23 Columbia, South Carolina 29201

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25 REPORTED BY: PATRICIA G. BACHAND, COURT REPORTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

PAGE:

OVERVIEW OF SCREENING PROCESS/QUESTIONS AND ANSWERS..... 8

THE HONORABLE JOHN W. KITTREDGE..... 31

- Examination by Mr. Dennis..... 35

- Examination by Senator Rankin..... 50

GRAYSON LAMBERT..... 61

- Examination by Mr. Maldonado..... 64

- Examination by Senator Rankin..... 73

- Examination by Chairman Caskey..... 78

- Examination by Senator Talley..... 79

JASON P. LUTHER..... 85

- Examination by Ms. Symmes..... 89

- Examination by Representative Jordan..... 98

- Examination by Chairman Rankin..... 100

THE HONORABLE MATTHEW PRICE TURNER..... 104

- Examination by Mr. Hinson..... 106

- Examination by Mr. Safran..... 113

- Examination by Senator Sabb..... 119

WILLIAM KEEFER BRUMBACH (COMPLAINANT)..... 126

WHITNEY B. HARRISON..... 125

- Examination by Mr. Dennis..... 139

- Examination by Senator Rankin..... 146

- Examination by Mr. Safran..... 149

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX (CONTINUED)

PAGE:

SHANDA NICOL (COMPLAINANT)..... 160

KARON MITCHELL (COMPLAINANT)..... 169

TUCKER PLAYER (COMPLAINANT)..... 183

JOHN GALLMAN (COMPLAINANT)..... 208

IRIS BULLARD (COMPLAINANT)..... 222

THE HONORABLE JAN B. BROMELL HOLMES..... 158

- Examination by Ms. Foster..... 233

- Examination by Senator Rankin..... 244

- Examination by Senator Sabb..... 249

- Examination by Chairman Caskey..... 252

Certificate of Reporter..... 256

Word Index

* * * * *

EXHIBIT INDEX

PAGE:

EXHIBITS:

EXHIBIT NO. 1..... 12

- 2023 CITIZENS COMMITTEE REPORT

EXHIBIT NO. 2..... 12

- 2023 SOUTH CAROLINA BAR JUDICIAL QUALIFICATIONS
COMMITTEE REPORT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT INDEX (CONTINUED):

EXHIBITS:	PAGE:
EXHIBIT NO. 3.....	32
- JUDICIAL MERIT SELECTION COMMISSION PERSONAL DATA QUESTIONNAIRE OF THE HONORABLE JOHN W. KITTREDGE EXHIBIT	
NO. 4.....	32
- JUDICIAL MERIT SELECTION COMMISSION SWORN STATEMENT OF THE HONORABLE JOHN W. KITTREDGE	
EXHIBIT NO. 5.....	62
- JUDICIAL MERIT SELECTION COMMISSION PERSONAL DATA QUESTIONNAIRE OF WILLIAM GRAYSON LAMBERT	
EXHIBIT NO. 6.....	62
- JUDICIAL MERIT SELECTION COMMISSION PERSONAL SWORN STATEMENT OF WILLIAM GRAYSON LAMBERT	
EXHIBIT NO. 7.....	86
- JUDICIAL MERIT SELECTION COMMISSION PERSONAL DATA QUESTIONNAIRE OF JASON PHILLIP LUTHER	
EXHIBIT NO. 8.....	86
- JUDICIAL MERIT SELECTION COMMISSION AMENDED PERSONAL DATA QUESTIONNAIRE OF JASON PHILLIP LUTHER	
EXHIBIT NO. 9.....	86
- JUDICIAL MERIT SELECTION COMMISSION PERSONAL SWORN STATEMENT OF JASON PHILLIP LUTHER	

1 EXHIBIT INDEX (CONTINUED):

2 EXHIBITS: PAGE:

3 EXHIBIT NO. 10..... 104

4 - JUDICIAL MERIT SELECTION COMMISSION PERSONAL DATA

5 QUESTIONNAIRE OF THE HONORABLE MATTHEW PRICE TURNER

6 EXHIBIT NO. 11..... 105

7 - JUDICIAL MERIT SELECTION COMMISSION PERSONAL SWORN

8 STATEMENT OF THE HONORABLE MATTHEW PRICE TURNER

9 EXHIBIT NO. 12..... 125

10 - JUDICIAL MERIT SELECTION COMMISSION PERSONAL DATA

11 QUESTIONNAIRE OF WHITNEY BOYKIN HARRISON

12 EXHIBIT NO. 13..... 125

13 - JUDICIAL MERIT SELECTION COMMISSION PERSONAL SWORN

14 STATEMENT OF WHITNEY BOYKIN HARRISON

15 EXHIBIT NO. 14..... 126

16 - AFFIDAVIT OF WILLIAM KEEFER BRUMBACH

17 EXHIBIT NO. 15..... 136

18 - WRITTEN RESPONSE OF WHITNEY BOYKIN HARRISON

19 EXHIBIT NO. 16..... 159

20 - JUDICIAL MERIT SELECTION COMMISSION PERSONAL DATA

21 QUESTIONNAIRE OF THE HONORABLE JAN B. BROMELL HOLMES

22 EXHIBIT NO. 17..... 159

23 - JUDICIAL MERIT SELECTION COMMISSION AMENDED PERSONAL

24 DATA QUESTIONNAIRE OF THE HONORABLE JAN B. BROMELL

25 HOLMES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT INDEX (CONTINUED):

EXHIBITS:	PAGE:
EXHIBIT NO. 18.....	159
- JUDICIAL MERIT SELECTION COMMISSION PERSONAL SWORN STATEMENT OF THE HONORABLE JAN B. BROMELL HOLMES	
EXHIBIT NO. 19.....	161
- AFFIDAVIT OF SHANDA NICOL	
EXHIBIT NO. 20.....	169
- AFFIDAVIT OF KARON MITCHELL	
EXHIBIT NO. 21.....	184
- AFFIDAVIT OF TUCKER S. PLAYER	
EXHIBIT NO. 22.....	208
- AFFIDAVIT OF JOHN H. GALLMAN	
EXHIBIT NO. 23.....	224
- AFFIDAVIT OF IRIS B. BULLARD	
EXHIBIT NO. 24.....	230
- WRITTEN RESPONSE OF THE HONORABLE JAN B. BROMELL HOLMES	

* * * * *

REQUESTED INFORMATION INDEX

(No Information Requested.)

1 CHAIRMAN CASKEY: Good morning. I'd like to
2 go ahead and call today's meeting to order. And I
3 recognize Representative Jay Jordan.

4 REPRESENTATIVE JORDAN: Thank you. It's my
5 understanding, the first statute, we are required to choose
6 a chairman at this time. And I can't think of anyone
7 better than my friend, Micah Caskey, to serve this time
8 around. So per South Carolina Law 2-19-10, I nominate
9 Micah Caskey.

10 SENATOR TALLEY: Second.

11 MR. CHAIRMAN: Seconded by Senator Talley.
12 Pending questions as to the election of the Chair, I've
13 been nominated by Representative Jay Jordan. All in favor
14 signify by saying "aye."

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

16 MR. CHAIRMAN: All opposed "nay"?

17 (Hearing none.)

18 CHAIRMAN CASKEY: The "ayes" have it. At
19 this point, I will go ahead and take lead of the chair to
20 nominate a vice chairman, and pursuant to South Carolina
21 law, that member must be a senator. And on that account, I
22 will nominate Senator Luke Rankin as vice chairman of the
23 Commission.

24 SENATOR TALLEY: Second.

25 CHAIRMAN CASKEY: Seconded by Mr. Talley.

1 Pending question to this election, I will nominate Senator
2 Luke Rankin as vice chairman of the Commission. All in
3 favor signify by saying "aye."

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

5 CHAIRMAN CASKEY: All opposed "nay"?

6 (Hearing none.)

7 CHAIRMAN CASKEY: The "ayes" have it. And
8 Senator Rankin will be designated as the Vice Chairman for
9 the Commission this year.

10 The Judicial Merit Selection Commission is
11 called pursuant to Chapter 19 of Title 2, South Carolina
12 Code of Laws, requiring the review of candidates for
13 judicial office. The function of the Commission is not to
14 choose between candidates, but rather to declare whether
15 the candidates who offer for positions on the bench, in our
16 judgment, are qualified to fill the positions they seek.

17 The inquiry we undertake is a thorough one.
18 It is centered around the Commission's nine evaluative
19 criteria, and it involves a complete personal and
20 professional background check on each candidate.

21 The public hearings are convened for the
22 purpose of screening candidates. This year we will screen
23 one open seat on the Supreme Court, one seat for reelection
24 and one open seat on the Court of Appeals, eleven seats for
25 reelection, and thirteen seats that are open on the circuit

1 court bench, seven open seats on the family court bench,
2 one open seat for reelection -- excuse me -- one seat for
3 reelection on the administrative law court, one seat for
4 reelection and one open seat for appointment for Master-in-
5 Equity, and one retired justice.

6 At this point, I would recognize our Chief
7 Counsel, Ms. Erin Crawford, for her comments/instructions.

8 MS. CRAWFORD: Good morning, Commission
9 members. I just want to briefly -- let's see, we've got a
10 lot here -- to introduce the screening attorneys and the
11 staff that we have involved. It takes a village and a lot
12 of us to run this.

13 For Senate screening attorneys, we have Andy
14 Fiffick, Paula Benson, Bob Maldonado, Maura Baker, Madison
15 Faulk, Sharon Wilkinson, Breeden John, Brian Cohl, and J.J.
16 Gentry.

17 The House screening attorneys are Patrick
18 Dennis, Kate Crater, Haley Symmes, Steve Davidson, Jimmy
19 Hinson, Julia Foster, Emma Hall, Lauren Trask, Erica
20 Starnes, Macey Webb, Brian Triplett, Trey Walpole, and
21 Meredith Ross.

22 And the Senate staff that helps: Maxine
23 Henry, Elizabeth Harrell, Susan Gibson, Marie Waller, and
24 of course, Lindi Putnam.

25 Mr. Chairman, at this time I'd like to

1 request a vote on the cover page for the draft report. It
2 shows that the report will be delivered on Thursday,
3 January 11th, 2024. The 48-hour period ends at noon on
4 Tuesday, January 16th, 2024. And the election is currently
5 scheduled for -- or we hope to have it scheduled for noon,
6 Wednesday, February 7th, 2024.

7 CHAIRMAN CASKEY: Great. Thank you, Ms.
8 Crawford. The pending question is the adoption of the
9 cover page for the report. Is there -- Senator Rankin
10 moves for adoption. So that is the question. Is there a
11 second? Mr. Jordan seconds.

12 All in favor signify by saying "aye."

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

14 CHAIRMAN CASKEY: All opposed "nay"?

15 (Hearing none.)

16 CHAIRMAN CASKEY: The "ayes" have it. And
17 the cover page of the report is adopted.

18 MS. CRAWFORD: Mr. Chairman, at this time,
19 if I can please distribute the signature page to the
20 Commission members for the -- for the draft report.

21 CHAIRMAN CASKEY: Make it so.

22 MS. CRAWFORD: Lindi will do that.

23 CHAIRMAN CASKEY: Thank you, Lindi.

24 MS. CRAWFORD: And at this time, Mr.
25 Chairman, I would like to suggest that we move into

1 executive session to discuss matters related to legal
2 advice.

3 CHAIRMAN CASKEY: Mr. Jordan moves that we
4 move into executive session. Seconded by Senator Rankin.
5 All in favor can signify by saying "aye".

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

7 CHAIRMAN CASKEY: All opposed "nay"?

8 (Hearing none.)

9 CHAIRMAN CASKEY: The "ayes" have it. And
10 we will move into executive session. So if you are not
11 supposed to be here, be gone.

12 (Executive session from 9:21 a.m. to 9:51 a.m.)

13 CHAIRMAN CASKEY: Good morning, we are back
14 on the record. We've come out of executive session. I
15 would just note for the record, we were joined by the
16 Senator from Horry, Luke Rankin, during that time.

17 A quorum was present, but there was no
18 actions taken during the executive session. So we're back
19 on the record, and I'll just recognize Ms. Crawford again.

20 MS. CRAWFORD: Thank you, Mr. Chairman. Mr.
21 Chairman, at this time I would like to point out to the
22 Commission members, that under Tab 4 in your notebooks, I
23 just have a list of the seats that we expect to screen next
24 year.

25 I'd like to offer, and at this time have

1 made exhibits to the records, the following:

2 The 2023 Citizens Committee Reports from the
3 Lowcountry, Midlands, Pee Dee, Piedmont, and Upstate, as
4 well as the 2023 Judicial -- South Carolina Bar's Judicial
5 Qualifications Committee Report.

6 CHAIRMAN CASKEY: So are there any
7 objections to entering that into the record -- those into
8 the record?

9 (Hearing none.)

10 CHAIRMAN CASKEY: Seeing no objections, I
11 would ask that the 2023 Citizens Committee Report and the
12 South Carolina Bar Report be marked as exhibits and entered
13 into the public hearing record.

14 (EXHIBIT NO. 1 - 2023 CITIZENS COMMITTEE
15 REPORTS)

16 (EXHIBIT NO. 2 - 2023 SOUTH CAROLINA BAR
17 JUDICIAL QUALIFICATIONS COMMITTEE REPORT)

18 CHAIRMAN CASKEY: I just want to take one
19 second to welcome everybody here. We sort of jumped into
20 things quickly this morning. But this is, obviously, the
21 last step in our Judicial Merit Selection screening
22 process. And our -- and I'm glad that we have so many
23 folks here to watch and observe what's going on here.

24 As you may well know, at the end of every
25 screening process the Commission releases a report,

1 oftentimes approaching three-hundred-and-some-odd pages.
2 But we want to be mindful of the fact that we want to make
3 our process here as open and as transparent as is possible.

4 And to that end this year, in a change from what
5 we've done in the past, all of these proceedings are
6 recorded. They will be released to the public on-line at
7 Scstatehouse.gov, when the final report of the Commission
8 is released.

9 We timed it that way -- and we don't
10 broadcast these live, because these are in some sense a job
11 interview, and it is inherently unfair for earlier
12 screening candidates -- or excuse me -- later screening
13 candidates to have benefitted from watching, directly, the
14 proceedings of earlier candidates.

15 So again for people who don't want to read
16 words on paper, we're going to make video available for you
17 as well.

18 So again we are at the end of what is a long
19 process, and a process that I have asked staff to prepare a
20 brief presentation on, so that members of the public who
21 are genuinely interested in this process can learn more
22 about it.

23 And so I hope that this serves some function
24 for people, again, who are good faith actors who are
25 curious about how this process goes.

1 And to that end, that is all the business we
2 have at this stage. And I would proceed to the overview of
3 the screening process presentation by Erin Crawford, Chief
4 Counsel of the JMSC, and Emma -- I didn't see Emma.

5 MS. CRAWFORD: She'll be here soon.

6 CHAIRMAN CASKEY: Emma will be here soon,
7 the Executive Director of the South Carolina Bar. Erin
8 Crawford will go first. And also, I do want to clarify one
9 quick thing, lest I be draw into a never-ending debate with
10 my colleagues here.

11 It may have been the case when Senator
12 Rankin was here before in executive session, and I simply
13 did not see him because I don't have my glasses on. I
14 don't recall hearing him, though, which is typically a
15 distinguishing characteristic. Unless I stand ready to be
16 corrected if that was -- you are here now.

17 Are you ready?

18 MS. CRAWFORD: I'm ready.

19 CHAIRMAN CASKEY: Ms. Crawford.

20 MS. CRAWFORD: Mr. Chairman, this in an
21 abbreviated presentation of what the JMSC does. I've cut
22 it back, significantly, from when I go out in public and
23 talk about it.

24 Just for your information, the JMSC does
25 screen and nominate all judges for the Supreme Court, Court

1 of Appeals, circuit court, family court, administrative law
2 court, Master-in-Equity. And we do also -- that's not on
3 there -- screen any judges that want to serve in active
4 retired capacity.

5 All of the candidates, no matter what
6 judicial office sought, must be a citizen of the United
7 States and South Carolina, at least 32 years old, licensed
8 attorney at law for at least eight years, a resident of
9 South Carolina for five years preceding his or her
10 election.

11 What are the evaluative criteria that each
12 judicial candidate must meet? These are the nine
13 evaluative -- the nine evaluative criteria that we use, the
14 Citizens Committee use, the Bar uses:

15 Constitutional qualifications, ethical
16 fitness, professional and academic ability, character,
17 reputation, physical health, mental stability, experience,
18 and judicial temperament.

19 That is just a brief overview of the
20 screening process, to show you all the work and all the
21 materials. And I'm going to go through it, briefly, in the
22 screening process from our end.

23 Application materials. These are things
24 that the candidates, whether you're a sitting judge or a
25 candidate running for an open seat, a minimum of eight

1 application documents includes a PDQ personal data
2 questionnaire, a sworn statement, a JMSC economic interest
3 form, a state ethics -- a State Ethics Commission form, a
4 confidential financial statement.

5 They submit five letters of recommendation,
6 CLE reports for the past five years, and writing samples as
7 well, if it is an open seat.

8 It is a lot of material. They must be -- it
9 must be turned in, no later than a published deadline, to
10 be considered a judicial candidate. And that deadline is a
11 set deadline. And if you're fifteen minutes late, we do
12 not accept it.

13 From outside sources we also gather, and the
14 Commission uses in its investigations, Citizens Committee
15 reports, grievance reports from the Bar -- I mean, from the
16 court -- credit reports, the ballot box survey results,
17 SLED reports, the Bar reports, and any complaints from
18 outside sources.

19 The citizens committee are -- we have five
20 different citizens committees. They are appointed by the
21 chair. The members of these committees are up to ten
22 members; they are appointed by the Chair and Vice Chair.

23 We've got a citizens committee from each
24 area of the state -- that is Pee Dee, Lowcountry, Upstate,
25 Piedmont, and the Midlands region.

1 The committees do the reports as well, based
2 on nine evaluative criteria. The screening attorneys do
3 let the candidates know if they're -- what the reports find
4 at that point, and they are made a part of the record at
5 the hearing which we have just done.

6 The Bar reports -- and Emma is going to go
7 into this. Emma Dean from the Bar, is going to go into
8 this in more detail, momentarily. They do a very similar
9 process. But we'll get into that, shortly. And that is
10 made a part of the record as well, which we just did.

11 Grievance reports. The candidates and
12 judges sign a waiver, that we can get any information from
13 the Commission on Lawyer Conduct and the Commission on
14 Judicial Conduct, stating whether there is a record of
15 discipline from the Supreme Court in the areas of
16 misconduct. This is a question on the PDQ. So we look to
17 make sure those are in compliance with each other.

18 The ballot box survey. We send the e-mail -
19 - ballot box survey to all members of the Bar that are on
20 file with the Supreme Court. It also goes to clerks of
21 court. The company we use is not in state, it is out of
22 state. It's in Texas. Everything is confidential. The
23 results are anonymous.

24 I do not know -- the Commission does not
25 know who filled out a ballot -- I mean, which ballot box

1 was filled out by whom. The only way I can usually tell is
2 if somebody in the comments writes their name, or mentions
3 that a candidate is a familial relative.

4 The candidate is informed at the interview
5 with the screening attorney, they are told about the
6 general concerns and themes raised, as well as positive
7 themes raised in the ballot box. And we address these at
8 the public hearing.

9 We received SLED reports -- credit reports
10 and SLED reports. SLED does a thorough investigation of
11 any cases that the candidate or judge is involved in, if
12 there are any crimes, any investigatory background.

13 A lot of times these are cases that are
14 filed by pro se litigants, that they were never served.
15 But we have access to all of that, including their criminal
16 report, traffic -- drivers license check, etc.

17 A credit report is run by the clerk's office
18 for each candidate, that's in the confidential financial
19 file that we keep, and the staff does compare that to the
20 confidential financial statement that is given to us by the
21 candidate, to make sure that everything matches up there as
22 well.

23 Complaints. If a person wishes to file a
24 complaint, and testify before the -- about a candidate,
25 they have to file a sworn affidavit. A complaint form has

1 to be in by a certain deadline. It's supposed to include
2 any supporting documents, and it has to be in hard copy per
3 the rule. And for the complaint to be accepted by the
4 Commission, it must state allegations regarding the
5 candidate's character, competency, or ethics.

6 And as a side note, letters in support of
7 candidates -- or letters in support of candidates are also
8 prohibited by the rules. So in order for something to come
9 before the Commission, it has to be a sworn affidavit filed
10 by somebody, and they have to be willing to testify at the
11 hearing about the candidate for it to be before the
12 Commission.

13 The screening attorneys, using all the
14 application documents, all of the information we receive
15 from outside sources and any other investigations, such as
16 looking at social media, appellate review -- you know,
17 appellate record, the screening attorneys conduct
18 interviews with their assigned candidates, let them know
19 about the process, what to expect, gives them any potential
20 issues.

21 It is not -- the screening attorney does not
22 serve as an advocate or as a -- it's more of a "go to"
23 person for the candidate. They're not out there pushing
24 this candidate, and it's more of a preparation for the
25 hearings.

1 2-19-50 of the Code provides that all
2 records and any information that the Judicial Merit
3 Selection Commission receives to make findings must be kept
4 strictly confidential, and are not subject to FOIA.

5 Once these documents are presented under
6 oath at the public hearing, they're obviously not
7 confidential, and open for dissemination. And after our
8 report is issued, any confidential materials we have are
9 destroyed.

10 Public hearing. The candidates appear
11 before the ten members of the JMSC at the public hearing.
12 Any complaints are heard. The screening attorney asks any
13 -- some housekeeping questions, general information, issues
14 that need to be put on the record. Then the members of the
15 Commission can ask candidates anything they want, any
16 positive or negative things, any questions that they may
17 have.

18 If the members to want to ask them about a
19 private matter, such as anything on their finances, or any
20 confidential or cautionary rules they -- letters they have
21 received from the courts, we must go into executive
22 session, where the public is escorted out and these matters
23 are discussed at that point.

24 Candidates can withdraw from any -- from
25 consideration at any time. And at that time, or soon

1 thereafter, all of their records are destroyed per the
2 statute.

3 The JMSC votes on whether a candidate is
4 qualified, and of those candidates can nominate up to three
5 best qualified for each seat.

6 The exceptions are -- the Master-in-Equity
7 statute just says we just let the delegation know the
8 qualified candidates. And then retired judges, they're not
9 -- their names are -- they're found qualified or
10 unqualified.

11 And then once they -- if they are found
12 qualified, we submit their names to the Chief Justice for
13 possible use. And so those are not -- the retired judges
14 are not included in the report and they are not voted on.

15 Note: If an incumbent judge is found not
16 qualified, or dies, withdraws, or becomes otherwise
17 disqualified between the time they file for the -- their
18 application and the date of the election, then the election
19 for that position will not be held, and we start all over
20 at the next screening cycle, listed as a vacancy.

21 The draft report. After all the hearings,
22 everything is compiled and there is a draft report based --
23 done for each candidate, all compiled into one document. In
24 2024, it should be published by Thursday, January 11th.

25 And then 48 hours -- at 48 hours later per

1 statute, the draft report becomes final. The anticipated
2 date would be 12 o'clock noon, Tuesday, January 16th, 2024.
3 And only at that point can the candidates seek and judges -
4 - or members can give votes or pledges to vote at the
5 election time. The statute does provide at least two weeks
6 has to occur between the date of the report and the date of
7 the election.

8 A concurrent resolution is drafted and
9 presented to the General Assembly, and it must be passed by
10 both bodies setting the screening date. It's typically
11 been held, the election, the first or second week of
12 February.

13 And that was just a very brief overview of
14 our process and what we go -- what the Commission looks at,
15 studies. And Emma Dean is here to discuss more in-depth,
16 the Bar process.

17 CHAIRMAN CASKEY: Thank you very much. Ms.
18 Dean, we'd be happy to hear from you. I don't know if you
19 have any materials that we need to put up or anything?

20 MS. DEAN: No.

21 CHAIRMAN CASKEY: No? A straight lecture.
22 Love it. Thank you, Ms. Dean. We'd be happy to hear from
23 you.

24 MS. DEAN: Thank you, Mr. Chairman. Thank
25 you, members of the Judicial Merit Selection Commission. I

1 appreciate you all having us, today, and hearing about what
2 the Bar does. It's a process I'm learning a little bit
3 now, as we go around.

4 But watching it for the first time, I was
5 really struck by the professionalism and hard work that
6 surrounds it. And that professionalism -- or hard work is
7 thanks to our staff, thanks to our many, many volunteers,
8 and thanks to our Chairs who are here today, Scott Moise
9 from Nelson Mullins and Jared Libet from the Attorney
10 General's Office.

11 Talking about the many, many volunteers,
12 that's 110 attorney volunteers served for JQC this year.
13 Sometimes it's higher, sometimes it's lower. But this
14 probably is our highest one, because, honestly, there were
15 so many candidates this year.

16 So these volunteers included two law
17 professors, two recognized ethics experts, a former circuit
18 court judge, a assistant solicitor, an attorney from the
19 public defender's side, two former presidents of the SCAJ
20 ABOTA members, plaintiffs lawyers, defense lawyers, lawyers
21 from small firms and large firms.

22 We had lawyers from large circuits and small
23 circuits. We have senior lawyers and we have lawyers that
24 are on the Young Lawyers Division, which is under 35 -- and
25 much younger than me -- and all ages in-between.

1 So we've got attorneys that are giving up
2 their time, from various different backgrounds. Some of
3 these committee members have served for many, many years,
4 volunteering lots of hours. And some are new to the
5 process.

6 So let's talk about the work that those
7 volunteers do. First, the volunteers divide into a
8 subcommittee that are based on kind of the regions that
9 they're in, looking at the judgeships that are open in
10 those regions, the number of candidates in that region, and
11 how we can get all these calls out.

12 And then these volunteers go to work. They
13 start calling their colleagues. And so these are -- each
14 candidate is allowed to submit five names. So they call
15 those five names, and then they also call others that they
16 find that are in that region, or in that area of practice
17 that the candidate's in, and they get thirty calls at least
18 for each new candidate.

19 And in those calls they ask them questions,
20 investigate the nine evaluative screening process -- nine
21 evaluative criteria. One day I'll be able to say the word
22 "evaluative," but it won't be today.

23 But those nine evaluative criteria that we
24 all know so well, that's what these volunteer attorneys are
25 calling about and asking the attorneys that they -- that

1 they reach to ask them about the candidate, right?

2 So these anonymous phone calls that are
3 selected either by the five, or going through more
4 anonymously -- randomly, finding those thirty people and
5 asking them questions about the candidate and their
6 judicial temperament, for example, their ethics, those nine
7 evaluative criteria.

8 After all those calls are made -- and
9 realize how many calls that is, if that's thirty for each
10 new candidate, those subcommittees then all meet and they
11 interview these candidates, right?

12 So the interviews happen. Usually it's the
13 people that have been doing the calls are the committee
14 members that are then interviewing the candidates, and they
15 ask them about their personal data questionnaire, their
16 background, their experience.

17 They also ask them about any concerns that
18 have come up in these calls. Again, these calls are
19 anonymous. And they're going to other attorneys, so any
20 concerns that have come up in those calls, the candidates
21 are given an opportunity to address any of those concerns.

22 They are then asked five procedural and
23 evidentiary questions about the law. So it's like a little
24 mini law school exam. It's the things you wish you knew at
25 your fingertips, not the substantive "I've got to look this

1 up," but "when I'm sitting on the bench and I've got to
2 rule quickly," those sorts of questions. And we have
3 attorneys and judges help us develop those questions.

4 So during that interview process, they're
5 asked about their background, address any questions that
6 have come up in those calls that have already been made,
7 and then ask five procedural legal questions.

8 The candidate then leaves, the subcommittee
9 meets, and then there's one giant call with all 110 of the
10 volunteer attorneys. So kind of a converging of all the
11 subcommittees, one giant committee then meets and talks
12 through the candidates. And that's how the report is
13 generated.

14 So checks and balances in the system. If
15 there are more -- if there are negative trends in the
16 calls, these volunteers make more calls. You've got a
17 subcommittee going to a committee process, you've got 110
18 lawyers on a phone call, that's a lot of questioning and a
19 lot of checks and balances just by the very nature of who
20 we all are.

21 I want to make sure I hit all the highlights
22 here. As I was saying, this process is very deliberative
23 and requires a lot of commitment from those volunteers.
24 The nine evaluative criteria are explored here by the
25 candidate's colleagues. And I think that's an important

1 point.

2 Again, these are the colleagues asking those
3 questions. Nothing like getting law school questions --
4 instead of from the law school professor, you get them from
5 your colleagues and having to answer those, and also
6 getting to answer any questions that are raised by your
7 colleagues in those phone calls, getting an opportunity to
8 address those.

9 So that is how a report is formulated.
10 That's the deliberation and the professionalism and the
11 many hours of commitment that these volunteers make.

12 CHAIRMAN CASKEY: Thank you, Ms. Dean. I
13 appreciate that. And what I hope folks -- I know the
14 members of the Commission are intimately familiar with this
15 process, so I recognize that it may have been dutiful to
16 listen to it all.

17 But given the recent discussion, and the
18 body politics from some elected officials who are paid to
19 care about this process, I thought it important that we
20 have Ms. Crawford and Ms. Dean elucidate this for those who
21 are now interested in this process.

22 One of the things that struck me is -- I
23 joined the Commission last year, is just how thorough and
24 deliberative it is from top to bottom. And while everyone
25 may not make themselves go through all the information that

1 is available on our website "Scstatehouse.gov," if you go
2 to Citizens Interest, you'll find all this information
3 there -- oftentimes, in great volume.

4 And so I hope that the presentation that Ms.
5 Crawford gave, which will be uploaded to our website soon,
6 and the comments from Ms. Dean, will help those who are
7 genuinely interested in this process will then have a more
8 substantive background for the conversations that follow.

9 Because it is the charge of this Commission,
10 as it exists today, to do what the law requires. Whether
11 or not this commission should ever look differently, or
12 whether it should exist at all, is a question for another
13 forum, another day, and another time.

14 Everything that we do here is guided by the
15 South Carolina constitution and the code of laws that has
16 been enacted by general assemblies of the past. So I
17 thought it important that we do that.

18 At this point, if any members have questions
19 for Ms. Dean or Ms. Crawford, I will volunteer them to take
20 those questions from any member.

21 REPRESENTATIVE RUTHERFORD: Not after your
22 patriotic speech.

23 CHAIRMAN CASKEY: And, Ms. Dean, if there's
24 anybody you brought with you, that you think it would be
25 useful for those who are watching to hear from, we'd be

1 happy to hear from them. But no pressure.

2 MS. DEAN: No, sir.

3 CHAIRMAN CASKEY: That's a firm head-shaking
4 --

5 MS. DEAN: We're good. Thank you.

6 CHAIRMAN CASKEY: -- and a negative. All
7 right. Thank you for making the time. Mr. Chairman.

8 SENATOR RANKIN: I do want to compliment
9 you, Emma. Obviously, you've sat on this side of the
10 podium. You have participated in the JMSC process for
11 years, so you bring to the Bar, a unique perspective to see
12 and know and be able to educate those who would be
13 applying, and who are interested in this process, what goes
14 on.

15 And to the members of the -- and y'all
16 please stand, if you will, the Attorney General's Office.
17 Ms. Moise, if you will, please. The others who -- again,
18 Kali, all the volunteers that are with y'all. Thank you
19 for your time.

20 You don't get paid to do this. And you are
21 doing it to make the judiciary a better body. And our goal
22 here is for independence of that third branch of
23 government. And so to those of you who are giving of your
24 time now, this process, and before, thank you.

25 CHAIRMAN CASKEY: Thank you. With that, I

1 think we can take a quick break and then move into our
2 first screening. So we'll be back in five minutes or so.
3 Thank you.

4 (A recess was taken from 10:20 a.m. to 10:31 a.m.)

5 CHAIRMAN CASKEY: Ladies and gentlemen, we
6 are -- we're going to get started here. I don't have a --
7 certainly, not a gavel -- but no artificial noise-maker.
8 So unfortunately, you'll just have to hear my voice.

9 Our break is concluded. At this point we'll
10 begin our screening. And the first candidate we have
11 before us is Justice John Kittredge, who's an applicant to
12 the Supreme Court Chief Justice position.

13 Mr. Justice Kittredge, would you please
14 raise your right hand.

15 WHEREUPON,

16 THE HONORABLE JOHN W. KITTREDGE, being duly
17 sworn and cautioned to speak the truth, the whole truth and
18 nothing but the truth.

19 CHAIRMAN CASKEY: Are the personal data
20 question -- you may need to turn on your microphone there.
21 It's on. Let me start again.

22 Are the personal data questionnaire and the
23 sworn statement before you -- those documents that you've
24 submitted to the Commission -- are those, those documents?

25 JUSTICE KITTREDGE: Yes, sir.

1 CHAIRMAN CASKEY: Are they both correct?

2 JUSTICE KITTREDGE: They are correct. No
3 material changes.

4 CHAIRMAN CASKEY: And there's nothing that
5 needs to be updated at this time.

6 JUSTICE KITTREDGE: No, sir.

7 CHAIRMAN CASKEY: Do you object to our
8 making these documents and any amendments, if applicable, a
9 part of the record of your sworn testimony?

10 JUSTICE KITTREDGE: No objection, sir.

11 CHAIRMAN CASKEY: It will be done at this
12 point in the transcript. If the staff would now please
13 give the PDQ and the sworn statement to the court reporter.

14 (EXHIBIT NO. 3 - JUDICIAL MERIT SELECTION
15 COMMISSION PERSONAL DATA QUESTIONNAIRE OF THE
16 HONORABLE JOHN W. KITTREDGE)

17 (EXHIBIT NO. 4 - JUDICIAL MERIT SELECTION
18 COMMISSION SWORN STATEMENT OF THE HONORABLE JOHN
19 W. KITTREDGE)

20 CHAIRMAN CASKEY: That has been done. The
21 Judicial Merit Selection Commission has thoroughly
22 investigated your qualifications for the bench. Our
23 inquiry has focused on the nine evaluative criteria, and
24 has included a ballot box survey, a thorough study of your
25 application materials, verification of your compliance with

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

4 We have received one affidavit filed in
5 opposition to your election. However, it was dismissed.
6 No witnesses are present to testify. Do you have a brief
7 opening statement you would like to make at this time?

8 JUSTICE KITTREDGE: Mr. Chairman, I have no
9 opening statement per se. But I would like to simply
10 reference and commend the staff of JMSC. I've been through
11 this process many times in my thirty-plus year career.
12 It's a very daunting field to navigate, to go through this
13 vetting process, even though I've been through it before,
14 and even though I'm running for the current seat without
15 opposition.

16 And I think I would be remiss if I did not
17 commend not only the JMSC staff, but those who work behind
18 the scenes, the Citizens Committees who contact so many
19 people in your home community. Not just the legal
20 community, but throughout the community -- school friends,
21 workplace friends, community friends of all kinds. And the
22 vetting they do is very substantial.

23 Independent of that, I think you've heard
24 earlier today from the Bar, and the vetting they do, where
25 lawyers give of their time vet candidates. It's quite an

1 undertaking. And when you meet with the panel from the
2 Bar, it's really breathtaking to hear the depth of their
3 investigation and the number of people they contact. And
4 all of that information is funneled here to the JMSC.

5 The documents that I completed for this
6 application, as I have completed in years past, is
7 voluminous. It's my personal background, it's my
8 professional background, it's community involvement, it's a
9 review of my financial situation, mental and physical
10 fitness to serve on the bench.

11 But the vetting process is much more arduous
12 and deep than I think most people realize. And to Ms.
13 Crawford, to Mr. Dennis, Ms. Putnam -- I'm sure others
14 behind the scene -- who have to go through all that
15 material, not just for me, but for the many other
16 candidates.

17 And I know I speak for all the candidates
18 when I express my appreciation to the staff in helping us
19 navigate this very expansive vetting process.

20 CHAIRMAN CASKEY: Thank you very much for
21 those comments, Mr. Justice. I certainly join you in your
22 commendation of the staff and the folks who spend so much
23 time to get us to this point in the process. So I thank
24 you for those comments.

25 At this point, I would recognize Mr. Dennis,

1 the staff attorney who's handled your application, and ask
2 that you please respond to any questions he has for you.

3 JUSTICE KITTREDGE: Yes, sir, Mr. Chairman.

4 MR. DENNIS: Thank you, Mr. Chairman. To
5 begin with, I'd like to note for the record, that based on
6 the testimony contained in Justice Kittredge's personal
7 data questionnaire, which has been included in the record,
8 with his consent, Justice Kittredge meets the
9 constitutional and statutory requirements for this position
10 regarding age, residence, and years of practice.

11 EXAMINATION BY MR. DENNIS:

12 Q. Good morning, Justice Kittredge. A couple of
13 questions for you, if you don't mind, sir. Could you
14 please, for the benefit of the Commission, describe your
15 judicial experience up to this point.

16 A. Yes, sir. I completed, this past summer, thirty-
17 two years of service on the state court bench. I have
18 served on every major court in South Carolina, and the only
19 person ever to have done so.

20 I've served as a family court judge, a circuit
21 court judge, a Court of Appeals judge, and the last fifteen
22 years on the State Supreme Court. So I do believe I have a
23 good sense of what happens on the front lines, because I've
24 been there and I've experienced it.

25 Q. Thank you, sir. For the benefit of the

1 Commission, would you describe what you consider to be your
2 general judicial philosophy. Please offer an example or
3 two of how you've applied that philosophy in your time on
4 the bench. And, specifically, if you could, speak to the
5 concept of separation of powers under the South Carolina
6 constitution.

7 A. My judicial philosophy is one of restraint. My
8 judicial philosophy arises primarily from Federalist Paper
9 78 written by Hamilton, and is one of restraint. Judges
10 adjudicate. Judges do not legislate. Judges should
11 respect the policy-making role and the policy-making
12 prerogative of the legislature. That is, in my judgment,
13 the proper role of a judge. And it's also embedded in the
14 concept of separation of powers.

15 My approach is consistent. I am not political in
16 any sense. When a Republican majority legislature passes a
17 law, that in most instances will reflect a Republican or a
18 conservative policy judgment, a court then upholds that
19 legislation.

20 Some attribute or impute to the court, the
21 underlying political and policy motivations of the
22 legislature. But what the court is doing is simply
23 upholding the rule of law and respecting the policy-making
24 role of the legislature.

25 And if I may, Mr. Dennis, share an example. I

1 believe that my judicial philosophy is consistent across
2 the board. And I can share many examples, but for time
3 constraints, I'll just select one.

4 It's a case that probably would paint me on the
5 liberal side of the political spectrum. It's a case called
6 Smith v. Tiffany. I think it was 2015, the court issued
7 companion cases, Smith v. Tiffany, and Machin v. Carus
8 Corporation.

9 It resulted from a legislative enactment from
10 2005 Contribution Among Joint Tortfeasers Act. The idea
11 that flowed from that legislation was an attempt by South
12 Carolina, to make a policy judgment to move away from joint
13 and several liability, that responsibility should mirror
14 the degree of fault of the tortfeasor, the person in the
15 wrong. Fault should correspond to the liability, and not
16 exceed it.

17 Well, the case comes before us, Smith v.
18 Tiffany. And we had, had Amicus briefs from all comers. I
19 believe the Chamber of Commerce submitted a brief. And
20 there was an opinion -- and, indeed, an opinion on the
21 Court -- that took the pro-business, quote, conservative
22 approach, and read it in a way that favored the defendant's
23 position, because the narrative that emerged from the
24 legislation was that a deep-pocket defendant should only be
25 responsible for the degree of its fault, and not in excess

1 of it.

2 We studied the case very carefully. And I became
3 convinced that the actual language in the statute was at
4 odds with the narrative that had emerged of abolishing
5 several liability, and the actual language of the statute,
6 in my firm judgment, would not support the defendant's
7 position, or from the political standpoint, the
8 conservative or pro-business position.

9 I wrote the majority opinion. The plaintiff's
10 Bar was thrilled with the result. Now, was it promoting or
11 advocating an agenda for plaintiff's or a liberal
12 disposition? Absolutely not. Just as when I uphold other
13 statutory schemes as being within the prerogative of the
14 legislature, I'm not acting in a political manner.

15 I'm acting respectful of separation of powers and
16 upholding the rule of law. And that's what I endeavor to
17 do in every case that's presented before me. And I have
18 tried to do that for thirty-two years.

19 **Q. Thank you, Justice. Would you please identify**
20 **some of the key challenges you believe are facing the**
21 **state's judicial system, and as Chief Justice, what you**
22 **might do to address some of those challenges.**

23 A. I will. But I'm respectful that I serve under a
24 very fine Chief Justice, Don Beatty, who will serve as
25 Chief Justice until next summer.

1 I also want to bring to the committee's attention
2 and perspective, that in my thirty-two years, I've served
3 under seven Chief Justices. I have deep respect for all
4 Chief Justices. Each has contributed significantly to the
5 system.

6 So the fact that I may have suggestions, or what
7 I view as improvements, please don't take it as some kind
8 of criticism of any of the prior Chief Justices or the
9 current Chief Justice. But doing this for thirty-two
10 years, I have been a faithful servant. I have served under
11 seven Chief Justices and I have supported each Chief
12 Justice.

13 But along that journey, I've seen things. And I
14 have ideas and things that I would like to improve. But
15 please remember, I'm not being critical of any Chief
16 Justice.

17 I'll try to answer it just briefly in sort of a
18 global way, administratively, and then look to operations
19 of the courts. And then we can do a deeper dive, Mr.
20 Dennis, if you have more particular questions.

21 From an administrative standpoint, under our
22 constitution, the Chief Justice position is referred to as
23 a strong Chief Justice position. And there is a tendency
24 for Chief Justice to act unilaterally without input from
25 other members of the court. I don't think there's any

1 untoward about that. I don't think there's anything
2 nefarious motive. I just think because of the nature of
3 how it's presented to the Chief, that it's only presented
4 on his or her radar, and not to the other members of the
5 court.

6 And what I want to do is change that culture,
7 change that dynamic, so when matters come to our attention,
8 they're on all five radars and not just one. Because I'm
9 confident that if I make a decision in isolation, it's
10 probably going to be a better ultimate result if I make
11 that decision in collaboration, in good faith with my
12 colleagues on the court.

13 Now, some decisions have to be made unilaterally.
14 But I think that's the exception and not the rule. So from
15 a broad-speaking administrative standpoint, I want to
16 engage the court more collaboratively, that we are a court
17 of five and not a court of one.

18 As far as actual court operations, I do believe
19 that we can make improvement on every court. And the first
20 example I would give you would be our court: We can do
21 better.

22 The time for processing an appeal -- and we
23 typically get the cert petitions from the Court of Appeals.
24 We do have original jurisdiction, we do other things, but
25 our bread and butter is certiorari petitions to the Court

1 of Appeals.

2 Once a rehearing is denied at the Court of
3 Appeals, that allows the grieved party to file a petition
4 for cert in our court. Quite frankly, it sometimes takes a
5 year for that petition to work its way to our agenda for us
6 to vote on.

7 In my judgment, that's inexcusable. A cert
8 petition ought to be more timely disposed of. And I think
9 with existing resources, we can accomplish that.

10 There are also in the works some changes to the
11 appellate court rules that will facilitate those changes.
12 So that's sort of the front bookend of how cases come into
13 the system.

14 On the back end in how we process opinions,
15 sometimes we'll have an original jurisdiction matter and we
16 tell the attorneys, "You've got to get your brief in, in
17 ten days or fifteen days." It's a fire alarm fire. We
18 hear the case then we wait months to issue an opinion.

19 Why aren't we held to the same standard? We
20 force them to come to us, quickly, because it's a matter of
21 public importance, and we wait months before we issue an
22 opinion.

23 So on the back end -- on that bookend, I think we
24 can do better in terms of a more expeditious resolution of
25 cases that come before us, and do all of that without

1 sacrificing the quality of our work.

2 I will say the same thing applies for the Court
3 of Appeals. It takes too long for a case to process
4 through the Court of Appeals. I know Chief Judge Williams,
5 who's only been at the helm for a short period of time, is
6 very aware of that and is working diligently on it, but at
7 the appellate level, expediting cases, narrowing the time.

8 Because the citizens and the people, the
9 litigants in these cases, they need finality. And it's no
10 different at the trial court.

11 If you want, I can make some suggestions in what
12 we're doing -- that I envision for circuit court, common
13 pleas, general sessions. I have thoughts for family court,
14 and on and on. But I'll let you hit the bulls eye with
15 your questions, and I'll respond accordingly, sir.

16 Q. Well, thank you. I was going to stop with the
17 appellate courts today. And you answered, actually, my
18 next two or three questions all at one time. So I
19 appreciate it. I'm going to skip ahead.

20 In your materials, you mentioned a need for --
21 your words -- transparency and accountability at the lawyer
22 discipline -- rather with the Office of Disciplinary
23 Council. Can you please discuss how you would achieve
24 these things at ODC?

25 A. Let me make an overarching comment. We need

1 increased transparency and accountability across the board
2 in the judicial branch, not simply ODC. There's a feature
3 of that, that's of critical importance, and that is the
4 public's confidence in the integrity of our justice system.

5 We can have a wonderful system. But if the
6 public doesn't believe it's there, it's not. Perception is
7 a reality. And I'm convinced that enhanced, increased
8 transparency and accountability on all fronts in the
9 judicial branch will help promote public confidence in the
10 integrity of our system.

11 Now more to your point regarding the Office of
12 Disciplinary Counsel. We've had tremendous leaders at
13 Disciplinary Counsel -- Lee Coggiola, John Nichols, and
14 most recently, William Blitch, who on the court we know
15 because I worked with him at the Court of Appeals, one of
16 the best advocates that ever appeared before us as a
17 representative at the Attorney General's Office. Very
18 capable. Very bright. And he has just in the last few
19 months taken on this new role. As with his predecessors,
20 I'm confident he will do a fine job.

21 One of the impediments that ODC has faced is a
22 lack of resources. And when complaints are filed, and
23 there's not a quick and a timely response to what may be
24 misconduct, then it calls into question is something really
25 being done. It puts a question mark in the eyes of the

1 public.

2 So expediency is of critical importance in
3 disciplinary matters, that they're handled quickly and
4 fairly, for the benefit of the public and those who are
5 accused of wrongdoing.

6 Now, in terms of the transparency, Mr. Blicht,
7 his predecessors, they operated under a set of rules that
8 are, quite frankly, I think need amending. Ad it needs to
9 be opened up to achieve that increased accountability and
10 transparency.

11 Just one example very quickly. When a person
12 offers for a judgeship, what may have been private in terms
13 of disposition of a disciplinary matter as an attorney,
14 when that person, he or she, offers to become a judge for
15 the people of South Carolina, I think this commission and I
16 think the people are entitled to know everything about that
17 candidate. That's one example.

18 **Q. Thank you, Justice. As you know, the Commission**
19 **received 1,395 ballot box surveys regarding you. Of those,**
20 **160 additional comments were included. The vast majority**
21 **of these comments were positive and spoke to various**
22 **strengths of intellect, experience, temporary, character.**

23 **Of that 160, twelve written comments expressed**
24 **some measure of concern. And these fell into two buckets.**
25 **And though you've responded to some of this a little bit,**

1 already, I'll ask you to respond again.

2 Specifically, one suggested that you are too
3 conservative -- their word -- in your judicial philosophy.
4 Could you respond to that criticism, please?

5 A. I believe my prior response goes a long way to
6 addressing that. We practice in a system -- the legal
7 system that is, by design, adversarial. You know,
8 everyone's pulling for the physician to heal the patient.
9 Everyone's pulling for the architect to design the
10 structure in a way that achieves safety.

11 Everyone's pulling for the pilot to land the plan
12 -- the plane safely. Not everyone's pulling for the judge.
13 Not everyone's pulling for the lawyer. Our system is, by
14 design, adversarial. And in an adversarial system, people
15 lose case -- or cases and they respond in a negative way.
16 That's human nature.

17 Quite frankly, after thirty-two years, I'm
18 surprised you didn't get more negative responses. But I
19 have tried, diligently, to apply the law fairly. And I am
20 apolitical. And I believe that with every fiber of my
21 being.

22 I've tried to treat everyone that I deal with --
23 both in and out of court, with the utmost respect,
24 kindness, and professionalism. And I have tried to devote
25 myself to applying the law fairly to everyone.

1 And I would just segue back to a comment I made
2 earlier. When a legislature is of a particular political
3 party, it should not be a mystery that the legislation they
4 produce reflects that majority view.

5 And when a court upholds that expression of a
6 policy judgment enacted in statutes, that underlying
7 political motivation, I don't think it's fair to attribute
8 it to the court or an individual judge.

9 **Q. And much of that answer is applicable to the**
10 **second set of comments, which suggests that some of your**
11 **opinions have offered too much deference to the General**
12 **Assembly.**

13 **In light of responding directly to that, I would**
14 **ask you to discuss what you think the appropriate amount of**
15 **deference to a general assembly and our constitutional**
16 **system is.**

17 A. Well, in our constitutional system -- and I'll do
18 it in a -- two different levels. When we're presented with
19 a case of a statutory construction, our duty is to discern
20 and effectuate legislative intent.

21 If there's an accompanying constitutional
22 challenge, there's an additional framework at play. The
23 law deals in frameworks. And with a constitutional
24 challenge, we begin with the premise that the authority of
25 the General Assembly is plenary.

1 Does that mean it's without limit? Absolutely
2 not. But deference is given to the legislative enactment.

3 In fact, in law -- not just in South Carolina,
4 but black letter law, legislative enactments, are presumed
5 to be constitutional. The law further requires that every
6 presumption be made in finding the law constitutional.

7 And the party challenging the constitutionality
8 of a statutory carries the burden of proving
9 unconstitutionality beyond a reasonable doubt.

10 I have written many opinions that have found
11 legislative enactments unconstitutional, where I was not
12 deferring to the legislature because I was convinced they
13 had crossed a line. I can give an example, if you'd like.

14 **Q. I think just a general discussion of where the**
15 **deference level is, is probably sufficient. That's all the**
16 **questions I've got for right now.**

17 **Justice Kittredge, I've got a couple of**
18 **housekeeping things I'm going to run through with you, real**
19 **quick, and then I'm going to turn you back over to the**
20 **commissioners.**

21 MR. DENNIS: Mr. Chairman, I would note that
22 the Upstate Citizens Committee reported that Justice
23 Kittredge is well qualified as to the criteria of ethical
24 fitness, professional and academic ability, character,
25 reputation, experience, and temperament.

1 They also found him to be at the highest
2 level of qualified for constitutional qualifications,
3 physical health and mental stability. They made no further
4 comments.

5 BY MR. DENNIS:

6 **Q. Justice Kittredge, quickly. Since submitting**
7 **your letter of intent to run for this seat, have you**
8 **contacted any members of this commission about your**
9 **candidacy?**

10 A. I have not.

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

14 A. I don't know the statute off the top of my head.
15 But if that's the rule about you can't members of this
16 commission and you can't seek votes --

17 **Q. Yes, sir.**

18 A. -- prior to the 48-Hour Rule.

19 **Q. Yes, sir.**

20 A. I'm very familiar with it. And I have abided by
21 it --

22 **Q. Thank you.**

23 A. -- and will continue to abide by it.

24 **Q. Since submitting your letter of intent, have you**
25 **sought or received the pledge of any legislature either**

1 prior to this date or pending the outcome of your
2 screening?

3 A. No, sir.

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

8 A. No, in terms of my instigating any contact. But
9 I want to be honest with you, this has taken on a life of
10 its own since I have filed. I've had probably hundreds of
11 people, either a phone call or run into them at church or
12 at the grocery store, "Hey, John, I heard you're running.
13 I talked to So-and-so" or "I'm going to put in a good
14 word."

15 So I hear that kind of banter about -- maybe it's
16 the nature of the Chief Justice position, but it's nothing
17 that I have instigated in any way. I wouldn't be surprised
18 if some of you folks had been contacted. And I can tell
19 you, my fingerprints are not on it. And I would never ask
20 anyone to contact a member of JMSC on my behalf.

21 MR. DENNIS: Mr. Chairman, I'd note for the
22 record that any concerns contained in Justice Kittredge's
23 materials were raised -- that were raised during the
24 investigation have been included in my questioning today.
25 And I don't have anything further for him.

1 CHAIRMAN CASKEY: Thank you, Mr. Dennis. I
2 appreciate that. Do any commissioners have any questions
3 for Justice Kittredge?

4 SENATOR RANKIN: Mr. Chairman.

5 CHAIRMAN CASKEY: Mr. Chairman Rankin.

6 SENATOR RANKIN: Thank you.

7 EXAMINATION BY SENATOR RANKIN:

8 Q. Justice Kittredge, welcome. You can almost smile
9 --

10 SENATOR RANKIN: For the record, he is now
11 smiling.

12 Q. -- because you're almost there. And I want to
13 compliment you for your willingness to do this. You have
14 appeared before this body before. I have got to the table
15 and had the ability to ask questions of you or other
16 candidates, and I want to thank you for your comments.

17 Not self-serving for this vetting process in its
18 current iteration, but I do want to invite you to comment
19 about this process -- not Chairman Caskey's or any other
20 member of this body, but this versus any other state that
21 you have encountered other justices of their highest courts
22 across the country.

23 A. Well, I want to walk a fine line on that one,
24 Senator. Because of my belief in separation of powers, the
25 judicial branch is not going to dictate to the legislative

1 branch or this body on how best to select judges.

2 But I will share this with you: One of the things
3 that I enjoy doing is speaking to civic groups, speaking to
4 schools. A couple weeks ago, I was in Berkeley and spoke
5 to the Rotary Club. I spoke to the Injured Workers
6 Conference this past Friday. I'm speaking tomorrow to a
7 middle school group.

8 I'm speaking to a class for Judge Clary, my
9 friend, who some of you may remember, at Clemson next
10 Thursday. So I'm regularly speaking to civic groups, and
11 one of the things I do is a question-and-answer. And the
12 very issue you brought up, Senator, always comes up.

13 And I'm so impressed with the quality and
14 maturity of our citizens, and how they respond to this
15 issue about judicial election. I don't run into the flame-
16 throwers that say we need public election. I'm speaking to
17 my cohorts in other states.

18 I go back to rule -- Federalist Paper 78, that
19 lamented about the political entrenchment that occurs when
20 judges are publicly elected, and the states that have
21 gotten into such difficulties when lawyers have to solicit
22 money and then hear cases with those lawyers and the
23 parties who gave money, and the havoc that's wreaked in
24 that situation.

25 And when I travel the state and speak to chamber

1 groups, Kawanis, Rotaries, and students. I'm impressed by
2 their recognition that we have a pretty good system, that
3 our judges for the most part are good.

4 And if I could give you one sort of anecdotal
5 story that I think illustrates the point of the benefit of
6 our system. Each week, we get a report of cases of
7 judicial misconduct from around the country.

8 And, unfortunately, it's a pretty long list. And
9 what you don't see in that list -- or very, very rarely --
10 is a judge from South Carolina being disciplined.

11 And our disciplinary rules mirror the ABA
12 standards. We don't have some specific rule that favors
13 judges. We have a rule that I helped rewrite in 2008, as
14 chair of the Commission on the profession, where we adopted
15 and mirrored the ABA standards for judicial discipline.

16 Yet, there are very few complaints against judges
17 in South Carolina. And why is that? I harken back to my
18 original comments to you: It's the vetting that goes on
19 here; that the people that you elect, the men and women, to
20 the bench of this state are, for the overwhelming majority,
21 good and decent people of high ethics, who abide by the
22 judicial code of conduct.

23 But there's a footnote to that. There is an area
24 where we do have to discipline judges. It's magistrates
25 and municipal judges, most of whom do an outstanding job.

1 And maybe it's driven because there's so many numbers of
2 magistrates and municipal judges. But I would point out to
3 you, they don't go through the vetting that we go through
4 in the state court system, that you put all candidates
5 through.

6 So is there room for improvement? I'm going to
7 leave that to the decision-makers. But overall, this
8 system has produced some very fine judges. Me,
9 notwithstanding.

10 **Q. You have been through this current composition of**
11 **JMSC, how many times? If it's been thirty-two years --**

12 A. When I got elected in '91, it was just a
13 transition. And that was the first effort. And it was
14 sort of a hybrid between the old way and the new way. But
15 every time -- when I got reelected to family court, when I
16 ran for circuit court, when I got reelected to circuit
17 court, it was under this iteration of the JMSC where the
18 rules were in place about no commitments beforehand, you
19 had to wait until the report is issued, etc. So I've been
20 through this many times.

21 **Q. Have you seen -- and, again, this is -- I'm going**
22 **to ask you to take your hat off of the candidate, but the**
23 **participant of other races, have you seen the ability to**
24 **game this system?**

25 A. To game the system?

1 **Q. Game it. And not in a pejorative sense.**

2 A. No. If it goes on, I'm not aware of it. And,
3 quite frankly, logistically, I don't know how you would
4 game it, given the political and the public spotlight
5 that's on the process.

6 Everyone knows about the citizens committee,
7 everyone knows the work they do. It's not done in secret.
8 People volunteer for the Bar and go through that process.
9 This is a public hearing.

10 The documents I file, except for certain
11 documents such as of a financial nature, will see the light
12 of day; they're very public. I don't know, given those
13 circumstances, how you game the system.

14 **Q. A couple more then I'm going to hush.**
15 **Effectively -- not you if you're successful -- but you as**
16 **one of five will effectively have under your control and**
17 **responsibility, the discipline of an errant job.**
18 **Effectively, now, your ability to -- or your after -- soon**
19 **hereafter to suspend a magistrate or send a -- suspend a**
20 **city municipal court judge, correct?**

21 A. Correct.

22 **Q. In terms of your ability to take a sitting member**
23 **of the circuit court, who may run afoul of any number of**
24 **things -- ethics or the law or their continued ability to**
25 **service -- that is the Supreme Court's ability to reassign,**

1 correct?

2 A. Well, I'd begin with the premise -- and I don't
3 know this, definitively, and I would have to research it.
4 I would think the Chief Justice has, perhaps, the authority
5 to suspend a state-level judge.

6 Q. I wouldn't disagree with you. But that may be up
7 for -- with that answer my --

8 A. Assuming -- assuming I can't.

9 Q. Correct.

10 A. Assuming the Chief can't. Let me tell you there
11 are ways to handle that. The judge could be unassigned --

12 Q. Solely within that authority now --

13 A. Yes.

14 Q. -- at the Supreme Court.

15 A. That authority exists now. If there's a -- I
16 don't know what the situation would be, but say there's
17 something nefarious going on and the Chief Justice -- and
18 this is an example, and if I could just tie this to one
19 component of the court of one approach versus what I hope
20 to be a collaborative court of five approach.

21 We suspend lawyers through the office of the
22 Chief Justice. The rest of the court usually does not know
23 anything about it. I think that should be done
24 collaboratively.

25 Because when you suspend a lawyer, oftentimes

1 when the dust settles, you realize there was not as much to
2 the allegation as appeared, ostensibly, in the first
3 instance. You've not only impacted the livelihood of that
4 lawyer, for him or her to make a living, you've impacted
5 his or her clients who now have to pick up a file and go
6 elsewhere. That's a traumatic experience for our -- for
7 our litigants.

8 So be it the suspension of a lawyer or the judges
9 coming together to deal with a state court-level judge, in
10 terms of discipline, I think that's something we would do
11 together.

12 Q. The point that I'm raising there, whether you do
13 or you don't, there are checks and balances within the
14 system itself --

15 A. Absolutely.

16 Q. -- to cure and/or correct abhorrent behavior --

17 A. Absolutely.

18 Q. -- on the bench. Which again is not a common
19 thing. But the perception by some, effectively, that the
20 system has been gamed, that judge has been bought off, that
21 judge is deferential because that's a lawyer who happens to
22 be in the House of Representatives or the Senate, there are
23 checks and balances within the system to cure and correct.

24 A. There absolutely are, Senator.

25 Q. Finally this -- and I say "finally." I may get

1 one more. You mentioned Smith and Tiffany and the Manchin
2 case, which effectively you've answered the question posed
3 by the federal court -- a question to y'all, effectively,
4 to say whether or not the jury could be asked to consider
5 the fault of a non -- a non-partied litigant, correct? Am
6 I distilling that correctly? And I'm mashing Manchin and
7 the Smith --

8 A. Manchin was a workers' comp question certified, I
9 believe --

10 Q. Correct.

11 A. -- by Joe Anderson. It's been a long time since
12 I've read those cases. But the case came to me, and I
13 thought it was appropriate for me to respond, to show an
14 evenhanded approach in how I view my judicial philosophy.
15 The judicial restraints cuts both ways.

16 Q. Well, and I'm -- and those were both 2017 cases,
17 'cause I looked --

18 A. Okay.

19 Q. -- in your list of 43,016.2 cases that you have
20 reported in the thirty-two years. To look at that -- and
21 that is -- I want to tip my hat to you. Effectively, the
22 Solomon's answer to the comp case, at least on deferring.

23 But effectively, perhaps, confusing and offering
24 to some judges some way to pose that question which, and
25 this is rhetorical, we now will be dealing with in this

1 **empty-chair defendant-type posture of litigation. So a**
2 **heavier time, perhaps.**

3 A. The statute is ambiguous. And so there was a
4 dissenting opinion in Smith v. Tiffany, that went the other
5 way, and we're trying to discern what the legislature
6 meant.

7 And you're correct. It's what can be submitted
8 to the jury. And the legislature specifically stated, if I
9 recall correctly -- it's been a while since I've actually
10 read the opinion. I know the big picture. -- but that a
11 defendant liability would be apportioned by the jury.

12 So what if there's a settlement to an at-fault
13 party on the front end who signs a covenant? Well, they're
14 no longer a party. They're not a defendant. And that
15 brings up the empty chair.

16 But if -- as far as the jury's consideration of
17 allocating fault, it has to be among the defendants. The
18 result was that South Carolina, if you read that language
19 the way it's written, retained a remnant of joint and
20 several liability in that limited context.

21 Are there unanswered questions going forward?
22 Yes. And I would conclude with this, because it's not of a
23 constitutional import: The ball is in the court of the
24 legislature, the legislature can change that law however it
25 wishes.

1 Q. John Brearley, a preacher at the First
2 Presbyterian Church of Myrtle Beach -- do you know him?

3 A. I do not.

4 Q. He knows you. You impressed him, years and years
5 ago, with no fanfare and no robe -- heavy robeitis behavior
6 on your part, in a most complimentary fashion to you, and
7 so won a compliment from him.

8 A. Well, he's my new best friend.

9 Q. The last question. Of the nine qualifications
10 that we hold each candidate to, is there one more
11 preeminent than the other? Or do we take them -- the nine
12 equally?

13 A. Well, that's a great question. And I'm going to
14 respond to that. I do a lot of swearing-in of new judges.
15 And when I first became a judge, I probably was given a
16 hundred different pointers how to be a good judge, what are
17 the best pointers for a judge.

18 Well, I've distilled those to five, and I share
19 those with new judges when I administer the oath to
20 whatever bench they're assuming. And they're basically
21 common sense, treating people with respect, being a good
22 listener.

23 People today don't listen. When people come to
24 court, they want to be heard. They don't want to be talked
25 over. They want to be heard. And it's often said that a

1 lawyer with some common sense and a good temporary makes a
2 far better judge than an ill-tempered genius. Those to me
3 are the fine qualities of a good judge.

4 So I think all nine of the above are important in
5 a holistic approach to your evaluation of these candidates.

6 **Q. Thank you.**

7 CHAIRMAN CASKEY: Any other members of the
8 Commission have questions for Justice Kittredge?

9 (Hearing none.)

10 CHAIRMAN CASKEY: Seeing none. Justice
11 Kittredge, we certainly appreciate you being here today.
12 This concludes this portion of the screening process.

13 I do want to take this opportunity to remind
14 you, that pursuant to the Commission's evaluative criteria,
15 the Commission expects candidates to follow the spirit as
16 well as the letter of the ethics laws, and we will view
17 violations or the appearance of impropriety as serious and
18 potentially deserving of heavy weight in the screening
19 deliberations.

20 On that note, and as you know, the record
21 will remain open until the formal release of the report of
22 qualifications, and you may be called back at such time of
23 that need arises.

24 But I do want to thank you, again, for your
25 leadership and your service to the state. I appreciate

1 your offering for this position. And I wish you all the
2 best. Thank you for your time, today, sir.

3 JUSTICE KITTREDGE: Thank you, Mr. Chairman.
4 And I thank all members of the Commission. Thank you.

5 (Candidate excused.)

6 CHAIRMAN CASKEY: For those who want to
7 stick around for the other 84 screenings that we'll be
8 entertaining this month, we certainly invite you to do
9 that. If you'd like to stay, you're sure welcome to.

10 Otherwise, we'll move into the next
11 screening. And so if we could invite the candidate in, as
12 well as his screening attorney.

13 CHAIRMAN CASKEY: Good morning, Mr. Lambert.
14 Thank you for --

15 MR. LAMBERT: Good morning.

16 CHAIRMAN CASKEY: -- being here today. Of
17 course we have Mr. Grayson Lambert, who is applying for the
18 judicial position of Seat 9 on the South Carolina Court of
19 Appeals. Mr. Lambert, if you would please raise your right
20 hand.

21 WHEREUPON,

22 GRAYSON LAMBERT, being duly sworn and
23 cautioned to speak the truth, the whole truth and nothing
24 but the truth.

25 CHAIRMAN CASKEY: You should have some

1 documents there before you. Are the personal data
2 questionnaire and the sworn statement before you, documents
3 that you submitted to the Commission?

4 MR. LAMBERT: They are.

5 CHAIRMAN CASKEY: Are they both correct?

6 MR. LAMBERT: They are.

7 CHAIRMAN CASKEY: Does anything need to be
8 changed or updated at this time?

9 MR. LAMBERT: It does not.

10 CHAIRMAN CASKEY: Do you object to our
11 making these documents and any amendments, if applicable, a
12 part of the record of your sworn testimony?

13 MR. LAMBERT: I do not.

14 CHAIRMAN CASKEY: We will go ahead and do
15 that.

16 (EXHIBIT NO. 5 - JUDICIAL MERIT SELECTION
17 COMMISSION PERSONAL DATA QUESTIONNAIRE OF WILLIAM
18 GRAYSON LAMBERT)

19 (EXHIBIT NO. 6 - JUDICIAL MERIT SELECTION
20 COMMISSION PERSONAL SWORN STATEMENT OF WILLIAM
21 GRAYSON LAMBERT)

22 CHAIRMAN CASKEY: The Judicial Merit
23 Selection Commission has thoroughly investigated your
24 qualifications for the bench. Our inquiry has focused on
25 the nine evaluative criteria and has included a ballot box

1 survey, a thorough study of your application materials,
2 verification of your compliance with state ethics laws, a
3 search of newspaper articles in which your name appears, a
4 study of previous screenings, a check for economic
5 conflicts of interest.

6 We have received no affidavits filed in
7 opposition to your election. No witnesses are present to
8 testify.

9 You'll certainly be invited to give a brief
10 opening statement. But I see you have some folks with you
11 today. If you'd like to introduce them to the Commission.

12 MR. LAMBERT: I do. I have my wife, Mary
13 Beth Lambert, who is a pediatrician here in town at
14 Sandhills. My father, Lanny Lambert, who's a lawyer and
15 former president of the Bar. And then my colleagues in the
16 Governor's Office, Thomas Limehouse and Erica Shedd.

17 CHAIRMAN CASKEY: Thank you all for being
18 here today. I certainly appreciate that.

19 If you have an opening statement you'd like
20 to give the Commission, we'd certainly like to hear from
21 you. Otherwise, we'll proceed with questions from the
22 screening attorney.

23 MR. LAMBERT: Thank you for the opportunity
24 to be here. I look forward to the possibility of serving
25 our state in this new way. I'm mindful that y'all have a

1 full day and weeks of hearings, so I'm happy to answer your
2 questions.

3 CHAIRMAN CASKEY: Great. At this point,
4 then, I'd recognize Mr. Maldonado, staff attorney.

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

12 EXAMINATION BY MR. MALDONADO:

13 Q. Mr. Lambert, first of all, good morning.

14 A. Good morning.

15 Q. Why do you now want to serve as a judge on the
16 Court of Appeals?

17 A. I believe public service is incredibly important.
18 That's why I left being a partner in one of the state's
19 biggest law firms, to come to the Governor's Office. As I
20 began thinking about how I would continue serving through
21 the rest of my career, I thought the being a judge on the
22 appellate bench made the most sense.

23 One, being a judge generally matters because
24 courts preserve the rule of law in our society. It ensures
25 an orderly and peaceful place in which we all can live and

1 settle our disputes. And given my experience through
2 practice, in more than eighty appeals, I thought the
3 appellate bench was where my skills were best suited.

4 So I look forward to being able to serve our
5 state in this way.

6 **Q. How do you feel your legal and professional**
7 **experience thus far will assist you to be an effective**
8 **judge on the Court of Appeals?**

9 A. I graduated from law school at Duke, and then
10 went to clerk on the 4th Circuit Court of Appeals for Judge
11 Shedd. I then was in private practice for the better part
12 of a decade, developing through that time, on almost
13 exclusively appellate practice.

14 I joined the Governor's Office about two and a
15 half years ago, where I serve now as his senior litigation
16 counsel. And my primary responsibility is handling
17 litigation in which the Governor is a party.

18 In all of these experiences, between private
19 practice and the Governor's Office, I've been counsel in
20 more than eighty appeals now. I've developed the research,
21 the analytical and the writing skills that are essential to
22 serving on the appellate bench, to thinking thoroughly
23 through the issues and to being able to carefully analyze the
24 issues a case presents, and resolve them based on the law
25 and the facts before you.

1 Q. Thank you. How would you describe your general
2 judicial philosophy?

3 A. Our courts are charged under the constitution to
4 decide cases. Cases are a concrete, live dispute between
5 adverse parties. The judge's job is to decide the case
6 before him, or her, based on the law that's there and the
7 facts that have been found, and the job to say what the law
8 is and not what the law should be.

9 How to determine what the law is should be based
10 on what the words and the statute of the constitution mean
11 to the people who enacted that law. Because they were the
12 law-giver, not the judge.

13 And thus, a court -- like as our Chief Judge
14 Sanders said once, appellate courts in this state are like
15 well-behaved school children; they speak when spoken to,
16 and do not answer questions they are not asked.

17 Courts are not supposed to, as our Supreme
18 Court's frequently said, to be a super-legislature, to
19 secondguess the General Assembly's wisdom, nor are they out
20 there to say what they think the law should be. They say
21 what the law is, they decide the case before them, and then
22 they move to the next case.

23 I think that ensures that the constitutional
24 separation of powers is protected, and that the peoples'
25 representatives get to determine what the law is. And

1 courts simply say what the law -- excuse me -- what the law
2 should be, and therefore, courts simply interpret the law
3 as it's been given to them.

4 **Q. Mr. Lambert, what is your vision of the future of**
5 **our judicial system? And what changes would you advocate,**
6 **and why?**

7 A. The most important thing facing the Court of
8 Appeals right now is ensuring that cases are timely decided
9 and disposed of. I recall from private practice, that
10 cases often could sit for years. And that's a detriment
11 not to the lawyers, but particular to the parties.

12 The Court of Appeals needs to look for ways to
13 ensure that its docket moves quickly. I know the Chief
14 Judge is working hard on that. I would welcome the
15 opportunity to work with him, whether that means ensuring
16 cases were to move through my chambers quickly, to ensure
17 that there is a -- and advocate for sufficient funding for
18 staff attorneys, that they -- there's less turnover in that
19 office, and generally, making sure the court's docket
20 progresses in a speedy enough way that courts and litigants
21 aren't waiting on cases for four or more years to be
22 decided for potential remand or for a final resolution.

23 **Q. Thank you. Mr. Lambert, the Commission received**
24 **243 ballot box surveys regarding you, with 63 additional**
25 **comments. The surveys, for example, contained the**

1 following positive comments:

2 Quote, "Would be an excellent addition to the
3 court. Head and shoulders above any other candidate
4 listed."

5 Also, quote, "Brilliant intellect. Loves the
6 law, especially the academic side of it. Would make an
7 outstanding appellate judge."

8 Seventeen of the written comments expressed
9 concerns, including concerns about your experience,
10 including both the lack of judicial experience and the lack
11 of criminal law experience. How would you respond to these
12 concerns?

13 A. I'll take the criminal law part first. I've done
14 a couple of criminal appeals, but I also, as a law clerk,
15 handled countless criminal appeals in Judge Shedd's
16 chambers. So I'm not unfamiliar of the criminal law from
17 that perspective.

18 I also, in the Governor's Office, touch any
19 number of issues, including in Title 16, that come from --
20 into the office through various ways, including from
21 legislation that's been passed and presented to the
22 Governor for his signature or veto.

23 So while I may not have tried a lot of criminal
24 cases, or done a lot of criminal appeals as lead appellate
25 counsel, I have an experience with criminal law that's not

1 going to show up in the public record. So I think I do
2 have a background in criminal law that I -- that gives me a
3 starting point for sitting on the bench.

4 As for the lack of judicial experience. I have
5 not been a judge before. But I don't know that I'm
6 qualified to be a circuit court judge in this state.
7 That's not the practice I've had in my career. It's not
8 the skill set I've developed.

9 But I think a diversity of experience on the
10 appellate bench is a beneficial thing to analyze the issues
11 and decide the cases that are there. And I pledge, both to
12 this commission and to all the members of the Bar, that I
13 will bring the same energy and effort to deciding cases as
14 a judge, that I brought to private practice and in the
15 Governor's Office when I've been litigating them.

16 **Q. Thank you. A second type of concern mentioned in**
17 **the ballot box comments offered that you might have a**
18 **political or a ideological bias. What would you offer as a**
19 **response regarding this concern?**

20 A. I recognize that I have been a lawyer in some
21 high profile and some controversial cases in my career.
22 But I have been just that, a lawyer.

23 Even with the Governor's Office, I work in a
24 legal office not in a political one, and my job is to be a
25 lawyer, even if often the folks around us in the statehouse

1 are focused on the political side of it.

2 If you take the two writing samples that I
3 submitted with my application, those were in the Methods of
4 Execution cases and the Second Planned Parenthood case, and
5 read them, the arguments there are legal. They are the
6 exact way you would go about analyzing a tort case or a
7 statutory claim, or any other lawsuit that's before you.

8 It's not political arguments. And I think if you
9 go back and listen to the arguments in the Supreme Court,
10 you'll hear the arguments I was advancing from the podium
11 there were legal ones, not political ones. So I appreciate
12 there's politically-charged cases I've worked on.

13 But the arguments and the job I've done is to
14 have been a lawyer there. So I don't think we would want
15 to discourage, generally, lawyers from going into
16 government service and then later wanting to seek the bench
17 because of the work that government service put on their
18 desks.

19 **Q. Thank you. Finally, another type of comment**
20 **expressed concerns regarding your temperament to be a**
21 **judge. What response would you offer to that concern?**

22 A. I don't want anyone to think I wouldn't be
23 thoughtful, reflective, fair to everyone. Certainly, I'm
24 disappointed that anything I've done in my career would
25 have left someone with the thought that my temperament

1 wasn't suited for the bench, or to carefully think through
2 the issues and treat the litigants before me, respectfully
3 and fairly.

4 And I vow that if I am fortunate enough to serve
5 on the Court of Appeals, I will seek to treat everyone well
6 and to have a judicial temporary that makes both the court
7 and this state proud.

8 **Q. Thank you. Mr. Lambert, you've indicated in your**
9 **PDQ, there was a lawsuit filed against you in 2013 in the**
10 **federal court by a David Willis, who was a federal inmate**
11 **at the time, while you were working as a law clerk for**
12 **Judge Shedd at the 4th Circuit Court of Appeals.**

13 **Can you please explain the nature and the**
14 **disposition of the lawsuit?**

15 A. Certainly. The plaintiff there was a -- an
16 inmate in federal prison, who was dissatisfied with the
17 result of his criminal appeal. He recognized he could not
18 sue the judges from his panel, because they have judicial
19 immunity, so he somehow found the names of the twelve law
20 clerks that worked for those three judges, and sued us as
21 well as the district court's judges. DOJ represented us,
22 and the case was promptly dismissed.

23 **Q. And were you ever served with that?**

24 A. I was never served with it. I don't recall
25 seeing about it, other than the fact the DOJ later told us

1 the case was over.

2 MR. MALDONADO: I would note that the
3 Midlands Citizens Committee reported Mr. Lambert to be
4 qualified in the evaluative criteria of ethical fitness,
5 professional and academic ability, character, reputation,
6 experience, and judicial temperament, and qualified in the
7 criteria of constitutional qualifications, physical health
8 and mental stability.

9 The Commission also noted, quote, "Will be a
10 great asset to the Court of Appeals."

11 BY MR. MALDONADO:

12 Q. I'll finish up with some housekeeping questions,
13 Mr. Lambert. Since submitting your letter of intent to run
14 for this seat -- have you been -- have you contacted any
15 members of the Commission about your candidacy?

16 A. I have not.

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

20 A. I am.

21 Q. Since submitting your letter of intent, have you
22 sought or received a pledge of any legislature either prior
23 to this date or pending the outcome of your screening?

24 A. I have not.

25 Q. Have you asked any third parties to contact

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

4 A. I have not and I am not.

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

10 CHAIRMAN CASKEY: Thank you, sir. Do any of
11 the Commission members have questions for the candidate?
12 Senator Rankin.

13 EXAMINATION BY SENATOR RANKIN:

14 Q. Welcome.

15 A. Thank you.

16 Q. Your dad --

17 A. Yes, sir.

18 Q. -- a well known, well respected lawyer.

19 A. Thank you. I agree.

20 Q. And your wife should be tending to sick babies
21 right now, or children. But thank you for being here as
22 well.

23 SENATOR RANKIN: I'm curious, what is the
24 strain that you need to alert folks to be more aware of --

25 DR. LAMBERT: RSV.

1 SENATOR RANKIN: RSV.

2 DR. LAMBERT: RSV. It's everywhere right
3 now.

4 SENATOR RANKIN: Adults can get a -- an
5 inoculation for that. Can children --

6 DR. LAMBERT: Yes. I do not take care of
7 adults, but I think greater than age 6.

8 SENATOR RANKIN: I'm a child. I need one of
9 those. Great answer, judge-want-to-be Lambert.

10 MR. LAMBERT: Thank you.

11 BY SENATOR RANKIN:

12 Q. I am curious -- and just a couple of questions.
13 Forgive my aside there.

14 A. Not at all.

15 Q. You are very young. But so are two of your other
16 opponents in this same race, within a year of your birth,
17 and within months. Another three, or at least four or
18 five, are very young.

19 I can't help but think of the line that Reagan
20 used against Mondale in that debate, but I think that was
21 it, youth is an impediment or an asset for you as you look
22 to this potential service?

23 A. I think it's an asset for me, Senator. I'm
24 excited about this. I'm eager to it. I've got the energy
25 to work hard in this. And while I appreciate that I

1 certainly -- I hope I'm still on the younger side of life,
2 Lord willing.

3 I have through my career, done a body of
4 appellate work that I think belies my age. As I mentioned
5 at the beginning, I've done -- been counsel in more than
6 eighty appeals. I've argued some fairly significant cases
7 in our Supreme Court and in the 4th Circuit.

8 So I think even though I may be young in the
9 sense of I don't have as much gray hair, yet, as I might
10 soon -- although, my children, I'm sure, are going to help
11 me get there -- I think I've got a set of experience that
12 prepares me for this job, even given my age.

13 But my age will ensure that I get into this,
14 ready to go and to work hard and to do the job well,
15 effectively and efficiently.

16 **Q. You're not running for a circuit court spot. So**
17 **perhaps, the question of trials that you've conducted --**
18 **and your PDQ says one to verdict -- that would not**
19 **necessarily be a detriment. And I'm curious, though, what**
20 **was that case?**

21 A. If it says one, then I need to go back and check
22 it. I've done two -- one to a jury verdict and one to a
23 non-jury verdict. The jury verdict was the case in
24 Berkeley County, where the football coach had been fired
25 after he didn't punt and lost a bunch of games.

1 It was a defamation case; the jury came back for
2 the plaintiff. The Court of Appeals reversed, saying he
3 was a public figure, which was the argument we had raised
4 in post-trial in J -- in JML motions. It's in the Supreme
5 Court right now. They've heard argument in that one.

6 The non-jury trial was in Richland County, last
7 August, before Judge Jocelyn Newman. It was the Methods of
8 Executive case in which she held that the firing squad and
9 electrocution bill from May 2021 was unconstitutional.
10 We'll be back in the Supreme Court, arguing that one again.

11 **Q. Both under your current employer in the**
12 **Governor's Office.**

13 A. No, Senator. The first one was when I was in
14 private practice with, what's now Burr & Forman, but was
15 then McNair. The second one was with the Governor's
16 Office.

17 **Q. And then, finally again, a question asked about -**
18 **- I think -- or I've heard it so many years, that I have to**
19 **hear it again, criminal experience. There were some**
20 **questions in exchange with you, about the Court of Appeals**
21 **PCR role.**

22 Is that a short, flat learning curve? Or a steep
23 learning curve that awaits you, if you were successful, in
24 terms of -- again, PCR -- it's a body of law, and you don't
25 have to have tried cases to --

1 A. Sure. I want to be careful. I don't know that
2 it's particularly steep. I don't want to be brash enough
3 to say that it's flat. I think there's certainly learning
4 to do on that process. I've read enough PCR opinions, that
5 I'm generally familiar with the framework.

6 But I think it's one of the things about this job
7 that really excites me, is that there are always going to
8 be issues you haven't dealt with and you haven't learned
9 before, so you get to dig into them and learn them.

10 And the academic side of me, the nerdy side finds
11 that really, really exciting. And the benefit of being on
12 the Court of Appeals as compared to the circuit court is
13 when these new issues come up, you don't have to make a
14 ruling on something quickly because a trial needs to go.
15 You have the time to research and talk with clerks and
16 think through the issues to try and get it as right as you
17 can the first time it comes up.

18 **Q. Blake Hewitt, who sits on that panel now -- I**
19 **don't recall the number -- but had argued -- both briefed**
20 **and argued, to my knowledge, more cases at the appellate**
21 **level of -- again, in my short stint here, than any other**
22 **candidate ever. How about you? Not just briefed, but**
23 **argued. How many for you?**

24 A. Argued? I believe I'm at eight right now. Five
25 in the State Supreme Court, three in the 4th Circuit.

1 Actually, none, ironically, in the Court of Appeals. I
2 think I've probably briefed more cases there than any, but
3 either they didn't receive argument or were still awaiting
4 argument at that time I left private practice to come to
5 the Governor's Office.

6 Although, I'm -- we still have some stuff over
7 there. I was briefing a Court of Appeals case this
8 morning, actually.

9 SENATOR RANKIN: Thank you.

10 CHAIRMAN CASKEY: Any other Commission
11 members have questions for the candidate?

12 EXAMINATION BY CHAIRMAN CASKEY:

13 **Q. Mr. Lambert, I did want to ask -- it may be there**
14 **and I just missed it -- but your experience in the family**
15 **court. What, if any, experience there? And if not,**
16 **anything of substantial weight? How would that -- how**
17 **would you approach issues that arise out of the family**
18 **court, given it's somewhat dissimilar quality from our**
19 **other courts?**

20 A. Certainly. I have no experience in family court
21 itself. My family court background consists at this point
22 of the number of times I've talked to two other lawyers on
23 often procedural questions in family court, thinking as
24 they were going towards appeal. None of those actually --
25 was never engaged as counsel for any of those appeals

1 before I left private practice.

2 I think it goes back to my answer to Senator
3 Rankin. I mean, I'm excited about the challenge of
4 learning new things. I mean, I'm generally familiar with
5 the family court system, the different standards of reviews
6 that it receives compared to some cases in general sessions
7 or in common pleas.

8 But while I don't have a large family law
9 background, I don't think any judge could know and have
10 seen everything. I think, particularly, that's true of
11 lawyers who've been in larger cities and larger firms, your
12 practice is not going to be a large general one where you
13 see a little bit of everything.

14 But I do think the civil experience I have is not
15 in one particular area of law. It's covered the waterfront
16 of constitutional, statutory, common law, contract, claims.

17 So the skill set you develop there is effect for
18 whatever the next issue is for learning the law, reading
19 the record, and being prepared to analyze the issues.

20 **Q. Thank you. I appreciate that.**

21 CHAIRMAN CASKEY: Are there any other
22 questions? Senator Talley.

23 EXAMINATION BY SENATOR TALLEY:

24 **Q. Good morning, Mr. Lambert.**

25 A. Good morning, Senator.

1 Q. Thank you for being here. Thank you for
2 offering. This is the third time, I believe, that I've
3 participated in this process. And I can't recall a
4 candidate for an appellate court that didn't stand before
5 us and say, "We've got to move cases through the appellate
6 system quicker."

7 A. Uh-huh.

8 Q. As a practicing lawyer, I agree with that. I
9 heard you say, earlier, that there were some staff issues -
10 - and not issues as much as just a number problem. But
11 take the "lawyer hat" off, I think one of the things as a
12 legislator I hear most about frustration with the court
13 system is the amount of time it's taking to move the case
14 through the system, and, obviously, the cost that, that
15 brings about. And at times, the leverage that the appeals
16 process is used to try to drive a resolution of the case.

17 So can you dive a little deeper on that? What do
18 you -- how do we address that, beyond we need more people,
19 to try to move these cases a little bit quicker?

20 A. Sure. And I think from a people perspective,
21 it's just, you know, getting people in the right places. I
22 think just saying people, generally, is not sufficient. I
23 mean, you could create three more judges and have a whole
24 another panel, but I don't think that's going to deal with
25 the backlog.

1 I think you're looking at, you know, getting good
2 people in the staff attorney's office, and paying them well
3 enough that they stay there, so that you have the
4 experience for those folks to review and brief cases more
5 quickly, which will help speed it up.

6 And I do think more people there is one important
7 answer, in the sense that if you have how many more staff
8 attorneys, and each staff attorney can do "X" cases in a
9 week or a month, that's that many more cases you can move
10 through.

11 You know, I'm hesitant to say that there needs
12 to be some time limit by which courts should be deciding
13 cases on appeal. I think when you -- when you present an
14 arbitrary rule like that, you could rush decisions that may
15 not need to be rushed.

16 Some of it may frankly be is looking at it as,
17 okay, there's a long-term answer to avoid a backlog, but
18 what's the short-term answer to get rid of it and to sort
19 of catch up and be ready to go.

20 From that perspective, I don't know that there is
21 a -- an alternative to having the work hours there, whether
22 that's for the people who are there now or for more people.

23 But at a certain point, I think the only way to
24 dispose of cases is for the court and staff to read the
25 briefs, read the record, research the law, and then draft

1 an opinion so that you get the answer right.

2 And anything that would rush that, and result,
3 potentially, in cases not receiving the review that every
4 case warrants, or potentially being rushed such that an
5 issue was overlooked and the answer -- the ultimate outcome
6 affirmed, reversed, vacated is incorrect -- we don't want
7 to do.

8 But I think, fundamentally, it's those work
9 hours. And I don't know -- there are probably different
10 solutions from more hours from the judges in chambers who
11 are there, and staff attorneys, to getting more bodies in
12 the building.

13 But someone's got to do the work. I don't think
14 we're going to give it to AI or to ChatGPT to start, you
15 know, drafting opinions and reviewing records.

16 CHAIRMAN CASKEY: Any further questions?

17 (Hearing none.)

18 CHAIRMAN CASKEY: Mr. Lambert, I'm going to
19 ask you this question, because this is not in a serious
20 category, but I'd be remiss if I did not recognize it. You
21 have on the same bow tie, today, as you did in your drivers
22 license picture. So I didn't want you to go out of here
23 thinking that this commission does not pay attention to
24 details.

25 MR. LAMBERT: I hope I don't --

1 SENATOR RANKIN: Frugality. That's your
2 answer.

3 MR. LAMBERT: That's it. And I just hope I
4 don't look as bad here, as I did in the drivers license
5 picture, I'm sure.

6 CHAIRMAN CASKEY: Well, I'll leave others to
7 make that decision.

8 MR. LAMBERT: Both are probably helpless.

9 CHAIRMAN CASKEY: Mr. Lambert, I do
10 appreciate you being here. And this concludes this portion
11 of our screening process.

12 I do want to take this opportunity to remind
13 you, that pursuant to the Commission's evaluative criteria,
14 the Commission expects candidates to follow the spirit as
15 well as the letter of the ethics laws, and we will review -
16 - we will view violations or the appearance of impropriety
17 as serious and potentially deserving of heavy weight in
18 screening deliberations.

19 On that note, and as you know, the record
20 will remain open until the formal release of the report of
21 qualifications, and you may be called back at such time if
22 that need were to arise.

23 Again, thank you for offering to the State
24 of South Carolina. Thank you for your service. And I
25 appreciate you all being here today.

1 MR. LAMBERT: Thank you, Mr. Chairman.

2 CHAIRMAN CASKEY: Thank you very much.

3 MR. LAMBERT: Thank you, Mr. Chairman.

4 Thank y'all very much.

5 (Candidate excused.)

6 CHAIRMAN CASKEY: So at this point, we are
7 going to take a break for lunch. We will go into executive
8 session, though, as we eat that lunch.

9 So on motion of Senator Sabb, the question -
10 - seconded by Senator Talley, we'll be going into executive
11 session. All in favor signify by saying "aye".

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

13 CHAIRMAN CASKEY: All opposed "nay"?

14 (Hearing none.)

15 CHAIRMAN CASKEY: The "ayes" have it. The
16 JMSC will now move into executive session, and I anticipate
17 that being about 45 minutes to an hour.

18 (Executive session from 11:42 a.m. to 12:30 p.m.)

19 CHAIRMAN CASKEY: Thank you. Good
20 afternoon, ladies and gentlemen. The Judicial Merit
21 Selection Commission is now back. And we are back on the
22 record.

23 For the record, I'd like to state that we
24 had -- while we'd been in executive session, no decisions
25 were made and no votes were taken during that point -- or

1 during that executive session. And we are now back in the
2 screening process No. 83 -- or I guess we start with number
3 3 of 83 to go, something like that.

4 Mr. Luther, thank you for being here.

5 MR. LUTHER: Thank you for having me.

6 CHAIRMAN CASKEY: And our understanding is
7 that you are here applying for Seat 9 on the Court of
8 Appeals; is that correct?

9 MR. LUTHER: Correct.

10 CHAIRMAN CASKEY: If you would please, sir,
11 raise your right hand.

12 WHEREUPON,

13 JASON P. LUTHER, being duly sworn and
14 cautioned to speak the truth, the whole truth and nothing
15 but the truth.

16 CHAIRMAN CASKEY: Before you are some
17 documents. If you'd just take a look at those, please.
18 Are the personal data questionnaire and the sworn statement
19 before you, the documents that you submitted to the
20 Commission?

21 MR. LUTHER: They appear to be.

22 CHAIRMAN CASKEY: Are they both correct?

23 MR. LUTHER: They are with the amendment
24 that I submitted about two weeks ago. And that's up here,
25 too, as Exhibit 8.

1 CHAIRMAN CASKEY: Do you object to our
2 making these documents and any amendments a part of the
3 record of your sworn testimony?

4 MR. LUTHER: I do not.

5 CHAIRMAN CASKEY: Thank you. We will go
6 ahead and do that.

7 (EXHIBIT NO. 7 - JUDICIAL MERIT SELECTION
8 COMMISSION PERSONAL DATA QUESTIONNAIRE OF JASON
9 PHILLIP LUTHER)

10 (EXHIBIT NO. 8 - JUDICIAL MERIT SELECTION
11 COMMISSION AMENDED PERSONAL DATA QUESTIONNAIRE OF
12 JASON PHILLIP LUTHER)

13 (EXHIBIT NO. 9 - JUDICIAL MERIT SELECTION
14 COMMISSION PERSONAL SWORN STATEMENT OF JASON
15 PHILLIP LUTHER)

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

25 We have received no affidavits filed in

1 opposition to your election. No witnesses are present to
2 testify. And we will invite you, certainly, to make a
3 brief opening statement, if you would like to.

4 But before that, I see you've brought
5 someone with you. If you want to introduce her, or him.

6 MR. LUTHER: It looks like I've got several
7 folks. So my wife, Emily Luther, here on the front row.
8 And then long friend, Matt Bogan, sitting behind her.

9 CHAIRMAN CASKEY: Thank you both for being
10 here.

11 MR. LUTHER: And I was told there may be two
12 other folks that were on the way, but --

13 CHAIRMAN CASKEY: Well, we'll certainly --
14 if they make it here, we'll give you a chance to recognize
15 them. Our commission has seemingly found an
16 uncharacteristic ability to go more quickly this morning
17 than anticipated. So we certainly appreciate your
18 flexibility in getting here with that.

19 But, anyway, we'd be happy to hear from you,
20 if you have any brief opening remarks.

21 MR. LUTHER: I will be brief, recognizing
22 that you're ahead of schedule and I don't want to be the
23 one that puts you behind. But I would just say I have
24 wanted to be an appellate judge since I was as teenager.
25 It's why I went to law school. That's why I worked hard to

1 get a -- an appellate clerkship after law school, and it's
2 why I have chosen to pursue a lot of opportunities that
3 I've had since law school, in the hopes that it would
4 prepare me, and give me the experience and skills to be the
5 best judge I could be one day.

6 And so in that sense, I'm very happy to be
7 here. Because I'm living out a dream, in a sense, just
8 being part of this process.

9 So thank you for having me and letting me be
10 here. And if this is the appropriate time, I'd also like
11 to just thank the staff. Ms. Crawford, Ms. Putnam, Ms.
12 Symmes, they have been really great to work with. And
13 they've made this process very easy. And I appreciate
14 that.

15 CHAIRMAN CASKEY: Thank you for those kind
16 words. We appreciate the opportunities to recognize all of
17 the hard work that staff has made. And we'll do that more
18 thoroughly, perhaps, at the end. But we've got a long way
19 to go till we get there. But your comments are nonetheless
20 appreciated.

21 At this point I'd ask you to respond to the
22 questions from Ms. Symmes.

23 MS. SYMMES: Thank you, Mr. Chairman. I
24 note for the record that based on the testimony contained
25 in the candidate's PDQ, which has been included in the

1 record with the candidate's consent, Jason Philip Luther
2 meets the constitutional and statutory requirements for
3 this position regarding age, residence, and years of
4 practice.

5 EXAMINATION BY MS. SYMMES:

6 **Q. Mr. Luther, I know you spoke to this already in**
7 **your opening comment, but if there are any additional**
8 **comments for the Commission, why do you want to now serve**
9 **as a judge on the Court of Appeals?**

10 A. You know, as I alluded to, I had a couple of
11 experiences as a teenager that sort of set me on a path
12 towards law. And part of that was not just a career in
13 law, but it put it in the context of public service.

14 To me, a career in law represented a couple
15 things. One, the law itself as an ideal that provides the
16 framework for our society to function and flourish; and
17 then, also, a career in a way that you could serve the
18 community for the greater good.

19 As I progressed in my interest in law, I found a
20 real sweet spot in appellate practice and appellate work.
21 I think it probably is a good intersection of my
22 personality and interest and skill set.

23 And so to me, being on the Court of Appeals is a
24 great place and a great way to marry those two interests of
25 upholding as the gatekeeper of the rule of law, and then

1 also serving the public. So it would be a tremendous honor
2 to do that as part of our Court of Appeals.

3 **Q. Mr. Luther, how do you feel your legal and**
4 **professional experience thus far will assist you to be an**
5 **effective judge on the Court of Appeals?**

6 A. I've spent a good bit of my practice doing
7 appellate work. So I think that's a unique skill set,
8 obviously, that is important for someone on the Court of
9 Appeals.

10 I've done it on both sides, both as a clerk, and
11 seeing what it is for a judge to prepare and to wrestle
12 with questions before him, or her. And then on the other
13 side, as an advocate, and how you have to put together your
14 argument, knowing what the Court of Appeals is looking for.

15 I've tried in my practice to have as much
16 exposure to different areas of law as well. I've done a
17 lot of trial work, bench trials and jury trials, federal
18 and state court, circuit court, administrative law court.

19 And then working at the Department of Revenue in
20 the last six years, I think, has given me another skill set
21 in that it's exposed me to a lot of areas of law within our
22 state, that often you might not get in private practice.

23 We deal with a lot of constitutional issues. We
24 deal with matters that we're trying to resolve in the
25 context of our own precedent and the state court precedent.

1 And so when you come to a matter at the Court of
2 Appeals that's before us, we're not just resolving that one
3 case, but I'm thinking about what does this mean down the
4 road, how does it fit within the bigger context of, again,
5 our longstanding administrative practice and court
6 precedent. So I think all of those things have prepared
7 me.

8 And one other element is, I was just a part-owner
9 in a small business before law school. And that's a whole
10 other unique perspective on what the court system provides.
11 And I think that would come into my role as a judge as
12 well.

13 **Q. Thank you. Mr. Luther, how would you describe**
14 **your general judicial philosophy?**

15 A. Probably three words. The first would be
16 "textualist." I think the text is the law and it is the
17 best expression of the General Assembly's intent. I would
18 say an originalist, in that as you're looking at the text,
19 you're trying to understand what it meant to the original
20 drafters.

21 And I've thought a lot about this, you know.
22 Originalism is one of the few things that, even at the
23 Supreme Court now, you find consensus on, on both sides of
24 the aisle. So I feel like that's a good place to be, if
25 the likes of a Scalia and a Kagan and a Ginsberg and such

1 are all in accord with that.

2 And then the third thing, which is something I
3 learned from Judge Shedd when I clerked for him, was you
4 decide a case only on the grounds necessary to resolve it.
5 So perhaps, a minimalist would be the best way to describe
6 that.

7 **Q. Thank you. What is your vision for the future**
8 **our judicial system? And what changes would you advocate,**
9 **and why?**

10 A. Well, when I think about the judicial system, I
11 think the vision for the future would be to maintain,
12 preserve, and build on the core values. So the rule of
13 law, accountability, transparency, service. I think those
14 are some of the core values of the court.

15 And you do that, obviously, because it's a --
16 it's a very important role. And you do it because you want
17 to build public confidence in the system. That's an
18 important thing.

19 And I think at times we've seen, particularly in
20 the federal system, that, that is an issue right now. And
21 so I would want to build on that, obviously, approaching
22 each case as a very important case. Not just for the court
23 but for each of the litigants.

24 And so I think a lot of -- you asked about how to
25 improve on that, or what I would do. I think some of it is

1 educational. We want citizens to understand the role of
2 the court. Sometimes the view or perspective of the
3 court's legitimacy, for example, is because they
4 misunderstand its role.

5 So that's what I would -- that would be my answer
6 to that.

7 **Q. Thank you. Mr. Luther, to what extent do you**
8 **believe that a judge should or should not defer to the**
9 **actions of the General Assembly?**

10 A. Well, as I said earlier, I think the General
11 Assembly is charged with making policy. If you look at our
12 constitution, Article 1, Section 1, right out the gate,
13 power -- political power is vested in and derived from the
14 people. They are, through their elected representatives,
15 the ones who set policy.

16 So it is the providence of the court to say what
17 the law is and not what it should be. And so deference to
18 the General Assembly, again, is expressed in the text is
19 the role of the judge.

20 **Q. Thank you. Mr. Luther, the Commission received**
21 **175 ballot box surveys regarding you, with 46 additional**
22 **comments. The ballot box survey, for example, contained**
23 **the following positive comments:**

24 "Jason would make an excellent judge. He
25 listens. He is thoughtful, reasonable. A sharp thinker.

1 Highest caliber of ethics and integrity. And he would
2 bring the right temperament and a level of respect and
3 dignity to the court."

4 "Jason has a wide array of experience that would
5 make him well suited to serve on the bench. Having clerked
6 for a judge, practiced in private practice, and served as
7 general counsel at a state agency, Jason is extremely
8 equipped to handle any matter that would come before him on
9 the Court of Appeals."

10 Four of the written comments expressed concerns.
11 Two of those comments indicated that you do not have the
12 relevant trial experience. What would you like to offer to
13 the Commission as a response to that concern?

14 A. Trial experience generally, or was that specific
15 to any particular area?

16 Q. Civil and criminal.

17 A. Civil and criminal. Certainly, it's humbling to
18 hear some of the positive comments. And I also appreciate
19 the questions about, you know, perhaps, trial experience.
20 You would expect folks to have a judge that has certainly
21 tried cases.

22 I have tried to go back -- at one point, I kept a
23 list of jury trials to verdict that I had in private
24 practice. I have not found the list. But if I had to
25 guess, it's about thirty-plus. So I've tried a number of

1 cases to verdict.

2 Certainly in the last six years at the court of -
3 - I mean, at the Department of Revenue, most of what we do
4 is ALC practice, and I can't count the number of trials
5 that we've had there. Of course those are all bench
6 trials. So I do think I have a great bit of trial
7 experience.

8 **Q. Mr. Luther, the second concern, as was stated in**
9 **one comment, indicated that due to your political ideology,**
10 **that you may demonstrate bias to attorneys or litigants.**
11 **What response would you offer to this concern regarding**
12 **that comment?**

13 A. I think I asked you what was the political bias,
14 and I'm not sure if we know. But I would say, again, as I
15 expressed earlier, I think we all have political
16 preferences that we bring to the table. You can't divorce
17 yourself from that.

18 A judge, obviously, is to set aside whatever
19 political preferences there are. My political persuasion,
20 though, feeds right into what I said is the role of the
21 judge, is that I see separation of powers as central to our
22 constitutional framework.

23 And so in that case the judge has a certain lane
24 that he or she is in, and that lane is that they apply the
25 text of the law to a particular controversy before it, and

1 again, not to inject my personal preferences into the
2 process and replace those of the General Assembly.

3 **Q. Thank you, Mr. Luther.**

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

11 The committee noted, "Past experience makes
12 him well qualified."

13 BY MS. SYMMES:

14 **Q. I have just a few housekeeping issues. Since**
15 **submitting your letter of intent for this seat, have you**
16 **contacted any members of the Commission about your**
17 **candidacy?**

18 A. No.

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

22 A. Yes.

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

1 screening?

2 A. No.

3 Q. Have you asked any third parties to contact
4 members of the General Assembly on your behalf, or are you
5 aware of anyone attempting to intervene in this process on
6 your behalf?

7 A. No. And I'm not aware of anyone.

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

13 CHAIRMAN CASKEY: Thank you, Ms. Symmes.
14 Mr. Luther, before we turn to any questions that may come
15 from any Commission members, we've had some folks join us
16 behind you. I didn't know if you wanted to recognize those
17 people, who didn't want to be on time to your hearing, or
18 not.

19 We moved the schedule up. It's not your
20 fault -- not his fault. It's our fault, my fault. It's
21 really Erin's fault. But if you'd like to, or if you want
22 to disavow knowledge of them, you're welcome to do that as
23 well.

24 MR. LUTHER: I mean, with that introduction,
25 they may not want to be on the record. Behind my wife is

1 Ray Jones -- that's my wife's partner and a long-time
2 friend. And then Adam Neil, who is a longtime friend and
3 colleague.

4 CHAIRMAN CASKEY: Gentlemen, we thank you
5 both for being here. Again, I make light in a moment of --
6 it feels like there's constant tension. So I certainly
7 appreciate you guys making the time to be here to support
8 Mr. Luther in this effort.

9 At this point are there any members of the
10 Commission who have questions of Mr. Luther? Mr. Jordan.

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

13 EXAMINATION BY REPRESENTATIVE JORDAN:

14 Q. Mr. Luther, thank you for putting forward to be
15 here today and going through this process with us. I guess
16 as I look at the Court of Appeals, what do you -- I mean,
17 you obviously -- we talk a lot about the -- what I call the
18 -- sort of higher level constitutional issues.

19 How do you see the Court of Appeals connecting
20 with those type issues, but also dealing with the -- you're
21 the last -- you would be the last court of guaranteed
22 opportunity for litigants and the day-to-day operations?
23 How do those two things connect or intersect?

24 A. So I don't know if this is quite responsive, but
25 with the aspect of your question about constitutional

1 issues, obviously, those factor into many of the decisions.
2 It's been said that the Supreme Court is a court of law --
3 issuing law and making law, and the Court of Appeals is an
4 error-correcting court. And so it's somewhat different,
5 obviously. If the Supreme Court has weighed in on a
6 constitutional issue, we're bound to follow it.

7 But to your point, understanding that we may be
8 the last stop on the appellate process for my litigants, I
9 think that makes it all the more important to approach each
10 case with vigor and zeal, and studying the issues, making
11 sure you understand them, and then working hard with your
12 colleagues to build a consensus and find the right
13 decision.

14 **Q. And to that end, I think you testified your**
15 **primary experience has been in the appellate field. Is**
16 **that fair to say?**

17 A. I don't know that I would describe it as primary,
18 but it's been a significant aspect of my practice.

19 **Q. Do you think you missed something that maybe you**
20 **did, or maybe you didn't, or maybe you missed something**
21 **that you think is taken care of in another way, so to**
22 **speak, by focusing -- or missing in certain other areas of**
23 **the practice of law?**

24 A. I would say that there are some areas that I
25 would feel the need to prepare extra for. So I would not

1 hold myself to be a criminal lawyer. I have done a good
2 bit of supervising on a criminal -- we have a criminal
3 prosecutor at the department, who handles all of our
4 criminal prosecutions, we work day-to-day on strategy,
5 discussing cases. And as I've prepared to go through this
6 process, I've really tried to be even more involved in
7 that, you know, appearing for pleas. And if we can get
8 some trials, we'll do those together as well. That would
9 be one area.

10 I do think my experience, particularly on the
11 administrative side of practice, and understanding how
12 state government works, is something that I would bring as
13 a judge.

14 And again, I spent a number of years in private
15 practice doing civil litigation, so it was not exclusively
16 appellate work.

17 And, perhaps, early on, I wish I had more
18 appellate work. But I think at one point -- at some point,
19 you've got to just kind of put in the effort to try cases
20 and be a litigator.

21 **Q. Thank you.**

22 SENATOR RANKIN: Mr. Chairman.

23 CHAIRMAN CASKEY: Senator Rankin.

24 EXAMINATION BY SENATOR RANKIN:

25 **Q. What is it about Judge Shedd that seems to foster**

1 folks that want to be court judges? And that's a slight
2 joke. You worked with him a year after your -- one of your
3 would-be candidates or opponents, Mr. Lambert, who clerked
4 with Dennis Shedd. Is that right?

5 A. We both clerked for Dennis Shedd. I actually
6 think I was a couple of years ahead of him.

7 Q. Yeah, you were -- you were '10 through '12. He
8 was '12 through '13.

9 A. I think that -- that's correct for me. I can't
10 remember exactly --

11 Q. Have you ever met Mr. Lambert?

12 A. Yes. I know him very well.

13 Q. Obviously. And a sincere question there is he,
14 Judge Shedd, apparently, instilled in at least two of his
15 clerks, the desire to serve on the bench. And so kudos to
16 you for that, if for no other reason, with respect to the
17 many other qualifications you have. That's it.

18 A. Well, Judge Shedd was a good mentor. And he was
19 a fun judge to work for too. So perhaps, seeing how much
20 he enjoyed the job has given us reason to pursue it as
21 well.

22 CHAIRMAN CASKEY: Fun. Define that word.
23 I've only met Judge Shedd in passing. "Fun" was not the
24 word that immediately came to mind. But I can appreciate
25 your comments.

1 MR. LUTHER: Certainly, a different
2 perspective, if you're sitting in a place like this, and
3 he's sitting where you are. Yes.

4 CHAIRMAN CASKEY: Any other questions from
5 members of the Commission?

6 (Hearing none.)

7 CHAIRMAN CASKEY: All right. Seeing none.
8 Mr. Luther, thank you again for being here, today, and
9 taking the time away from your practice and your family to
10 spend some time with us.

11 This concludes this portion of our screening
12 process. I do want to take this opportunity to remind you
13 that pursuant to the Commission's evaluative criteria, the
14 Commission expects candidates to follow the spirit as well
15 as the letter of the ethics laws, and we will view
16 violations or the appearance of impropriety as serious and
17 potentially deserving of heavy weight in the screening
18 deliberations.

19 On that note, and as you may know, the
20 record will remain open until the formal release of the
21 report of qualifications, and you may be called back at
22 such time if that need were to arise.

23 So again, I thank you for offering. And I
24 wish you all the best as you leave out of here today.
25 Thank you.

1 MR. LUTHER: Thank you.

2 (Candidate excused.)

3 CHAIRMAN CASKEY: The Commission will now
4 move -- of course, everybody is welcome to stay for the
5 remaining 82 candidates that we'll be screening this month.
6 But at this point, I think we -- we're ahead of schedule.
7 Which is atypical. We'll stand at ease for a couple of
8 minutes while we're waiting on the next candidate.

9 (A recess was held from 12:52 p.m. to 1:24 p.m.)

10 CHAIRMAN CASKEY: Ladies and gentlemen, the
11 Commission will come to order. We have before us, Judge
12 Matthew Turner. Judge, good to see you. Thank you for
13 being here.

14 JUDGE TURNER: Good to see you.

15 CHAIRMAN CASKEY: We certainly appreciate
16 your flexibility in getting here, recognizing the
17 accelerated, and admittedly, new position we find ourselves
18 in where we're ahead of schedule. So we --

19 JUDGE TURNER: Well, that's nice. I'm sure
20 -- I know you guys are glad to be ahead.

21 CHAIRMAN CASKEY: Thank you for that. You
22 are here in application for the Court of Appeals, Seat 9.
23 That's correct?

24 JUDGE TURNER: Yes, sir.

25 CHAIRMAN CASKEY: If you would please raise

1 your right hand.

2 WHEREUPON,

3 THE HONORABLE MATTHEW PRICE TURNER, being
4 duly sworn and cautioned to speak the truth, the whole
5 truth and nothing but the truth.

6 CHAIRMAN CASKEY: Thank you, sir. There are
7 some documents in front of you. If you would take a moment
8 to review those. Is that the personal data questionnaire
9 and sworn statement before you, that you have submitted to
10 the Commission?

11 JUDGE TURNER: Yes, it is.

12 CHAIRMAN CASKEY: Are they correct? And
13 does anything need to be changed or amended at this time?

14 JUDGE TURNER: No. I made one supplement
15 before, and that should have already been turned in.

16 CHAIRMAN CASKEY: So that is included in our
17 packets. Do you object to our making these documents,
18 including the amendment, a part of the record of your sworn
19 testimony?

20 JUDGE TURNER: No objection.

21 CHAIRMAN CASKEY: We'll go ahead and do
22 that.

23 (EXHIBIT NO. 10 - JUDICIAL MERIT SELECTION
24 COMMISSION PERSONAL DATA QUESTIONNAIRE OF THE
25 HONORABLE MATTHEW PRICE TURNER)

1 (EXHIBIT NO. 11 - JUDICIAL MERIT SELECTION
2 COMMISSION PERSONAL SWORN STATEMENT OF THE
3 HONORABLE MATTHEW PRICE TURNER)

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

13 We've received no affidavits filed in
14 opposition to your election. And no witnesses are present
15 to testify.

16 We'll afford you, certainly, the opportunity
17 to make a brief opening statement in just a minute. But if
18 you want to recognize the folks who've come with you,
19 today, and introduce us to them. We'd be happy to --

20 JUDGE TURNER: This is Meg, my lovely bride
21 of twenty-one years. And then my father, Mike Tuner, who
22 was also my law partner for fifteen years.

23 CHAIRMAN CASKEY: Thank you both for being
24 here. And, again, our apologies, with an asterisk, on
25 starting a little bit early. So we're certainly glad that

1 you were able to make the trip down here.

2 With that, Judge Turner, we'd be happy to
3 hear from you, with any brief remarks you have, or we can
4 go right into questioning.

5 JUDGE TURNER: I know you guys have a busy
6 couple of weeks. So I appreciate the time, and thank you
7 for what you do.

8 CHAIRMAN CASKEY: At this point, I'd
9 recognize Mr. Hinson to ask some questions on behalf of the
10 Commission.

11 MR. HINSON: Good afternoon, Judge Turner.

12 JUDGE TURNER: Good afternoon.

13 MR. HINSON: Mr. Chairman, I note for the
14 record that based on the testimony contained in the
15 candidate's PDQ, which has been included in the record,
16 with the candidate's consent, Judge Turner meets the
17 constitution and/or statutory requirements for this
18 position regarding age, residence, and years of practice.

19 EXAMINATION BY MR. HINSON:

20 **Q. Judge Turner, why do you now want to serve as a**
21 **judge on the Court of Appeals?**

22 A. Let me just first take the opportunity to say
23 I've thoroughly enjoyed my time as a family court judge for
24 the past five-plus years. It's been a rewarding, even
25 though difficult at times, experience for me.

1 And if you guys, or the General Assembly as a
2 whole, doesn't see fit for me to go to the Court of
3 Appeals, I will happily continue to serve as a family court
4 judge for as long as you guys will have me.

5 But when I was in private practice, I had the
6 chance to do some appellate work. I actually enjoyed
7 getting in to doing the research, writing the briefs, doing
8 the arguments.

9 As you know, as a trial judge, I don't often have
10 a lot of time to dig into the cases and to really get into
11 them, the way I would like to, and have to sometimes make a
12 lot of quick decisions. But I would like that aspect. And
13 it's just a different way for me to serve this state.

14 **Q. Thank you, Judge. How do you feel your legal and**
15 **professional experience thus far will assist you to be an**
16 **effect judge on the Court of Appeals?**

17 A. I went straight from law school to private
18 practice in a small town. We had a general litigation
19 firm, I did that for fifteen years. I represented people
20 in probate court, magistrate's court, family court, circuit
21 court, civil and general sessions.

22 I also did some appeals. And so I have a varied
23 experience in many different courts. I believe I have good
24 writing ability. I take pride in my orders when I was an
25 attorney, writing orders and doing the briefs.

1 So I believe the experience in private practice
2 in many different areas of law, combined with my experience
3 as a family court judge, have equipped me to be a good
4 Court of Appeals judge.

5 **Q. Thank you. Judge Turner, how would you describe**
6 **your general judicial philosophy?**

7 A. Well, I treat everyone with respect. And I rule
8 after -- or try to make a fair and impartial ruling after
9 everybody has a full opportunity to be heard. That's a big
10 thing for me.

11 A lot of times, you know, these cases take a long
12 time before they come to me. And these people want to have
13 their day in court, and I think the worst thing I could do
14 as a judge would be to run them out and feel like they
15 didn't have a chance to be fully heard.

16 And so I really try to make sure everybody has a
17 full opportunity to present their case, so they don't feel
18 like the judge shut them out or didn't get a chance to be
19 heard. And once I have allowed everybody to be fully
20 heard, then I take the law and apply it to the facts of
21 that case.

22 **Q. Judge Turner, what is your vision for the future**
23 **of our judicial system? And what changes would you**
24 **advocate for, and why?**

25 A. Well, as everybody knows, the judiciary's been

1 under attack here, most recently and for a while, but
2 really recently. And I would like somehow to make that
3 better.

4 I don't know the perfect way to do that. I don't
5 know if that's more community involvement, or whether that
6 would be educating the community more on what we do and the
7 things that we try to focus on, and to show that we are
8 trying to do our best in each case, and it's not as bad as
9 what they make it seem to be.

10 I know we all went to a mental health seminar,
11 all the judges went last week, and somebody told me they
12 saw that on the news. And so I think that's a -- that's a
13 good thing.

14 And maybe more of that would be better to educate
15 people to know that we are actually focusing on what's
16 going on in the world, and that we are trying to do things
17 to make it better.

18 And so I would like to improve the perception of
19 the judiciary, but also to help try to speed along, moving
20 these cases through. I know that's a -- backlog is a
21 problem not just on the trial court, but at the appeals
22 court as well.

23 And so I've actually talked to Chief Judge Bruce
24 Williams on multiple occasions, and he's explained to me
25 what he's been doing in terms of trying to move cases

1 through a little bit fast. And so far it sounds like it's
2 working. And so that would be another thing I'd like to
3 do.

4 And of course, I'd be happy to jump on board with
5 whatever he's doing, and to help out in any way that I can
6 to try to get things moved through quicker.

7 **Q. Thank you. Judge Turner, what extent do you**
8 **believe that a judge should or should not defer to the**
9 **actions of the General Assembly?**

10 A. Well, the General Assembly has the job of
11 creating the law. And it's my belief that it's my job to
12 take that law and to apply it to the facts of each case.

13 **Q. Judge Turner, the Commission received 343 ballot**
14 **box surveys regarding you, with 71 additional comments.**
15 **The ballot box survey, for example, contained the following**
16 **positive comments.**

17 One stated you would be a welcomed addition to
18 the Court of Appeals. Another said you had great
19 temperament on the bench. And yet another said you know
20 the law well and run your courtroom well.

21 Of the 71 written comments, only a couple had
22 raised any concerns, and you kind of touched on this a
23 little while ago, and it has to do with experience.
24 Anything else you'd like to add in response to those
25 concerns?

1 A. I don't think so. I think I'm -- as I outlined,
2 I have a wide variety of experience. And to add on top of
3 that, my time now as a family court and having to make the
4 -- those decisions. And so I think that has equipped me to
5 do the job.

6 **Q. Thank you. Judge, you mentioned in your PDQ, you**
7 **were named in a lawsuit Thomas v. South Carolina Department**
8 **of Social Services. Can you explain the nature of the suit**
9 **and the disposition of it?**

10 A. Sure. I was actually never served with that
11 suit. I found out about it 'cause another one of my
12 colleagues was also named as a defendant. It stemmed from
13 a DSS case where I presided over one, or maybe multiple
14 hearings in that case.

15 And the plaintiff brought a lawsuit in federal
16 court, seeking monetary damages against me, one of my
17 colleagues, DSS, and several DSS employees. It was a pro
18 se action from what I could tell. And so what I -- it's a
19 very long, rambling complaint.

20 From what I can gather from it, the concern -- or
21 what I did wrong was when I didn't overrule one of my
22 colleague's prior orders, and that I didn't dismiss the DSS
23 action, is what I can gather the complaint was about me.

24 Again, I was never served. It was dismissed
25 shortly after it was filed.

1 **Q. Thank you. I**

2 MR. HINSON: I would note that the Piedmont
3 Citizens Committee reported that Judge Turner is qualified
4 in the area of constitutional qualifications, physical
5 health and mental stability, and well qualified in the
6 areas of ethical fitness, professional and academic
7 ability, character, reputation, experience, and judicial
8 temperament.

9 They included a note that -- the Piedmont
10 committee offered -- the Piedmont committee offered this
11 additional comment:

12 "The judge has a fine record as a family
13 court judge, and was an experienced and well regarded
14 practitioner before he ascended to the bench. The
15 committee is confident that his experience, ability, and
16 character would make him a fine candidate for the Court of
17 Appeals."

18 BY MR. HINSON:

19 **Q. And with that, I just have a few housekeeping**
20 **questions for you. Since submitting your letter of intent**
21 **to run for this seat, have you contacted any members of the**
22 **Commission about your candidacy?**

23 A. I have not.

24 **Q. Are you familiar with Section 2-19-70, including**
25 **the limitations on contacting members of the General**

1 **Assembly regarding your screening?**

2 A. I am.

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

7 A. I have not.

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

12 A. I have not. And I'm not aware of any.

13 MR. HINSON: I would just note for the
14 record that any concerns raised during the investigation
15 regarding this candidate were incorporated into the
16 questioning of the candidate today. And with that, I have
17 no further questions.

18 CHAIRMAN CASKEY: Thank you, sir. Do any
19 members of the Commission have questions for Judge Turner?
20 Mr. Safran.

21 EXAMINATION BY MR. SAFRAN:

22 Q. Judge Turner, thank you for being here.

23 A. Yes, sir.

24 Q. I think what really struck me, in looking at
25 these ballot box comments, was something that somebody said

1 that really kind of captures it all: "I can't think of
2 anyone more qualified, humble, or human for the job."

3 I think that the common theme throughout
4 everything that I've read, is that you maintain a level of
5 humility, that you are always even-keeled, fair-minded.
6 The other thing that I find to be kind of -- well, more
7 than kind of -- impressive is this: You were in a general
8 practice for a lot of years; is that fair?

9 A. Yes, sir. That's correct.

10 Q. And it looks like you handled kind of the gamut -
11 - civil, workers' comp, domestic, probate -- kind of
12 anything that came in the door, I guess.

13 A. You have to in a small town.

14 Q. I've been there.

15 A. Yes.

16 Q. I understand completely. I know that, earlier
17 today, Representative Jordan asked the question about
18 trying to recognize that the Court of Appeals is often that
19 last stop for somebody who has a grievance, that wants to
20 use our judicial system. And I don't know that,
21 necessarily, the answer came back understanding what he was
22 meaning.

23 Is it fair to say that the vast majority of cases
24 that end up at the Court of Appeals are going to be in the
25 very areas that you used to practice in for all those

1 years?

2 A. That is correct. Most of them are.

3 Q. And I'm assuming that just because you focused on
4 family court as a judge, doesn't mean you've forgotten
5 everything you learned during all those experiences.

6 A. I hope I haven't forgotten it. I don't think I
7 have.

8 Q. Well, and I guess my point is, is that is it --
9 is it fair to say that, basically, the Court of Appeals has
10 been left with the obligation to really handle the cases
11 that pretty much, you know, the man on the street's going
12 to bring in, the ones that are going to impact daily lives
13 on that level, individually, probably more so than any?

14 A. Absolutely, yes.

15 Q. I mean, and you're dealing with that every day in
16 family court, aren't you?

17 A. I am, yes.

18 Q. And so I guess my question is this -- we've heard
19 some outstanding candidates, great backgrounds, you know,
20 who it seems like have been involved in some high-level,
21 complex-type of litigation, that think that -- they think
22 that makes them uniquely qualified for the Court of
23 Appeals.

24 But really, isn't the Court of Appeals a place
25 that handles so much more than those few complex cases that

1 come down the pike?

2 A. It does. I mean, there's all kind of cases that
3 come through there, like you said, just from the regular
4 people off the street to the high complex, big-dollar
5 cases.

6 Q. Well, and I guess the thing is, you have actually
7 handled appellate work and have gone to both the Supreme
8 Court and the Court of Appeals.

9 A. I have.

10 Q. And I guess my question is, is that just being a
11 judge there doesn't necessarily mean that you've done fifty
12 of them over the course of time, but you've dealt with
13 those very subjects that are going to be in front of you on
14 a regular basis.

15 A. Correct. Yeah. And a lot of the cases that come
16 on appeal are from a family court, where I've been the last
17 five and years.

18 Q. And I understand that you've enjoyed family
19 court.

20 A. I have. I really do enjoy it. It's tough, but I
21 like it.

22 Q. But I guess, again, this is something, I guess,
23 that you say you've thinking about for a while?

24 A. I have. And it took a long time to make the
25 decision on whether or not to offer myself for this

1 position now. So it took a lot of prayer and thought, but
2 I'm here now.

3 **Q. And do you think you're up to it?**

4 A. Yes, sir, I do.

5 **Q. You know, I didn't check, but how did you -- how**
6 **did you weather on those -- or how did you fare on those**
7 **cases that you did go up on?**

8 A. Where I was appealed? Or the ones --

9 **Q. Yeah.**

10 A. -- that I took as a lawyer?

11 **Q. Both of them.**

12 A. Well, somebody asked me -- I think it was in the
13 citizens committee, they were referencing published
14 opinions versus unpublished opinions. And I said, "Well, I
15 think the only time they published my opinions or my
16 decisions is when they reversed me."

17 So I've been reversed on the Supreme Court, and I
18 was partially-affirmed and partially-reversed by Justice
19 Hill, when he was on the Court of Appeals, but I've had --
20 the vast majority of mine have been affirmed in unpublished
21 opinions.

22 **Q. Well --**

23 A. And then I had -- oh, I'm sorry. Go ahead.

24 **Q. No, you right ahead.**

25 A. I was going to say when I was in practice, a few

1 of the cases that I had were -- went in our favor. One of
2 them was -- we disagreed with the trial court. And we had
3 that reversed. And the other one was we agreed with the
4 trial court, but we were able to maintain that. And it was
5 affirmed all the way up.

6 Q. Nobody bats a thousand, okay?

7 A. That's right.

8 Q. But I guess just along those lines, you know, I
9 can tell you -- I mean, I used to take some up. And it
10 seemed like when I was with a particular law firm, that
11 every time we got reversed, my name got on it. Every time
12 that it got affirmed, somebody else's name got on it.

13 A. I understand.

14 Q. So, you know, at some point you just take your
15 licks.

16 A. That's right.

17 Q. I mean, that's just how it works. But again -- I
18 mean, is this something in terms of a stop that you think
19 you want to kind of make for the rest of your career for
20 the most part?

21 A. As of now, yes, sir.

22 Q. Thank you very much.

23 CHAIRMAN CASKEY: Any other members of the
24 Commission have questions for Judge Turner? Senator
25 Talley.

1 SENATOR TALLEY: Not so much a question as a
2 comment. Judge, good to see you.

3 JUDGE TURNER: Good to see you.

4 SENATOR TALLEY: And it's nice to read the
5 ballot box comments. I don't know if I'm the only one on
6 this panel that has been in your courtroom, but well --
7 well said by members of the Bar who have appeared in front
8 of you, as to your demeanor, your conduct of hearings --
9 which have not always gone my way, but that's okay. I'm
10 not always right. And I just wanted to kind of -- on the
11 vast majority of these comments being so favorable for the
12 job that you have done.

13 JUDGE TURNER: Well, thank you. I
14 appreciate that.

15 CHAIRMAN CASKEY: Senator Sabb.

16 SENATOR SABB: Thank you, Mr. Chairman.

17 EXAMINATION BY SENATOR SABB:

18 Q. And thank you, Judge. As some of my colleagues
19 have said, we appreciate good, qualified folks offering.
20 And certainly, I think you fall within that realm.

21 I really have a series of questions that I want
22 to ask a number of our sitting judges, and so you're the
23 first. And, really, I'm curious because of some of what
24 I've read in the media as it relates to lawyer legislators,
25 not only serving as a part of this body, but as serving in

1 the General Assembly, period.

2 And it appears that one of the issues that's
3 raised is that lawyer-legislators, and including members of
4 this body, are essentially clogging up the dockets. And
5 I'm curious, based on your experience, what impact, if any,
6 does the fact that you have lawyer-legislators that are a
7 part of the cases that you see, what impact is it having on
8 clogged dockets?

9 A. Well, the dockets are clogged whether you had a -
10 - lawyer-legislators involved or not. They're going to be
11 -- they're going to be backlogged. That's just the way it
12 is.

13 I think it makes scheduling more difficult when
14 you have a lawyer-legislator involved, because they
15 obviously are afforded protection for, you know, so many
16 months out of each year. It may take longer to get a
17 lawyer-legislator's trial schedule. But I wouldn't say
18 it's necessarily clogging up the docket. 'Cause it usually
19 taking so long, it's getting pushed down anyway.

20 I know just for example, though, even though the
21 legislators may have protection, if they are available and
22 willing, they can come on a Monday or a Friday. Senator
23 Talley was in my courtroom last week, and I don't remember
24 the -- what came up, but he made the reference that I'd be
25 -- "I could be available on a Monday or a Friday."

1 So I don't think that it's as bad as it sounds.
2 I do think that, you know, it does sometimes pose some
3 scheduling difficulties.

4 I've been chief admin for my circuit, for going
5 on a year and a half now, and so I've been able to
6 negotiate around that. And I don't -- and I'm primarily in
7 the 8th Circuit, and we don't have many lawyer-legislators.
8 And so I don't -- I don't see a lot, honestly.
9 Representative Bannister from Greenville every now and
10 then.

11 And I was in Spartanburg last week when I saw
12 Senator Talley, so it may not be as much for me as it would
13 be for other judges, just because I don't have them in my
14 courtroom as often.

15 Q. And quite frankly, Your Honor, that's why I
16 intend to ask the question of more persons than you.
17 Because for some, perception is their reality. And so it's
18 important for me, particularly during this period, that we
19 flesh out some of it, publically, because I want to know
20 when I think in terms of lawyers and having conflicts.

21 And so I was a part-time assistant solicitor, so
22 I had a private practice doing everything other than
23 criminal law, because I was -- I was an assistant
24 solicitor. And so when I was trying cases as an assistant
25 solicitor when we were in general sessions, then it was a

1 higher court. And so I could not go to those other trials
2 and things that were scheduled. And so it's the same thing
3 in terms of working around a schedule.

4 And so would you agree with me, that it's a --
5 it's just something that we do -- I mean, in -- and
6 clearly, when we're in session -- I mean, you can't be two
7 places at one time. But just in terms of conflicts in
8 general, it's something that our system has embraced, I
9 would think since the system was created.

10 A. Right. And you always are going to work around
11 scheduling. I mean, there's -- you know somebody may be on
12 vacation, or somebody may be in a trial in another county
13 or another circuit. And so there's always that issue.

14 And to me, the biggest issue is just if you had a
15 trial. And of course family court's different, so we often
16 have temporary hearings or motion hearings which are
17 fifteen to thirty minutes. And those don't -- aren't that
18 big of a deal to schedule. It's just when you have a
19 multi-day trial is where I've had the issue when there's a
20 lawyer legislator involved.

21 CHAIRMAN CASKEY: I'd like to just add my
22 own experience with scheduling a trial in the family court
23 context. I had a two-week trial with Mr. Bannister, that
24 we had to split over -- actually, there was a two-week gap
25 in the middle of it.

1 Anyway, Judge Turner, we certainly
2 appreciate you being here and you offering for service.
3 Are there any more questions from the Commission?

4 (Hearing none.)

5 CHAIRMAN CASKEY: I don't have any more
6 questions for you, Judge Turner. So this concludes this
7 portion of our screening process.

8 I do want to this opportunity to remind you
9 that pursuant to the Commission's evaluative criteria, the
10 Commission expects candidates to follow the spirit as well
11 as the letter of the ethics laws. And know that we will
12 view violations or the appearance of impropriety as serious
13 and potentially deserving of heavy weight in the screening
14 deliberations.

15 On that note, and as you know, the record
16 will remain open until the formal release of the report of
17 qualifications, and you may be called back at such time if
18 that need were to arise.

19 Again, I thank you for being here. I
20 appreciate your flexibility in scheduling. Thank you to
21 Megan, and Mr. Turner, for you guys being here. It's much
22 appreciated. And I wish you the best of the rest of your
23 day.

24 JUDGE TURNER: Thank you. I appreciate it.
25 Good to see you guys.

1 CHAIRMAN CASKEY: Thank you, sir.

2 JUDGE TURNER: Thank you all.

3 (Candidate excused.)

4 CHAIRMAN CASKEY: Senator Talley moves, and
5 Representative Jordan seconds, that we go into executive
6 session for a legal briefing. So without any questions, all
7 in favor signify by saying "aye".

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

9 CHAIRMAN CASKEY: All opposed "any"?

10 (Hearing none.)

11 CHAIRMAN CASKEY: The "ayes" have it. The
12 Commission will go into executive session for a legal
13 briefing. And when we are done with that, we will resume
14 with the screening process.

15 (Executive session from 1:47 p.m. to 2:12 p.m.)

16 CHAIRMAN CASKEY: Good afternoon, ladies and
17 gentlemen. We are back on the record. For the record,
18 while we were in executive session, no decisions were taken
19 and no votes were made. We only received a legal briefing.
20 We have now concluded that, and resume with our screening
21 process.

22 Next we have Ms. Whitney Harrison, who is
23 applying for Court of Appeals, Seat 9. Is that correct?

24 MS. HARRISON: That's correct.

25 CHAIRMAN CASKEY: If you would please raise

1 your right hand.

2 WHEREUPON,

3 WHITNEY B. HARRISON, being duly sworn and
4 cautioned to speak the truth, the whole truth and nothing
5 but the truth.

6 CHAIRMAN CASKEY: Thank you. You should
7 have some documents there with you.

8 MS. HARRISON: Yes, sir.

9 CHAIRMAN CASKEY: Are the personal data
10 questionnaire and the sworn statement before you, documents
11 that you have submitted to the Commission?

12 MS. HARRISON: Yes, sir.

13 CHAIRMAN CASKEY: And are they both correct,
14 or do they need any sort of updating?

15 MS. HARRISON: They are correct.

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

19 MS. HARRISON: No, sir. No objection.

20 CHAIRMAN CASKEY: We'll go ahead and do
21 that. We'll mark those.

22 (EXHIBIT NO. 12 - JUDICIAL MERIT SELECTION
23 COMMISSION PERSONAL DATA QUESTIONNAIRE OF WHITNEY
24 BOYKIN HARRISON)

25 (EXHIBIT NO. 13 - JUDICIAL MERIT SELECTION

1 COMMISSION PERSONAL SWORN STATEMENT OF WHITNEY
2 BOYKIN HARRISON)

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

12 We have received one affidavit filed in
13 opposition to your election. And one witness is present to
14 testify. At this point, we are going to entertain that
15 complainant, to hear that person now. And so I will
16 recognize Mr. Dennis for riding herd over that process.

17 MR. DENNIS: Mr. Brumbach, if you wouldn't
18 mind coming forward, please. And, Mr. Chairman, if you
19 wouldn't mind swearing him, when he comes to the podium.

20 CHAIRMAN CASKEY: Mr. Brumbach, if you would
21 please raise your right hand.

22 WHEREUPON,

23 WILLIAM BRUMBACH, being duly sworn and
24 cautioned to speak the truth, the whole truth and nothing
25 but the truth.

1 CHAIRMAN CASKEY: Thank you, sir.

2 MR. DENNIS: Thank you, Mr. Chairman. And
3 for everybody else's information, Mr. Brumbach's affidavit,
4 and the documents that were submitted with it, as well as
5 Ms. Harrison's written response, have been provided to all
6 members of the Commission, and are going to be made a part
7 of the record at this point in the transcript.

8 (EXHIBIT NO. 14 - AFFIDAVIT OF WILLIAM
9 KEEFER BRUMBACH)

10 MR. DENNIS: So as the chairman said,
11 there's a single affidavit filed in opposition to Ms.
12 Harrison's candidacy by Mr. William Brumbach. A copy of
13 the affidavit, as well as the attachments, has been
14 provided to the Commission members ahead of time.

15 In summary, Mr. Brumbach's allegations arise
16 from domestic litigation in which Harrison represented Mr.
17 Brumbach's ex-wife, for the purposes of matters either
18 appealed from the trial court or brought separately in the
19 Supreme Court.

20 Both Mr. Brumbach and Ms. Harrison
21 acknowledge that Ms. Harrison had no involvement in the
22 trial aspects of this litigation.

23 In this instance, Mr. Brumbach filed a writ,
24 asking the State Supreme Court to review the issuance of a
25 temporary order made by the family court. Ms. Harrison

1 responded to Mr. Brumbach's writ with a return motion to
2 dismiss and motion for sanctions on behalf of her client.
3 Mr. Brumbach's writ was filed pro se.

4 Ultimately, Ms. Harrison's motion to dismiss
5 prevailed at the Supreme Court, based on the fact that Mr.
6 Brumbach was otherwise represented in the matter, and,
7 therefore, could not proceed pro se at the Supreme Court.

8 It is the content of Ms. Harrison's filing
9 that gives rise to the complaint before the Commission,
10 today. However, Mr. Brumbach alleges that Ms. Harrison's
11 use of language and disputed facts in her filing amounted
12 to in his words, ladies and gentlemen, a character
13 assassination; that the use of this information was
14 unnecessary for the representation of her client, on a
15 discreet point of law, and served only to inflame passions
16 rather than settle a discreet legal question before the
17 court.

18 As he's going to explain further, Mr.
19 Brumbach alleges that these tactics indicate that Ms.
20 Harrison is not a suitable choice to be judge of a Court of
21 Appeals. Mr. Brumbach, does that fairly summarize the
22 facts around this matter?

23 MR. BRUMBACH: I think there's one
24 correction -- but you did an excellent job. But the one
25 correction I'd like the make, the motion to dismiss was

1 denied. The court denied my request to issue a writ, but
2 also denied the motion to dismiss.

3 MR. DENNIS: Yes, sir. I appreciate that
4 clarification. And I probably missed that somewhere in a
5 myriad of work I'm not used to doing.

6 MR. BRUMBACH: Certainly.

7 MR. DENNIS: So, Mr. Brumbach, I'm going to
8 ask you, in a narrative form, if you'll just please explain
9 to the Commission why you're here, what it is about this
10 that gives rise to concern, and how it's related to Ms.
11 Harrison's candidacy.

12 MR. BRUMBACH: Absolutely. Thank you. And
13 does this microphone work okay? I feel like I can't hear
14 myself very well. But, hopefully, it's projecting. Yeah.

15 Thank you for taking a few minutes. And
16 I'll be very brief here. And Mr. Dennis did an excellent
17 job of what occurred. But, yes, I -- my ex-wife and I got
18 a divorce in 2019, and she filed a petition to modify the
19 custody order.

20 She had a series of temporary hearings, and
21 in late -- or in the summer of 2022, she prevailed on a
22 motion to have a temporary modification of our custody
23 order. So the litigation was still pending in the family
24 court, because the order was merely a temporary order.

25 But I wanted to challenge that temporary

1 order through the appellate process. And I did so,
2 pursuant to the way that the Supreme Court had said in
3 Terry v. Terry, to challenge temporary orders.

4 Because I am an attorney, myself, and
5 because my resources were running low, I wanted to proceed
6 pro se in the appellate courts. So I -- actually, I was
7 represented at the Court of Appeals. And when I went to
8 the Supreme Court, and asked the Supreme Court to issue a
9 writ of certiorari, I represented myself.

10 CHAIRMAN CASKEY: Mr. Brumbach, I don't want
11 to be -- I want to certainly afford you the latitude to
12 share your thoughts with the Commission because -- again,
13 we are charged with the evaluation of the candidate against
14 the nine criteria. We have the benefit of the documents
15 you've filed, and so I would ask you to jump to the part in
16 the story that is additive from what you've -- what you've
17 submitted so far.

18 MR. BRUMBACH: Certainly.

19 CHAIRMAN CASKEY: And I don't want to be
20 rude. I just want to be equal in our administration of
21 process.

22 MR. BRUMBACH: Yes, sir. And I just wanted
23 to make sure that it was clear that, yeah, there was
24 litigation proceeding in the family court, which is where I
25 was represented, and I wished to proceed pro se before the

1 South Carolina Supreme Court.

2 So Ms. Harrison raised what I think was a
3 perfectly appropriate issue to raise. She raised the issue
4 of whether a litigant can be represented in the family
5 court and proceed pro se at the Supreme Court level. And
6 that was perfectly appropriate for her to raise that issue.
7 But if you look at the brief that she submitted, it's an
8 eight-page brief, and she gave two paragraphs to that
9 issue.

10 Again, the issue was can a candidate -- can
11 a litigant be represented in the family court while
12 proceeding pro se in the Supreme Court. A very cerebral,
13 unemotional issue, and she gave two paragraphs of treatment
14 -- it was the first and second paragraph on the fourth page
15 of her brief, were the only two paragraphs where she gave
16 any treatment to that issue. And she -- again, it was a
17 valid issue to raise. She missed some complexities --

18 CHAIRMAN CASKEY: Again, what is the
19 evaluative criteria that you think we should assess her in
20 lacking, given your experience?

21 MR. BRUMBACH: And I'm not even sure what
22 the evaluative criteria are. But what she did was she
23 showed that she does not understand that the appellate
24 process is for sober, disinterested legal analysis. And
25 she proceeded to make a jury argument, you know, which

1 again shows just a lack of understanding of what the
2 appellate process is about.

3 She also included in her jury argument,
4 facts that her own client had admitted, under oath, were
5 untrue. So she represented facts to the South Carolina
6 Supreme Court, that her own client had acknowledged, under
7 oath, were untrue.

8 So what she did, again, was she took what
9 should have been a very legal academic issue, devoted only
10 two paragraphs to the academic issue -- which is, you know,
11 the type of issue that appellate courts --

12 CHAIRMAN CASKEY: So Mr. Brumbach, let me
13 ask you of the -- these are the nine criteria.

14 MR. BRUMBACH: Yes, sir.

15 CHAIRMAN CASKEY: Again, I don't want to,
16 you know, impose my judgment --

17 MR. BRUMBACH: Certainly.

18 CHAIRMAN CASKEY: -- on what you're
19 asserting here. The nine are: constitutional
20 qualifications or statutory requirements, ethical fitness,
21 professional and academic ability, character, reputation,
22 physical health, mental stability, experience, and judicial
23 temperament.

24 And in your view, your experience with Ms.
25 Harrison is that she lacks in which of these?

1 MR. BRUMBACH: Well, it's the -- could you
2 read those again? I'm sorry.

3 CHAIRMAN CASKEY: Yes, sir. Happy to.
4 Constitutional qualifications or statutory requirements --
5 qualifications or requirements -- that's that you had to
6 been a lawyer for eight years --

7 MR. BRUMBACH: Yes, sir.

8 CHAIRMAN CASKEY: -- ethical fitness,
9 professional and academic ability, character, reputation,
10 physical health --

11 MR. BRUMBACH: There we go. It's the
12 professional and academic ability, and that -- and the
13 character.

14 CHAIRMAN CASKEY: Thank you.

15 MR. BRUMBACH: The professional and academic
16 ability, because she misunderstood that appellate courts
17 care about sober, academic legal issues, and not jury
18 arguments and personal attacks.

19 CHAIRMAN CASKEY: Yes, sir.

20 MR. BRUMBACH: And it's the character,
21 because she represented --

22 CHAIRMAN CASKEY: Thank you.

23 MR. BRUMBACH: -- facts to the --

24 CHAIRMAN CASKEY: Again, I don't want to be
25 --

1 MR. BRUMBACH: Okay.

2 CHAIRMAN CASKEY: -- rude in any sense.
3 But, you know, we have 82 more candidates we have to get
4 to. We do have the benefit of the documents you've
5 submitted, so the Commission has the ability to review
6 those. I think you've made a point of where your
7 objections are.

8 And, Mr. Dennis, I'll turn it back over to
9 you for anything further.

10 MR. DENNIS: I was going to let him -- if
11 there are any more questions of anybody else on the
12 Commission, I do think we probably ought to allow Mr.
13 Brumbach closing --

14 CHAIRMAN CASKEY: Certainly.

15 MR. DENNIS: -- and wrap it up.

16 CHAIRMAN CASKEY: Certainly.

17 MR. BRUMBACH: Yeah. I mean, I think the --
18 apparently, you've read the documents. I don't have much
19 to add to the documents, other than what I've said, today,
20 and the fact that Ms. Harrison, when afforded the chance to
21 file a reply brief, after I had pointed out that she had
22 misrepresented facts to the South Carolina Supreme Court,
23 she chose not to file a reply brief.

24 Which I don't understand how any attorney
25 who's been -- who has had it pointed out, that she

1 misrepresented facts to the Supreme Court, would not file a
2 reply brief to correct that.

3 CHAIRMAN CASKEY: Thank you, sir. I
4 appreciate it. Any further questions from members of the
5 Commission?

6 SENATOR RANKIN: And, Mr. Brumbach, I've
7 never met you before. And I am certainly not skilled in
8 the field of appellate law beyond the basics. Do you
9 practice in the appellate courts, yourself?

10 MR. BRUMBACH: Not regularly. I have
11 clerked in the appellate courts, and I consider myself
12 knowledgeable of the appellate process.

13 SENATOR RANKIN: And not that it should be
14 so arcane that you shouldn't get it readily but -- and I'm
15 sure we're going to hear an explanation of that. In terms
16 of the prejudice to you, that you are hanging your hat on
17 with these two -- this now, I would say, recognized of the
18 nine evaluative criteria -- how have you -- or were you
19 prejudiced in this process?

20 MR. BRUMBACH: You know, I'm not even here
21 to talk about how I was prejudiced. I mean, the idea --
22 why I want to be here is because I want the South Carolina
23 Court of Appeals to have the absolute best judges it can
24 possibly have.

25 And somebody who has misunderstood what the

1 appellate process is about, and has called her moral
2 character into question by misrepresenting facts to the
3 Supreme Court, I don't think is somebody who should be on
4 the South Carolina Court of Appeals.

5 So it's not about whether I was prejudiced
6 at all. It's just about trying to give this committee the
7 information to select the best candidates for the Court of
8 Appeals.

9 SENATOR RANKIN: And, again, we've got the
10 complaint, and prejudice is not the end all be all. But
11 what I'm curious about is -- and I think you've exhausted
12 this, so I appreciate your --

13 MR. BRUMBACH: Thank you.

14 CHAIRMAN CASKEY: Thank you, sir. We really
15 appreciate you making time in being here today. I know
16 it's not easy, so thank you.

17 MR. BRUMBACH: Yes, sir. Thank you.

18 CHAIRMAN CASKEY: Ms. Harrison, if you would
19 come back to podium.

20 Ms. Harrison, if you would raise your hand -
21 - your right hand.

22 WHEREUPON,

23 WHITNEY B. HARRISON, being duly sworn and
24 cautioned to speak the truth, the whole truth and nothing
25 but the truth.

1 MR. DENNIS: Ms. Harrison, you've heard what
2 Mr. Brumbach's had to say to the Commission, today, and the
3 questions that they have asked. You've also been provided
4 the affidavit and the supporting documentation. And of
5 course you're familiar with the litigant, having been a
6 lawyer in the matter.

7 (EXHIBIT NO. 15 - WRITTEN RESPONSE OF
8 WHITNEY BOYKIN HARRISON)

9 MR. DENNIS: I know that you have also
10 provided a written reply to the Commission that they have.
11 Do you have anything that you need to add in response to
12 what you've heard, today, or what you've read in the
13 documents?

14 MS. HARRISON: Yes, please. I'll be brief.
15 Relocation is one of the hardest issues that I have dealt
16 with in practice, and that's because it's not just that Mom
17 and Dad are getting a divorce and kids are going to live in
18 two households.

19 Everything is changing. The norm, the way
20 this family will function. There's going to be a lot of
21 distance in the travel. And it's hard and it's
22 heartbreaking. And the way that people handle hard things
23 and grief need to be honored.

24 But it is somebody's life. And that's
25 something that we deal with every single day. As lawyers,

1 you as JMSC, me as a candidate to be a judge, what we all
2 have in common is that we have to recognize that it's
3 people, and the way that they feel about things is always
4 going to be paramount.

5 And that space can exist, while also I can
6 be in a space where I acted in character and in
7 professionalism and in integrity. And while I did provide
8 a writeup of the legal analysis on the four emergency
9 appeals that were filed on a temporary order, in under nine
10 months, I do what to squarely address why I didn't file a
11 reply.

12 And it's simply because it's understood in
13 the South Carolina appellate practice, and a motions
14 practice, specifically, we don't engage in a he said/she
15 said narrative.

16 It's also well settled law in South
17 Carolina, that when you have conflicting testimony, which
18 inevitably in family law it's always conflicting, you can
19 submit two affidavits on one side, two can be submitted on
20 the other. You simply provide those materials to the
21 court.

22 Whether it's the family court or the appellate
23 court, sitting in the de novo posture, and when they do
24 that, you leave it to the fact-finder and the rule-maker to
25 make that decision.

1 But at the end of the day, I stand by the
2 fact that I filed a motion to dismiss. It was proper. And
3 I believe it was proper to also file for sanctions, given
4 the number of filings and the abuse of the appellate
5 process.

6 And I think that if I had not filed, it
7 would have been malpractice not to be an advocate for my
8 client in that setting. I'm happy to answer any other
9 questions.

10 CHAIRMAN CASKEY: Are there any questions
11 from members of the Commission with respect to this issue?

12 (Hearing none.)

13 MR. DENNIS: Thank you, Ms. Harrison. At
14 this point, Mr. Chairman, if it suits you, we'll head to
15 the remainder of the hearing.

16 CHAIRMAN CASKEY: Just before we do, I want
17 to give Ms. Harrison an opportunity to make a brief
18 statement, if you'd like to. And before you do that, even,
19 I see some folks who've come with you today. If you want
20 to introduce them, we'd be happy to hear from them.

21 MS. HARRISON: Sure. Thank you. Today, I
22 have my brother and sister-in-law, Trey and Helen Harrison,
23 along with one of my law partners, Erin Stuckey.

24 I have no opening remarks, other than to say
25 it's great to be here with all of you again, and just what

1 an outstanding staff you have; they are just a pleasure to
2 work with. And so I'm ready if y'all are ready.

3 CHAIRMAN CASKEY: Great. Thank you very
4 much. And thank you all, to, for being here. Mr. Dennis.

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

11 EXAMINATION BY MR. DENNIS:

12 **Q. Ms. Harrison, could you explain to the Commission**
13 **why it is that you'd like to be a judge on the Court of**
14 **Appeals?**

15 A. So I love the law. Especially appellate
16 practice. For me, there is nothing better than finding
17 something that you're passionate about and getting to do
18 that every single day. And for me, I delight in nuance and
19 complexity and the idea of helping people.

20 And so when I think about what it is that I want
21 to do for the next twenty to forty years in practice, I
22 want to serve, and I want to make a difference for people.
23 And I see that serving on the Court of Appeals would allow
24 me to help people in a broader way.

25 And so I want to serve because I love it and I

1 love our court system.

2 Q. Ms. Harrison, can you describe for the Commission
3 how you feel your legal and professional experience up to
4 this point will assist you to be effective on the Court of
5 Appeals?

6 A. So I've had the privilege of clerking at both of
7 South Carolina's appellate courts. And in private
8 practice, I've handled more than sixty appeals as lead
9 counsel. Through that process I have worked on every type
10 of issue and case that will come before both the Court of
11 Appeals and in the Supreme Court.

12 I've also handled extraordinary writs
13 supersedeas, which are either emergency appeals, novel
14 issues in just everyday cases. Outside of the appellate
15 context, I have tried multiple cases to verdict, most of
16 those being medication malpractice cases.

17 I've also worked on more than three class
18 actions, and also in complex cases that involved multi-
19 district litigation. And all in all, I've had the ability
20 to arbitrate, mediate, try and appeal.

21 And because of that, I think I've had a wide
22 variety of experiences that will give me context to better
23 understand not only where the lawyers are arguing from,
24 understanding the difficulties that sometimes when you make
25 motions and deal with preservation issues, but also where

1 the judge is coming from. And I think that, overall, that
2 gives me a really well rounded experience.

3 **Q. Ms. Harrison, would you describe your general**
4 **judicial philosophy?**

5 A. Sure. So I believe that I am a textualist and a
6 minimalist. And what I mean by that is that I firmly
7 believe in the cardinal rules of statutory construction. I
8 think that a court can only go as far as what the General
9 Assembly has said. And that's based on public policy, as
10 well as expressed law by the General Assembly.

11 I also think it's important to be a minimalist.
12 Because oftentimes, when you have an issue before you, if
13 you have one, two, three of those issues, they can be kind
14 of complex, and we only need to get to the issue as far as
15 that one case will go.

16 And my reasoning behind that is while we can sit
17 here all day and talk about hypotheticals, we could
18 brainstorm for hours, and the reality is we still wouldn't
19 always squarely be able to align what the issue was.

20 And so if we make that sure we're only ruling on
21 issues that are actually needing to be addressed, we're
22 going to make sure that the law is tight and we're going to
23 make sure that we're actually addressing what's before us
24 and not stepping too far outside the line.

25 **Q. Thank you, Ms. Harrison. And can you explain to**

1 what extent you believe a judge should or should not defer
2 to an active general assembly?

3 A. I think it's a requirement that there is
4 deference. It is the express law of our state. And so the
5 role of the judiciary is simply to interpret the law and
6 follow the rule of laws written by the General Assembly.

7 Q. Thank you. Ms. Harrison, the Commission received
8 353 ballot box surveys regarding you, and 96 of those
9 contained individualized written comments. The majority of
10 these comments spoke positively of your ability and
11 integrity.

12 However, nine of these comments expressed
13 concerns. Primarily, the concerns that were raised were
14 about your experience and your relative youth, indicating
15 that you were not yet prepared for a seat on the Court of
16 Appeals. How would you respond to these criticisms?

17 A. At the outset, let me say that I think there
18 should always be pause if a candidate is under the age of
19 40, and applying for the Court of Appeals. I think those
20 concerns are especially valid if you don't know me. And
21 I'm grateful for the opportunity to address it.

22 I think -- oftentimes, we think that age equates
23 to wisdom. And we think that because oftentimes this
24 wisdom represents that you've had a certain number of
25 experiences, as well as emotional maturity that oftentimes

1 you can only get with life.

2 For me, I think that my -- both my personal and
3 my professional experience allows me to be an outlier. I
4 talked a little bit, today, about the highlights of my
5 professional experience. And while those are so important
6 to me, and I'm proud to have had these variety of
7 experiences, what I'm most proud about is the fact that
8 lawyers from across the state hire me and invite me into
9 their cases because they trust me.

10 And certainly, I think it's because of my
11 intellect, but I also think it's because of who I am and
12 the character that I have. They know that when I argue on
13 their behalf, that I'm going to have it squarely before the
14 court.

15 I'm never going to use inflammatory language.
16 I'm going to use reason. I'm going to push back and have a
17 backbone when it's necessary. And if they disagree with me
18 -- and my trial counsel can certainly tell you, we get into
19 some heated discussions at times.

20 But they know that we're going to get to the end
21 result. And I think that my ability to do that is in a lot
22 of ways based on my personal experiences.

23 I've shared in the PDQ, and even when I was here
24 last year, a little bit about my health experiences, and
25 the fact that at 24, I learned a lot about what it looks

1 like to decide what you're going to do with a year of your
2 life.

3 I've looked death squarely in they eye. And what
4 I can tell you is that forever changed me. And I look at
5 it now, sixteen years later, stronger and healthier than
6 ever before.

7 And I will tell you it's the best thing that ever
8 happened to me, because it changed my perspective. I know
9 what it's like to hear things you don't want to hear. I
10 know what it's like to be in a room where people are
11 talking about you and not to you.

12 And what I've learned from all of that, it's the
13 dignity and the authenticity that you show people. That's
14 really what matters.

15 So whether we're in a medical context or we're
16 sitting in a courtroom, I know what it's like to be scared.
17 I know what it's like to feel like you don't have a voice
18 and you need someone to be there to hear you.

19 And I think that through all of those
20 experiences, it allows me to be just a bit of an outlier
21 when it comes to what we think is our norm of age.

22 **Q. Thank you, Ms. Harrison. I've got just a couple**
23 **more things to run through with you.**

24 MR. DENNIS: First, I'd like to note that
25 the Midlands Citizens Committee reported that Ms. Harrison

1 was qualified as to constitutional qualifications, physical
2 health and mental stability, and well qualified as to the
3 remaining criteria. The committee noted that Ms. Harrison
4 is, quote, exceptionally qualified in their opinion.

5 BY MR. DENNIS:

6 Q. And, Ms. Harrison, some quick housekeeping to run
7 through with you. Since submitting your letter of intent
8 to run for this seat, have you contacted any members of the
9 Commission about your candidacy?

10 A. No, sir. I have not.

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

14 A. I am.

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

19 A. I have not.

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

24 A. No, sir, I have not asked. And I'm unaware of
25 anyone doing that.

1 Q. Thank you.

2 MR. DENNIS: Mr. Chairman, I would note for
3 the record that any concerns raised during the
4 investigation regarding the candidate were included into
5 the questioning of the today.

6 And I have no more questions and will turn
7 it back over to you.

8 CHAIRMAN CASKEY: Thank you, sir. I
9 appreciate that. Do any members of the Commission have
10 questions for Ms. Harrison? Senator Rankin.

11 EXAMINATION BY SENATOR RANKIN:

12 Q. Ms. Harrison, we've met before in your last
13 candidacy and run for this office. And I have asked --
14 earlier today, there were a couple of other young
15 candidates, all very similarly aged that -- about youth.
16 And that is a attribute versus a detraction from your
17 candidacy.

18 The last -- next to the last candidate I asked, I
19 think, had five full arguments in private practice, three
20 since his job change, eight total if I'm correct. You said
21 you had argued sixty cases before the Supremes or the Court
22 of Appeals, or who?

23 A. I've handled more than sixty appeals. I've
24 argued more than twenty times. And that's a combined
25 number between the Supreme Court and the Court of Appeals.

1 I'm not exactly sure how many times I've argued at the
2 Supreme Court. I feel confident it's more than five, but I
3 don't want to lead you astray and give you a wrong number.

4 **Q. So the sixty -- and I misheard you. You have**
5 **participated in a briefing of --**

6 A. The briefing -- a lot of times, cases will be
7 decided merely on the briefs, or if it's a situation
8 whether we file a motion. And so in those sixty, I served
9 as lead counsel. It just kind of varies whether or not
10 they give argument to those cases.

11 **Q. In my other questioning of the candidate, I cited**
12 **Blake Hewitt, who is on the bench that you hope to ascend**
13 **to, who at that point -- and you may know the number -- had**
14 **participated, argued, or briefed more cases than anyone**
15 **I've ever heard. Do you know what his number is?**

16 A. I think his number is more than a hundred.

17 **Q. Not those now that he is sitting on the --**

18 A. Correct. I remember at his investiture, they
19 said the number. And it was quite impressive, but it does
20 not surprise me. Blake is a standout in everything that he
21 does.

22 **Q. So between now and this election, you hope to get**
23 **forty more?**

24 A. I sure hope not. I enjoy sleeping and a little
25 bit of a personal life. But if called to do it, I'm ready

1 to do it.

2 **Q. Thank you.**

3 CHAIRMAN CASKEY: Ms. McIver. It's been a
4 long day, already. I apologize.

5 MS. MCIVER: No worries. I understand.
6 Thank you very much. Part of what Senator Rankin just
7 touched on were some issues that I wanted to point out too.

8 I noticed, too, Senator Rankin, her age and
9 -- the age of some of the other candidates that are hoping
10 to ascend to this position. And I did want to point out
11 some of the letters that you have in your letters of
12 reference, because they do come from such a varied group of
13 people.

14 You've got a former president of one of our
15 independent university, Presbyterian College, a general
16 counsel for one of our major corporations here, a lawyer on
17 the plaintiff's side, a lawyer on the defense side, and all
18 of them sing your praises for your leadership, your
19 intellect, your service, your work ethic, your legal mind,
20 creative arguments.

21 And I think the number of appeals that
22 you've handled, as well as the number that you've actually
23 argued at oral argument, show that you have the experience
24 that it takes to put yourself up for this. And so I want
25 to thank you for putting yourself up to do this.

1 I know that this process can be daunting. I
2 know that you've been through this process before. But I
3 just want to thank you for coming forward and being willing
4 to serve.

5 MS. HARRISON: Thank you.

6 CHAIRMAN CASKEY: Any other members of the
7 Commission have questions? Mr. Safran.

8 MR. SAFRAN: Just briefly.

9 EXAMINATION BY MR. SAFRAN:

10 Q. We appreciate you being here. Just for
11 clarification, what I think we're all understanding is, is
12 that a bunch of cases may get briefed at the appellate
13 courts, but not all of them get to the argument stage.

14 And so when you're saying the sixty, those are
15 cases that you've at least been involved in trying to get
16 the paperwork and the briefing done, and then some
17 percentage of those actually get heard as far as oral
18 argument.

19 A. Yes, sir. That's correct. And so the twenty
20 that I named, those would be the twenty that I argued. And
21 the reason why that number stands out is, as a young
22 lawyer, Chief Justice Toal shared with me, that you know
23 you've really made it if you've argued at least twenty
24 times before the South Carolina appellate courts, because
25 you represented less than one percent of the South Carolina

1 Bar.

2 And so, candidly, I stopped counting once I hit
3 twenty, because I was a little bit of a -- competitive with
4 myself on that. And so for me, I felt comfortable, once I
5 hit twenty, I needed to not worry so much about getting to
6 that point. But I have argued at least twenty times.

7 Q. Right. And I guess, basically, you've kind of
8 followed the same pattern, I guess, that Mr. Nicols had
9 done, and Mr. Hewitt, where you've kind of somebody that
10 people look to, to basically help out when the case gets to
11 the appellate level.

12 A. Yes, sir. And I would say the only variation
13 that I have between John and Blake, is that I've gotten
14 actually brought in earlier than most appellate lawyers.
15 And so I'm actually part of the litigant in some of the
16 bigger cases, like Santee Cooper and SCE&G. And as a
17 result, I don't have as high of numbers.

18 But I think it's because I can really identify
19 segments of time where I was working for two to three years
20 at a portion where I wasn't taking on any other appeals.
21 But I think that's honestly given me a lot more flexibility
22 and a better appreciation of the law, and in a lot of ways,
23 what trial lawsuits are up to every day.

24 And it means a lot to me, that I've been in the
25 trenches, so that I can better understand their issues as

1 well.

2 Q. Well, and I guess, basically, if you were at that
3 level involved, you can help more or less create the
4 records you're ultimately going to have to defend at some
5 point.

6 A. That's right. It's a lot easier when you feel
7 good about the record versus being handed the record.

8 Q. Well, that's tough. Let me ask you this -- and I
9 -- you know, I guess this is the old \$64,000 question --
10 and, obviously, I should have maybe brought it up earlier
11 to others.

12 In my point of reference, it's very unusual and
13 unique to see the number of people who are offering on the
14 Court of Appeals, and they're not 40 yet, or they're right
15 at or in their early 40s. That's not how it used to be.

16 I think over the course of years, you usually had
17 people that had a greater degree of years in. What's now,
18 I guess, the reason why everybody wants to start out so
19 early?

20 A. Well, I would say I think there's been a really
21 big shift, nationally, as far as how appellate practice is
22 treated. It's no longer something that you just aspire to.
23 Instead, it's an entire practice group.

24 And so when you look at what is a great appellate
25 practitioner, it's not that you know all the areas of law,

1 it's that you have the skill set to come in and say I'm not
2 afraid that I haven't dealt with this particular issue. I
3 know that I have of the experiences to be able to jump in,
4 read as much case law as I need to and become adapted into
5 whatever that issue is. And so I think there's a
6 preference with that.

7 I'm grateful to know the other two candidates in
8 my race. And they're just outstanding gentlemen, and they
9 also clerked at appellate courts, and so I think there's
10 probably a level of fondness and appreciation that this has
11 become a practice area, and it's something that people have
12 fallen in love with.

13 I'll say for myself, when I look at how you
14 really make a difference in South Carolina, and I look at
15 it from the judiciary standpoint, I think that the bench
16 and Bar deserve a long period of time from a jurist.

17 And so to be able to say I'm committed to thirty
18 years of writing strong opinions, that's beneficial to any
19 side of the Bar that you want to look through. And that's
20 because it let's business know these are -- these are how
21 the rulings are going to be, it let's plaintiff's lawyers
22 make the assessment.

23 And so I see it as a real benefit, if you get the
24 right people in there, and people who are passionate and
25 care about the area, it doesn't get much better than that.

1 Q. Well, I think -- I guess the flip side of what
2 you just said is, is that -- you know, in going through
3 this process now, as long as you don't do anything that
4 would be untoward or beyond what would be the appropriate
5 behavior, you're basically asking for a commitment from the
6 state of thirty years-plus. I mean, that's a big jump,
7 isn't it?

8 A. It is a big jump. And I think that's the import
9 of this very system that we have. I think that we have --
10 y'all are our third interview, and that's because you
11 recognize the gravity of what our ask is of hoping to
12 service, as well as what the expectation is.

13 Q. Let me just ask one last thing. We had Judge
14 Turner here, earlier, and something that we touched on that
15 was important to me is this: Would you agree that the Court
16 of Appeals ultimately is really kind of the last guaranteed
17 stop for, basically, the common man litigant in South
18 Carolina?

19 A. Absolutely.

20 Q. I mean, this is where -- whether it be family
21 court, probate court, workers' comp, just tort actions -- I
22 mean, this is what really -- those are the areas that
23 impact every man, correct?

24 A. That's correct.

25 Q. And so, really, that is a place where I'm

1 assuming that people need to be very cognizant of kind of
2 how important those cases are in terms of how they affect
3 the general public, correct?

4 A. Oh, I completely agree. I think it's your last
5 chance to be heard. It's rare to get certiorari granted at
6 the Supreme Court, if you're not a big name or you don't
7 have some type of novel issue. It's the last time someone
8 will get their due.

9 The Court of Appeals has a song that was written
10 by judges, many years ago, called The Wonderful Court of
11 Appeals. And in it there's a discussion of how it's the
12 mule court and its purpose is -- they're there to do the
13 work, they don't have the fancy titles, they don't -- don't
14 sit on high with mule ultra, but what they do, do is they
15 do the work of every type of area of law.

16 And I just -- I've always loved that -- that it's
17 nine people there, knowing that their job is to show up and
18 grind and make sure that everyone has their chance to be
19 heard that they feel good about the fairness of that
20 ruling.

21 Q. Well, and just along those lines, do you feel
22 like you've had enough of the hands-on as it relates to
23 those areas of practice, that, you know, you first that it
24 be not just a matter of going and looking in a book, but
25 actually having been there, to be able to see what

1 **oftentimes is the practical side of ruling in these cases?**

2 A. I do. I mean, I certainly will acknowledge that
3 I haven't been seated as a lower court judge. But that
4 being said, I've handled almost every type of area of law
5 you can think of from death penalty to business litigant to
6 medical malpractice to nursing home.

7 I've fought arbitration and won arbitration.
8 I've lost arbitration. I think so much about being good
9 lawyer is knowing when you're going to lose, and losing
10 with grace, and recognizing where you need to improve.

11 I've fallen on my face, but I've also been
12 successful. And I think it's that entire experience and
13 being willing to stand up and argue at a podium, I think,
14 matters more now than ever.

15 If you look at the number of people that are
16 actually going into trial, it's very few. And so for me,
17 it really matters -- and it mattered -- even last year,
18 before I came to apply, I didn't want to come see y'all
19 before I had tried more than five cases to verdict.

20 And I wanted those to be complex cases, because I
21 wanted to be able to fully understand the good parts of
22 trial, the bad parts of trial, and what the judge is
23 thinking, and what it's like to sit there and wait with
24 your client.

25 Also, just the difficulties of how do you sustain

1 for two and a half weeks. That's a lot of Cliff bars and a
2 whole lot of diet Coke. And I think there's something to
3 be said for understanding that and living that before
4 asking to ever be able to call balls or strikes at the
5 Court of Appeals.

6 Q. And, lastly, I think that -- when I first has the
7 privilege of being here, I heard Mr. Nichols testify. And
8 particularly in just terms of having prior judicial
9 experience, I think what he said was is that at an
10 appellate level, it's really a different skill set than
11 what you're going to need at a trial level. So the fact is
12 -- because you haven't sat as a circuit court judge before,
13 I don't think that's necessarily a detriment. Do you?

14 A. I don't. And I agree with Mr. Nichols'
15 viewpoint. And it's just the reality is just it's very
16 different inquiry; we're operating under a standard of
17 review.

18 And that's actually what I've had extensive
19 training in, having clerked at both appellate courts. I've
20 spent more than three years, growing up in the appellate
21 court system here in South Carolina. And I've also stood
22 before them, and having to write bench memos as a law
23 clerk, and certainly writing briefs; it's understanding the
24 posture and it's understanding the lense upon which the
25 court can actually rule upon.

1 And so I would hope that, that experience would
2 actually ensure that I was efficient and able to get to
3 those rulings even faster because that's where kind of
4 where my brain has been taught to work.

5 **Q. Well, understanding the practical implications of**
6 **how rulings may end up more or less changing things.**

7 A. Absolutely.

8 **Q. Thank you.**

9 A. Thank you.

10 CHAIRMAN CASKEY: Other members of the
11 Commission?

12 (Hearing none.)

13 CHAIRMAN CASKEY: Ms. Harrison, thank you so
14 much for being here today, for making yourself available as
15 you've gone through this entire process. It's a lot. And
16 we thank you for offering for service.

17 So let me just take this last opportunity to
18 remind you that pursuant to the Commission's evaluative
19 criteria, the Commission expects candidates to follow the
20 spirit as well as the letter of the ethics laws, and we
21 will view violations or the appearance of impropriety as
22 serious and potentially deserving of heavy weight in the
23 screening deliberations.

24 On that note, and as you may know, the
25 record will remain open until the formal release of the

1 report of qualifications, and you may be called back at
2 such time if that need were to arise.

3 And thank you for offering for service to
4 the state. And I appreciate your time today.

5 MS. HARRISON: Thank you so much. Y'all
6 have a great day.

7 CHAIRMAN CASKEY: Thank you.

8 (Candidate excused.)

9 CHAIRMAN CASKEY: All right. Ladies and
10 gentleman, the Commission will stand at ease for about two
11 minutes, so we can reshuffle some of these papers. You
12 don't need to leave the room or anything. Just a couple
13 quick minutes before we get set to go again.

14 (A recess was taken from 2:49 p.m. to 2:56 p.m.)

15 CHAIRMAN CASKEY: Judge Bromell Holmes, good
16 afternoon. Thank you --

17 JUDGE HOLMES: Good afternoon.

18 CHAIRMAN CASKEY: -- for being here. If you
19 would please raise your right hand.

20 WHEREUPON,

21 THE HONORABLE JAN B. BROMELL HOLMES, being
22 duly sworn and cautioned to speak the truth, the whole
23 truth and nothing but the truth.

24 CHAIRMAN CASKEY: Thank you, ma'am. There
25 should be some documents there in front of you. If you

1 would take a gander at those. Are the personal data
2 questionnaire and the sworn statement before you, the
3 documents that you submitted to the Commission?

4 JUDGE HOLMES: They are.

5 CHAIRMAN CASKEY: Are they both correct? Or
6 does there need to be any amendments?

7 JUDGE HOLMES: They are correct.

8 CHAIRMAN CASKEY: Do I understand object to
9 our making these documents a part of your -- a part of the
10 record of your sworn testimony?

11 JUDGE HOLMES: I do not.

12 CHAIRMAN CASKEY: We'll go ahead and do that
13 now, mark those.

14 (EXHIBIT NO. 16 - JUDICIAL MERIT SELECTION
15 COMMISSION PERSONAL DATA QUESTIONNAIRE OF THE
16 HONORABLE JAN B. BROMELL HOLMES)

17 (EXHIBIT NO. 17 - JUDICIAL MERIT SELECTION
18 COMMISSION AMENDED PERSONAL DATA QUESTIONNAIRE OF
19 THE HONORABLE JAN B. BROMELL HOLMES)

20 (EXHIBIT NO. 18 - JUDICIAL MERIT SELECTION
21 COMMISSION PERSONAL SWORN STATEMENT OF THE
22 HONORABLE JAN B. BROMELL HOLMES)

23 CHAIRMAN CASKEY: The Judicial Merit
24 Selection Commission has thoroughly investigated your
25 qualifications for the bench. Our inquiry has focused on

1 the nine evaluative criteria, and has included a ballot box
2 survey, a thorough study of your application materials,
3 verification of your compliance with state ethics laws, a
4 search of newspaper articles in which your name appears, a
5 study of previous screenings, and a check for economic
6 conflicts of interest.

7 We have received five affidavits filed in
8 opposition to your election. And there are five witnesses
9 present here, today, to testify. At this point I'm going
10 to recognize Ms. Foster to bring those folks forward, so we
11 can hear those out at this time.

12 You're welcome to have a seat just behind
13 you. Ms. Foster.

14 MS. FOSTER: Ms. Nicol, I would ask you to
15 approach.

16 CHAIRMAN CASKEY: Ms. Nicol, if you would
17 please raise your right hand.

18 WHEREUPON,

19 SHANDA NICOL, being duly sworn and cautioned
20 to speak the truth, the whole truth and nothing but the
21 truth.

22 CHAIRMAN CASKEY: Thank you, ma'am.

23 MS. FOSTER: Ms. Nicol, the Commission has
24 before it, your affidavit of complaint, which I
25 respectfully request be made part of the record at this

1 time.

2 (EXHIBIT NO. 19 - AFFIDAVIT OF SHANDA NICOL)

3 MS. FOSTER: The purpose of today's hearing
4 is for the Commission to review the qualifications of the
5 candidates, to determine whether Judge Bromell Holmes is
6 qualified to be on the Court of Appeals. The Commission is
7 not here to re-litigate a case. They do not have the
8 ability to change the result of your case.

9 Ms. Nicol, you submitted your affidavit,
10 which the Commission is reviewing. Is there anything else
11 you wish to testify to -- specifically regarding Judge
12 Bromell Holmes' ethics, competency, or character -- that
13 has not already been covered in the documents before the
14 Commission?

15 MS. NICOL: There may be a few items that
16 I've prepared, that may not be specific in my affidavit.
17 But it is very similar.

18 MS. FOSTER: Would you like to offer that
19 testimony now?

20 MS. NICOL: Sure. Do you want me to just go
21 ahead with what I was prepared with today or --

22 MS. FOSTER: Yes, ma'am.

23 MS. NICOL: Okay. Thank you again for
24 having me here today. This will actually be my second time
25 petitioning and appealing to the JMSC regarding Judge

1 Bromell Holmes.

2 I believe there's a difference in desiring
3 to be promoted, which is one thing. There's also deserving
4 to be promoted, which is quite another. And today I am
5 going to be speaking on ethical fitness and professional
6 and academic ability, character, and reputation.

7 Under the ethical fitness category, it would
8 be the responsibility of Judge Bromell Holmes, you know,
9 obviously, to see cases objectively and without bias, and
10 to comply with the code of judicial conduct.

11 Specifically, Canon 3 cites that a judge
12 should be patient, dignified, respectful, and act according
13 to the law. Under the professional and academic ability, a
14 judge should be well versed in the legal principles,
15 procedural, and evidentiary rules.

16 Under character, I have ethic -- ethical
17 standards and work habits should be scrutinized. And Judge
18 Bromell Holmes' reputation in Horry County, South Carolina,
19 is that Holmes is a home wrecker. And as awful as that may
20 sound, and I hate to have to say that out loud, on
21 September 15th, 2021, Judge Bromell Holmes oversaw my case.

22 She has lived up to her reputation, at least
23 in my particular situation. Sadly, her decisions in court
24 on this particular day effected the lives of two innocent
25 children; they were both under the age of 5 years old.

1 Her temperament in court has changed the
2 entire trajectory of my life, my children's lives, my
3 husband, my entire family negatively. I sought the courts
4 for protection day when Judge Bromell Holmes was overseeing
5 my case.

6 Due to her short temper, her disregard for
7 the evidence that was submitted, the lack of her critical
8 thinking skills, she has disrupted the status quo in a
9 nanosecond, in a fifteen-minute hearing. The entire status
10 quo for my children's lives were completely disrupted.

11 She did not apply the law, the South
12 Carolina Code 63-15-240, which could have been applied in
13 my situation. There were seventeen criteria that could
14 have been used to protect our children in a domestic
15 violence situation.

16 Judge Bromell Holmes, unfortunately, did not
17 deliberate the facts of my case. She did not discern the
18 matters, and she made some very irrational decisions. It
19 was obvious --

20 CHAIRMAN CASKEY: Ms. Nicol.

21 MS. NICOL: Yes.

22 CHAIRMAN CASKEY: Let me just pause there.
23 I appreciate the gravity of the issue that we're dealing
24 with, and certainly want to empathize and afford some
25 latitude for your testimony.

1 Our rules require that the testimony be
2 additive to the matters that have already been submitted,
3 meaning that we -- we have the allegations, we have the
4 complaint. And so what we need at this stage in these
5 proceedings are things that we don't have in the complaint.
6 And at this point -- again, I don't want to be rude or
7 disrespectful.

8 I'm happy to hear out what else -- and I
9 think I speak for the rest of the commissioners, who say
10 we'd like to hear what you have in addition to the written
11 matters that have been entered into the record.

12 And so we'll take a couple of minutes here
13 to get where we got to get, but I think it's important that
14 we not just re-verbalize what we already have in the
15 record.

16 MS. NICOL: I didn't believe that I had put
17 all of those things into my affidavit, specifically. So I
18 apologize if that's not the case. I was speaking
19 specifically to Judge Bromell Holmes' reputation and her
20 character at this point, which is part of the criteria
21 today. So I can kind of --

22 CHAIRMAN CASKEY: Yes, ma'am. We appreciate
23 that. And I -- we had a matter earlier where I
24 specifically made a request to -- a direction. So I
25 appreciate that.

1 MS. NICOL: Yeah.

2 CHAIRMAN CASKEY: I'm just asking you to
3 jump to the part about -- that will provide some additional
4 information to the committee with specificity, if you
5 could.

6 MS. NICOL: I believe Judge Bromell Holmes
7 relied on the sway of the lawyers in the court hearing
8 versus relying upon the facts of evidence that were
9 presented.

10 I believe if we're talking about Judge
11 Bromell Holmes moving up to the appellate court, my
12 understanding would be that the appellate court doesn't
13 always have live testimony. So we're relying heavily on
14 facts and evidence and we're relying on documentation.

15 In the lower courts, I provided all of those
16 things to Judge Bromell Holmes. And it was disregarded.
17 So my concern would be that if Judge Bromell Holmes is not
18 reviewing evidence appropriately in the lower courts, can
19 she do that in a higher court situation where we're heavily
20 relying on that.

21 I understand in my situation she became very
22 frazzled in court, and she kind of threw her hands up and
23 just cut the baby in half. But these are real peoples'
24 lives. And when documentation of significant value is
25 placed before a judge in the appellate court, from someone

1 in the lower courts who are seeking advocacy or justice or
2 mercy, can Judge Bromell Holmes do that? Can she do that?
3 I don't know. She certainly didn't do that at the lower
4 courts.

5 Typically, when we promote somebody, we're
6 promoting them based on meeting criteria, being able to
7 advance to the next level. So if we're talking about
8 giving Judge Bromell Holmes a promotion and advancement, we
9 should heavily weigh what did not occur in the lower
10 courts.

11 Perhaps, Judge Bromell Holmes needs more
12 time. Maybe she needs more time in the lower courts to
13 rectify the things that have gone on unaccounted for, so
14 that we don't have people like myself looking to a higher
15 court situation and already having the reputation of Holmes
16 as a home-wrecker.

17 CHAIRMAN CASKEY: Thank you.

18 MS. NICOL: That doesn't give me a lot of --
19 that doesn't give me a lot of confidence.

20 CHAIRMAN CASKEY: Thank you, ma'am. Do any
21 members of the Commission have questions for Ms. Nicol?
22 Senator Sabb.

23 SENATOR SABB: Thank you, moving. And thank
24 you, ma'am, for coming. What I heard -- or some of what I
25 heard was that you believe that there were errors of law

1 committed.

2 MS. NICOL: Yes.

3 SENATOR SABB: And you were represented by
4 counsel?

5 MS. NICOL: I was at the time.

6 SENATOR SABB: Yeah. And so, typically, the
7 way the system works is where the judge rules and the
8 litigants believe that there was an error of law committed,
9 then -- certainly not in the temporary realm, but for
10 extraordinary circumstances.

11 But ultimately at the outcome that's
12 determined by a judge inconsistent with the law, the
13 litigants have a right of appeal. You're aware of that,
14 right?

15 MS. NICOL: Yes, sir.

16 SENATOR SABB: And in your case, did you all
17 appeal the order?

18 MS. NICOL: My case is -- it's kind of an
19 anomaly, actually. So there was not an appeal that was
20 done. It would have been wonderful to have correct legal
21 proceedings in my case, from lawyers, from judges. I'm not
22 here to litigate my case, but I can certainly tell you that
23 did not happen.

24 SENATOR SABB: Yes, ma'am. And that's kind
25 of what I wanted to just zero in on. Because I mean, you

1 know, the way our system works -- and I've been practicing
2 law now for thirty-six years, and I've not always agreed
3 with the rulings of a particular jurist. And in some
4 instances we've appealed, and in other instances we've not.

5 I've not always agreed with the rulings of
6 our juries. But we give deference to them as fact-finders,
7 and then sometimes we appeal. Sometimes the appeals are
8 successful and sometimes they're not.

9 But I guess just on the issue of errors of
10 law being committed, you know, I just wanted to make sure
11 that the record was clear on the issue of whether or not
12 there were appeals.

13 SENATOR SABB: So thank you, Mr. Chairman.
14 That's the extent of my inquiry right now.

15 CHAIRMAN CASKEY: Thank you, Senator Sabb.
16 Other questions from members of the Commission?

17 (Hearing none.)

18 CHAIRMAN CASKEY: Thank you very much, Ms.
19 Nicol. We appreciate you making the time --

20 MS. NICOL: Thank you so much.

21 CHAIRMAN CASKEY: -- to be here and sharing
22 your input.

23 MS. NICOL: I appreciate it.

24 MS. FOSTER: Judge, would you like to share
25 a response?

1 JUDGE HOLMES: I did provide a written
2 statement. And I'm going to stand on my written statement.
3 This is a pending case. And I stand on the order that I
4 issued. I cannot make public comments concerning opinion
5 case.

6 MS. FOSTER: Thank you. Is Ms. Karon
7 Mitchell present?

8 MS. MITCHELL: Yes, ma'am, that's me. How
9 are you all?

10 CHAIRMAN CASKEY: Good afternoon. Ms.
11 Mitchell, if you would raise your right hands.

12 WHEREUPON,

13 KARON MITCHELL, being duly sworn and
14 cautioned to speak the truth, the whole truth and nothing
15 but the truth.

16 CHAIRMAN CASKEY: Thank you very much. Ms.
17 Foster.

18 MS. FOSTER: Ms. Mitchell, the Commission
19 has before it, your affidavit of complaint, which I
20 respectfully request be made part of the record at this
21 time.

22 (EXHIBIT NO. 20 - AFFIDAVIT OF KARON
23 MITCHELL)

24 MS. FOSTER: The purpose of today's hearing
25 is for the Commission to review the qualifications of the

1 candidate, to determine whether Judge Bromell Holmes is
2 qualified to be on the Court of Appeals. The Commission is
3 not here to re-litigate a case, and they do not have the
4 ability to change the result of the case.

5 MS. MITCHELL: Yes, ma'am.

6 MS. FOSTER: Ms. Mitchell, you submitted
7 your affidavit, which the Commission is reviewing. Is
8 there anything else you wish to testify to, specifically
9 regarding Judge Bromell Holmes' ethics, competency,
10 character, that has not already been covered in the
11 documents before the Commission?

12 MS. MITCHELL: Yes, ma'am. I do for just a
13 few minutes. I'll try to be brief.

14 My name is Karon Mitchell. I'm a school
15 teacher, business person in Myrtle Beach. I am not a
16 lawyer, but I have always been a child advocate. And I had
17 something really bad to happen to me. I've never been in
18 court and everything before. It made me very -- it made me
19 very aware of how the court system worked.

20 I thought our system was honest. So from
21 there, I started having different people contact me about,
22 "Would you just go and sit with me? Would you help me?
23 Would you do this? Would you just help me to go through
24 this process?"

25 So I started going into family court,

1 sitting in the family courts, just stopping in to different
2 ones, or if somebody requested me go there -- me go there.
3 I don't do anything but sit, listen, take notes.

4 I am not there as a lawyer. I am not there
5 for representation or anything. I am just there to support
6 who is in there and who is -- I look at everything that is
7 going on.

8 From there it got so overwhelming that I
9 started a courtroom watchdog group. So this group is -- we
10 go in to sit, listen. And if we -- if something comes up,
11 or we notice that something is not right in the courtroom,
12 then we try to help -- we try to help that person.

13 We don't do any type of judicial legal
14 advice or anything. It's just, "We noticed this. You
15 check on it."

16 So it's overwhelming, the problems in family
17 court.

18 CHAIRMAN CASKEY: Ms. Mitchell, I'm going to
19 give you plenty of chance to talk. I think you've done a
20 great job of, how you say, laying the foundation --

21 MS. MITCHELL: Yes, sir.

22 CHAIRMAN CASKEY: -- for your perspective.
23 If you could take us to your observations of Judge Bromell
24 Holmes' --

25 MS. MITCHELL: I'm going to so exactly like

1 you said.

2 CHAIRMAN CASKEY: All right. Thank you,
3 ma'am.

4 MS. MITCHELL: All right. So here we go.
5 So when you go -- this is my opinion. When you go to
6 ethical, I believe that -- and I did not know Judge Holmes
7 before I started this process. I had no contact with her.
8 Didn't know her, didn't know her family, nothing about her.

9 But what I have noticed in being in the
10 courtroom is that, in my personal opinion as a -- as an
11 observer, a teacher, and everything, is I don't think she's
12 prepared. I don't think she's read the file. And that
13 comes under ethical.

14 But I don't see impartiality. Because I
15 know the players in Horry County, I know all the lawyers.
16 I know which ones are the power ones, which ones aren't.
17 And many times the case goes to who that attorney is. And
18 I just started keeping count.

19 And so -- and so the second part is
20 professional. I was in the courtroom one day, and she
21 stated that a counselor's affidavit -- the affidavit had
22 stated that the person in the courtroom had made a
23 complaint to LLR. Judge Holmes referenced that complaint.

24 That complaint was from Roberta -- Roberta
25 Vogle -- excuse me -- Bogle. I've got dry mouth. I'm

1 sorry. And that is a counselor. The counselor broke the
2 law by putting LLR in her affidavit to go to the judge, and
3 then Judge Holmes referenced it in the courtroom against
4 the -- against the plaintiff.

5 And so that goes to professionalism. You
6 need to know the law before you hold something against
7 someone. I mean, LLR is supposed to be -- you can't use it
8 in court. It's supposed to be anonymous. It's a court of
9 your peers looking over it. And it's should not be ever
10 used against someone. If somebody feels so competent to
11 write in to LLR, that you -- you know, and that -- they
12 should be protected.

13 The last part is temperament and -- judicial
14 temperament. And so I'm in the courtroom that day, and I'm
15 -- Judge Bromell Holmes is this way, I'm to the right in
16 the courtroom just like this, and all of a sudden her
17 demeanor and her speech was -- you could just kind of tell
18 the a harshness of it.

19 And the lady to the right of me, she did
20 like this. And all of a sudden Judge Holmes flipped and
21 turned to the right and said something like, "See?"

22 And that is not the temperament of a judge
23 in the courtroom. She didn't -- I think she thought it was
24 me, but I don't know the woman -- I mean, I didn't know her
25 from anywhere other than just helping people who were

1 contacting me.

2 I continued to go back, many times into her
3 courtroom, to sit. Sometimes called, not. And I just see
4 the three things and I will go back to her point. I see
5 ethical, I see maybe -- I see not prepared, impartial.

6 This is my -- this is my opinion. I see
7 professionalism, knowing the law, and I see judicial
8 temperament in how to treat -- these people that are going
9 to the courts are upset, their lives are being turned
10 upside down.

11 And you should show grace. You should
12 follow the law. I'm not saying to let people get in there
13 -- you should follow the law, but --

14 CHAIRMAN CASKEY: Thank you, ma'am. I do
15 appreciate that. Are there members that have questions for
16 Ms. Nichol?

17 MS. MITCHELL: I'm Ms. Mitchell.

18 CHAIRMAN CASKEY: I'm so sorry. What did I
19 say?

20 MS. CRAWFORD: Nichol.

21 MS. MITCHELL: Yeah, that's okay.

22 CHAIRMAN CASKEY: I apologize, Ms. Mitchell.

23 MS. MITCHELL: No, you're good.

24 CHAIRMAN CASKEY: Mr. Safran.

25 MR. SAFRAN: Ms. Mitchell, let me just ask

1 you a few things, okay? I think you said that, basically,
2 because of, I guess, concern, your passion, you started
3 watching these courtroom proceedings. And you're not
4 invested --

5 MS. MITCHELL: Yes, sir. That is correct.

6 MR. SAFRAN: Do you go to any courtrooms in
7 the family court, other than ones that Judge Holmes
8 occupies?

9 MS. MITCHELL: Oh, absolutely.

10 MR. SAFRAN: All right. And have you found
11 other proceedings to be to your satisfaction?

12 MS. MITCHELL: You know what, I've found
13 that there's hiccups in every one of them. I found one
14 other judge, that it was very blatant. But you know what,
15 that judge is doing better now.

16 And, yes, I see it in every one of them. I
17 see it in the family court, period, the abuse. And I'm
18 going to tell you what it comes down to: It's the almighty
19 greed of the dollar.

20 MR. SAFRAN: Well, let me ask another thing.
21 Aren't the family courts the ones that really handle the
22 most emotional and high-charged type of situations?

23 MS. MITCHELL: They do.

24 MR. SAFRAN: And by its very nature, people
25 are upset, aren't they? I mean, that's why they're there.

1 They're disputing something that goes to the base of their
2 lives, don't they?

3 MS. MITCHELL: You are correct. But
4 understand that it is an emotional time, and it is a -- it
5 is for -- you know, one side might do it either -- but when
6 you are in family court, you need the very best judge up
7 before you.

8 And I'm telling you witnessing for the last
9 months and months and -- since COVID kind of came up. And
10 so I'm just telling you what I see as a teacher, as a
11 business person, as a community person. Luke knows me.
12 And I've always -- I've always stood up for my community.
13 And that's what I'm doing now today.

14 MR. SAFRAN: Well, and I guess you'd agree
15 with me, that in light -- there really isn't a lot of
16 perfection in terms of --

17 MS. MITCHELL: Yes. Yes, sir. You know,
18 what I put on the record, again today, which is the
19 testimony from 2018. Who do I give it to? This is the
20 transcript from 2018. This is when you questioned Judge
21 Holmes.

22 CHAIRMAN CASKEY: Yes, ma'am. So we can
23 take legislative notice, to coin a phrase, of a previous
24 transcript of this body.

25 MS. MITCHELL: Right.

1 CHAIRMAN CASKEY: In fact, everybody
2 watching can obtain a copy of that on Scstatehouse.gov. I
3 love to sell our state's website. It looks like the least
4 sexy website that's ever been designed, but it's very
5 informative.

6 And so if you go to Scstatehouse.gov, then
7 Citizen's Interest, Judicial Merit Selection Commission,
8 there is a treasure trove of things like transcripts from
9 2018.

10 MS. MITCHELL: Yes, sir.

11 CHAIRMAN CASKEY: Anyway, so part of my
12 contract required me to highlight that.

13 MS. MITCHELL: Thank you.

14 CHAIRMAN CASKEY: But anyway --

15 MS. MITCHELL: I'm not a lawyer.

16 CHAIRMAN CASKEY: The floor is yours.

17 MS. MITCHELL: So you questioned her in
18 2018, and Mr. Young did too. And now I'm telling you, I'm
19 in court in 2019, and I knew nothing of this until just
20 recently that -- this transcript.

21 And because I'm -- I don't do things just
22 off the cuff. I'm very calculated. Because you don't mess
23 with peoples' lives, and you don't do things like that.
24 And so I'm -- I'm very calculated and I'm very concerned
25 about it, and that's my reason for being here.

1 And if you had concerns in 2018, I'm telling
2 you, you should have concerns in 2023.

3 MR. SAFRAN: No, and I'll tell you that I've
4 always got that level of concern no matter who it is --

5 MS. MITCHELL: Yes, sir.

6 MR. SAFRAN: -- no matter what the situation
7 is. I think there's a certain level of decorum that any
8 judge tries to pursue.

9 MS. MITCHELL: Yes. And I've said it, and I
10 say it now.

11 MS. MITCHELL: Yes.

12 MR. SAFRAN: But I guess my question is this
13 -- we as a -- as a group, or this state for that matter, I
14 don't think we -- we can in any way promise you perfect
15 judges. That's why we have an appellate process.

16 Because people are necessarily inclined to
17 make mistakes and do things that aren't necessarily always
18 going to be correct. I mean, you agree with me on that,
19 though, don't you?

20 MS. MITCHELL: Not necessarily. I believe
21 that whenever you're in that position, and you're making
22 decisions on other peoples' lives, that it is elevated to --
23 -- it's elevated and you need to be on point.

24 MR. SAFRAN: Sure. But I guess my point is,
25 I guess we wouldn't have any need for appellate courts if

1 everybody got it right every time.

2 MS. MITCHELL: Correct.

3 MR. SAFRAN: But, no, I appreciate your
4 concern. And, obviously, you're here for, you know --

5 MS. MITCHELL: Yes, sir.

6 MR. SAFRAN: -- a reason that's obviously
7 close to your heart.

8 MS. MITCHELL: It is.

9 MR. SAFRAN: I get that. Well, thank you
10 very much.

11 MS. MITCHELL: Thank you.

12 CHAIRMAN CASKEY: Ms. Blackley.

13 MS. BLACKLEY: Ms. Mitchell, thank you for
14 being here.

15 MS. MITCHELL: Thank you.

16 MS. BLACKLEY: I want to give a little bit
17 of background. I think we have some commonality.

18 MS. MITCHELL: Okay.

19 MS. BLACKLEY: I'm the only non-attorney
20 sitting right here.

21 MS. MITCHELL: Yay.

22 MS. BLACKLEY: And I am a former child
23 victim's advocate, a former clerk of court. I understand
24 the process. I've worked with numerous judges as a --

25 MS. MITCHELL: I testified many times.

1 MS. BLACKLEY: -- lay-person and not as a --
2 not as a -- I was a sworn officer of the court, but not an
3 attorney. So I get what you're saying.

4 And I have often seen differences in how
5 judges rule from the bench. And I can tell you, the
6 understanding of a family court judge having to rule in
7 some of the most highly emotional cases that probably any
8 judge has to deal with, may sometimes come across as not --
9 let me finish -- not as understandable, especially when
10 someone -- you know, because you always have two sides, and
11 each side wants their side to be the right side --

12 MS. MITCHELL: Right.

13 MS. BLACKLEY: -- where the verdict comes.
14 And so I just wanted to go on the record, to tell you that
15 there is a -- there is an understanding of a lay-person --

16 MS. MITCHELL: Yes, ma'am.

17 MS. BLACKLEY: -- who is not -- who doesn't
18 have that full legal background of having gone to law
19 school --

20 MS. MITCHELL: Right.

21 MS. BLACKLEY: -- up here. And I thank you
22 for your comments. But I also wanted to let you know that
23 we all understand that we want -- that the outcome
24 sometimes may not render what everybody wants.

25 And that's on any level of court, whether

1 it's criminal, civil, or family court, or whatever level it
2 is. But I appreciate your comments thank you.

3 MS. MITCHELL: Well, thank you. But, you
4 know, my -- my position on this is not the outcome or who
5 won. My position on this is that -- is how the judge --
6 it's not whether I like the person on either side or
7 anything like that.

8 We need to know that we have somebody in
9 there that has gone over the records, that's impartial,
10 that's got a temperament, and that knows the law. And
11 that's what I'm saying, and that's what I've witnessed over
12 and over, and that's my big concern.

13 MS. BLACKLEY: And I understand that.

14 MS. MITCHELL: Yes, ma'am.

15 MS. BLACKLEY: So thank you.

16 MS. MITCHELL: Thank you. I thank all of
17 you. Thank you very much for your time.

18 CHAIRMAN CASKEY: Is there any other
19 questions for Ms. Mitchell?

20 (Hearing none.)

21 CHAIRMAN CASKEY: I didn't want you to --

22 MS. MITCHELL: Oh, I'm sorry.

23 CHAIRMAN CASKEY: But it doesn't appear that
24 there are any other questions. I would just thank you for
25 your time and effort --

1 MS. MITCHELL: Thank you.

2 CHAIRMAN CASKEY: -- and your diligence in
3 this matter. Also, the ladies responding to, to my probing
4 to get us focused on the issues before this --

5 MS. MITCHELL: A school teacher.

6 CHAIRMAN CASKEY: Yes, ma'am. And so I
7 appreciate that very much as a poor student. I thank you
8 for --

9 MS. MITCHELL: You would have done fine in
10 my class.

11 CHAIRMAN CASKEY: Thank you.

12 MS. MITCHELL: I didn't -- I didn't send one
13 kid to the office. I would probably be in jail now, 'cause
14 all I do is snap my finger and say, "Sit down."

15 CHAIRMAN CASKEY: Well, thank you very much
16 again. Thank you for making the trip here.

17 MS. MITCHELL: Thank you.

18 CHAIRMAN CASKEY: Ms. Foster.

19 MS. FOSTER: Judge Holmes.

20 JUDGE HOLMES: To respond in brevity, I
21 wasn't given any specific dates and times. All of our
22 court hearings are transcribed by a court -- by a court
23 reporter, as well as a recording. I believe that the
24 record would reflect that I have always acted
25 appropriately. And I deny that I have acted

1 inappropriately in any of the instances she has referenced.
2 Thank you.

3 MS. FOSTER: Thank you. We have three
4 complaints remaining. It's Ms. Bullard, Mr. Gallman, and
5 Mr. Player. All three of these are -- have one underlying
6 matter related to it. Mr. Player, would like to come
7 first?

8 MR. PLAYER: Good afternoon.

9 CHAIRMAN CASKEY: I'm sorry, your name, sir?

10 MR. PLAYER: Tucker Player.

11 CHAIRMAN CASKEY: Mr. Player, would you
12 raise your right hand.

13 WHEREUPON,

14 TUCKER PLAYER, being duly sworn and
15 cautioned to speak the truth, the whole truth and nothing
16 but the truth.

17 CHAIRMAN CASKEY: Thank you, sir.

18 MR. PLAYER: I provided a summary of my
19 testimony --

20 MS. FOSTER: Sir.

21 MR. PLAYER: Oh, I'm sorry.

22 MS. FOSTER: If I may begin. Mr. Player,
23 the Commission has before it, your affidavit of complaint,
24 which respectfully -- which I respectfully request be made
25 part of the record at this time.

1 (EXHIBIT NO. 21 - AFFIDAVIT OF TUCKER S.
2 PLAYER)

3 MS. FOSTER: The purpose of today's hearing
4 is for the Commission to review the qualifications of the
5 candidates, to determine whether Judge Bromell Holmes is
6 qualified to be on the Court of Appeals.

7 The Commission is not here to re-litigate a
8 case, and they do not have the ability to change the result
9 of the case.

10 Mr. Player, you submitted your affidavit,
11 which the Commission is reviewing. Is there anything else
12 you wish to testify to, specifically regarding Judge
13 Bromell Holmes' ethic, competency, or character, that has
14 not already been covered in the documents before the
15 Commission?

16 MR. PLAYER: Just a few things. I won't go
17 through the entire summary of testimony. I'm here on
18 behalf of myself not -- I represented John Gallman in civil
19 matters. I did not represent him in family court. I don't
20 do family court.

21 I've never seen Judge Holmes until today.
22 My concern, and the reason I'm here, is the order that I
23 attached. Because to me, an order like that can't be
24 issued by a judge that sits on a Court of Appeals.

25 Primarily, I'm focusing on two things. It's

1 either temperament or professional and academic ability
2 because of three things. The number one is real simple.
3 She ordered that the father of a 9- and 10-year-old could
4 not communicate with his children for a year. For a year.

5 If any of you can extrapolate that or
6 justify that as in the best interest of any child, I'm all
7 ears. But that is the primary focus of why that order
8 disqualifies her from servicing on the Court of Appeals.

9 The other two issues borderline between
10 knowing the statutes, and her temperament. Because one of
11 the -- one of her findings for issuing the order, which
12 prohibited these children from speaking to their father for
13 a year, was that he took her to MUSC for a physical
14 evaluation after finding bruises on her thighs.

15 The reports that came from MUSC were
16 mandatory, statutory reports from the providers that are
17 covered under the statute. So Judge Holmes either didn't
18 understand the law, or she didn't care what it said, when
19 she said, "When you took them to MUSC, that was wrong and
20 I'm taking your kids." So --

21 CHAIRMAN CASKEY: Senator Sabb.

22 SENATOR SABB: Attorney Player, if you don't
23 mind, let me just -- I hate to interrupt. But I was
24 curious about your first point regarding no contact for a
25 year. Was there a condition precedent of some sort of the

1 evaluation or test that the defendant was supposed to avail
2 himself to and he didn't? Or did I misread that?

3 MR. PLAYER: No, that was there. It was
4 during the pandemic and it went on for a year, during which
5 he twice went back and requested that he be able to speak
6 to his children, you know, wish them a Happy Birthday,
7 Merry Christmas, and stuff like that.

8 SENATOR SABB: But was there something that
9 the judge required, that he was supposed to comply with,
10 and then once that's complied with then the issue of
11 visitation and those kinds of thing would have been
12 revisited?

13 MR. PLAYER: Right. But, see, using the
14 father's failures to punish the children is my problem with
15 her ruling.

16 SENATOR SABB: Well, but stay with me a
17 second. Just stay with me a second. I'm not casting
18 judgment. I understand you've got an opinion based on the
19 relationship that you have with a client. And I guess for
20 me -- and I wanted to just address that issue.

21 Because there are condition precedents,
22 oftentimes, in several of our jurisprudential --
23 jurisprudence as it relates to a lot of areas, where one
24 thing has to be done before something else.

25 And, typically, my approach has been even if

1 we disagree with it, let's get it out of the way and then
2 let's focus. Because not only should the judge be
3 interested in a parent having access to the child, the
4 parent also would be interested in having access to the
5 child.

6 And so if there is a condition present -- to
7 the extent that it can be met. If it can't be met, then
8 that's a different issue with me. But if it's just a
9 condition precedent, so that I can have access to my
10 children -- and that's of paramount importance to me,
11 because it irreparably harms me and my children -- then to
12 the extent that, that's something that is within my power
13 to do, I simply do it whether I disagree or not. I mean,
14 do you think that's a reasonable approach or not?

15 MR. PLAYER: Not when there are a 9- and 10-
16 year-old involved and they're --

17 SENATOR SABB: Come on. Let's not focus on
18 how old the children are. I'm specifically interested in
19 the condition precedent.

20 MR. PLAYER: Right. And that would be a
21 legal technicality that I think has absolutely nothing to
22 do with the best interest of --

23 SENATOR SABB: Well, when you say it has
24 nothing to do with it --

25 MR. PLAYER: Because it's not in the order.

1 Show me in the order where she gives -- what is her
2 justification for saying no communication with the
3 children? That's what I'm asking for. If somebody can
4 give it, then vote her into office.

5 SENATOR SABB: So I -- my point was very
6 narrow. And I was just trying to get you to address that
7 narrow issue, not the global thing. Because I intend to
8 hear you out.

9 MR. PLAYER: Sure.

10 SENATOR SABB: But on that particular issue
11 relating to the condition precedent, that's what I wanted
12 to drill down on.

13 MR. PLAYER: And I guess it's a -- it's an -
14 - it's a -- it's an issue of balancing. Because you're
15 right, if the court orders you to do something, you have to
16 go back that.

17 SENATOR SABB: Right.

18 MR. PLAYER: A condition precedent, yes.
19 But in this situation, to me, from reading the order and
20 the lack -- the lack of what I see as a legitimate basis
21 for that harsh of a restriction, at some point --

22 CHAIRMAN CASKEY: Let me intervene, if I
23 could. Mr. Rutherford, do you have questions?

24 REPRESENTATIVE RUTHERFORD: Yeah. I mean,
25 Mr. Player said that if we could point it out. In No. 7 on

1 whatever page -- page 3 of 5, Jan Holmes -- I assume her
2 initials: "The court is concerned that the minor daughter
3 has been subjected to ridicule by paternal relative for not
4 substantiating the alleged abuse as stated by the father.
5 The court is further concerned about the minor daughter's
6 alleged supplement statement by the father. The minor
7 daughter has expressed discontent with the father as to his
8 action. The minor son needs counseling for anxiety and
9 stress."

10 No. 8, "That defendant father is to have no
11 visitation with the minor children or telephonic contact or
12 electronic contact with the children and are not
13 participate or attend any of the children's extracurricular
14 activities or events."

15 So No. 7 precedes No. 8, and No. 7 seems to
16 be her rationale for ordering No. 8. And then she goes on
17 to No. 9, that they participate in psychological custodial
18 evaluation, which is what Senator Sabb was asking about.

19 So while we may disagree as to whether she
20 should have done it or not, No. 7 is her rationale for
21 doing it, is it not?

22 MR. PLAYER: That's exactly what --

23 REPRESENTATIVE RUTHERFORD: Whether is
24 legitimate or not, is that not what she stated was her
25 reason for doing it?

1 MR. PLAYER: Right. And it goes directly --

2 REPRESENTATIVE RUTHERFORD: And wait. I'm
3 sorry. Hold on. Hold on. You seem to come for Senator
4 Sabb, and state that she did this without any basis
5 whatsoever. But you knew that No. 7 existed on page 3 of
6 5, did you not?

7 MR. PLAYER: I don't consider that to be a
8 legitimate --

9 REPRESENTATIVE RUTHERFORD: Whether you
10 consider to be --

11 MR. PLAYER: -- excuse --

12 REPRESENTATIVE RUTHERFORD: -- legitimate or
13 not --

14 MR. PLAYER: No, you're either going to --
15 I'm not under cross-examination.

16 REPRESENTATIVE RUTHERFORD: Wait a minute.
17 Let me -- let me -- let me finish. Whether you consider it
18 to be legitimate or not, you stated that she did not do
19 exactly what she did in No. 7. You didn't say, "She did it
20 and I disagree." You said she didn't do it, and it's right
21 there.

22 MR. PLAYER: You're twisting my words. And
23 it's not going to work, Mr. Rutherford.

24 REPRESENTATIVE RUTHERFORD: Listen, I'm --

25 CHAIRMAN CASKEY: Gentlemen. Gentlemen.

1 Gentlemen, please. The purpose of our inquiry today is the
2 evaluation of the candidate with respect to the nine
3 constitutionally, statutorily-mandated criteria that we are
4 charged with the responsibility of evaluating.

5 MR. PLAYER: Correct.

6 CHAIRMAN CASKEY: Now, we're not here to re-
7 litigate the case. I think you made your point, sir, that
8 you think she made these decisions without sufficient
9 basis. I think Mr. Rutherford has raised concern about
10 your allegation. That's -- that's what we're here to --
11 we've now hashed that out. What I'd like to do, though, is
12 --

13 REPRESENTATIVE RUTHERFORD: Wait a minute.
14 I'm sorry, Mr. Chairman. Hold on. Let me disagree with
15 you for one second. Because I stopped reading, and I
16 should not have.

17 'Cause No. 9 says that, "The parties shall
18 participate in a psychological and custodial evaluation
19 that will be submitted to the court prior to the defendant
20 father having any visitation addressed with the minor
21 children."

22 Now, again, I don't know -- I don't do
23 family court, but that sounds like a condition precedent
24 that Senator Sabb was asking about. And I'm just sitting
25 here, perusing this stuff. I'm not saying that I don't

1 agree with the testimony, but I am saying that what he is
2 saying doesn't seem to mesh with what is right in front of
3 us, in the information that he was told that we have.

4 CHAIRMAN CASKEY: Yes, sir. I think you've
5 now that made very clear.

6 REPRESENTATIVE RUTHERFORD: I'm not taking a
7 point. I'm just reading what's here. So I'm just -- this
8 is not my opinion.

9 MR. PLAYER: Well, at least he's reading it.

10 CHAIRMAN CASKEY: So we have what you've
11 submitted in the record now. We have the benefit of your
12 testimony. Is there anything else you'd like to add?

13 MR. PLAYER: I just wanted to continue,
14 'cause I was talking to Senator Sabb about the -- you know,
15 the weighing of the issues.

16 But there's -- there's a give and take. And
17 there was no give here. It was he went back twice. He --
18 I'm not sure what he testified to getting this evaluation.
19 But the entire time, these two children, 9- and 10-year-
20 olds, don't have any communication --

21 CHAIRMAN CASKEY: Yes, sir.

22 MR. PLAYER: -- with their father.

23 CHAIRMAN CASKEY: And, again, not --

24 MR. PLAYER: Okay. Okay.

25 CHAIRMAN CASKEY: -- here to re-litigate

1 that.

2 MR. PLAYER: Sorry.

3 CHAIRMAN CASKEY: We've made it clear that
4 you have concerns about this litigation. We have the
5 information in your affidavit and in the record now. What
6 else --

7 MR. PLAYER: Just the last issue is, of
8 course, the whistle blower. I mean, you're trying to
9 promote Judge Holmes to the Court of Appeals, and she
10 doesn't know the law. She allowed a counselor to come into
11 a court and violate the statutory law of South Carolina.
12 And then she did it herself when she repeated it in her
13 order.

14 An LLR complaint is confidential. Period.
15 And she didn't know that, or she ignored it. And what I
16 argue is the same manner in which she ignored the mandatory
17 reporting. She blames John for everything that arose out
18 of a mandatory report by a provider, that, if you
19 understand the law, you can't place blame with the father.

20 SENATOR SABB: Mr. Chairman.

21 CHAIRMAN CASKEY: Yes, sir. Senator Sabb.

22 SENATOR SABB: I just want to put a pin
23 there just for a second.

24 MR. PLAYER: Sure.

25 SENATOR SABB: Now, typically, when the

1 court rules, you assign one of the lawyers to draft the
2 order. Typically, the lawyer that drafts the order is
3 required to share the order with the opposing party. Do
4 you agree with me on all of that?

5 MR. PLAYER: Yes, sir. Yes, sir.

6 SENATOR RANKIN: Do you know in this
7 instance which lawyer was asked to draft the order?

8 MR. PLAYER: I believe it was his exwife's.
9 but I do not know for sure.

10 SENATOR SABB: Okay. So then you had a
11 lawyer to draft the order, to place that language in the
12 order. You had another lawyer on the opposing side, that
13 read the order -- and as far as I know, and you can help me
14 if I'm wrong -- did not put anything on the record in terms
15 of any objections to anything in the order.

16 MR. PLAYER: I don't think that's correct.
17 But I don't have those documents before the court. And
18 that quite -- I'm not trying to be rude or dismissive but -
19 -

20 SENATOR SABB: No, no. You're fine.

21 MR. PLAYER: I mean, my point is, the
22 original order. I just don't understand how that --

23 SENATOR SABB: I'm with you.

24 MR. PLAYER: -- order can be issued.

25 SENATOR SABB: I'm with you. But what I'm

1 seeing is an issue that you're raising, that's not only
2 missed by the judge, assuming what we're saying is correct.
3 But it's missed by the court, it's missed by the
4 plaintiff's lawyer, and it's missed by the defense lawyer.

5 Because come on, you and I are officers of
6 the court, right? We have a responsibility, if we know
7 that something is violative of the law, we have a
8 responsibility to bring that to the judge's attention. You
9 agree with me on that, right?

10 MR. PLAYER: Yes, sir. I would have
11 probably been in jail if I'd represented John in this
12 particular situation.

13 SENATOR SABB: I'm with you. But both
14 lawyers would have had, essentially, a responsibility to
15 make sure that, that issue was protected.

16 MR. PLAYER: I would agree in most
17 circumstances. But in the family court setting, it just
18 doesn't work that way. Because if he would have appealed
19 her order --

20 SENATOR SABB: No, I'm not --

21 MR. PLAYER: -- saying you can't see the
22 kids, he would have missed -- he'd have had two years of no
23 contact.

24 SENATOR RANKIN: No, no. And I'm not going
25 to go there.

1 MR. PLAYER: Okay.

2 SENATOR SABB: I'm on your third issue now,
3 relative to the violation associated with the disclosure.

4 MR. PLAYER: Yes, sir.

5 SENATOR SABB: My point is, that you would
6 have had the lawyer drafting the order that missed it -- my
7 words, not necessarily somebody else's -- but included it
8 in there, then you've got the reviewing lawyer that, as far
9 as we know, allowed it to be included in there, and then
10 you've got the court ultimately signing the order that's
11 proposed to her.

12 MR. PLAYER: Yes.

13 SENATOR SABB: That's the typical way. I
14 wasn't there and you weren't there.

15 MR. PLAYER: I'm assuming, with your
16 assumption, that, that's what was done here.

17 SENATOR SABB: Yeah. Because that's what
18 typically occurs. And so I guess I just wanted the record
19 to reflect, that, that's the process by which these orders
20 are typically generated.

21 MR. PLAYER: Yes, sir.

22 SENATOR SABB: I'm finished with that, Mr.
23 Chairman.

24 CHAIRMAN CASKEY: Thank you, sir.

25 MR. PLAYER: I'm making you nervous, so I'll

1 be quite now.

2 CHAIRMAN CASKEY: No, no, no. In fact, if
3 anything, I was going to quibble with the introductory
4 clause of your last colloquy, which was that we are trying
5 to promote her or trying to give -- our charge is simply to
6 evaluate the constitutional and statutory --

7 MR. PLAYER: A poor choice of words on my
8 part. I apologize.

9 CHAIRMAN CASKEY: Okay. I just want to make
10 sure that you, and anybody else who shares your view, as I
11 understand the other two complainants might, we're just
12 here to do our jobs, to thoroughly investigate it here,
13 obviously.

14 And so if anything else, I'm grateful to you
15 and others who've taken the time and effort to submit
16 information to this commission, so that we can then
17 ultimately, hopefully, with the grace of God, arrive at the
18 best decisions available.

19 MR. PLAYER: And going back to Todd and
20 Senator Sabb. There is a process, and sometimes things get
21 lost in that process. But, you know, the 362 days -- you
22 know, they tried to intervene twice. And that restriction
23 was never lifted.

24 To me, I just can't understand a judge that
25 sees that as the best interest of the children. And we're

1 going to put her in charge of telling other judges what
2 they should do on both the family court and the circuit
3 court?

4 CHAIRMAN CASKEY: Yes, sir. I hear you.
5 Are there any other commission -- the senator from Horry.

6 SENATOR RANKIN: Mr. Player, Luke Rankin.

7 MR. PLAYER: Yes, sir.

8 SENATOR RANKIN: We know each other, but we
9 don't.

10 MR. PLAYER: Yes. Do we need Jay to be
11 here?

12 SENATOR RANKIN: No, no, no. We'll let the
13 court decide that, I guess. But my quick question to you:
14 You don't practice in the family court --

15 MR. PLAYER: No.

16 SENATOR RANKIN: -- arena.

17 MR. PLAYER: No. No. And I don't know what
18 Judge Holmes has said in defense. And she's probably going
19 to say, "It was a temporary hearing, I had what was in
20 front of me."

21 And quite frankly, that's a bigger problem
22 with her system than anything else. If the judges are put
23 in that position to make -- I mean, twice we've heard
24 today, two situations, a fifteen and twenty-minute hearing
25 and the children are taken away.

1 SENATOR RANKIN: You'd never appeared before
2 her in court.

3 MR. PLAYER: No. That's the first time I've
4 seen her today.

5 SENATOR RANKIN: And you said at the outset,
6 you're not here on behalf of and being paid today by Mr.
7 Gallman --

8 MR. PLAYER: No, sir.

9 SENATOR RANKIN: -- are you?

10 MR. PLAYER: I am not.

11 SENATOR RANKIN: That's all. Thank you.

12 CHAIRMAN CASKEY: Thank you, sir.

13 Representative Rutherford.

14 REPRESENTATIVE RUTHERFORD: Thank you, Mr.
15 Chairman. Tell me about the LLR thing again. How did that
16 come about?

17 MR. PLAYER: A counselor that I'm not even
18 sure my client made the complaint against, put an affidavit
19 in court, saying that John Gallman complained against her
20 to the LLR, and then that was cited in an affidavit which
21 she then cited in her order.

22 REPRESENTATIVE RUTHERFORD: And you are
23 relying on the fact that the counselor mentioned the
24 complaint as a reason that judge Holmes should have ignored
25 that and not mentioned it? Is that --

1 MR. PLAYER: Well, considering it was
2 confidential, statutory-protected information, she
3 shouldn't have used it to -- as a reasoning for taking his
4 children away. She should not have mentioned it at all,
5 since it's confidential.

6 REPRESENTATIVE RUTHERFORD: And let me --
7 let me get back to that. Because you know the Supreme
8 Court has weighed in -- well, the court -- federal court,
9 particularly, as weighed in on what is now confidential in
10 these complaints, and what used to be confidential is held
11 in confidence by the agency, but is not necessarily
12 confidential as to the parties that are involved.

13 Similar to an ODC complaint which used to be
14 confidential, but now the party that has had the complaint
15 filed against them can talk about the complaint, no
16 different than an ethics complaint, because you can't
17 restrain the party that filed the complaint.

18 And so restraining the party that has the
19 complaint filed against them has been held to be
20 unconstitutional. You're aware of that, right?

21 MR. PLAYER: What year was -- I'm not sure
22 of the opinion.

23 REPRESENTATIVE RUTHERFORD: Okay. So if
24 we're not sure of the opinion, and we're saying now that a
25 party in front of the judge mentioned that an LLR complaint

1 had been filed against her, you're submitting that the
2 judge should have ignored that?

3 MR. PLAYER: Yes. It has nothing to do with
4 the situation. You don't punish the children by punishing
5 -- by taking them away from the father. If he -- if he
6 somehow, you know, acted inappropriately through make a
7 statutorily-provided for complaint -- that's the other
8 thing.

9 It doesn't matter if it was confidential.
10 He has a right to go make an LLR complaint. And he doesn't
11 get punished for it by a judge who's trying to establish
12 her power.

13 REPRESENTATIVE RUTHERFORD: So, Mr. Player,
14 I'm not -- I'm not getting into the merits of it.

15 MR. PLAYER: You're not?

16 REPRESENTATIVE RUTHERFORD: I'm saying --
17 no, sir. I'm suggesting that if you're alleging that she
18 committed a clear violation of the law, I'm suggesting that
19 it is not as clear anymore. Because the courts have said
20 that you cannot restrain speech.

21 And, in fact, even as it relates to lawyers,
22 you can't restrain speech. Even as it relates to ethics
23 complaints against members of the House and Senator, you
24 can't restrain speech.

25 And so I would submit that your assertion

1 that Judge Holmes had to ignore that is not proper, given
2 the fact that one of the parties to the LLR complaint spoke
3 on that in court.

4 There's nothing that I see that bars the
5 judge for hearing that and reacting to it. What she did
6 with it, how that impacted the case? I'm not here to deal
7 with that.

8 MR. PLAYER: Yes, you are.

9 REPRESENTATIVE RUTHERFORD: Simply as to --
10 well, we may disagree on that.

11 MR. PLAYER: No, you're here to judge her
12 character --

13 REPRESENTATIVE RUTHERFORD: But it's not
14 what I'm --

15 MR. PLAYER: -- and fitness.

16 CHAIRMAN CASKEY: Mr. Player. Mr. Player.
17 One at a time, or we're going to stop.

18 MR. PLAYER: He's interrupting me, pretty
19 consistently.

20 CHAIRMAN CASKEY: Okay. Well, we're going
21 to start over now. And I'm going to say Mr. Rutherford
22 gets to talk until he's done, and then you're going to get
23 to talk until I think you're done.

24 MR. PLAYER: Okay.

25 CHAIRMAN CASKEY: And then we're going to

1 move onto the next candidate. 'Cause we still have another
2 79 candidates to evaluate.

3 MR. PLAYER: I understand.

4 CHAIRMAN CASKEY: So Mr. Rutherford.

5 REPRESENTATIVE RUTHERFORD: Mr. Chairman, I
6 don't have any other questions. Just simply, the comment
7 that before we assert the things are black letter law, we
8 ought to know what black letter law is at the current time,
9 and how it relates to what it is the allegations we're
10 making. Period.

11 CHAIRMAN CASKEY: Yes, sir.

12 REPRESENTATIVE RUTHERFORD: That's it.

13 CHAIRMAN CASKEY: Mr. Player, you disagree
14 with that assertion?

15 MR. PLAYER: Yes, I do.

16 CHAIRMAN CASKEY: All right. Thank you. Is
17 there anything else members of the Commission want to ask
18 about, that is probative to the question of whether or not
19 this candidate has satisfied the statutory and
20 constitutional requirements for office?

21 Mr. Sabb asserts that he has. And as we
22 wait on bated breath, Mr. Sabb, you're recognized.

23 SENATOR SABB: No, no. Just on the narrow
24 issue now of -- as I was observing the exchange between Mr.
25 Player and Mr. Rutherford, it just dawned on me, from the

1 standpoint of the hearing itself.

2 So you've got evidence being presented,
3 let's assume hypothetical that the evidence is violative of
4 the law in its presentation, such that they don't allow it
5 into the record at all, then the proper thing would have
6 been for somebody to do what?

7 MR. PLAYER: Object.

8 SENATOR SABB: Object to it coming into
9 evidence, and then it's not a part of the record. So then
10 the fundamental question now is: Did anybody object to it
11 coming in the record? Because we have a waiver in our law
12 all the time, right?

13 MR. PLAYER: Sure.

14 SENATOR SABB: And then you don't object to
15 something, you waive it. Things that are otherwise not
16 admissible into evidence now becoming admissible because
17 there was no objection. It was waived and it's now part of
18 the record.

19 And so what frankly concerns me now, just on
20 the ultimate issue of competence as it relates to being
21 able to know the law and all of those kinds of things, is
22 if you've got something that's not objected to, and it's
23 now a part of the record, I'm not so sure --

24 MR. PLAYER: I understand. And that is all
25 of your prerogatives in making your evaluations.

1 SENATOR SABB: But do you disagree in terms
2 of --

3 MR. PLAYER: Yeah.

4 SENATOR SABB: -- the fact that -- oh, so
5 you do disagree that the -- hold on -- you disagree that if
6 something is being offered into evidence that is
7 objectionable, and if a party fails to object to it and it
8 becomes a part of the evidentiary record, that's somehow
9 the judge's fault if a lawyer didn't object to it? And you
10 and I both agree, I believe, that if evidence is
11 objectionable, then it's our job to do what?

12 MR. PLAYER: I agree.

13 CHAIRMAN CASKEY: I think -- I think what
14 Mr. Player would say, if I've understood his position
15 correctly, is that notwithstanding the lack of objection,
16 the judge should not then still relied on that in making
17 her order? Or do I misunderstand your position?

18 MR. PLAYER: The fundamental -- the most
19 fundamental is no communication with a 9- and 10-year-old
20 for a year. That, I don't understand. And what Mr.
21 Rutherford misunderstood earlier is, I said if you can
22 justify that --

23 CHAIRMAN CASKEY: Sure.

24 MR. PLAYER: It's not that she didn't give a
25 justification. The other two were two statutory schemes --

1 which I provided the statute. The statute doesn't say what
2 Todd says it says. It hasn't been overruled as far as I
3 know. I have no idea of what year the opinion was -- I
4 mean, I don't know.

5 I'm not saying he's wrong. But I haven't
6 seen it. But regardless, the statute says it was
7 confidential. And she blamed him for the mandatory report
8 for over which he had no -- you know, he had no control.
9 So that was the misunderstanding --

10 CHAIRMAN CASKEY: I think I've -- I think
11 I'm tracking with you. And I think we've done ample
12 service --

13 MR. PLAYER: Yes.

14 CHAIRMAN CASKEY: -- to the Commission and
15 to the General Assembly as a whole. We will have the
16 benefit of our -- what will surely be a voluminous report,
17 such that they can then give way to this discussion however
18 the members of the General Assembly see it.

19 And I appreciate the Commissioners, and
20 yourself, Mr. Player, for digging through that so that
21 would could proceed.

22 MR. PLAYER: Certainly.

23 CHAIRMAN CASKEY: I'm not going to ask if
24 there are any more questions, but I will give you the last
25 word, Mr. Player. Is there anything else you think we need

1 to hit on?

2 MR. PLAYER: No. I would just ask the
3 Commission to review the order, and my comments, and take
4 it into consideration.

5 CHAIRMAN CASKEY: Thank you, sir.

6 SENATOR SABB: Mr. Chairman, I would be -- I
7 would be remiss, though. I want to thank you --

8 MR. PLAYER: Well, thank you.

9 SENATOR RANKIN: -- for allowing us to
10 engage in the exchange we did.

11 MR. PLAYER: Absolutely. And I'm sorry if I
12 got out of --

13 SENATOR SABB: You were not.

14 MR. PLAYER: -- out of turn. Todd's -- I've
15 been around Todd a long time, so --

16 SENATOR SABB: So have the rest of us.

17 MR. PLAYER: He might be off by five. I
18 think it's thirty-five.

19 SENATOR SABB: But, no, I just wanted to
20 thank the gentleman for allowing us to engage in the
21 exchange.

22 CHAIRMAN CASKEY: Absolutely. I appreciate
23 that. And then thank you for your comments.

24 MR. PLAYER: Thank you.

25 CHAIRMAN CASKEY: Thank you, Mr. Player.

1 MS. FOSTER: Mr. Gallman.

2 CHAIRMAN CASKEY: Mr. Gallman, if you would
3 please raise your right hand.

4 WHEREUPON,

5 JOHN GALLMAN, being duly sworn and cautioned
6 to speak the truth, the whole truth and nothing but the
7 truth.

8 CHAIRMAN CASKEY: Thank you, sir.

9 MS. FOSTER: Mr. Gallman, the Commission has
10 before it, your affidavit of complaint, which I
11 respectfully request be made part of the record at this
12 time.

13 (EXHIBIT NO. 22 - AFFIDAVIT OF JOHN H.
14 GALLMAN)

15 MS. FOSTER: The purpose of today's hearing
16 is for the Commission to review the qualifications of the
17 candidates, to determine whether Judge Bromell Holmes is
18 qualified to be on the Court of Appeals. The Commission is
19 not here to re-litigate a case, and they do not have the
20 ability to change the result of the case.

21 Mr. Gallman, you've submitted your
22 affidavit, which the Commission is reviewing. Is there
23 anything else you wish to testify to, specifically
24 regarding Judge Bromell Holmes' ethics, competency, or
25 character, that has not already been covered by the

1 Commission?

2 MR. GALLMAN: Yes. And I would begin by
3 stating for a point of clarification. And then I'll read
4 my statement, very brief, perhaps three minutes at most.
5 But I'd like to start with a point of clarification. We
6 completed a psychological evaluation that was completed in
7 December of two thousand --

8 CHAIRMAN CASKEY: Mr. Gallman.

9 MR. GALLMAN: I know. I hear you.

10 CHAIRMAN CASKEY: I just --

11 MR. GALLMAN: I understand --

12 CHAIRMAN CASKEY: I'm going to --

13 MR. GALLMAN: Micah, I understand.

14 CHAIRMAN CASKEY: I don't think you need to
15 --

16 MR. GALLMAN: I do.

17 CHAIRMAN CASKEY: The goal here is to --

18 MR. GALLMAN: I understand.

19 CHAIRMAN CASKEY: -- provide additional
20 evidence into the record.

21 MR. GALLMAN: And it's important that I
22 establish for the record.

23 CHAIRMAN CASKEY: All right. Briefly, then,
24 if you will. And then --

25 MR. GALLMAN: And then I'll read a brief

1 statement.

2 CHAIRMAN CASKEY: Well, we'll talk about
3 that. Let's do this one first.

4 MR. GALLMAN: Okay. I want to make sure as
5 a point of clarification, prior to the final divorce order,
6 we completed a psychological evaluation. The guardian that
7 was involved in that case is sitting in this room. That
8 psychological evaluation was not put on the record.

9 And I settled via consent order for 50/50
10 equal time and agreed, in a no-fault divorce, to pay
11 \$6,888.88 month, okay? So a psychological evaluation was
12 completed. It was kept off the record because the
13 plaintiff's attorney did not want that on the record.

14 Subsequently, she got another attorney and
15 filed to take the children away from me. And the judge was
16 unaware of that. So I will grant her the benefit of the
17 doubt. But there was a psychological that was completed.
18 And in that 362 days and nights, I went to two other
19 providers.

20 I was completely exonerated. And I could
21 put that psychological evaluation out on my ex-wife today,
22 and could have put it out at any point in history. But
23 that would have hurt my children.

24 CHAIRMAN CASKEY: Mr. Gallman.

25 MR. GALLMAN: And it would not have been in

1 the best interest of my children. So I want to clarify
2 that. And there's one other point of clarification --

3 CHAIRMAN CASKEY: Mr. Gallman, hold on.
4 It's a weird system we got here. But, you know, when I
5 press the button and need your attention, I need your
6 attention so that we can stay focused on what we have to do
7 here. And that is evaluate the candidate as related to the
8 nine statutory and constitutional qualifications.

9 To that end, you, I think, have made clear
10 that there were additional evidentiary factors that
11 mattered, and therefore had a consequential effect with
12 respect to your analysis of her satisfaction of those
13 qualifications. So I think you've made that point, and now
14 I understand you wanted to make an additional point that's
15 relative to your statement.

16 I'm not going to allow a reading of the
17 statement that has been submitted to the Commission
18 already, 'cause we have it in the record. And our purpose
19 and our focus is on adding additional information, both for
20 the benefit of the commissioners here, but also for the
21 members of the General Assembly who will have to rely on
22 this commission's report in making their decisions with
23 respect to the election of judge -- judges and justices.

24 So to that end, if you have additional
25 things that you'd like to add, I'd be happy to hear from

1 them. But again, I want to emphasize that this is not a
2 forum to re-litigate the merits of the case.

3 And I empathize with you. I get it. I've
4 been there. I haven't been in your shoes, but I can feel
5 the passion. And so I want to be fair to you and to
6 everybody involved in this process, and we'd kindly ask you
7 to focus comments, again, on the information that we don't
8 have somewhere in a written form.

9 MR. GALLMAN: Thank you, Chairman Caskey.
10 If I may.

11 CHAIRMAN CASKEY: Yes, sir. Please.

12 MR. GALLMAN: Thank you. The other point of
13 clarification that I would like to make is that the
14 assertion that it could have been objected on the record
15 was not possible, as this occurred at a temporary hearing
16 where no one spoke. The judge took the information, called
17 a recess, came back. And I will start with my statements.

18 I want to make sure that the record reflects
19 that it could have not have been objected in a fifteen-
20 minute temporary hearing. I digress.

21 On September 23rd, 2019, my children were
22 taken from me by Judge Jan Bromell Holmes. They were not
23 just removed from me. Far worse, I was forbidden from
24 seeing, speaking, or any form of communication for 362 days
25 and nights.

1 This was beyond court-ordered parental
2 alienation. It was court-ordered erasing of an entire side
3 of a family. In essence, my children's family was erased
4 from their life. Half of their family was erased from
5 their life for an entire year.

6 At the time, my little girl was 10 and my
7 little boy was 9. Up to that point in their life, I had
8 been a constant fixture in their lives. They both lived
9 with me, every day of for most of their lives. Only after
10 my recent divorce in the 50/50 consent custody agreement
11 did that change.

12 But even after the divorce, my children
13 lived with me half of the time, and were able to
14 communicate with me on a daily basis. I am still baffled
15 at the reasoning for my children being taken from me.

16 As my attorney has addressed, Judge Holmes
17 took my children because she believed I made a complaint
18 against a counselor with the South Carolina's LLR. I
19 thought that complaints were supposed to be confidential
20 and statutory-protected.

21 The other reason Judge Holmes took my
22 children from me is because I took my daughter to MUSC to
23 be examined. I found bruises on the inner thighs and the
24 crotch area of my daughter on five consecutive weeks in a
25 row when she came to me in the summer of 2019.

1 And thank God, I had moved into a new home
2 with a swimming pool, and every time she came, I would ask
3 her to --

4 REPRESENTATIVE RUTHERFORD: Mr. Chairman.

5 MR. GALLMAN: -- get into the swimming pool.

6 REPRESENTATIVE RUTHERFORD: I'm sorry. At
7 some point -- and, Mr. Gallman, I talk to him all the time.
8 He and I agree on a lot of things, but he is at this point
9 re-litigating the case. And the other party that he has
10 just accused of abuse is not here to say that, that's not
11 true.

12 MR. GALLMAN: I've not accused anyone of
13 abuse, Mr. Rutherford. Never once in the record have I
14 ever --

15 CHAIRMAN CASKEY: Mr. Gallman.

16 MR. GALLMAN: -- pointed a finger.

17 CHAIRMAN CASKEY: Mr. Gallman, one at a
18 time. One at a time.

19 MR. GALLMAN: Don't put on the record I've
20 accused someone of abuse. I have never --

21 CHAIRMAN CASKEY: Mr. Gallman. Mr. Gallman.

22 MR. GALLMAN: Okay. Let's just --

23 CHAIRMAN CASKEY: One at a time.

24 MR. GALLMAN: Okay.

25 CHAIRMAN CASKEY: And, Mr. Rutherford, I've

1 heard your complaint, and I've taken notice of that.

2 Mr. Gallman, I'm affording you some latitude
3 here, given the gravity of this moment and the seriousness
4 with which we have to evaluate all of this, but I need you
5 to get to your point of new information for this
6 commission.

7 Because we've heard a lot now, several
8 times, and I want us to get to the finish line smoothly.
9 So being mindful of Mr. Rutherford's comments with respect
10 to the repetitious nature of some of what you're offering,
11 I just want you to land this plane in the next minute or
12 so, okay?

13 MR. GALLMAN: I can land this plane in three
14 minutes, if I'm not interrupted.

15 CHAIRMAN CASKEY: All right. You've got --
16 we've got about one minute.

17 MR. GALLMAN: Okay. Okay.

18 CHAIRMAN CASKEY: So let's do it that way.

19 MR. GALLMAN: Because of the location of the
20 bruises, I sought counsel from multiple -- from
21 professionals including my lawyer and a licensed
22 professional counselor. The counselor advised me to take
23 my daughter to MUSC Children's Hospital.

24 MUSC documented the bruises in my daughter's
25 inner thighs, while the MUS social worker and a member of

1 law enforcement made mandatory, statutory reports to DSS.
2 Judge Holmes accused me of trying to use a false complaint
3 of child abuse to gain advantage in a custody matter, where
4 I already had 50/50 custody. That is absolutely,
5 unequivocally untrue.

6 MUSC's pediatric crash team social worker
7 made the mandatory complaint to DSS. I was trying to
8 protect my daughter. I called two different professionals
9 prior to taking her to MUSC. Both advised me to do this.

10 How could my attempt to protect my daughter
11 be used to take her away from me? But that is exactly what
12 happened to me. To me, the law utterly failed my children.
13 If Judge Holmes wanted to punish me, there were ways she
14 could do so without hurting my children.

15 I spent well over a half a million dollars
16 in the divorce and custody battle, trying to establish my
17 children's right to have a dad, and to be a dad. And I
18 would spend ten million more dollars if that's what it took
19 in order for my beautiful, wonderful, precious children to
20 have a father.

21 Before she took my children, I volunteered
22 for everything that my children did. I was the homeroom
23 parent for both of their classes at the time. I chaired
24 the Homeroom Parents Committee. I was the vice president
25 of the PTO. I was a member of the School Improvement

1 Council at a local public elementary school. I chaired the
2 school dance committee. And I was coaching my son's
3 twenty-fourth youth sports team.

4 CHAIRMAN CASKEY: Mr. Gallman. One second,
5 if you would. You know I've tried several times to help
6 focus the conversation against our mission here. I
7 certainly understand your grievance and your frustrations
8 and your hurt. There's no question that everyone one of
9 your words is dripping with that emotion and deserves its
10 full and due respect.

11 I would be remiss in my duties, though, if I
12 did not give you one last chance to get us to something
13 that is going to tell us about Judge Bromell Holmes'
14 qualifications for the Court of Appeals. Now, so pause
15 right there. We'll go to Senator Sabb, and ask the senator
16 if he has a question for me -- for you, and what that might
17 be.

18 SENATOR SABB: Mr. Chairman, I did have a
19 question for the gentleman.

20 CHAIRMAN CASKEY: Thank you, sir.

21 MR. GALLMAN: If I may --

22 CHAIRMAN CASKEY: Well, wait a minute.

23 MR. GALLMAN: -- I can finish in one minute.
24 If you would --

25 CHAIRMAN CASKEY: We don't need a minute.

1 Let's call it twenty seconds.

2 MR. GALLMAN: Okay. With all due respect,
3 Chairman Caskey, I've waited for four years. So I'm going
4 to take my two minutes to finish, with all due respect.

5 SENATOR SABB: Let me ask my questions,
6 then, if we're going to go that way.

7 CHAIRMAN CASKEY: Well, we're not -- Senator
8 Sabb, we're not going to go -- I understand your
9 frustration. Our complaint process is very clear. And you
10 have submitted documents, you have submitted a complaint,
11 and we take those under advisement.

12 I understand that this isn't the forum you
13 maybe hoped it was. But we're giving you time to explain
14 to us, where she fails to meet these criteria. You've told
15 us a story that is -- "story" is not the right word for it.
16 You've explained your situation, I think, and brought
17 lucidity to this episode.

18 We're now looking for, again, things that we
19 don't have in the record. Admittedly, I don't have your
20 service as a PTO officer in the record. And I appreciate
21 that, but I need to know things that help us and the
22 General Assembly make decisions about the election of
23 judges.

24 So with respect, if you can get this done in
25 thirty seconds, I'll be happy to hear from you. If you

1 can't do that, then I'm going to ask you to sit down.

2 MR. GALLMAN: Okay. Thank you so much. And
3 as I was stating at that time, I was a partner in a Fortune
4 400 company, four times over a partner, an entire -- and
5 over sixty branch offices of a -- of a firm here in South
6 Carolina.

7 I'm going to end with this, and I'll state
8 two things for the record. Removing children via an abrupt
9 emotional cutoff in a fifteen-minute hearing with no
10 evidence is cruel. It's unjust. It's inhumane. And it's
11 evil.

12 I want you to consider, and this will be my
13 final statement, that for a 9-year-old little boy who's dad
14 was coaching his twenty-fourth sports team, and a 10-year-
15 old little girl to be removed from their father for 362
16 days and nights, literally ten percent of the life, with no
17 phone call, no text message, no Christmas card, no Happy
18 Thanksgiving, no birthday present, no nothing. It damn
19 near killed me. And it was cruel and unjust.

20 And anyone that does that should not be
21 promoted to the academic ability. And with that, I
22 conclude my testimony.

23 CHAIRMAN CASKEY: Thank you, Mr. Gallman.
24 And I appreciate your time and I appreciate you coming
25 here. Mr. Rutherford.

1 REPRESENTATIVE RUTHERFORD: The person that
2 the LLR complaint was filed against, what was the name of
3 that person?

4 CHAIRMAN CASKEY: I don't know that, that's
5 relevant here.

6 REPRESENTATIVE RUTHERFORD: Yes, it is.
7 Yes, it is. And I'll tell you why. I just need --

8 CHAIRMAN CASKEY: Well, tell me why it's
9 relevant, first, before we go down this avenue.

10 REPRESENTATIVE RUTHERFORD: Because No. 4 on
11 page 2 of 5, "The defendant father has filed, slash, made a
12 complaint against the minor child's third party counselor,
13 comma, Roberta Bogle. That has been dismissed."

14 Once a complaint is dismissed with any
15 agency, you are free to talk about it. And so the
16 substance that they have talked about, in now two
17 testimonies going to this LLR complaint, at that point was
18 dismissed.

19 CHAIRMAN CASKEY: Right. But, Mr.
20 Rutherford, you're talking about the affidavit of Mr.
21 Player. That's not --

22 REPRESENTATIVE RUTHERFORD: No, sir. I'm
23 talking about the judge's order. This is the judge's
24 order.

25 CHAIRMAN CASKEY: Which was submitted with

1 Mr. Player. I think your point stands. And I think the
2 Commission can consider your point as in its evaluation on
3 the totality. I don't think that requires a response from
4 you, Mr. Gallman.

5 MR. GALLMAN: Well, Chairman Caskey, if I
6 may respond to this statement, please.

7 CHAIRMAN CASKEY: I don't think it's
8 necessary --

9 MR. GALLMAN: It is to establish the record.

10 CHAIRMAN CASKEY: Sir, I respectfully --

11 MR. GALLMAN: It absolutely is.

12 CHAIRMAN CASKEY: Mr. Gallman. Mr. Gallman.

13 MR. GALLMAN: For the record --

14 CHAIRMAN CASKEY: Let's go one at a time.

15 MR. GALLMAN: Okay.

16 CHAIRMAN CASKEY: One at a time.

17 MR. GALLMAN: Okay. Well, please.

18 CHAIRMAN CASKEY: Hold on. Hold on. What
19 we're going to do is I'm going to give you just a last
20 little bit here. We've got other folks that want to be
21 heard, okay? But I don't think the issue of whether or not
22 the legal propriety or the inclusion or not inclusion of
23 this LLR complaint is one that we need arrive at a
24 conclusion on here.

25 I understand there are differences of

1 opinion here. That not our chore here. Our task is to
2 evaluate the candidate. So if you have something else you
3 want to say, I'll hear you.

4 MR. GALLMAN: One sentence.

5 CHAIRMAN CASKEY: All right. Shoot.

6 MR. GALLMAN: Please. Thank you. To Mr.
7 Rutherford's point -- to Representative Rutherford's point,
8 I gave no documents to LLR. Not one single document.
9 Never have I given a document to LLR.

10 As it relates to Roberta Bogle, I cannot
11 talk about it because I signed an agreement that I could
12 not talk about it. But we settled a lawsuit that will
13 stand on its own merit.

14 CHAIRMAN CASKEY: Thank you, sir. Again, I
15 appreciate your time. Thank you for being here. That's
16 all, sir.

17 MR. GALLMAN: Thank you.

18 CHAIRMAN CASKEY: Thank you.

19 MS. FOSTER: Ms. Bullard.

20 MS. BULLARD: Good afternoon.

21 CHAIRMAN CASKEY: Ms. Bullard, if you would
22 please raise your right hand.

23 MS. BULLARD: I will.

24 WHEREUPON,

25 IRIS BULLARD, being duly sworn and cautioned

1 to speak the truth, the whole truth and nothing but the
2 truth.

3 CHAIRMAN CASKEY: Ms. Bullard, I know you've
4 been sitting here for quite a while. And you've heard me,
5 a couple times, revisit the question about what it is that
6 we're here to do. We have the benefit of your affidavit
7 that was here. We've obviously heard testimony from Mr.
8 Player and Mr. Gallman.

9 My understanding is that the nature of your
10 complaint is related to the same case, same episode, same
11 course of conduct. And I would ask you, unless we extend
12 these proceedings much longer than they need be to be
13 extended, that you focus your comments again on the
14 question of the evaluative criteria that we're using here.

15 MS. BULLARD: Okay. If I may say, briefly,
16 that my husband and I have advocated for thousands of
17 children over our careers. My husband, a licensed master
18 social worker, was over children services for Beckman
19 Mental Health, which is part of the South Carolina mental
20 health.

21 CHAIRMAN CASKEY: Ms. Bullard.

22 MS. BULLARD: For forty-three years --

23 CHAIRMAN CASKEY: I made a procedural
24 mistake. You'll have to forgive me, this is my first time
25 sitting in this seat. And I have made the mistake of not

1 recognizing that your complaint was not fully in the
2 record.

3 Luckily, we have these fine lawyers next to
4 me, who have stopped us all now. And, again, I apologize
5 for interrupting you for my mistake. But Ms. Foster needs
6 to put this on the record so it's a formal part of our
7 record. So, Ms. Foster, please continue with saving me.

8 MS. FOSTER: Ms. Bullard, the Commission has
9 before it, your affidavit of complaint, which I
10 respectfully request be made a part of the record at this
11 time.

12 (EXHIBIT NO. 23 - IRIS B. BULLARD)

13 MS. FOSTER: The purpose to today's hearing
14 is for the Commission to review the qualifications of the
15 candidate, to determine whether Judge Bromell Holmes is
16 qualified to be on the Court of Appeals. The Commission is
17 not here to re-litigate a case, and they do not have the
18 ability to change the result of the case.

19 Ms. Bullard, you've submitted your
20 affidavit, which the Commission is reviewing. Is there
21 anything else you wish to testify to, specifically
22 regarding Judge Bromell Holmes' ethics, competency, or
23 character, that is not already been covered by the
24 Commission?

25 MS. BULLARD: Yes.

1 CHAIRMAN CASKEY: Again, I'm sorry. But
2 that was my fault.

3 MS. BULLARD: That's okay.

4 CHAIRMAN CASKEY: And I know it derails your
5 chain of thought. So please continue.

6 MS. BULLARD: I just want to say this, and I
7 think you will understand why I want to say it. For forty-
8 three years, my husband was director of children's mental
9 health. For thirty-three years, I was the campus
10 administrator at Connie Maxwell Children's Home, which if
11 you don't know, is a ministry of South Carolina Baptist.

12 And since 1892, the ministry each and every
13 year has ministered to over one hundred families, providing
14 hope and healing, and trying to provide family
15 reunification. I say that because we have both, as
16 advocates, known about situations when children were
17 separated from their parents.

18 And I ask you, do you think it's in the best
19 interest of children to have a loving parent removed from
20 their life for a year? I submit to you, I do not think
21 that it is.

22 I also say to you, that if you ever had a
23 10-year-old daughter, and she put on a bathing suit to go
24 swimming and you saw horrific bruises in the area of her
25 crotch, you would be deeply concerned.

1 Those bruises were seen by several people.
2 The child went to MUSC. And Judge Bromell Holmes, in
3 court, stated, quote, "The defendant father made
4 allegations at MUSC, that RGG may have been physically and
5 sexually abused."

6 The court order further stated, quote, "This
7 court finds that it is convenient to allege abuse in a
8 custody order in a custody action."

9 The father already had joint custody. And I
10 understand what Judge Bromell Holmes said. And,
11 apparently, she assumed that what may be true in some cases
12 must be true in all cases. It was not true in this case.

13 CHAIRMAN CASKEY: Ms. Bullard, thank you for
14 making the time to come here and --

15 MS. BULLARD: I would like to continue for a
16 -- for a moment.

17 CHAIRMAN CASKEY: Okay. I'm happy to have
18 you continue, but what we can't do is focus on what is
19 already in the record. So as you heard us discuss out
20 loud, there are -- the order is already in the record, the
21 allegations are in the record, the judge's decision is in
22 the record, Mr. Player and Mr. Gallman --

23 MS. BULLARD: I'm his mother.

24 CHAIRMAN CASKEY: Okay. Well, nice to meet
25 you. You've heard all -- you've heard the various points

1 of view. What can you tell us that's new?

2 MS. BULLARD: Okay. I can tell you this,
3 that our family was traumatized for a year. That time was
4 stolen from our husband and me, from cousins, aunts and
5 uncles, and certainly from my son who was their father, and
6 a good father. And then the court order stated, quote --

7 CHAIRMAN CASKEY: Let me pause right there.

8 MS. BULLARD: No. No.

9 CHAIRMAN CASKEY: Yes, ma'am. Yes, ma'am.

10 MS. BULLARD: This regards character and --

11 CHAIRMAN CASKEY: Ma'am, one at a time.

12 MS. BULLARD: -- and me.

13 CHAIRMAN CASKEY: It's going to be one at a
14 time. That's the only way this can work. One of the
15 things that we have to do here is have a -- an official
16 transcript of it. The lady to your left there is taking
17 down all of our words. Try as she might, she can't write
18 down both of us talking about the same time.

19 And in the interest of keeping things moving
20 in a progressive and helpful direction, my responsibility
21 is to make sure that we refocus on that goal.

22 MS. BULLARD: I'm sorry.

23 CHAIRMAN CASKEY: I feel the frustration and
24 the hurt and the anguish. It's inescapable. And so I hope
25 you don't intuit from my interventions here, any lack of

1 compassion or empathy. It's certainly not. It is simply
2 that I have a responsibility to keep us focused on what is
3 mandated by law. And that again is the evaluation of the
4 candidates, constitutional, statutory fitness to serve.

5 And to that end, we cannot simply reread
6 what is already in the order. And we cannot reread what is
7 already in the record. And so I'm going to give you one
8 last shot at this. Is there anything you want to add that
9 we haven't already heard?

10 MS. BULLARD: Well, I would like to say that
11 my character and my husband's character were assaulted in
12 the order. We had no chance to discuss this with anyone.
13 I know you don't want to hear it, but it said the court is
14 concerned that the minor daughter has been subjected to
15 ridicule by a paternal relative for not substantiating the
16 alleged abuse as stated by the father.

17 Judge Bromell Holmes knows nothing about me.
18 She knows nothing about my husband. She knows nothing
19 about our lives, which has been spent advocating for
20 children. She did not ask anyone other than the mother and
21 her attorney. She accepted everything they said.

22 I do not think that unjustly assaulting the
23 character of loving grandparent is very professional. I
24 was not asked a question. I was not allowed a comment.
25 Therefore, I could have nothing to do, my husband could

1 have nothing to do but sit for a year, praying every
2 morning and every night, that this injustice would be
3 fixed.

4 As you exercise your political prerogative,
5 I would urge you to consider Judge Bromell Holmes
6 reputation for lacking professionalism and the temperament
7 required to be a judge.

8 CHAIRMAN CASKEY: Thank you very much, Ms.
9 Bullard. I appreciate you making the time. I know it's
10 not easy to revisit what is clearly, you know, and
11 undeniably and very difficult episode. So thank you for
12 again making your way here and time today before the
13 Commission.

14 Do any of the commissioners have any
15 questions for Ms. Bullard?

16 (Hearing none.)

17 CHAIRMAN CASKEY: Seeing none. Thank you
18 very much for you time and your testimony here today.

19 MS. BULLARD: I appreciate the opportunity
20 to address this committee.

21 CHAIRMAN CASKEY: Thank you. So it's come
22 to my attention that we need to go into executive session
23 for a briefing on some legal issues. And so to that end,
24 on a motion of Representative Jordan, seconded by Ms.
25 Blackley, the pending question is moving into executive

1 session. All in favor signify by saying "aye".

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

3 CHAIRMAN CASKEY: All opposed "nay"?

4 (Hearing none.)

5 CHAIRMAN CASKEY: The "ayes" have it.

6 Ladies and gentlemen, we'll kindly ask for everyone to step
7 out of the room while we have a discussion on some legal
8 issues that have arisen.

9 (Executive session from 4:20 p.m. to 4:38 p.m.)

10 CHAIRMAN CASKEY: Ladies and gentlemen,
11 thank you for indulging us in that brief respite. We are
12 not coming out of executive session, and resuming our
13 screening process.

14 For the record, while we were in executive
15 session, no votes were taken and no decisions were made.
16 For your edification there was a procedural question
17 raised, and we had to discuss that with our lawyers.
18 Having had resolved that question, we are able to proceed.
19 And I would again recognize Ms. Foster for the resumption
20 of our screening.

21 EXHIBIT NO. 24 - WRITTEN RESPONSE OF THE
22 HONORABLE JAN B. BROMELL HOLMES)

23 MS. FOSTER: The Commission has before it,
24 your written response to the complaints, which I
25 respectfully request be made a part of the record at this.

1 Would you like to add any more testimony or response?

2 JUDGE HOLMES: Other than denying the
3 allegations. Since my written response will be made a part
4 of the record, I certainly stand on my written response. I
5 deny the allegations that I have acted unprofessional, that
6 I have improper temperament, that I ever made a ruling
7 based on any type of contempt.

8 All of my rulings have been based on the
9 information presented to me, properly presented to me,
10 after I gave it deliberate considerate deliberation. And
11 I've always heard from all parties in all matters. And
12 that's pretty much my statement in addition to what's
13 written.

14 CHAIRMAN CASKEY: Any questions from
15 Commission members with respect to the complaints we've
16 heard?

17 (Hearing none.)

18 CHAIRMAN CASKEY: Judge, thank you for the -
19 - sorry, ladies and gentlemen. This is my first time being
20 in this chair. And so I need correction, even sometimes
21 when I had it right to start with.

22 (Off-the-record discussion.)

23 CHAIRMAN CASKEY: Judge, we did not give you
24 an opportunity, earlier, to introduce the gentleman that
25 came in with you, or any of the other folks that have

1 joined you today. If you want to introduce them, we'd
2 recognize that, certainly, this is not a standard part of
3 their day. And we want to give you an opportunity to
4 recognize them, nor not.

5 JUDGE HOLMES: My husband is here with me,
6 and four other very experienced jurists in Horry County are
7 also present in support -- and Georgetown County. George
8 Hearn, Martha Hammel, Debra Dansler, and Carolyn Hills.

9 SENATOR RANKIN: What about your husband?
10 What's his name?

11 JUDGE HOLMES: Oh, I'm sorry. I didn't --
12 Cleveland Holmes. As in the State of Ohio, Cleveland
13 Holmes.

14 CHAIRMAN CASKEY: Well, thank you all for
15 being here today. No doubt this is a important moment.
16 And thank you for making time to do that.

17 Judge, at this point I would -- I would
18 recognize you for any brief opening remarks you may want to
19 make. And if you don't want to, then we'll proceed
20 directly with questions from Ms. Foster.

21 JUDGE HOLMES: I just want to thank you all
22 for what you do. I know it's very tedious. And I
23 appreciate the time and effort that you devote in your
24 duties. I am also thankful to your staff, who has always
25 been very, very gracious to deal with.

1 CHAIRMAN CASKEY: Ms. Foster.

2 MS. FOSTER: I note for the record that
3 based on the testimony contained in the candidate's PDQ,
4 which has been included in the record with the candidate's
5 consent, Judge Bromell Holmes meets the constitutional
6 and/or statutory requirements for this position regarding
7 age, residence, and years of practice.

8 EXAMINATION BY MS. FOSTER:

9 Q. Judge, why do you want to serve on -- as a judge
10 on the Court of Appeals?

11 A. I started my family court trial experience at the
12 tender at of 36, in 2007, when I was elected. So I have
13 served continuously for sixteen and a half years. I feel
14 that -- I've done that position with purpose and passion.

15 And I feel that I have worked to the point where
16 I can be acclimated. I have the necessary skills, the
17 experience required for a judge on the Court of Appeals.

18 Q. Judge, you noted in your PDQ, several instances
19 of your serving as acting Justice on the Supreme Court, no
20 November 15th, 2017, December 14th, 2022, and April 20th,
21 2023. And you also note that you were appointed to sit as
22 an acting justice on the Court of Appeals in July of 2023,
23 and you'll serve until December 31st, 2023.

24 How do you feel your legal and professional
25 experience, and specifically your appellate experience,

1 serving on the Supreme Court and the Court of Appeals, will
2 assist you to be an effective judge on the Court of
3 Appeals?

4 A. Actually -- it actually begins with my family
5 court trial experience. I thought I would retire as a
6 family court judge, but when extended the opportunity in
7 November of 2017, to sit on the Supreme Court, I realized
8 that I had the requisite skills to do appellate work; that
9 the skills that I acquired in family court in terms of
10 reading the plaintiff's submission, defendant's submission,
11 and the entire record were the same skills; and also
12 knowing the rules of evidence, and knowing the appellate
13 court rules are the same skills that served me quite well
14 at the Supreme Court level.

15 I received many compliments from justices,
16 encouraging me to offer my service at the appellate level,
17 whether at the Supreme Court or the Court of Appeals. I
18 certainly believe that the proper court for me at this
19 particular point is the Court of Appeals.

20 And I can tell you, I'm so grateful for my
21 experience at the family court level, because that
22 experience is certainly helping me as I fulfill the role at
23 -- and fulfill the role and assist with the backlog of
24 cases at the Court of Appeals, presently.

25 In terms of not relying solely on what the

1 appellant states in the brief, what the respondents states
2 in the brief. But I must consider the appellant, the
3 response brief, as well as the entire record as a whole.
4 'Cause you can't really rely on one particular side, who is
5 representing their side only, to give you the facts as
6 actually what took place at the trial.

7 So because of my experience as a family court
8 trial judge, I am handling that job quite remarkably. I am
9 appreciative of the fact that oral arguments are on the
10 video portal.

11 So everything that I've done in terms of work at
12 the Court of Appeals, the oral arguments are on video
13 portal for anyone to watch.

14 Also -- I'm going to stop talking. I'll let you
15 go to your next question.

16 **Q. Thank you, Judge. How would you describe your**
17 **general judicial philosophy?**

18 A. To rule after careful consideration of all the
19 facts presented to the court. Also, to have patience, be
20 diligent, be meticulous, and to make sure that all parties
21 are heard.

22 **Q. Judge, what is your vision for the future of our**
23 **judicial system? And what changes would you advocate, and**
24 **why?**

25 A. In terms of the vision that I have for the

1 judicial system, I would advocate in terms of -- because
2 I'm working at the Court of Appeals now, and I see that as
3 -- see this issue as being a problem. During COVID we
4 ventured into technology -- all the courts did, in terms of
5 Webex.

6 And so I was chief administrative judge at the
7 time for the 15th Circuit. But we did not venture into
8 trying to have a contested trial by Webex. And so,
9 actually, we are seeing that problem now at the Court of
10 Appeals.

11 And I actually sat on the panel that heard the
12 first case that was appealed as a result of COVID. And so
13 when individuals -- when the judge is where the judge is,
14 and you have lawyers in their locations and they're saying,
15 "Well, see, Judge. There it is right there."

16 Well, we don't see it because it wasn't in the
17 record. So that was very difficult. But I do advocate --
18 we're on the right track in terms of Webex. But I
19 certainly don't advocate that for contested trials. Never
20 did. And we've only used it in family court for
21 uncontested matters.

22 The other thing I would like to see -- and I
23 don't know I should venture and say this because -- in one
24 of the cases I sat -- we have rules of discovery in family
25 court. And I know you have rules of discovery as well in

1 general sessions.

2 But I was troubled by a trial that proceeded, and
3 on day three of the trial, GPS evidence was allowed into
4 the record. And that was the first time the defendant knew
5 of it. That troubled me, because in family court we have
6 rules of discovery where you can't have trial by ambush.

7 You have a certain amount of time to turn over
8 what is discovery, what is -- what you will -- what you
9 plan to use at trial. Well, that didn't happen in this
10 particular case.

11 And I do know that the solicitor does have to
12 turn over everything that the solicitor plans to use in
13 discovery, if it's in the solicitor's possession. However,
14 this particular document was not in the solicitor's
15 possession, so they didn't have an obligation to turn it on
16 -- to turn it over.

17 Well, one question that I had was certainly you
18 knew that you were going to use it. So that is one change
19 I would like to see if that is not -- I haven't had an
20 opportunity to dive any -- deeply into it.

21 But I think that, certainly, if we can -- that
22 needs to be taken more seriously when you're talking about
23 a person that can go to prison for "X" amount of years, and
24 to spring something -- a document on them, the third day of
25 trial.

1 And then the trial not -- it not -- it not be a
2 mistrial and -- or even taken up -- given a continuance for
3 the defendant to have an opportunity to do proper
4 discovery.

5 **Q. Thank you.**

6 A. And we are also moving -- and I'm appreciative of
7 us being -- being more considerate of mental health issues.
8 I can tell you since COVID, we have dealt a lot of people
9 coming into family court with mental health issues.

10 And so we are moving in that direction. And I
11 would like for us to continue to give the judges resources
12 in terms of how to deal with individuals that present
13 themselves with mental issues in our courts.

14 **Q. Thank you. Judge, to what extend do you believe**
15 **that a judge should or should not defer to the actions of**
16 **the General Assembly?**

17 A. I believe that a judge should always defer to the
18 actions of the General Assembly. I was asked a question by
19 Chairman Caskey last year, and this question bothered me
20 the entire time. And I want to give an example of me
21 actually deferring to the General Assembly.

22 I was about two years a judge at -- on the family
23 court level, when I actually faced the issue of deferring
24 to the General Assembly. And this question concern --
25 concerned me being harsh on a juvenile rape defendant.

1 And what happened there, the juvenile pled guilty
2 to criminal sexual conduct first degree. The state -- the
3 statute says an individual that pleads guilty to that, or
4 is found guilty, must register as a sex offender
5 biannually.

6 The juvenile's attorney objected to me ordering
7 that, and indicated that my doing so is cruel and unusual
8 punishment because of it being a juvenile. And my position
9 was I -- I understand your argument, but the statute does
10 not differentiate whether it's a juvenile or an adult.

11 I am required to follow the law. And I did. The
12 case, because it was a constitutional issue, was appealed
13 directly to the Supreme Court. I was affirmed.

14 But the Supreme Court did give the juvenile an
15 opportunity to request a review. But I deferred to the
16 General Assembly. And I believe that was the right thing
17 for me to do.

18 **Q. Judge, the Commission received 334 ballot box**
19 **surveys regarding you, with 74 additional comments. The**
20 **ballot box survey, for example, contained the following**
21 **positive comments:**

22 Quote, "Judge Holmes is an excellent jurist, has
23 tremendous knowledge of the law, unquestioned ethics, and
24 sterling judicial temperament."

25 Another noted, quote, "Judge Holmes is an

1 excellent family court judge and has significant experience
2 on the appellate bench. She's a hard worker and plays no
3 favorites."

4 Nineteen of the written comments expressed
5 concern. Some of these concerns related to your level of
6 experience, as well as your ability to serve on the Court
7 of Appeals. How would you respond to such concerns?

8 A. The concerns in terms of my level of experience,
9 I certainly don't think -- and I realize that these are
10 ballot box survey, so they are anonymous. I don't believe
11 that they came from individuals that regularly appear in
12 front of me.

13 Because individuals that regularly appear in
14 front of me, certainly know that I have the requisite
15 experience and the requirements to serve as a judge on the
16 Court of Appeals.

17 And the other issue -- what was the last part of
18 the question?

19 Q. It was related to level of experience as well as
20 ability to serve on the Court of Appeals.

21 A. And when I served as an acting justice on the
22 Supreme Court, all of those oral arguments are also on the
23 video portal. And in terms of my service on the Court of
24 Appeals -- actually, I stated all of the oral arguments are
25 on video portal.

1 And so I wouldn't offer for this service if I
2 felt like I was not qualified to do so.

3 **Q. Thank you, Judge. Another concern raised was**
4 **regarding your impartiality. What response would you offer**
5 **any concern about that?**

6 A. Well, I would say impartiality -- and I don't
7 know what context that is made in. But I -- I am not
8 partial towards women or men. I mean, as you saw here
9 today, I had a female and a male litigant complain
10 concerning my orders.

11 As a family court judge, I have presided over
12 19,745 cases. 19,745 cases. If I had any problems
13 concerning impartiality, I think we would have had probably
14 way more complaints filed on today.

15 I call it as I see it. I call a spade a spade.
16 And sometimes that is hard for individuals to accept.
17 Family court is an emotionally-charged court. People come
18 in at their worst. And I don't have a magic wand to fix
19 the situation. All I can do is make the best out of a
20 broken situation that I'm dealt.

21 But I do not show impartiality. If I'm impartial
22 to anyone, it would be to the children. 'Cause I'm going
23 to do what's in the best interest of the children.

24 **Q. Thank you, Judge. Another concern raised was**
25 **regarding your judicial temperament. How would you respond**

1 to such concerns? And what do you believe is proper
2 temperament for a judge?

3 A. A judge should be patient at all times,
4 dignified. And I've -- I was always raised with these
5 Christian principles: Do unto others and you expect them to
6 do unto you. You reap what you sow. You know, treat
7 others as you expect to be treated.

8 So I treat all litigants that come in my
9 courtroom with the utmost respect. Now, there are times,
10 and you probably witness -- witnessed some on today where
11 individuals will talk over each other.

12 And I -- as the judge, I have to maintain proper
13 decorum in my courtroom. And, yes, I may have to raise my
14 voice -- such as this -- and say, "I asked you not to
15 interrupt."

16 I have done that because that was the proper tone
17 for me to have to control the situation. And so -- and,
18 perhaps, maybe the individuals that experienced that saw
19 that as improper temperament. I didn't.

20 Part of my -- the code of judicial conduct -- I
21 have to maintain decorum in my courtroom, so there are
22 times when judges -- we have to raise our voice. Not yell.
23 But we have to speak with authority. And it is not always
24 accepted. So I do not have a -- an issue with my judicial
25 temperament.

1 **Q. Thank you, Judge.**

2 MS. FOSTER: I would note that the Pee Dee
3 Citizens Committee reported that Judge Bromell Holmes was
4 well qualified as to evaluative criteria and ethical
5 fitness, experience, professional and academic ability,
6 character, reputation, and judicial temperament, and
7 qualified in the evaluative criteria of constitutional
8 qualifications, physical health and mental stability.

9 BY MS. FOSTER:

10 **Q. Just moving to some housekeeping issues. Since**
11 **submitting your letter of intent to run for this seat, have**
12 **you contacted any members of the Commission about your**
13 **candidacy?**

14 A. I have not.

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

18 A. What was the question again?

19 **Q. If you need me to repeat. Are you aware with**
20 **South Carolina Code Section 2-19-70, including the**
21 **limitations on contacting members of the General Assembly**
22 **regarding your screening?**

23 A. I am.

24 **Q. Since submitting your letter of intent, have you**
25 **sought or received the pledge of any legislature either**

1 prior to this date or pending the outcome of your
2 screening?

3 A. I have not.

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

8 A. I have not -- or I am not.

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

14 CHAIRMAN CASKEY: Thank you, Ms. Foster. Do
15 members of the Commission have any questions for the judge?

16 SENATOR RANKIN: Mr. Chairman.

17 CHAIRMAN CASKEY: Senator from Horry.

18 EXAMINATION BY SENATOR RANKIN:

19 Q. Judge Holmes, welcome. And I remember screening
20 you last year, again, for reelection to the family court,
21 at which you were not opposed in that race. And you have
22 served in that role since 2007?

23 A. That is correct.

24 Q. A unique day for us, and all the people who have
25 come to make their statements about you public, and so I do

1 want to ask, aside from the complaints that we have now
2 moved beyond in terms of the -- your desire to be on the
3 family court no longer, but the Court of Appeals for the
4 first time. It doesn't mean that you're not qualified, but
5 I want to ask you about your interest in that and your
6 experience in that.

7 Harkening back -- and the record will reflect
8 your previous candidates, each of whom have, based on short
9 years of practice, or longer, had some engagement with the
10 appellate courts. Your only real engagement is just of
11 late, correct, with your appointment and service -- I think
12 was it to the Court of Appeals? Is that correct?

13 A. That is correct. Beginning July 1st through the
14 end of the year, and it's just to help with the backlog of
15 cases. The court of appeal sits in panels of three judges.
16 And, certainly, there is a shortage there.

17 Q. And I don't say that to diminish your ability to
18 serve. But in terms of your making any oral arguments,
19 appearing before any Court of Appeals, or Supreme Court,
20 oral arguments, motions, or preparing and participating in
21 any briefs, what experience have you had in that prior to
22 this recent appointment serving on the bench?

23 A. Okay. In terms of preparing briefs, whenever I
24 prepare orders in family court, I include my orders the
25 plaintiff's position and the defendant's position, and of

1 course, the ruling of the court.

2 The Court of Appeals requires more than -- at the
3 Court of Appeals level, the judge is actually judging or
4 making a determination as to whether a judge has made an
5 error. The briefs are prepared by the lawyers who appear
6 for the court.

7 So in terms of if I'm just as qualified or more
8 qualified to serve than individuals that have been
9 appellate lawyers, my response to that would be this is a
10 position for a judge.

11 And I believe that because I sat as a judge, I
12 made rulings as a judge, I'm in the position to critique a
13 judge. And I can certainly do that by the review of
14 plaintiff's briefs or defendant's briefs, and certainly, a
15 review of the record, the rules of evidence, and
16 determining whether any issues before the court are proper
17 before the court or whether those issues were preserved for
18 appeal.

19 So I believe from standpoint it's more important
20 to have judicial experience. I recognize that there are
21 lawyers that choose to appellate work. But in terms of a
22 judge being a judge, we consider submissions by plaintiff's
23 attorney, defendant's attorney. And at the appellate level
24 it would be appellate's attorney and the respondent's
25 attorney.

1 Q. And I don't disagree with you in that, that you
2 are one type judge does not foreclose your being another
3 type judge. This state's history of the judiciary is full
4 of judges -- in fact, the very first one today, Justice
5 Kittredge -- Chief Justice-to-be Kittredge, who served in
6 the family court at his first stop along this thirty-two
7 year career.

8 So I don't hold that against you for not having
9 done it before. You have -- we've heard, again, a number
10 of comments about you, today, and again, your defense of
11 those comments. And I'm moving beyond that.

12 But I don't want the record to go without
13 reference to the folks who have taken the time to speak on
14 your behalf -- the sheriff of Horry County, Phillip
15 Thompson, Clerk of Court of Horry County, who appeared
16 before you in 2017, as a bailiff, and makes comments about
17 your temperament and your reputation.

18 And then an attorney who the Horry practitioner
19 are familiar with, Dorsey Strickland, who wrote about you -
20 - again, though in the family court context, effectively
21 giving you praise for calling balls and strikes.

22 And whether male or female litigant, gender
23 notwithstanding, he, along with many anonymous folks, say
24 that you have the right judicial temperament for this.

25 So again, I'm going to ask it -- it was asked

1 earlier, but why in the world would you want to go from
2 those day in/day out, making a life better or worse,
3 calling it as you deem, with what you have before you, to
4 the ivory tower of a appellate practice, where surely
5 you've heard some don't like it because they are removed
6 from the human touch?

7 A. I can just tell you, based on my experience there
8 when -- I couldn't believe that individuals actually said
9 that. I think those who may feel that way, choose to work
10 in their chambers in their -- at their local residences.

11 I have made it a point to be here in Columbia.
12 So I'm interacting with the staff's attorneys office. The
13 office that I'm using is across the hall from the staff
14 attorney office, so I have human contact all day.

15 I am assigned a law clerk that is there, and I
16 have contact with her every day. And by -- by the token of
17 me being there as well, I'm hearing more motions.

18 I mean, in fact -- and this also goes to why I
19 would want to do it. I'm considering motions as a family
20 court judge. Well, those same motions also come to the
21 Court of Appeals, where a judge is asked to provide an
22 extension of time for an appellate or a respondent to file
23 their final brief.

24 Well, I understand that family situations happen,
25 and so -- because I sat as a judge, and I had made rulings

1 as a judge concerning extensions of time, I'm able to grant
2 those.

3 I've also have motions filed where -- where
4 individuals would ask for their appeal to be reinstated
5 because somehow they missed the deadline. And so I have
6 graciously granted those -- granted those, too, because I
7 realize we're all human.

8 We all have things that happen in our lives that
9 we have no control over. And, certainly, we need a judge
10 sitting in -- in that seat, that understands that -- that
11 has actually been there, that has been asked as a judge to
12 grant the extensions.

13 So I'm loving it there. And I have lots of
14 communication with wonderful people.

15 CHAIRMAN CASKEY: Senator Sabb.

16 SENATOR RANKIN: Thank you, Mr. Chairman.

17 EXAMINATION BY SENATOR SABB:

18 Q. I guess I'd just like to make a comment. Of
19 course, I don't do family court any more. I had my
20 druthers of it some twelve, fourteen years ago. I've been
21 practicing for about thirty-six years now, and I realize
22 before too long, that the family court wasn't for me.

23 And so I don't -- I don't practice there. But I
24 would like to say that I practice, primarily in
25 Williamsburg and Georgetown County, and over in Horry from

1 time to time, and so I come into contact with lawyers and
2 courtroom personnel and all of those kinds of things.

3 And of course, I sort of make it my business to
4 talk to people about various things. And I've never heard
5 any negative comments about judge Holmes, and how she
6 carries herself, in and around the courthouse. I think
7 she's well respected and I think she -- she's served us
8 well.

9 I would like to -- in Chairman Rankin's comments,
10 he kind of inferred, I thought -- and, perhaps, I
11 misunderstood him -- that you were going to leave the
12 family court.

13 And I want to make sure that I understand -- my
14 understanding is that you are offering for this position,
15 but that you also have an appreciation for the position
16 that you currently hold. Is that right?

17 A. I love what I do as a family court judge. But
18 after sixteen and a half years -- I'm 53 years old, and so
19 sometimes --

20 Q. Or years young.

21 A. Well, yeah, young. I'm still young. Fifty-three
22 years young. And I just think that there is a higher
23 calling for me. I think, certainly, if it doesn't work
24 out, I will continue to be a family court judge, to serve
25 in that compassion -- in that capacity with the passion and

1 purpose that I have done so for the past sixteen and a half
2 years.

3 But I think at a particular point in one's life,
4 when you believe that your services are needed elsewhere,
5 that you offer your services. And I do have some appellate
6 lawyer experience, because I did handle appeals when
7 practiced law. I practiced law for twelve years. But I --
8 I certainly have been away from that, but I just still make
9 the point.

10 And I know you're making a point of clarification
11 -- but I just want to clarify that the Court of Appeals
12 judges writes the orders. And I am accustomed to writing
13 orders.

14 Q. And of course I'm familiar with the law firm that
15 you initially worked with, Morant and Morant.

16 A. Absolutely.

17 Q. Johnny and Louis, the practiced -- well, of
18 course we lost Louis. He's been called from -- we lost
19 Johnny. Thank you. He was called -- but I am very
20 familiar with Morant and Morant. And was familiar with the
21 law offices of --

22 A. B. Bromell, PA.

23 Q. Yeah, that's how it works. Yeah. So I'm very
24 familiar with them and -- you know, and I -- I appreciate
25 your offering. I understand callings and all of those

1 kinds of -- sorts of things. I just wanted to clarify the
2 other point. Thank you.

3 A. Thank you.

4 CHAIRMAN CASKEY: Further questions from
5 members of the Commission?

6 EXAMINATION BY CHAIRMAN CASKEY:

7 Q. Judge, if I may -- as people contemplate whether
8 or not they want to ask any questions. And forgive me for
9 my faulty memory here, but during your comments earlier,
10 you referenced the GPS monitoring of a defendant and --
11 could you repeat that story and help me understand what you
12 were talking about?

13 A. Actually, what I was talking about is dealing
14 with a case at the Court of Appeals. Just in reading where
15 -- it wasn't a GPS monitor of the defendant's. Let me
16 apologize there. The defendant was charged with receiving
17 stolen goods.

18 And so the equipment that was stolen and placed
19 on the defendant's property had a GPS -- had GPS record.
20 And that GPS record certainly placed the equipment at the
21 defendant's -- on the defendant's property. The defendant
22 denies that he was aware that -- that the equipment was on
23 his property.

24 And so the third day of trial, of course that was
25 used to infer that because it was on his property, he had

1 reason to know that it was on his property. And that just
2 goes to a greater issue of where the Supreme Court, in
3 State v. Stewart, now says that jury charges can't be given
4 concerning inferences. And so that's the rest of the
5 story.

6 But that's what bothered me, that if that
7 happened -- it just bothered me that evidence such as GPS
8 could come in and it not be disclosed to the defendant
9 prior to beginning of trial.

10 Q. When you were considering this case as a sitting
11 member of the panel? Or this was just a case that you --

12 A. A case that I reviewed, yes.

13 Q. Okay. So you weren't -- you weren't actively a
14 member of a panel as a sitting judge?

15 A. Oh, yeah.

16 Q. So you were a member of the panel that heard that
17 case.

18 A. I'm reviewing it. Yes. It's --

19 Q. Let me clear my lack of knowledge. When you say
20 "reviewing," what do you -- what do you mean by that?

21 A. Well, it's -- there are -- there are other case
22 law that we are looking at and considering. And I was just
23 saying being at the Court of Appeals, that is something --
24 if that -- if that is the law, then that's concerning that
25 you would not have proper disclosure prior to trial.

1 Q. Okay. Well, just off the top of my head -- I
2 mean, that sounds like a pretty egregious violation of
3 Brady v. Maryland, if the solicitor had knowledge of that
4 information and didn't disclose it.

5 And what triggered my concern was that -- not
6 understanding that you were just reviewing this case, and
7 you weren't, in fact, sitting there. But I think your
8 comment was that you had not had an opportunity to dive
9 into that.

10 And I was wondering, well, if not -- when sitting
11 on a panel, when would one dive in. So I appreciate that
12 clarification. That resolves my concern in that I held
13 onto.

14 CHAIRMAN CASKEY: Other members of the
15 Commission have any other questions?

16 (Hearing none.)

17 CHAIRMAN CASKEY: Seeing none. Judge, thank
18 you again for your service to the state. Thank you for
19 offering for this position and being here today.

20 I do want to take this opportunity to remind
21 you, that pursuant to the Commission's evaluative criteria,
22 the Commission expects candidates to follow the spirit as
23 well as the letter of the ethics laws, and we will review -
24 - we will view violations or the appearance of impropriety
25 as serious and potentially deserving of heavy weight in

1 screening deliberations.

2 On that note, and as you know, the record
3 will remain open until the formal release of the report of
4 qualifications, and you may be called back at such time if
5 that need arises.

6 Again, I thank you for being there today.
7 Thank you for your patience and thank you for your service
8 to the State of South Carolina.

9 JUDGE HOLMES: And thank you all as well for
10 what you do. It's greatly appreciated.

11 CHAIRMAN CASKEY: Thank you, ma'am.

12 JUDGE HOLMES: Thank you.

13 CHAIRMAN CASKEY: With no further comments
14 on today's screening agenda, the Commission will stand
15 recessed until we begin again tomorrow at 9:30 a.m.

16 (OFF THE RECORD AT 5:13 P.M.)

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CERTIFICATE OF REPORTER

I, PATRICIA G. BACHAND, COURT REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT CONSISTING OF 256 PAGES IS A TRUE, ACCURATE, AND COMPLETE RECORD TO THE BEST OF MY SKILL AND ABILITY.

I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE PARTIES CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY INTERESTED IN SAID CAUSE.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS 13TH DAY OF NOVEMBER 2023.



PATRICIA G. BACHAND, COURT REPORTER
MY COMMISSION EXPIRES MARCH 8, 2027

<hr/> <p style="text-align: center;">\$</p> <hr/> <p>\$6,888.88 210:11</p> <p>\$64,000 151:9</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p>1 12:14 92:12</p> <p>1,395 43:19</p> <p>10 100:7 103:23 213:6</p> <p>10- 187:15</p> <p>10-year- 192:19 219:14</p> <p>10-year-old 185:3 205:19 225:23</p> <p>10:20 30:4</p> <p>10:31 30:4</p> <p>11 104:1</p> <p>110 23:12 26:9,17</p> <p>11:42 83:18</p> <p>11th 10:3 21:24</p> <p>12 22:2 100:7,8 124:22</p> <p>12:30 83:18</p>	<p>12:52 102:9</p> <p>13 100:8 124:25</p> <p>14 126:8</p> <p>14th 233:20</p> <p>15 136:7</p> <p>15th 162:21 233:20 236:7</p> <p>16 67:19 159:14</p> <p>160 43:20,23</p> <p>16th 10:4 22:2</p> <p>17 159:17</p> <p>175 92:21</p> <p>18 159:20</p> <p>1892 225:12</p> <p>19 8:11 161:2</p> <p>19,745 241:12</p> <p>1:24 102:9</p> <p>1:47 123:15</p> <p>1st 245:13</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>2</p>	<p>8:11 12:16 220:11</p> <p>2-19-10 7:8</p> <p>2-19-50 20:1</p> <p>2-19-70 47:11 71:17 95:19 111:24 145:11 243:15, 20</p> <p>20 169:22</p> <p>2005 36:10</p> <p>2007 233:12 244:22</p> <p>2008 51:13</p> <p>2013 70:9</p> <p>2015 36:6</p> <p>2017 56:16 233:20 234:7 247:16</p> <p>2018 176:19,20 177:9,18 178:1</p> <p>2019 128:18 177:19 212:21 213:25</p> <p>2021 75:9 162:21</p> <p>2022 128:21 233:20</p> <p>2023 12:2,4,11,14,16 178:2 233:21, 22,23</p> <p>2024</p>	<p>10:3,4,6 21:24 22:2</p> <p>20th 233:20</p> <p>21 184:1</p> <p>22 208:13</p> <p>23 224:12</p> <p>23rd 212:21</p> <p>24 143:25 230:21</p> <p>243 66:24</p> <p>2:12 123:15</p> <p>2:49 158:14</p> <p>2:56 158:14</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>3 31:14 84:3 162:11 189:1 190:5</p> <p>31st 233:23</p> <p>32 15:7</p> <p>334 239:18</p> <p>343 109:13</p> <p>35 23:24</p> <p>353 142:8</p>	<p>36 233:12</p> <p>362 197:21 210:18 212:24 219:15</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>4 11:22 31:17 220:10</p> <p>40 142:19 151:14</p> <p>400 219:4</p> <p>40s 151:15</p> <p>43,016.2 56:19</p> <p>45 83:17</p> <p>46 92:21</p> <p>48 21:25</p> <p>48-hour 10:3 47:18</p> <p>4:20 230:9</p> <p>4:38 230:9</p> <p>4th 64:10 70:12 74:7 76:25</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>5 61:16 162:25 189:1 190:6 220:11</p>
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<p>50/50 210:9 213:10 216:4</p> <p>53 250:18</p> <p>5:13 255:16</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>6 61:19 73:7</p> <p>63 66:24</p> <p>63-15-240 163:12</p> <hr/> <p style="text-align: center;">7</p> <hr/> <p>7 85:7 188:25 189:15,20 190:5,19</p> <p>71 109:14,21</p> <p>74 239:19</p> <p>78 35:9 50:18</p> <p>79 203:2</p> <p>7th 10:6</p> <hr/> <p style="text-align: center;">8</p> <hr/> <p>8 84:25 85:10 189:10,15,16</p> <p>82 102:5 133:3</p>	<p>83 84:2,3</p> <p>84 60:7</p> <p>8th 120:7</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p>9 60:18 84:7 85:13 102:22 123:23 189:17 191:17 213:7</p> <p>9- 185:3 187:15 192:19 205:19</p> <p>9-year-old 219:13</p> <p>91 52:12</p> <p>96 142:8</p> <p>9:21 11:12</p> <p>9:30 255:15</p> <p>9:51 11:12</p> <hr/> <p style="text-align: center;">A</p> <hr/> <p>a.m. 11:12 30:4 83:18 255:15</p> <p>ABA 51:11,15</p> <p>abbreviated 14:21</p> <p>abhorrent 55:16</p>	<p>abide 47:23 51:21</p> <p>abided 47:20</p> <p>ability 15:16 46:24 49:15 52:23 53:18,22,24,25 71:5 86:16 95:9 106:24 111:7,15 131:21 132:9, 12,16 133:5 140:19 142:10 143:21 161:8 162:6,13 170:4 184:8 185:1 208:20 219:21 224:18 240:6,20 243:5 245:17</p> <p>abolishing 37:4</p> <p>ABOTA 23:20</p> <p>abrupt 219:8</p> <p>absolute 134:23</p> <p>absolutely 37:12 46:1 55:15,17,24 114:14 128:12 153:19 157:7 175:9 187:21 207:11,22 216:4 221:11 251:16</p> <p>abuse 138:4 175:17 189:4 214:10, 13,20 216:3 226:7 228:16</p> <p>abused 226:5</p>	<p>academic 15:16 46:24 67:6 71:5 76:10 95:8 111:6 131:9,10,21 132:9,12,15,17 162:6,13 185:1 219:21 243:5</p> <p>accelerated 102:17</p> <p>accept 16:12 241:16</p> <p>accepted 19:3 228:21 242:24</p> <p>access 18:15 187:3,4,9</p> <p>acclimated 233:16</p> <p>accompanying 45:21</p> <p>accomplish 40:9</p> <p>accord 91:1</p> <p>account 7:21</p> <p>accountability 41:21 42:1,8 43:9 91:13</p> <p>accused 43:5 214:10,12, 20 216:2</p> <p>accustomed 251:12</p> <p>achieve 41:23 43:9</p> <p>achieves 44:10</p> <p>acknowledge 126:21 155:2</p>	<p>acknowledged 131:6</p> <p>acquired 234:9</p> <p>act 36:10 38:24 162:12</p> <p>acted 137:6 182:24,25 201:6 231:5</p> <p>acting 37:14,15 233:19,22 240:21</p> <p>action 110:18,23 189:8 226:8</p> <p>actions 11:18 92:9 109:9 140:18 153:21 238:15, 18</p> <p>active 15:3 142:2</p> <p>actively 253:13</p> <p>activities 189:14</p> <p>actors 13:24</p> <p>actual 37:3,5 39:18</p> <p>Ad 43:8</p> <p>Adam 97:2</p> <p>adapted 152:4</p> <p>add 109:24 110:2 121:21 133:19 136:11 192:12</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

211:25 228:8 231:1	administrator 225:10	235:23 236:1, 17,19	afternoon 83:20 105:11,12	24 124:20
adding 211:19	admissible 204:16	advocated 223:16	123:16 158:16, 17 169:10 183:8	126:14 159:12
addition 67:2 109:17 164:10 231:12	admitted 131:4	advocates 42:16 225:16	222:20	161:21
additional 43:20 45:22 66:24 88:7 92:21 109:14 111:11 165:3 209:19 211:10, 14,19,24 239:19	admittedly 102:17 218:19	advocating 37:11 228:19	age 34:10 63:10 73:7 74:4,12,13 88:3 105:18 139:10 142:18, 22 144:21 148:8,9 162:25 233:7	AI 81:14
additive 129:16 164:2	adopted 10:17 51:14	affect 154:2	aged 146:15	aisle 90:24
address 18:7 25:21 26:5 27:8 37:22 79:18 137:10 142:21 186:20 188:6 229:20	adoption 10:8,10	affidavit 18:25 19:9 32:4 125:12 126:3,8, 11,13 136:4 160:24 161:2,9, 16 164:17 169:19,22 170:7 172:21 173:2 183:23 184:1,10 193:5 199:18,20 208:10,13,22 220:20 223:6 224:9,20	agency 93:7 200:11 220:15	alarm 40:17
addressed 141:21 191:20 213:16	adult 239:10	affidavits 62:6 85:25 104:13 137:19 160:7	agenda 37:11 40:5 255:14	ALC 94:4
addressing 44:6 141:23	adults 73:4,7	affirmed 81:6 116:20 117:5,12 239:13	ages 23:25	alert 72:24
adjudicate 35:10	advance 166:7	afford 104:16 129:11 163:24	agree 72:19 79:8 121:4 153:15 154:4 156:14 176:14 178:18 192:1 194:4 195:9,16 205:10,12 214:8	alienation 213:2
admin 120:4	advancement 166:8	affording 215:2	agreed 117:3 168:2,5 210:10	align 141:19
administer 58:19	advancing 69:10	afforded 119:15 133:20	agreement 213:10 222:11	allegation 55:2 191:10
administration 129:20	advantage 216:3	affording 215:2	ahead 7:2,19 41:19 61:14 85:6 86:22 100:6 102:6,18,20 103:21 116:23,	allegations 19:4 126:15 164:3 203:9 226:4,21 231:3, 5
administrative 9:3 15:1 38:21 39:15 89:18 90:5 99:11 236:6	adversarial 44:7,14	afoul 53:23		allege 226:7
administratively 38:18	adverse 65:5	afraid 152:2		alleged 189:4,6 228:16
	advice 11:2 171:14			alleges 127:10,19
	advised 215:22 216:9			alleging 201:17
	advisement 218:11			allocating 57:17
	advocacy 166:1			allowed 24:14 107:19 193:10 196:9 228:24 237:3
	advocate 19:22 66:5,17 89:13 91:8 107:24 138:7 170:16 179:23			allowing 207:9,20
				alluded

88:10	Anderson	appealed	17,19,24 235:12	156:10,19,20
almighty	56:11	116:8 126:18	236:2,10 240:7,	165:11,12,25
175:18	Andy	168:4 195:18	16,20,24 245:3,	178:15,25
alternative	9:13	236:12 239:12	12,19 246:2,3	233:25 234:8,
80:21	anecdotal	appealing	248:21 251:6,11	12,16 240:2
ambiguous	51:4	161:25	252:14 253:23	245:10 246:9,
57:3	anguish	appeals	appearance	21,23 248:4,22
ambush	227:24	8:24 15:1 34:21	59:17 82:16	251:5
237:6	anomaly	39:23 40:1,3	101:16 122:12	appellate's
amended	167:19	41:3,4 42:15	157:21 254:24	246:24
85:11 103:13	anonymous	60:19 63:16	appeared	applicable
159:18	17:23 25:2,19	64:2,8,10,20	42:16 49:14	31:8 45:9 61:11
amending	173:8 240:10	66:8,12 67:14,	55:2 118:7	applicant
43:8	247:23	15,24 70:5,12	199:1 247:15	30:11
amendment	anonymously	71:10 74:6 75:2,	appearing	application
84:23 103:18	25:4	20 76:12 77:1,7,	99:7 245:19	15:23 16:1
amendments	anticipate	25 79:15 84:8	appears	19:14 21:18
31:8 61:11 85:2	83:16	88:9,23 89:2,5,	32:2 62:3 85:22	31:25 33:6 34:1
159:6	anticipated	9,14 90:2 93:9	104:10 119:2	62:1 69:3 85:20
Amicus	22:1 86:17	97:16,19 98:3	125:9 160:4	102:22 104:8
36:18	anxiety	102:22 105:21	appellant	125:7 160:2
amount	189:8	106:3,16,22	235:1,2	applied
45:14 79:13	anymore	107:4 108:21	appellate	35:3 163:12
237:7,23	201:19	109:18 111:17	19:16,17 40:11	applies
amounted	apolitical	113:18,24	41:7,17 63:22	41:2
127:11	44:20	114:9,23,24	64:3,13,22	apply
ample	apologies	115:8 116:19	65:14 67:7,24	44:19 94:24
206:11	104:24	123:23 127:21	68:10 74:4	107:20 109:12
analysis	apologize	129:7 134:23	76:20 79:4,5	155:18 163:11
130:24 137:8	148:4 164:18	135:4,8 137:9	86:24 87:1	applying
211:12	174:22 197:8	139:14,23	88:20 89:7 98:8,	29:13 44:25
analytical	224:4 252:16	140:5,8,11,13	15 99:16,18	60:17 84:7
64:21	apparently	142:16,19	106:6 115:7	123:23 142:19
analyze	100:14 133:18	146:22,23,25	129:1,6 130:23	appointed
64:23 68:10	226:11	148:21 150:20	131:2,11 132:16	16:20,22 233:21
78:19	appeal	151:14 153:16	134:8,9,11,12	appointment
analyzing	39:22 70:17	154:9,11 156:5	135:1 137:13,22	9:4 245:11,22
69:6	77:24 80:13	161:6 168:7,12	138:4 139:15	apportioned
and/or	115:16 140:20	170:2 184:6,24	140:7,14	57:11
55:16 63:9	167:13,17,19	185:8 193:9	149:12,24	appreciated
105:17 233:6	168:7 245:15	208:18 217:14	150:11,14	87:20 122:22
	246:18 249:4	224:16 233:10,	151:21,24 152:9	255:10
		17,22 234:1,3,		

appreciating 168:19	151:25 153:22 154:23 186:23	Article 92:12	239:16 243:17, 21 244:5	104:24
appreciation 33:18 150:22 152:10 250:15	arena 198:16	articles 32:1 62:3 85:22 104:10 125:9 160:4	Assembly's 65:19 90:17	astray 147:3
appreciative 235:9 238:6	argue 143:12 155:13 193:16	artificial 30:7	assert 203:7	at-fault 57:12
approach 35:15 36:22 54:19,20 56:14 59:5 77:17 98:9 160:15 186:25 187:14	argued 74:6 76:19,20, 23,24 146:21,24 147:1,14 148:23 149:20,23 150:6	ascend 147:12 148:10	asserting 131:19	attached 184:23
approaching 13:1 91:21	arguing 75:10 140:23	ascended 111:14	assertion 201:25 203:14 212:14	attachments 126:13
appropriately 165:18 182:25	argument 75:3,5 77:3,4 89:14 130:25 131:3 147:10 148:23 149:13, 18 239:9	asks 20:12	asserts 203:21	attack 108:1
April 233:20	arguing 75:10 140:23	aspect 97:25 98:18 106:12	assess 130:19	attacks 132:18
arbitrary 80:14	arguments 69:5,8,9,10,13 106:8 132:18 146:19 148:20 235:9,12 240:22,24 245:18,20	aspects 126:22	assessment 152:22	attempt 36:11 216:10
arbitrate 140:20	arise 77:17 82:22 101:22 122:18 126:15 158:2	aspire 151:22	asset 71:10 73:21,23	attempting 48:6 72:2 96:5 112:10 145:22 244:6
arbitration 155:7,8	arisen 230:8	assassination 127:13	assign 194:1	attend 189:13
arcane 134:14	arises 35:8 59:23 255:5	assaulted 228:11	assigned 19:18 248:15	attention 38:1 39:7 81:23 195:8 211:5,6 229:22
architect 44:9	arose 193:17	assaulting 228:22	assist 64:7 89:4 106:15 140:4 234:2,23	attorney 15:8 18:5 19:21 20:12 23:9,12, 18 29:16 34:1 42:17 43:13 60:12 62:22 63:4 80:8 106:25 129:4 133:24 172:17 180:3 185:22 210:13,14 213:16 228:21 239:6 246:23, 24,25 247:18 248:14
arduous 33:11	array 93:4	assemblies 28:16	assistant 23:18 120:21, 23,24	attorney's 80:2
area 16:24 24:16 51:23 78:15 93:15 99:9 111:4 152:11,25 154:15 155:4 213:24 225:24	arrive 197:17 221:23	assembly 22:9 45:12,15, 25 47:13 48:5 71:19 72:1 92:9, 11,18 95:2,21 96:4 106:1 109:9,10 112:1, 9 119:1 141:9, 10 142:2,6 145:13,21 206:15,18 211:21 218:22 238:16,18,21,24	assume 189:1 204:3	
areas 17:15 89:16,21 98:22,24 107:2 111:6 113:25			assumed 226:11	
			assuming 54:8,10 58:20 114:3 154:1 195:2 196:15	
			assumption 196:16	
			asterisk	

attorneys 9:10,13,17 17:2 19:13,17 24:1, 24,25 25:19 26:3,10 40:16 66:18 80:8 81:11 94:10 248:12	243:19 244:6 252:22	8:20 18:12 25:16 26:5 28:8 33:7,8 68:2 77:21 78:9 179:17 180:18	balls 156:4 247:21	190:4 191:9 213:14
attribute 35:20 45:7 146:16	awful 162:19	backgrounds 24:2 114:19	Bannister 120:9 121:23	bated 203:22
atypical 102:7	aye 7:14,15 8:3,4 10:12,13 11:5,6 83:11,12 123:7, 8 230:1,2	backlog 79:25 80:17 108:20 234:23 245:14	banter 48:15	bathing 225:23
audibly 7:15 8:4 10:13 11:6 83:12 123:8 230:2	eyes 7:18 8:7 10:16 11:9 83:15 123:11 230:5	backlogged 119:11	Baptist 225:11	bats 117:6
August 75:7	<hr/> B <hr/>	bad 82:4 108:8 120:1 155:22 170:17	Bar 12:12,16 14:7 15:14 16:15,17 17:6,7,19 22:16 23:2 29:11 32:24 33:2 37:10 53:8 62:15 68:12 118:7 150:1 152:16,19	battle 216:16
aunts 227:4	babies 72:20	baffled 213:14	Bar's 12:4	Beach 58:2 170:15
authenticity 144:13	baby 165:23	bailiff 247:16	bars 156:1 202:4	Beatty 37:24
authority 45:24 54:4,12, 15 242:23	back 11:13,18 14:22 30:2 40:14,23 45:1 46:19 50:18 51:17 59:22 69:9 74:21 75:1,10 78:2 82:21 83:21 84:1 93:22 101:21 113:21 122:17 123:17 133:8 135:19 143:16 146:7 158:1 174:2,4 186:5 188:16 192:17 197:19 200:7 212:17 245:7 255:4	Baker 9:14	base 176:1	beautiful 216:19
avail 186:1	backbone 143:17	balances 26:14,19 55:13, 23	based 17:1 21:22 24:8 34:5 63:6 64:24 65:6,9 87:24 105:14 119:5 127:5 139:6 141:9 143:22 166:6 186:18 231:7,8 233:3 245:8 248:7	Beckman 223:18
avenue 220:9	background	balancing 188:14	base 176:1	began 63:20
avoid 80:17		ball 57:23	base 176:1	begin 30:10 34:5 45:24 54:2 183:22 209:2 255:15
awaiting 77:3		ballot 16:16 17:18,19, 25 18:7 31:24 43:19 61:25 66:24 68:17 85:19 92:21,22 104:7 109:13,15 112:25 118:5 125:6 142:8 160:1 239:18,20 240:10	based 17:1 21:22 24:8 34:5 63:6 64:24 65:6,9 87:24 105:14 119:5 127:5 139:6 141:9 143:22 166:6 186:18 231:7,8 233:3 245:8 248:7	beginning 74:5 245:13 253:9
awaits 75:23		ball 57:23	based 17:1 21:22 24:8 34:5 63:6 64:24 65:6,9 87:24 105:14 119:5 127:5 139:6 141:9 143:22 166:6 186:18 231:7,8 233:3 245:8 248:7	begins 234:4
aware 41:6 48:6 53:2 72:2,24 96:5,7 112:10,12 145:22 167:13 170:19 200:20		ballot 16:16 17:18,19, 25 18:7 31:24 43:19 61:25 66:24 68:17 85:19 92:21,22 104:7 109:13,15 112:25 118:5 125:6 142:8 160:1 239:18,20 240:10	based 17:1 21:22 24:8 34:5 63:6 64:24 65:6,9 87:24 105:14 119:5 127:5 139:6 141:9 143:22 166:6 186:18 231:7,8 233:3 245:8 248:7	behalf 48:5,7,20 72:1,3 96:4,6 105:9 112:9,11 127:2 143:13 145:21, 23 184:18 199:6 244:5,7 247:14
		basics 134:8	basically 58:20 114:9 150:7,10 151:2 153:5,17 175:1	behavior 55:16 58:5 153:5
		basis 115:14 188:20	basics 134:8	belief 49:24 109:11

<p>belies 74:4</p> <p>believed 213:17</p> <p>bench 8:15 9:1 26:1 31:22 33:10 34:17 35:4 51:20 55:18 58:20 61:24 63:22 64:3,22 68:3,10 69:16 70:1 85:18 89:17 93:5 94:5 100:15 104:6 109:19 111:14 125:5 147:12 152:15 156:22 159:25 180:5 240:2 245:22</p> <p>beneficial 68:10 152:18</p> <p>benefit 34:14,25 43:4 51:5 76:11 129:14 133:4 152:23 192:11 206:16 210:16 211:20 223:6</p> <p>benefitted 13:13</p> <p>Benson 9:14</p> <p>Berkeley 50:4 74:24</p> <p>Beth 62:13</p> <p>biannually 239:5</p> <p>bias 68:18 94:10,13 162:9</p>	<p>big 57:10 107:9 121:18 151:21 153:6,8 154:6 181:12</p> <p>big-dollar 115:4</p> <p>bigger 90:4 150:16 198:21</p> <p>biggest 63:19 121:14</p> <p>bill 75:9</p> <p>birth 73:16</p> <p>birthday 186:6 219:18</p> <p>bit 23:2 43:25 78:13 79:19 89:6 94:6 99:2 104:25 109:1 143:4,24 144:20 147:25 150:3 179:16 221:20</p> <p>black 46:4 203:7,8</p> <p>Blackley 179:12,13,16, 19,22 180:1,13, 17,21 181:13,15 229:25</p> <p>Blake 76:18 147:12,20 150:13</p> <p>blame 193:19</p> <p>blamed 206:7</p> <p>blames 193:17</p>	<p>blatant 175:14</p> <p>Blitch 42:14 43:6</p> <p>blower 193:8</p> <p>board 36:2 42:1 109:4</p> <p>Bob 9:14</p> <p>bodies 22:10 81:11</p> <p>body 27:18 29:21 49:14,20 50:1 74:3 75:24 118:25 119:4 176:24</p> <p>Bogan 86:8</p> <p>Bogle 172:25 220:13 222:10</p> <p>book 154:24</p> <p>bookend 40:12,23</p> <p>borderline 185:9</p> <p>bothered 238:19 253:6,7</p> <p>bottom 27:24</p> <p>bought 55:20</p> <p>bound 98:6</p> <p>bow 81:21</p> <p>box 16:16 17:18,19,</p>	<p>25 18:7 31:24 43:19 61:25 66:24 68:17 85:19 92:21,22 104:7 109:14,15 112:25 118:5 125:6 142:8 160:1 239:18,20 240:10</p> <p>boy 213:7 219:13</p> <p>BOYKIN 124:24 125:2 136:8</p> <p>Brady 254:3</p> <p>brain 157:4</p> <p>brainstorm 141:18</p> <p>branch 29:22 42:2,9 49:25 50:1 219:5</p> <p>brash 76:2</p> <p>bread 39:25</p> <p>break 30:1,9 83:7</p> <p>Brearley 58:1</p> <p>breath 203:22</p> <p>breathtaking 33:2</p> <p>Breeden 9:15</p> <p>brevity 182:20</p> <p>Brian 9:15,20</p>	<p>bride 104:20</p> <p>briefed 76:19,22 77:2 147:14 149:12</p> <p>briefing 77:7 123:13,19 147:5,6 149:16 229:23</p> <p>briefly 9:9 15:21 38:17 123:6 149:8 209:23 223:15</p> <p>briefs 36:18 80:25 106:7,25 147:7 156:23 245:21, 23 246:5,14</p> <p>bright 42:18</p> <p>Brilliant 67:5</p> <p>bring 29:11 38:1 68:13 93:2 94:16 99:12 114:12 160:10 195:8</p> <p>brings 57:15 79:15</p> <p>broad-speaking 39:15</p> <p>broadcast 13:10</p> <p>broader 139:24</p> <p>broke 173:1</p> <p>broken 241:20</p> <p>Bromell 158:15,21</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>159:16,19,22 161:5,12 162:1, 8,18,21 163:4, 16 164:19 165:6,11,16,17 166:2,8,11 170:1,9 171:23 173:15 184:5,13 208:17,24 212:22 217:13 224:15,22 226:2,10 228:17 229:5 230:22 233:5 243:3 251:22</p> <p>brother 138:22</p> <p>brought 28:24 50:12 68:14 86:4 110:15 126:18 150:14 151:10 218:16</p> <p>Bruce 108:23</p> <p>bruises 185:14 213:23 215:20,24 225:24 226:1</p> <p>Brumbach 125:17,20,23 126:9,12,20,23 127:6,10,19,21, 23 128:6,7,12 129:10,18,22 130:21 131:12, 14,17 132:1,7, 11,15,20,23 133:1,13,17 134:6,10,20 135:13,17</p> <p>Brumbach's</p>	<p>126:3,15,17 127:1,3 136:2</p> <p>buckets 43:24</p> <p>build 91:12,17,21 98:12</p> <p>building 81:12</p> <p>Bullard 183:4 222:19, 20,21,23,25 223:3,15,21,22 224:8,12,19,25 225:3,6 226:13, 15,23 227:2,8, 10,12,22 228:10 229:9,15,19</p> <p>bulls 41:14</p> <p>bunch 74:25 149:12</p> <p>burden 46:8</p> <p>Burr 75:14</p> <p>business 14:1 90:9 152:20 155:5 170:15 176:11 250:3</p> <p>busy 105:5</p> <p>butter 39:25</p> <p>button 211:5</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>calculated 177:22,24</p>	<p>caliber 93:1</p> <p>call 7:2 24:14,15 26:9,18 48:11 97:17 156:4 218:1 219:17 241:15</p> <p>called 8:11 36:5 59:22 82:21 101:21 122:17 135:1 147:25 154:10 158:1 174:3 212:16 216:8 251:18,19 255:4</p> <p>calling 24:13,25 247:21 248:3 250:23</p> <p>callings 251:25</p> <p>calls 24:11,17,19 25:2,8,9,13,18, 20 26:6,16 27:7 42:24</p> <p>campus 225:9</p> <p>candidacy 47:9 71:15 95:17 111:22 126:12 128:11 145:9 146:13,17 243:13</p> <p>candidate 8:20 15:12,25 16:10 18:3,4,11, 18,21,24 19:11, 23,24 21:3,23 24:14,18 25:1,5, 10 26:8 30:10 43:17 52:22</p>	<p>58:10 60:5,11 67:3 72:7,8,11 76:22 77:11 79:4 83:5 96:11 102:2,8 111:16 112:15,16 123:3 129:13 130:10 137:1 142:18 146:4,18 147:11 158:8 170:1 191:2 203:1,19 211:7 222:2 224:15 244:11, 12</p> <p>candidate's 19:5 24:17 26:25 63:7,8 87:25 88:1 105:15,16 139:7,8 233:3,4</p> <p>candidates 8:12,14,15,22 13:12,13,14 15:5,24 17:3,11 19:7,18 20:10, 15,24 21:4,8 22:3 23:15 24:10 25:11,14, 20 26:12 32:25 33:16,17 49:16 52:4 59:5,15 82:14 100:3 101:14 102:5 114:19 122:10 133:3 135:7 146:15 148:9 152:7 157:19 161:5 184:5 203:2 208:17 228:4 245:8 254:22</p> <p>candidly 150:2</p>	<p>Canon 162:11</p> <p>capable 42:18</p> <p>capacity 15:4 250:25</p> <p>captures 113:1</p> <p>card 219:17</p> <p>cardinal 141:7</p> <p>care 27:19 73:6 98:21 132:17 152:25 185:18</p> <p>career 32:11 63:21 68:7,21 69:24 74:3 88:12,14, 17 117:19 247:7</p> <p>careers 223:17</p> <p>careful 64:23 76:1 235:18</p> <p>carefully 37:2 70:1</p> <p>Carolina 7:8,20 8:11 12:4,12,16 14:7 15:7,9 28:15 34:18 35:5 36:12 43:15 46:3 51:10,17 57:18 60:18 82:24 110:7 130:1 131:5 133:22 134:22 135:4 137:13,17 149:24,25 152:14 153:18</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>156:21 162:18 163:12 193:11 219:6 223:19 225:11 243:20 255:8 Carolina's 140:7 213:18 Carolyn 232:8 carries 46:8 250:6 Carus 36:7 case 14:11 36:4,5,17 37:2,17 40:18 41:3 44:15 45:19 56:2,12, 22 64:24 65:5, 21,22 69:4,6 70:22 71:1 74:20,23 75:1,8 77:7 79:13,16 81:4 90:3 91:4, 22 94:23 98:10 107:17,21 108:8 109:12 110:13, 14 140:10 141:15 150:10 152:4 161:7,8 162:21 163:5,17 164:18 167:16, 18,21,22 169:3, 5 170:3,4 172:17 184:8,9 191:7 202:6 208:19,20 210:7 212:2 214:9 223:10 224:17, 18 226:12 236:12 237:10 239:12 252:14 253:10,11,12,</p>	<p>17,21 254:6 cases 18:11,13 36:7 40:12,25 41:7,9 44:15 50:22 51:6 56:12,16, 19 65:4 66:8,10, 16,21 67:24 68:11,13,21 69:4,12 74:6 75:25 76:20 77:2 78:6 79:5, 19 80:4,8,9,13, 24 81:3 93:21 94:1 99:5,19 106:10 107:11 108:20,25 113:23 114:10, 25 115:2,5,15 116:7 117:1 119:7 120:24 140:14,15,16,18 143:9 146:21 147:6,10,14 149:12,15 150:16 154:2 155:1,19,20 162:9 180:7 226:11,12 234:24 236:24 241:12 245:15 Caskey 7:1,7,9,18,25 8:5,7 10:7,14, 16,21,23 11:3,7, 9,13 12:6,10,18 14:6,19 22:17, 21 27:12 28:23 29:3,6,25 30:5, 19 31:1,4,7,11, 20 33:20 49:1,5 59:7,10 60:6,13, 16,25 61:5,7,10,</p>	<p>14,22 62:17 63:3 72:10 77:10,12 78:21 81:16,18 82:6,9 83:2,6,13,15,19 84:6,10,16,22 85:1,5,16 86:9, 13 87:15 96:13 97:4 99:23 100:22 101:4,7 102:3,10,15,21, 25 103:6,12,16, 21 104:4,23 105:8 112:18 117:23 118:15 121:21 122:5 123:1,4,9,11,16, 25 124:6,9,13, 16,20 125:3,20 126:1 129:10,19 130:18 131:12, 15,18 132:3,8, 14,19,22,24 133:2,14,16 134:3 135:14,18 138:10,16 139:3 146:8 148:3 149:6 157:10,13 158:7,9,15,18, 24 159:5,8,12, 23 160:16,22 163:20,22 164:22 165:2 166:17,20 168:15,18,21 169:10,16 171:18,22 172:2 174:14,18,22,24 176:22 177:1, 11,14,16 179:12 181:18,21,23 182:2,6,11,15, 18 183:9,11,17</p>	<p>185:21 188:22 190:25 191:6 192:4,10,21,23, 25 193:3,21 196:24 197:2,9 198:4 199:12 202:16,20,25 203:4,11,13,16 205:13,23 206:10,14,23 207:5,22,25 208:2,8 209:8, 10,12,14,17,19, 23 210:2,24 211:3 212:9,11 214:15,17,21, 23,25 215:15,18 217:4,20,22,25 218:3,7 219:23 220:4,8,19,25 221:5,7,10,12, 14,16,18 222:5, 14,18,21 223:3, 21,23 225:1,4 226:13,17,24 227:7,9,11,13, 23 229:8,17,21 230:3,5,10 231:14,18,23 232:14 233:1 238:19 244:14, 17 249:15 252:4,6 254:14, 17 255:11,13 Caskey's 49:19 casting 186:17 catch 80:19 category 81:20 162:7</p>	<p>cautionary 20:20 cautioned 30:17 60:23 84:14 103:4 124:4 125:24 135:24 158:22 160:19 169:14 183:15 208:5 222:25 centered 8:18 central 94:21 cerebral 130:12 cert 39:23 40:4,7 certified 56:8 certiorari 39:25 129:9 154:5 chain 225:5 chair 7:12,19 16:21, 22 51:14 57:15 231:20 chaired 216:23 217:1 chairman 7:1,6,11,16,18, 20,22,25 8:2,5, 7,8 9:25 10:7, 14,16,18,21,23, 25 11:3,7,9,13, 20,21 12:6,10, 18 14:6,19,20 22:17,21,24 27:12 28:23 29:3,6,7,25</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>30:5,19 31:1,4, 7,11,20 32:8 33:20 34:3,4 46:21 48:21 49:1,4,5,19 59:7,10 60:3,6, 13,16,25 61:5,7, 10,14,22 62:17 63:3,5 72:8,10 77:10,12 78:21 81:16,18 82:6,9 83:1,2,3,6,13, 15,19 84:6,10, 16,22 85:1,5,16 86:9,13 87:15, 23 96:11,13 97:4,12 99:22, 23 100:22 101:4,7 102:3, 10,15,21,25 103:6,12,16,21 104:4,23 105:8, 13 112:18 117:23 118:15, 16 121:21 122:5 123:1,4,9,11,16, 25 124:6,9,13, 16,20 125:3,18, 20 126:1,2,10 129:10,19 130:18 131:12, 15,18 132:3,8, 14,19,22,24 133:2,14,16 134:3 135:14,18 138:10,14,16 139:3,5 146:2,8 148:3 149:6 157:10,13 158:7,9,15,18, 24 159:5,8,12, 23 160:16,22 163:20,22</p>	<p>164:22 165:2 166:17,20 168:13,15,18,21 169:10,16 171:18,22 172:2 174:14,18,22,24 176:22 177:1, 11,14,16 179:12 181:18,21,23 182:2,6,11,15, 18 183:9,11,17 185:21 188:22 190:25 191:6,14 192:4,10,21,23, 25 193:3,20,21 196:23,24 197:2,9 198:4 199:12,15 202:16,20,25 203:4,5,11,13, 16 205:13,23 206:10,14,23 207:5,6,22,25 208:2,8 209:8, 10,12,14,17,19, 23 210:2,24 211:3 212:9,11 214:4,15,17,21, 23,25 215:15,18 217:4,18,20,22, 25 218:3,7 219:23 220:4,8, 19,25 221:5,7, 10,12,14,16,18 222:5,14,18,21 223:3,21,23 225:1,4 226:13, 17,24 227:7,9, 11,13,23 229:8, 17,21 230:3,5, 10 231:14,18,23 232:14 233:1 238:19 244:12,</p>	<p>14,16,17 249:15,16 250:9 252:4,6 254:14, 17 255:11,13 Chairs 23:8 challenge 45:22,24 78:3 128:25 129:3 challenges 37:20,22 challenging 46:7 chamber 36:19 50:25 chambers 66:16 67:16 81:10 248:10 chance 86:14 106:6 107:15,18 133:20 154:5,18 171:19 217:12 228:12 change 13:4 39:6,7 57:24 146:20 161:8 170:4 184:8 208:20 213:11 224:18 237:18 changed 61:8 103:13 144:4,8 163:1 changing 136:19 157:6 Chapter 8:11 character 15:16 19:5 43:22 46:24 71:5 95:9 111:7,</p>	<p>16 127:12 131:21 132:9, 13,20 135:2 137:6 143:12 161:12 162:6,16 164:20 170:10 184:13 202:12 208:25 224:23 227:10 228:11, 23 243:6 characteristic 14:15 charge 28:9 197:5 198:1 charged 65:3 92:11 129:13 191:4 252:16 charges 253:3 Chatgpt 81:14 check 8:20 18:16 32:3 62:4 74:21 85:23 104:11 116:5 125:10 160:5 171:15 checks 26:14,19 55:13, 23 chief 9:6 14:3 21:12 30:12 37:21,24, 25 38:3,4,8,9, 11,15,22,23,24 39:3 41:4 48:16 54:4,10,17,22 65:13 66:13 108:23 120:4 149:22 236:6</p>	<p>247:5 child 73:8 170:16 179:22 185:6 187:3,5 216:3 226:2 child's 220:12 children 65:15 72:21 73:5 74:10 162:25 163:14 185:4,12 186:6, 14 187:10,11,18 188:3 189:11,12 191:21 192:19 197:25 198:25 200:4 201:4 210:15,23 211:1 212:21 213:12, 15,17,22 216:12,14,19, 21,22 219:8 223:17,18 225:16,19 228:20 241:22, 23 children's 163:2,10 189:13 213:3 215:23 216:17 225:8,10 choice 127:20 197:7 choose 7:5 8:14 246:21 248:9 chore 222:1 chose 133:23 chosen 87:2</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Christian 242:5	city 53:20	156:23 179:23 247:15 248:15	47:11 51:22 162:10 163:12 242:20 243:20	comfortable 150:4
Christmas 186:7 219:17	civic 50:3,10	clerk's 18:17	Coggiola 42:13	comma 220:13
church 48:11 58:2	civil 78:14 93:16,17 99:15 106:21 113:11 181:1 184:18	clerked 91:3 93:5 100:3, 5 134:11 152:9 156:19	cognizant 154:1	commend 32:10,17
circuit 8:25 15:1 23:17 34:20 41:12 52:16 53:23 64:10 68:6 70:12 74:7,16 76:12,25 89:18 106:20 120:4,7 121:13 156:12 198:2 236:7	claim 69:7	clerking 140:6	Cohl 9:15	commendation 33:22
circuits 23:22,23	claims 78:16	clerks 17:20 70:20 76:15 100:15	cohorts 50:17	comment 41:25 45:1 49:18 69:19 88:7 94:9,12 111:11 118:2 203:6 228:24 249:18 254:8
circumstances 53:13 167:10 195:17	clarification 128:4 149:11 209:3,5 210:5 211:2 212:13 251:10 254:12	clerkship 87:1	Coke 156:2	comments 18:2 28:6 33:21, 24 43:20,21,23 45:10 47:4 49:16 51:18 66:25 67:1,8 68:17 87:19 88:8 92:22,23 93:10,11,18 100:25 109:14, 16,21 112:25 118:5,11 142:9, 10,12 169:4 180:22 181:2 207:3,23 212:7 215:9 223:13 239:19,21 240:4 247:10,11,16 250:5,9 252:9 255:13
cited 147:11 199:20, 21	clarify 14:8 211:1 251:11 252:1	Cleveland 232:12	collaboration 39:11	
cites 162:11	Clary 50:8	client 127:2,14 131:4, 6 138:8 155:24 186:19 199:18	collaborative 54:20	
cities 78:11	class 50:8 140:17 182:10	clients 55:5	collaboratively 39:16 54:24	
citizen 15:6	classes 216:23	Cliff 156:1	colleague 97:3	
Citizen's 177:7	clause 197:4	clogged 119:8,9	colleague's 110:22	
citizens 12:2,11,14 15:14 16:14,19, 20,23 28:2 32:18 41:8 46:22 50:14 53:6 71:3 92:1 95:5 111:3 116:13 144:25 243:3	CLE 16:6	clogging 119:4,18	colleagues 14:10 24:13 26:25 27:2,5,7 39:12 62:15 98:12 110:12,17 118:18	
	clear 129:23 168:11 192:5 193:3 201:18,19 211:9 218:9 253:19	close 179:7	College 148:15	
	Clemson 50:9	closing 133:13	colloquy 197:4	
	clerk 64:10 67:14 70:11 89:10	Club 50:5	Columbia 248:11	comments/ instructions 9:7
		coach 74:24	combined 107:2 146:24	Commerce 36:19
		coaching 217:2 219:14	comers 36:18	commission 7:23 8:2,9,10,13
		code 8:12 20:1 28:15		

<p>9:8 10:20 11:22 12:25 13:7 16:3, 14 17:13,24 19:4,9,12 20:3, 15 22:14,25 27:14,23 28:9, 11 30:24 31:15, 18,21 34:14 35:1 43:15,18 47:8,16 51:14 59:8,15 60:4 61:3,17,20,23 62:11,20 66:23 68:12 71:9,15 72:11 77:10 81:23 82:14 83:21 84:20 85:8,11,14,17 86:15 88:8 92:20 93:13 95:16 96:15 97:10 101:5,14 102:3,11 103:10,24 104:2,5 105:10 109:13 111:22 112:19 117:24 122:3,10 123:12 124:11,23 125:1,4 126:6, 14 127:9 128:9 129:12 133:5,12 134:5 136:2,10 138:11 139:12 140:2 142:7 145:9 146:9 149:7 157:11,19 158:10 159:3, 15,18,21,24 160:23 161:4,6, 10,14 166:21 168:16 169:18, 25 170:2,7,11</p>	<p>177:7 183:23 184:4,7,11,15 197:16 198:5 203:17 206:14 207:3 208:9,16, 18,22 209:1 211:17 215:6 221:2 224:8,14, 16,20,24 229:13 230:23 231:15 239:18 243:12 244:15 252:5 254:15,22 255:14</p> <p>commission's 8:18 59:14 82:13 101:13 122:9 157:18 211:22 254:21</p> <p>commissioners 46:20 49:2 164:9 206:19 211:20 229:14</p> <p>commitment 26:23 27:11 153:5</p> <p>commitments 52:18</p> <p>committed 152:17 167:1,8 168:10 201:18</p> <p>committee 12:2,5,11,14,17 15:14 16:14,19, 23 24:3 25:13 26:11,17 46:22 53:6 71:3 95:5, 11 111:3,10,15 116:13 135:6 144:25 145:3 165:4 216:24 217:2 229:20</p>	<p>243:3</p> <p>committee's 38:1</p> <p>committees 16:20,21 17:1 32:18</p> <p>common 41:12 55:18 58:21 59:1 78:7, 16 113:3 137:2 153:17</p> <p>commonality 179:17</p> <p>communicate 185:4 213:14</p> <p>communication 188:2 192:20 205:19 212:24 249:14</p> <p>community 32:19,20,21 33:8 88:18 108:5,6 176:11, 12</p> <p>comp 56:8,22 113:11 153:21</p> <p>companion 36:7</p> <p>company 17:21 219:4</p> <p>compare 18:19</p> <p>compared 76:12 78:6</p> <p>compassion 228:1 250:25</p> <p>competence 204:20</p> <p>competency 19:5 161:12 170:9 184:13</p>	<p>208:24 224:22</p> <p>competent 173:10</p> <p>competitive 150:3</p> <p>compiled 21:22,23</p> <p>complain 241:9</p> <p>complainant 125:15</p> <p>complainants 197:11</p> <p>complained 199:19</p> <p>complaint 18:24,25 19:3 110:19,23 127:9 135:10 160:24 164:4,5 169:19 172:23,24 183:23 193:14 199:18,24 200:13,14,15, 16,17,19,25 201:7,10 202:2 208:10 213:17 215:1 216:2,7 218:9,10 220:2, 12,14,17 221:23 223:10 224:1,9</p> <p>complaints 16:17 18:23 20:12 42:22 51:16 183:4 200:10 201:23 213:19 230:24 231:15 241:14 245:1</p> <p>complete 8:19</p>	<p>completed 33:5,6 34:16 209:6 210:6,12, 17</p> <p>completely 113:16 154:4 163:10 210:20</p> <p>complex 114:25 115:4 140:18 141:14 155:20</p> <p>complex-type 114:21</p> <p>complexities 130:17</p> <p>complexity 139:19</p> <p>compliance 17:17 31:25 62:2 85:21 104:9 125:8 160:3</p> <p>complied 186:10</p> <p>compliment 29:8 49:13 58:7</p> <p>complimentary 58:6</p> <p>compliments 234:15</p> <p>comply 162:10 186:9</p> <p>component 54:19</p> <p>composition 52:10</p> <p>concept 35:5,14</p> <p>concern 43:24 68:16,19 69:21 93:13 94:8,11 110:20</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>128:10 165:17 175:2 178:4 179:4 181:12 184:22 191:9 238:24 240:5 241:3,5,24 254:5,12</p> <p>concerned 177:24 189:2,5 225:25 228:14 238:25</p> <p>concerns 18:6 25:17,20, 21 48:22 67:9, 12 69:20 72:6 93:10 96:9 109:22,25 112:14 142:13, 20 146:3 178:1, 2 193:4 204:19 240:5,7,8 242:1 244:10</p> <p>conclude 57:22 219:22</p> <p>concluded 30:9 123:20</p> <p>concludes 59:12 82:10 101:11 122:6</p> <p>conclusion 221:24</p> <p>concrete 65:4</p> <p>concurrent 22:8</p> <p>condition 185:25 186:21 187:6,9,19 188:11,18 191:23</p> <p>conduct 17:13,14 19:17</p>	<p>51:22 118:8 162:10 223:11 239:2 242:20</p> <p>conducted 74:17</p> <p>Conference 50:6</p> <p>confidence 42:4,9 91:17 166:19 200:11</p> <p>confident 39:9 42:20 111:15 147:2</p> <p>confidential 16:4 17:22 18:18,20 20:4,7, 8,20 193:14 200:2,5,9,10,12, 14 201:9 206:7 213:19</p> <p>conflicting 137:17,18</p> <p>conflicts 32:3 62:5 85:24 104:12 120:20 121:7 125:11 160:6</p> <p>confusing 56:23</p> <p>connect 97:23</p> <p>connecting 97:19</p> <p>Connie 225:10</p> <p>consecutive 213:24</p> <p>consensus 90:23 98:12</p> <p>consent 34:8 63:8 88:1 105:16 139:8</p>	<p>210:9 213:10 233:5</p> <p>consequential 211:11</p> <p>conservative 35:18 36:21 37:8 44:3</p> <p>considerate 231:10 238:7</p> <p>consideration 20:25 57:16 207:4 235:18</p> <p>considered 16:10</p> <p>consistent 35:15 36:1</p> <p>consistently 202:19</p> <p>consists 77:21</p> <p>constant 97:6 213:8</p> <p>constitution 28:15 35:6 38:22 65:3,10 92:12 105:17</p> <p>constitutional 15:15 34:9 45:15,17,21,23 46:5,6 47:2 57:23 63:9 65:23 71:7 78:16 88:2 89:23 94:22 95:6 97:18,25 98:6 111:4 131:19 132:4 139:9 145:1 197:6 203:20 211:8 228:4 233:5 239:12 243:7</p>	<p>constitutionality 46:7</p> <p>constitutionally 191:3</p> <p>constraints 36:3</p> <p>construction 45:19 141:7</p> <p>contact 32:18 33:3 48:4, 8,20 71:25 96:3 112:8 145:20 170:21 172:7 185:24 189:11, 12 195:23 244:4 248:14,16 250:1</p> <p>contacted 47:8 48:18 71:14 95:16 111:21 145:8 243:12</p> <p>contacting 47:12 71:18 95:20 111:25 145:12 174:1 243:16,21</p> <p>contained 34:6 48:22 63:7 66:25 87:24 92:22 105:14 109:15 139:6 142:9 233:3 239:20</p> <p>contemplate 252:7</p> <p>contempt 231:7</p> <p>content 127:8</p> <p>contested 236:8,19</p>	<p>context 57:20 88:13 89:25 90:4 121:23 140:15, 22 144:15 241:7 247:20</p> <p>continuance 238:2</p> <p>continue 47:23 63:20 106:3 192:13 224:7 225:5 226:15,18 238:11 250:24</p> <p>continued 53:24 174:2</p> <p>continuously 233:13</p> <p>contract 78:16 177:12</p> <p>contributed 38:4</p> <p>Contribution 36:10</p> <p>control 53:16 206:8 242:17 249:9</p> <p>controversial 68:21</p> <p>controversy 94:25</p> <p>convened 8:21</p> <p>convenient 226:7</p> <p>converging 26:10</p> <p>conversation 217:6</p> <p>conversations 28:8</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

convinced 37:3 42:7 46:12	cost 79:14	146:14 158:12 164:12 223:5	113:18,24 114:4,9,16,22, 24 115:8,16,19 116:17,19 117:2,4 121:1, 22 123:23 126:18,19,24,25 127:5,7,17,20 128:1,24 129:2, 7,8,24 130:1,5, 11,12 131:6 133:22 134:1,23 135:3,4,7 137:21,22,23 139:13,23 140:1,4,10,11 141:8 142:15,19 143:14 146:21, 25 147:2 151:14 153:15,21 154:6,9,10,12 155:3 156:5,12, 21,25 161:6 162:23 163:1 165:7,11,12,19, 22,25 166:15 170:2,18,19,25 171:17 173:8 175:7,17 176:6 177:19 179:23 180:2,6,25 181:1 182:22 184:6,19,20,24 185:8 188:15 189:2,5 191:19, 23 193:9,11 194:1,17 195:3, 6,17 196:10 198:2,3,13,14 199:2,19 200:8 202:3 208:18 217:14 224:16 226:3,6,7 227:6	228:13 233:10, 11,17,19,22 234:1,2,5,6,7,9, 13,14,17,18,19, 21,24 235:7,12, 19 236:2,9,20, 25 237:5 238:9, 23 239:13,14 240:1,6,16,20, 22,23 241:11,17 244:20 245:3, 12,15,19,24 246:1,2,3,6,16, 17 247:6,15,20 248:20,21 249:19,22 250:12,17,24 251:11 252:14 253:2,23
Cooper 150:16	Council 41:23 217:1	court 8:23,24 9:1,3 14:25 15:1,2 16:16 17:15,20, 21 23:18 30:12 31:13 34:17,18, 20,21,22 35:18, 20,22 36:6,21 38:25 39:5,12, 16,17,18,19,20, 23,25 40:2,4,11 41:2,4,10,12,13 42:14,15 44:23 45:5,8 52:4,15, 16,17 53:20,23 54:14,19,20,22 56:3 57:23 58:24 60:18 63:16 64:8,10 65:13 66:7,12 67:3 68:6 69:9 70:5,6,10,12 71:10 74:7,16 75:2,5,10,20 76:12,25 77:1,7, 15,18,20,21,23 78:5 79:4,12 80:24 84:7 88:9, 23 89:2,5,8,14, 18,25 90:1,5,10, 23 91:14,22 92:2,16 93:3,9 94:2 97:16,19, 21 98:2,3,4,5 100:1 102:22 105:21,23 106:2,3,16,20, 21 107:3,4,13 108:21,22 109:18 110:3,16 111:13,16	counseling 189:8	
copy 19:2 126:12 177:2	counsel 9:7 14:4 42:12, 13 64:16,19 67:25 74:5 77:25 93:7 140:9 143:18 147:9 148:16 167:4 215:20	counselor 173:1 193:10 199:17,23 213:18 215:22 220:12	court's 53:25 65:18 66:19 70:21 92:3 121:15	
core 91:12,14	counselor's 172:21	count 94:4 172:18	court-level 55:9	
Corporation 36:8	counting 150:2	countless 67:15	court-ordered 213:1,2	
corporations 148:16	country 49:22 51:7	county 74:24 75:6 121:12 162:18 172:15 232:6,7 247:14,15 249:25	courthouse 250:6	
correct 31:1,2 53:20,21 54:1,9 55:16,23 56:5,10 57:7 61:5 84:8,9,22 100:9 102:23 103:12 113:9 114:2 115:15 123:23,24 124:13,15 134:2 146:20 147:18 149:19 153:23, 24 154:3 159:5, 7 167:20 175:5 176:3 178:18 179:2 191:5 194:16 195:2 244:23 245:11, 12,13	corrected 14:16	correction 127:24,25 231:20	courtroom 109:20 118:6 119:23 120:14 144:16 171:9,11 172:10,20,22 173:3,14,16,23 174:3 175:3 242:9,13,21 250:2	
correctly 56:6 57:9 205:15	correspond 36:15		courtrooms 175:6	
			courts 20:21 38:19	

41:17 49:21 63:24 65:3,14, 17 66:1,2,20 77:19 80:12 106:23 129:6 131:11 132:16 134:9,11 140:7 149:13,24 152:9 156:19 163:3 165:15,18 166:1,4,10,12 171:1 174:9 175:21 178:25 201:19 236:4 238:13 245:10	created 121:9 creating 109:11 creative 148:20 credit 16:16 18:9,17 crimes 18:12 criminal 18:15 67:11,13, 14,15,16,23,24, 25 68:2 70:17 75:19 93:16,17 99:1,2,4 120:23 181:1 239:2 criteria 8:19 15:11,13 17:2 24:21,23 25:7 26:24 31:23 46:23 59:14 61:25 71:4,7 82:13 85:19 95:6,8 101:13 104:7 122:9 125:6 129:14 130:19, 22 131:13 134:18 145:3 157:19 160:1 163:13 164:20 166:6 191:3 218:14 223:14 243:4,7 254:21 critical 38:15 42:3 43:2 163:7 criticism 38:8 44:4 criticisms 142:16	critique 246:12 cross- examination 190:15 crossed 46:13 crotch 213:24 225:25 cruel 219:10,19 239:7 cuff 177:22 culture 39:6 cure 55:16,23 curious 13:25 72:23 73:12 74:19 118:23 119:5 135:11 185:24 current 32:14 38:9 49:18 52:10 75:11 203:8 curve 75:22,23 custodial 189:17 191:18 custody 128:19,22 213:10 216:3,4, 16 226:8,9 cut 14:21 165:23 cutoff 219:9 cuts 56:15 cycle	21:20 <hr/> D <hr/> dad 72:16 136:17 216:17 219:13 daily 114:12 213:14 damages 110:16 damn 219:18 dance 217:2 Dansler 232:8 data 16:1 25:15 30:19,22 31:15 34:7 61:1,17 84:18 85:8,11 103:8,24 124:9, 23 159:1,15,18 date 21:18 22:2,6,10 48:1 71:23 95:25 112:5 145:17 244:1 dates 182:21 daughter 189:2,7 213:22, 24 215:23 216:8,10 225:23 228:14 daughter's 189:5 215:24 daunting 32:12 149:1 David 70:10	Davidson 9:18 dawned 203:25 day 24:21 28:13 53:12 63:1 87:5 107:13 114:15 122:23 136:25 138:1 139:18 141:17 148:4 150:23 158:6 162:24 163:4 172:20 173:14 213:9 232:3 237:3,24 244:24 248:2,14,16 252:24 day-to-day 97:22 99:4 days 40:17 197:21 210:18 212:24 219:16 de 137:23 deadline 16:9,10,11 19:1 249:5 deal 44:22 55:9 79:24 89:23,24 121:18 136:25 140:25 180:8 202:6 232:25 238:12 dealing 56:25 97:20 114:15 163:23 252:13 deals 45:23
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

dealt 76:8 115:12 136:15 152:2 238:8 241:20	197:18 211:22 218:22 230:15	defense 23:20 148:17 195:4 198:18 247:10	demeanor 118:8 173:17	deserves 217:9
Dean 17:7 22:15,18, 20,22,24 27:12, 20 28:6,19,23 29:2,5	declare 8:14	defer 92:8 109:8 142:1 238:15,17	demonstrate 94:10	deserving 59:18 82:17 101:17 122:13 157:22 162:3 254:25
death 144:3 155:5	decorum 178:7 242:13,21	deference 45:11,15 46:2, 15 92:17 142:4 168:6	denied 40:2 128:1,2	design 44:7,9,14
debate 14:9 73:20	Dee 12:3 16:24 243:2	deferential 55:21	denies 252:22	designated 8:8
Debra 232:8	deem 248:3	deferred 239:15	Dennis 9:18 33:13,25 34:4,11 35:25 38:20 46:21 47:5 48:21 49:1 100:4,5 125:16, 17 126:2,10 128:3,7,16 133:8,10,15 136:1,9 138:13 139:4,5,11 144:24 145:5 146:2	designed 177:4
decade 64:12	deep 33:12 38:3	deferring 46:12 56:22 238:21,23	deny 182:25 231:5	desire 100:15 245:2
December 209:7 233:20,23	deep-pocket 36:24	Define 100:22	denying 231:2	desiring 162:2
decent 51:21	deeper 38:19 79:17	definitively 54:3	department 89:19 94:3 99:3 110:7	desks 69:18
decide 65:4,5,21 68:11 91:4 144:1 198:13	deeply 225:25 237:20	degree 36:14,25 151:17 239:2	depth 33:2	destroyed 20:9 21:1
decided 66:8,22 147:7	defamation 75:1	delegation 21:7	derails 225:4	detail 17:8
deciding 68:13 80:12	defend 151:4	deliberate 163:17 231:10	derived 92:13	details 81:24
decision 39:9,11 82:7 98:13 115:25 137:25 226:21	defendant 36:24 57:11,14 110:12 186:1 189:10 191:19 220:11 226:3 237:4 238:3,25 252:10,16,21 253:8	deliberation 27:10 231:10	describe 34:14 35:1 65:1 90:13 91:5 98:17 107:5 140:2 141:3 235:16	determination 246:4
decision-makers 52:7	defendant's 36:22 37:6 234:10 245:25 246:14,23 252:15,19,21	deliberations 59:19 82:18 101:18 122:14 157:23 255:1	deserve 152:16	determine 65:9,25 161:5 170:1 184:5 208:17 224:15
decisions 39:13 80:14 83:24 98:1 106:12 110:4 116:16 123:18 162:23 163:18 178:22 191:8	defendant-type 57:1	deliberative 26:22 27:24		determined 167:12
	defendants 57:17	delight 139:18		determining 246:16
	defender's 23:19	delivered 10:2		detraction 146:16
				detriment 66:10 74:19 156:13
				develop

26:3 78:17	diligence	disclose	dispose	distinguishing
developed	182:2	254:4	80:24	14:15
64:20 68:8	diligent	disclosed	disposed	distribute
developing	235:20	253:8	40:8 66:9	10:19
64:12	diligently	disclosure	disposition	district
devote	41:6 44:19	196:3 253:25	37:12 43:13	70:21 140:19
44:24 232:23	diminish	discontent	70:14 110:9	dive
devoted	245:17	189:7	dispute	38:19 79:17
131:9	direction	discourage	65:4	237:20 254:8,11
dictate	164:24 227:20	69:15	disputed	diversity
49:25	238:10	discovery	127:11	68:9
dies	directly	236:24,25	disputes	divide
21:16	13:13 45:13	237:6,8,13	64:1	24:7
diet	190:1 232:20	238:4	disputing	Division
156:2	239:13	discreet	176:1	23:24
difference	director	127:15,16	disqualified	divorce
139:22 152:14	14:7 225:8	discuss	21:17	94:16 128:18
162:2	disagree	11:1 22:15	disqualifies	136:17 210:5,10
differences	54:6 143:17	41:23 45:14	185:8	213:10,12
180:4 221:25	187:1,13 189:19	226:19 228:12	disregard	216:16
differentiate	190:20 191:14	230:17	163:6	docket
239:10	202:10 203:13	discussed	disregarded	66:13,19 119:18
differently	205:1,5 247:1	20:23	165:16	dockets
28:11	disagreed	discussing	disrespectful	119:4,8,9
difficult	117:2	99:5	164:7	document
105:25 119:13	disappointed	discussion	disrupted	21:23 222:8,9
229:11 236:17	69:24	27:17 46:14	163:8,10	237:14,24
difficulties	disavow	154:11 206:17	dissatisfied	documentation
50:21 120:3	96:22	230:7 231:22	70:16	136:4 165:14,24
140:24 155:25	discern	discussions	dissemination	documented
dig	45:19 57:5	143:19	20:7	215:24
76:9 106:10	163:17	disinterested	dissenting	documents
digging	disciplinary	130:24	57:4	16:1 19:2,14
206:20	41:22 42:12,13	dismiss	dissimilar	20:5 30:23,24
dignified	43:3,13 51:11	110:22 127:2,4,	77:18	31:8 33:5 53:10,
162:12 242:4	discipline	25 128:2 138:2	distance	11 61:1,2,11
dignity	17:15 41:22	dismissed	136:21	84:17,19 85:2
93:3 144:13	51:15,24 53:17	32:5 70:22	distilled	103:7,17 124:7,
digress	55:10	110:24 220:13,	58:18	10,17 126:4
212:20	disciplined	14,18	distilling	129:14 133:4,
	51:10	dismissive	56:6	18,19 136:13
		194:18		158:25 159:3,9

161:13 170:11 184:14 194:17 218:10 222:8	drive 79:16		effect 78:17 106:16 211:11	160:8 211:23 218:22
DOJ 70:21,25	driven 52:1	<hr/> E <hr/>	effected 162:24	electrocution 75:9
dollar 175:19	drivers 18:16 81:21 82:4	e-mail 17:18	effective 64:7 89:5 140:4 234:2	electronic 189:12
dollars 216:15,18	druthers 249:20	eager 73:24	effectively 53:15,16,18 55:19 56:2,3,21, 23 74:15 247:20	element 90:8
domestic 113:11 126:16 163:14	dry 172:25	earlier 13:11,14 32:24 45:2 79:9 92:10 94:15 113:16 146:14 150:14 151:10 153:14 164:23 205:21 231:24 248:1 252:9	effectuate 45:20	elementary 217:1
Don 37:24	DSS 110:13,17,22 216:1,7	early 99:17 104:25 151:15,19	efficient 157:2	elevated 178:22,23
door 113:12	due 94:9 154:8 163:6 217:10 218:2,4	ears 185:7	efficiently 74:15	eleven 8:24
Dorsey 247:19	Duke 64:9	ease 102:7 158:10	effort 52:13 68:13 97:8 99:19 181:25 197:15 232:23	Elizabeth 9:23
doubt 46:9 210:17 232:15	duly 30:16 60:22 84:13 103:4 124:3 125:23 135:23 158:22 160:19 169:13 183:14 208:5 222:25	easier 151:6	egregious 254:2	else's 117:12 126:3 196:7
draft 10:1,20 21:21, 22 22:1 80:25 194:1,7,11	dust 55:1	easy 87:13 135:16 229:10	eight-page 130:8	elucidate 27:20
drafted 22:8	duties 217:11 232:24	eat 83:8	eighty 64:2,20 74:6	embedded 35:13
drafters 90:20	dutiful 27:15	economic 16:2 32:3 62:4 85:23 104:11 125:10 160:5	elect 51:19	embraced 121:8
drafting 81:15 196:6	duty 45:19	edification 230:16	elected 27:18 50:20 52:12 92:14 233:12	emerged 36:23 37:4
drafts 194:2	dynamic 39:7	educate 29:12 108:14	election 7:12 8:1 10:4 15:10 21:18 22:5,7,11 32:5 50:15,16 62:7 86:1 104:14 125:13 147:22	emergency 137:8 140:13
draw 14:9		educating 108:6		Emily 86:7
dream 87:7		educational 92:1		Emma 9:19 14:4,6 17:6,7 22:15 29:9
drill 188:12				emotion 217:9
dripping 217:9				emotional 142:25 175:22 176:4 180:7 219:9

<p>emotionally-charged 241:17</p> <p>empathize 163:24 212:3</p> <p>empathy 228:1</p> <p>emphasize 212:1</p> <p>employees 110:17</p> <p>employer 75:11</p> <p>empty 57:15</p> <p>empty-chair 57:1</p> <p>enacted 28:16 45:6 65:11</p> <p>enactment 36:9 46:2</p> <p>enactments 46:4,11</p> <p>encountered 49:21</p> <p>encouraging 234:16</p> <p>end 12:24 13:4,18 14:1 15:22 40:14,23 57:13 87:18 98:14 113:24 135:10 138:1 143:20 157:6 211:9,24 219:7 228:5 229:23 245:14</p> <p>endeavor 37:16</p> <p>ends 10:3</p>	<p>energy 68:13 73:24</p> <p>enforcement 216:1</p> <p>engage 39:16 137:14 207:10,20</p> <p>engaged 77:25</p> <p>engagement 245:9,10</p> <p>enhanced 42:7</p> <p>enjoy 50:3 115:20 147:24</p> <p>enjoyed 100:20 105:23 106:6 115:18</p> <p>ensure 66:13,16 74:13 157:2</p> <p>ensures 63:24 65:23</p> <p>ensuring 66:8,15</p> <p>entered 12:12 164:11</p> <p>entering 12:7</p> <p>entertain 125:14</p> <p>entertaining 60:8</p> <p>entire 151:23 155:12 157:15 163:2,3, 9 184:17 192:19 213:2,5 219:4 234:11 235:3 238:20</p>	<p>entitled 43:16</p> <p>entrenchment 50:19</p> <p>envision 41:12</p> <p>episode 218:17 223:10 229:11</p> <p>equal 129:20 210:10</p> <p>equally 58:12</p> <p>equates 142:22</p> <p>equipment 252:18,20,22</p> <p>equipped 93:8 107:3 110:4</p> <p>Equity 9:5</p> <p>erased 213:3,4</p> <p>erasing 213:2</p> <p>Erica 9:19 62:16</p> <p>Erin 9:7 14:3,7 138:23</p> <p>Erin's 96:21</p> <p>errant 53:17</p> <p>error 167:8 246:5</p> <p>error-correcting 98:4</p> <p>errors 166:25 168:9</p>	<p>escorted 20:22</p> <p>essence 213:3</p> <p>essential 64:21</p> <p>essentially 119:4 195:14</p> <p>establish 201:11 209:22 216:16 221:9</p> <p>ethic 148:19 162:16 184:13</p> <p>ethical 15:15 46:23 71:4 95:8 111:6 131:20 132:8 162:5,7,16 172:6,13 174:5 243:4</p> <p>ethics 16:3 19:5 23:17 25:6 32:1 51:21 53:24 59:16 62:2 82:15 85:21 93:1 101:15 104:9 122:11 125:8 157:20 160:3 161:12 170:9 200:16 201:22 208:24 224:22 239:23 254:23</p> <p>evaluate 197:6 203:2 211:7 215:4 222:2</p> <p>evaluating 191:4</p> <p>evaluation 59:5 129:13</p>	<p>185:14 186:1 189:18 191:2,18 192:18 209:6 210:6,8,11,21 221:2 228:3</p> <p>evaluations 204:25</p> <p>evaluative 8:18 15:11,13 17:2 24:20,21, 22,23 25:7 26:24 31:23 59:14 61:25 71:4 82:13 85:19 95:7 101:13 104:7 122:9 125:6 130:19,22 134:18 157:18 160:1 223:14 243:4,7 254:21</p> <p>even-keeled 113:5</p> <p>evenhanded 56:14</p> <p>events 189:14</p> <p>everyday 140:14</p> <p>everyone's 44:8,9,11,12,13</p> <p>evidence 163:7 165:8,14, 18 204:2,3,9,16 205:6,10 209:20 219:10 234:12 237:3 246:15 253:7</p> <p>evidentiary 25:23 162:15 205:8 211:10</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>evil 219:11</p> <p>ex-wife 126:17 128:17 210:21</p> <p>exact 69:6</p> <p>exam 25:24</p> <p>EXAMINATIO</p> <p>N 34:11 49:7 63:12 72:13 77:12 78:23 88:5 97:13 99:24 105:19 112:21 118:17 139:11 146:11 149:9 233:8 244:18 249:17 252:6</p> <p>examined 213:23</p> <p>examples 36:2</p> <p>exceed 36:16</p> <p>excellent 67:2 92:24 127:24 128:16 239:22 240:1</p> <p>exception 39:14</p> <p>exceptionally 145:4</p> <p>exceptions 21:6</p> <p>excess 36:25</p> <p>exchange 75:20 203:24 207:10,21</p>	<p>excited 73:24 78:3</p> <p>excites 76:7</p> <p>exciting 76:11</p> <p>exclusively 64:13 99:15</p> <p>excuse 9:2 13:12 66:1 172:25 190:11</p> <p>excused 60:5 83:5 102:2 123:3 158:8</p> <p>Execution 69:4</p> <p>executive 11:1,4,10,12,14, 18 14:7,12 20:21 75:8 83:7, 10,16,18,24 84:1 123:5,12, 15,18 229:22,25 230:9,12,14</p> <p>exercise 229:4</p> <p>exhausted 135:11</p> <p>exhibit 12:14,16 31:14, 17 61:16,19 84:25 85:7,10, 13 103:23 104:1 124:22,25 126:8 136:7 159:14, 17,20 161:2 169:22 184:1 208:13 224:12 230:21</p> <p>exhibits 12:1,12</p>	<p>exist 28:12 137:5</p> <p>existed 190:5</p> <p>existing 40:9</p> <p>exists 28:10 54:15</p> <p>exonerated 210:20</p> <p>expansive 33:19</p> <p>expect 11:23 19:19 93:20 242:5,7</p> <p>expectation 153:12</p> <p>expects 59:15 82:14 101:14 122:10 157:19 254:22</p> <p>expediency 43:2</p> <p>expediting 41:7</p> <p>expeditious 40:24</p> <p>experience 15:17 25:16 34:15 43:22 46:25 55:6 64:1, 7 67:9,10,11,25 68:4,9 71:6 74:11 75:19 77:14,15,20 78:14 80:4 87:4 89:4 93:4,12,14, 19 94:7 95:9,11 98:15 99:10 105:25 106:15, 23 107:1,2 109:23 110:2</p>	<p>111:7,15 119:5 121:22 130:20 131:22,24 140:3 141:2 142:14 143:3,5 148:23 155:12 156:9 157:1 233:11, 17,25 234:5,21, 22 235:7 240:1, 6,8,15,19 243:5 245:6,21 246:20 248:7 251:6</p> <p>experienced 34:24 111:13 232:6 242:18</p> <p>experiences 64:18 88:11 114:5 140:22 142:25 143:7, 22,24 144:20 152:3</p> <p>experts 23:17</p> <p>explain 70:13 110:8 127:18 128:8 139:12 141:25 218:13</p> <p>explained 108:24 218:16</p> <p>explanation 134:15</p> <p>explored 26:24</p> <p>exposed 89:21</p> <p>exposure 89:16</p> <p>express 33:18 142:4</p> <p>expressed 43:23 67:8</p>	<p>69:20 92:18 93:10 94:15 141:10 142:12 189:7 240:4</p> <p>expression 45:5 90:17</p> <p>extend 223:11 238:14</p> <p>extended 223:13 234:6</p> <p>extension 248:22</p> <p>extensions 249:1,12</p> <p>extensive 156:18</p> <p>extent 92:7 109:7 142:1 168:14 187:7,12</p> <p>extra 98:25</p> <p>extracurricular 189:13</p> <p>extraordinary 140:12 167:10</p> <p>extrapolate 185:5</p> <p>extremely 93:7</p> <p>exwife's 194:8</p> <p>eye 41:14 144:3</p> <p>eyes 42:25</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>face 155:11</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

faced 42:21 238:23	98:16 107:8 113:8,23 114:9 212:5	126:25 128:23 129:24 130:4,11 136:20 137:18, 22 153:20 163:3 170:25 171:1,16 172:8 175:7,17, 21 176:6 180:6 181:1 184:19,20 191:23 195:17 198:2,14 213:3, 4 225:14 227:3 233:11 234:4,6, 9,21 235:7 236:20,24 237:5 238:9,22 240:1 241:11,17 244:20 245:3,24 247:6,20 248:19,24 249:19,22 250:12,17,24	father's 186:14	147:2 151:6 154:19,21 212:4 227:23 233:13, 15,24 248:9
facilitate 40:11	fair-minded 113:5		Faulk 9:15	
facing 37:20 66:7	fairly 43:4 44:19,25 70:3 74:6 127:21		fault 36:14,15,25 56:5 57:17 96:20,21 205:9 225:2	feels 97:6 173:10
fact 13:2 38:6 46:3 70:25 119:6 127:5 133:20 138:2 143:7,25 156:11 177:1 197:2 199:23 201:21 202:2 205:4 235:9 247:4 248:18 254:7	fairness 154:19		faulty 252:9	fell 43:24
fact-finder 137:24	faith 13:24 39:11		favor 7:13 8:3 10:12 11:5 83:11 117:1 123:7 230:1	felt 150:4 241:2
fact-finders 168:6	faithful 38:10		favorable 118:11	female 241:9 247:22
factor 98:1	fall 118:20		favored 36:22	fiber 44:20
factors 211:10	fallen 152:12 155:11		favorites 240:3	field 32:12 98:15 134:8
facts 64:25 65:7 107:20 109:12 127:11,22 131:4,5 132:23 133:22 134:1 135:2 163:17 165:8,14 235:5, 19	false 216:2	fancy 154:13	favours 51:12	Fiffick 9:14
failed 216:12	familial 18:3	fanfare 58:5	feature 42:2	fifteen 16:11 34:21 40:17 104:22 106:19 121:17 198:24
fails 205:7 218:14	familiar 27:14 47:11,20 71:17 76:5 78:4 95:19 111:24 136:5 145:11 243:15 247:19 251:14,20,24	fare 116:6	February 10:6 22:12	fifteen- 212:19
failures 186:14	families 225:13	fashion 58:6	federal 56:3 70:10,16 89:17 91:20 110:15 200:8	fifteen-minute 163:9 219:9
fair 45:7 69:23	family 9:1 15:1 34:20 41:13 52:15 77:14,17,20,21, 23 78:5,8 101:9 105:23 106:3,20 107:3 110:3 111:12 114:4,16 115:16,18 121:15,22	fast 109:1	Federalist 35:8 50:18	fifty 115:11
		faster 157:3	feeds 94:20	Fifty-three 250:21
		father 62:14 104:21 185:3,12 189:4, 6,7,10 191:20 192:22 193:19 201:5 216:20 219:15 220:11 226:3,9 227:5,6 228:16	feel 64:6 89:3 90:24 98:25 106:14 107:14,17 128:13 137:3 140:3 144:17	figure 75:3
				file 17:20 18:19,23, 25 21:17 40:3 53:10 55:5 133:21,23 134:1 137:10 138:3 147:8 172:12 248:22

<p>filed 18:14 19:9 32:4 42:22 48:10 62:6 70:9 85:25 104:13 110:25 125:12 126:11, 23 127:3 128:18 129:15 137:9 138:2,6 160:7 200:15,17,19 201:1 210:15 220:2,11 241:14 249:3</p> <p>filing 127:8,11</p> <p>filings 138:4</p> <p>fill 8:16</p> <p>filled 17:25 18:1</p> <p>final 13:7 22:1 66:22 210:5 219:13 248:23</p> <p>finality 41:9</p> <p>finally 55:25 69:19 75:17</p> <p>finances 20:19</p> <p>financial 16:4 18:18,20 33:9 53:11</p> <p>find 17:3 24:16 28:2 90:23 98:12 102:17 113:6</p> <p>finding 25:4 46:6 139:16 185:14</p>	<p>findings 20:3 185:11</p> <p>finds 76:10 226:7</p> <p>fine 37:24 42:20 49:23 52:8 59:3 111:12,16 182:9 194:20 224:3</p> <p>finger 182:14 214:16</p> <p>fingerprints 48:19</p> <p>ingertips 25:25</p> <p>finish 71:12 180:9 190:17 215:8 217:23 218:4</p> <p>finished 196:22</p> <p>fire 40:17</p> <p>fired 74:24</p> <p>firing 75:8</p> <p>firm 29:3 37:6 106:19 117:10 219:5 251:14</p> <p>firmly 141:6</p> <p>firms 23:21 63:19 78:11</p> <p>fit 90:4 106:2</p> <p>fitness 15:16 33:10 46:24 71:4 95:8 111:6 131:20</p>	<p>132:8 162:5,7 202:15 228:4 243:5</p> <p>five-plus 105:24</p> <p>fix 241:18</p> <p>fixed 229:3</p> <p>fixture 213:8</p> <p>flame- 50:15</p> <p>flat 75:22 76:3</p> <p>flesh 120:19</p> <p>flexibility 86:18 102:16 122:20 150:21</p> <p>flip 153:1</p> <p>flipped 173:20</p> <p>floor 177:16</p> <p>flourish 88:16</p> <p>flowed 36:11</p> <p>focus 108:7 185:7 187:2,17 211:19 212:7 217:6 223:13 226:18</p> <p>focused 31:23 61:24 69:1 85:18 104:6 114:3 125:5 159:25 182:4 211:6 228:2</p>	<p>focusing 98:22 108:15 184:25</p> <p>FOIA 20:4</p> <p>folks 12:23 27:13 33:22 48:18 62:10 68:25 72:24 80:4 86:7, 12 93:20 96:15 100:1 104:18 118:19 138:19 160:10 221:20 231:25 247:13, 23</p> <p>follow 28:8 59:15 82:14 98:6 101:14 122:10 142:6 157:19 174:12,13 239:11 254:22</p> <p>fondness 152:10</p> <p>football 74:24</p> <p>footnote 51:23</p> <p>forbidden 212:23</p> <p>force 40:20</p> <p>foreclose 247:2</p> <p>forever 144:4</p> <p>forgive 73:13 223:24 252:8</p> <p>forgotten 114:4,6</p>	<p>form 16:3 18:25 128:8 212:8,24</p> <p>formal 59:21 82:20 101:20 122:16 157:25 224:6 255:3</p> <p>Forman 75:14</p> <p>formulated 27:9</p> <p>fortunate 70:4</p> <p>Fortune 219:3</p> <p>forty 139:21 147:23</p> <p>forty- 225:7</p> <p>forty-three 223:22</p> <p>forum 28:13 212:2 218:12</p> <p>forward 57:21 62:24 64:4 97:14 125:18 149:3 160:10</p> <p>foster 9:19 99:25 160:10,13,14,23 161:3,18,22 168:24 169:6, 17,18,24 170:6 182:18,19 183:3,20,22 184:3 208:1,9, 15 222:19 224:5,7,8,13 230:19,23</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

232:20 233:1,2, 8 243:2,9 244:9, 14	front 34:23 40:12 57:13 86:7 103:7 115:13 118:7 158:25 192:2 198:20 200:25 240:12, 14	107:22 235:22	gave 28:5 50:23 130:8,13,15 222:8 231:10	59:2
fought 155:7	fronts 42:8	G	gavel 30:7	gentleman 158:10 207:20 217:19 231:24
found 21:9,11,15 46:10 47:1 65:7 70:19 86:15 88:19 93:24 95:5 110:11 175:10,12,13 213:23 239:4	Frugality 82:1	gain 216:3	gender 247:22	gentlemen 30:5 83:20 97:4 102:10 123:17 127:12 152:8 190:25 191:1 230:6,10 231:19
foundation 171:20	frustration 79:12 218:9 227:23	Gallman 183:4 184:18 199:7,19 208:1, 2,5,9,14,21 209:2,8,9,11,13, 16,18,21,25 210:4,24,25 211:3 212:9,12 214:5,7,12,15, 16,17,19,21,22, 24 215:2,13,17, 19 217:4,21,23 218:2 219:2,23 221:4,5,9,11,12, 13,15,17 222:4, 6,17 223:8 226:22	general 18:6 20:13 22:9 28:16 35:2 41:13 45:11,15, 25 46:14 47:13 48:5 65:1,19 71:18 72:1 78:6, 12 90:14,17 92:9,10,18 93:7 95:2,20 96:4 106:1,18,21 107:6 109:9,10 111:25 112:9 113:7 119:1 120:25 121:8 141:3,8,10 142:2,6 145:12, 21 148:15 154:3 206:15,18 211:21 218:22 235:17 237:1 238:16,18,21,24 239:16 243:16, 21 244:5	Gentry 9:16
fourteen 249:20	frustrations 217:7	game 52:24,25 53:1,4, 13	Georgetown 232:7	genuinely 13:21 28:7
fourth 130:14	fulfill 234:22,23	gamed 55:20	George 232:7	get all 24:11
framework 45:22 76:5 88:16 94:22	full 63:1 107:9,17 146:19 180:18 217:10 247:3	games 74:25	Georgetown 232:7 249:25	giant 26:9,11
frameworks 45:23	fully 107:15,19 155:21 224:1	gamut 113:10	get all 24:11	Gibson 9:23
frankly 40:4 43:8 44:17 53:3 80:16 120:15 198:21 204:19	fun 100:19,22,23	gander 159:1	Ginsberg 90:25	girl 213:6 219:15
frazzled 165:22	function 8:13 13:23 88:16 136:20	gap 121:24	give 22:4 31:13 32:25 39:20 46:13 51:4 62:9, 20 81:14 86:14 87:4 135:6 138:17 140:22 147:3,10 166:18,19 168:6 171:19 176:19 179:16 188:4 192:16,17 197:5 205:24 206:17, 24 217:12	
free 220:15	fundamental 204:10 205:18, 19	gate 92:12		
frequently 65:18	fundamentally 81:8	gatekeeper 88:25		
Friday 50:6 119:22,25	funding 66:17	gather 16:13 110:20,23		
friend 7:7 50:9 58:8 86:8 97:2	funneled 33:4			
friends 32:20,21	future 66:4 91:7,11			

<p>221:19 228:7 231:23 232:3 235:5 238:11,20 239:14</p> <p>giving 24:1 29:23 166:8 218:13 247:21</p> <p>glad 12:22 102:20 104:25</p> <p>glasses 14:13</p> <p>global 38:18 188:7</p> <p>goal 29:21 209:17 227:21</p> <p>God 197:17 214:1</p> <p>good 7:1 9:8 11:13 13:24 29:5 34:12,23 39:11 48:13 51:2,3,21 58:16,21 59:1,3 60:13,15 63:13, 14 78:24,25 80:1 83:19 88:18,21 89:6 90:24 99:1 100:18 102:12, 14 105:11,12 106:23 107:3 108:13 118:2,3, 19 122:25 123:16 151:7 154:19 155:8,21 158:15,17 169:10 174:23 183:8 222:20 227:6</p>	<p>goods 252:17</p> <p>government 29:23 69:16,17 99:12</p> <p>Governor 64:17 67:22</p> <p>Governor's 62:16 63:19 64:14,19 67:18 68:15,23 75:12, 15 77:5</p> <p>GPS 237:3 252:10, 15,19,20 253:7</p> <p>grace 155:10 174:11 197:17</p> <p>gracious 232:25</p> <p>graciously 249:6</p> <p>graduated 64:9</p> <p>grandparent 228:23</p> <p>grant 210:16 249:1,12</p> <p>granted 154:5 249:6</p> <p>grateful 142:21 152:7 197:14 234:20</p> <p>gravity 153:11 163:23 215:3</p> <p>gray 74:9</p> <p>Grayson 60:17,22 61:18, 21 63:9</p>	<p>great 10:7 28:3 58:13 63:3 71:10 73:9 87:12 88:24 94:6 109:18 114:19 138:25 139:3 151:24 158:6 171:20</p> <p>greater 73:7 88:18 151:17 253:2</p> <p>greatly 255:10</p> <p>greed 175:19</p> <p>Greenville 120:9</p> <p>grief 136:23</p> <p>grievance 16:15 17:11 113:19 217:7</p> <p>grieved 40:3</p> <p>grind 154:18</p> <p>grocery 48:12</p> <p>grounds 91:4</p> <p>group 50:7 148:12 151:23 171:9 178:13</p> <p>groups 50:3,10 51:1</p> <p>growing 156:20</p> <p>guaranteed 97:21 153:16</p> <p>guardian 210:6</p>	<p>guess 84:2 93:25 97:15 113:12 114:8,18 115:6, 10,22 117:8 150:7,8 151:2,9, 18 153:1 168:9 175:2 176:14 178:12,24,25 186:19 188:13 196:18 198:13 249:18</p> <p>guided 28:14</p> <p>guilty 239:1,3,4</p> <p>guys 97:7 102:20 105:5 106:1,4 122:21,25</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>habits 162:17</p> <p>hair 74:9</p> <p>Haley 9:18</p> <p>half 64:15 120:5 156:1 165:23 213:4,13 216:15 233:13 250:18 251:1</p> <p>hall 9:19 248:13</p> <p>Hamilton 35:9</p> <p>Hammel 232:8</p>	<p>hand 30:14 60:20 84:11 103:1 124:1 125:21 135:20,21 158:19 160:17 183:12 208:3 222:22</p> <p>handed 151:7</p> <p>handle 54:11 93:8 114:10 136:22 175:21 251:6</p> <p>handled 34:1 43:3 67:15 113:10 115:7 140:8,12 146:23 148:22 155:4</p> <p>handles 99:3 114:25</p> <p>handling 64:16 235:8</p> <p>hands 165:22 169:11</p> <p>hands-on 154:22</p> <p>hanging 134:16</p> <p>happen 25:12 167:23 170:17 237:9 248:24 249:8</p> <p>happened 144:8 216:12 239:1 253:7</p> <p>happily 106:3</p> <p>happy 22:18,22 29:1 63:1 86:19 87:6 104:19 105:2</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>109:4 132:3 138:8,20 164:8 186:6 211:25 218:25 219:17 226:17</p> <p>hard 19:2 23:5,6 66:14 73:25 74:14 86:25 87:17 98:11 136:21,22 240:2 241:16</p> <p>hardest 136:15</p> <p>harken 51:17</p> <p>Harkening 245:7</p> <p>harms 187:11</p> <p>Harrell 9:23</p> <p>Harrison 123:22,24 124:3,8,12,15, 19,24 125:2 126:16,20,21,25 127:20 130:2 131:25 133:20 135:18,20,23 136:1,8,14 138:13,17,21,22 139:8,12 140:2 141:3,25 142:7 144:22,25 145:3,6 146:10, 12 149:5 157:13 158:5</p> <p>Harrison's 126:5,12 127:4, 8,10 128:11</p>	<p>harsh 188:21 238:25</p> <p>harshness 173:18</p> <p>hashed 191:11</p> <p>hat 52:22 56:21 79:11 134:16</p> <p>hate 162:20 185:23</p> <p>havoc 50:23</p> <p>head 47:14 67:3 138:14 254:1</p> <p>head-shaking 29:3</p> <p>heal 44:8</p> <p>healing 225:14</p> <p>health 15:17 47:3 71:7 95:6 108:10 111:5 131:22 132:10 143:24 145:2 223:19,20 225:9 238:7,9 243:8</p> <p>healthier 144:5</p> <p>hear 22:18,22 28:25 29:1 30:8 33:2 40:18 48:15 50:22 62:20 69:10 75:19 79:12 86:19 93:18 105:3 125:15 128:13 134:15 138:20</p>	<p>144:9,18 160:11 164:8,10 188:8 198:4 209:9 211:25 218:25 222:3 228:13</p> <p>heard 20:12 32:23 48:12 58:24,25 75:5,18 79:9 107:9,15,19,20 114:18 136:1,12 147:15 149:17 154:5,19 156:7 166:24,25 198:23 215:1,7 221:21 223:4,7 226:19,25 228:9 231:11,16 235:21 236:11 247:9 248:5 250:4 253:16</p> <p>hearing 7:17 8:6 10:15 11:8 12:9,13 14:14 17:5 18:8 19:11 20:6,10, 11 23:1 53:9 59:9 81:17 83:14 96:17 101:6 122:4 123:10 138:12, 15 157:12 161:3 163:9 165:7 168:17 169:24 181:20 184:3 198:19,24 202:5 204:1 208:15 212:15,20 219:9 224:13 229:16 230:4 231:17 248:17 254:16</p> <p>hearings 8:21 19:25</p>	<p>21:21 63:1 110:14 118:8 121:16 128:20 182:22</p> <p>Hearn 232:8</p> <p>heart 179:7</p> <p>heartbreaking 136:22</p> <p>heated 143:19</p> <p>heavier 57:2</p> <p>heavily 165:13,19 166:9</p> <p>heavy 58:5 59:18 82:17 101:17 122:13 157:22 254:25</p> <p>held 21:19 22:11 40:19 75:8 102:9 200:10,19 254:12</p> <p>Helen 138:22</p> <p>helm 41:5</p> <p>helped 51:13</p> <p>helpful 227:20</p> <p>helping 33:18 139:19 173:25 234:22</p> <p>helpless 82:8</p> <p>helps 9:22</p>	<p>Henry 9:23</p> <p>herd 125:16</p> <p>hesitant 80:11</p> <p>Hewitt 76:18 147:12 150:9</p> <p>Hey 48:12</p> <p>hiccups 175:13</p> <p>high 51:21 68:21 115:4 150:17 154:14</p> <p>high-charged 175:22</p> <p>high-level 114:20</p> <p>higher 23:13 97:18 121:1 165:19 166:14 250:22</p> <p>highest 23:14 47:1 49:21 93:1</p> <p>highlight 177:12</p> <p>highlights 26:21 143:4</p> <p>highly 180:7</p> <p>Hill 116:19</p> <p>Hills 232:8</p> <p>Hinson 9:19 105:9,11, 13,19 111:2,18</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

112:13	Holmes'	horrific	227:24	100:24
hire	161:12 162:18	225:24	hurting	immunity
143:8	164:19 170:9	Horry	216:14	70:19
history	171:24 184:13	11:16 162:18	husband	impact
210:22 247:3	208:24 217:13	172:15 198:5	163:3 223:16,17	114:12 119:5,7
hit	224:22	232:6 244:17	225:8 227:4	153:23
26:21 41:14	home	247:14,15,18	228:18,25	impacted
150:2,5 207:1	32:19 155:6	249:25	232:5,9	55:3,4 202:6
hold	162:19 214:1	Hospital	husband's	impartial
58:10 99:1	225:10	215:23	228:11	107:8 174:5
173:6 190:3	home-wrecker	hour	hush	181:9 241:21
191:14 205:5	166:16	83:17	53:14	impartiality
211:3 221:18	homeroom	hours	hybrid	172:14 241:4,6,
247:8 250:16	216:22,24	21:25 24:4	52:14	13,21
holistic	honest	27:11 80:21	hypothetical	impediment
59:5	48:9 170:20	81:9,10 141:18	204:3	73:21
Holmes	honestly	House	hypotheticals	impediments
158:15,17,21	23:14 120:8	9:17 55:22	141:17	42:21
159:4,7,11,16,	150:21	201:23		implications
19,22 161:5	honor	households	I	157:5
162:1,8,19,21	89:1 120:15	136:18		import
163:4,16 165:6,	HONORABLE	housekeeping	idea	57:23 153:8
11,16,17 166:2,	30:16 31:16,18	20:13 46:18	36:10 134:21	importance
8,11,15 169:1	103:3,25 104:3	71:12 95:14	139:19 206:3	40:21 42:3 43:2
170:1 172:6,23	158:21 159:16,	111:19 145:6	ideal	187:10
173:3,15,20	19,22 230:22	243:10	88:15	important
175:7 176:21	honored	human	ideas	26:25 27:19
182:19,20	136:23	44:16 113:2	38:14	28:17 59:4
184:5,21 185:17	hope	248:6,14 249:7	identify	63:17 66:7 80:6
189:1 193:9	10:5 13:23	humble	37:19 150:18	89:8 91:16,18,
198:18 199:24	27:13 28:4	113:2	ideological	22 98:9 120:18
202:1 208:17	54:19 74:1	humbling	68:18	141:11 143:5
212:22 213:16,	81:25 82:3	93:17	ideology	153:15 154:2
21 216:2,13	114:6 147:12,	humility	94:9	164:13 209:21
224:15 226:2,10	22,24 157:1	113:5	ignore	232:15 246:19
228:17 229:5	225:14 227:24	hundred	202:1	impose
230:22 231:2	hoped	58:16 147:16	ill-tempered	131:16
232:5,11,12,13,	218:13	225:13	59:2	impressed
21 233:5	hopes	hundreds	illustrates	50:13 51:1 58:4
239:22,25 243:3	87:3	48:10	51:5	impressive
244:19 250:5	hoping	hurt	immediately	113:7 147:19
255:9,12	148:9 153:11	210:23 217:8		

<p>improper 231:6 242:19</p> <p>impropriety 59:17 82:16 101:16 122:12 157:21 254:24</p> <p>improve 38:14 91:25 108:18 155:10</p> <p>improvement 39:19 52:6 216:25</p> <p>improvements 38:7</p> <p>impute 35:20</p> <p>in-between 23:25</p> <p>in-depth 22:15</p> <p>in/day 248:2</p> <p>inappropriately 183:1 201:6</p> <p>inclined 178:16</p> <p>include 19:1 245:24</p> <p>included 21:14 23:16 31:24 34:7 43:20 48:24 61:25 63:7 85:19 87:25 103:16 104:7 105:15 111:9 125:6 131:3 139:7 146:4 160:1 196:7,9 233:4</p> <p>includes 16:1</p>	<p>including 18:15 47:12 67:9,10,19,20 71:17 95:19 103:18 111:24 119:3 145:11 215:21 243:15, 20</p> <p>inclusion 221:22</p> <p>inconsistent 167:12</p> <p>incorporated 72:7 96:10 112:15 244:11</p> <p>incorrect 81:6</p> <p>increased 42:1,7 43:9</p> <p>incredibly 63:17</p> <p>incumbent 21:15</p> <p>independence 29:22</p> <p>independent 32:23 148:15</p> <p>indicating 142:14</p> <p>individual 45:8 239:3</p> <p>individualized 142:9</p> <p>individually 114:13</p> <p>individuals 236:13 238:12 240:11,13 241:16 242:11, 18 246:8 248:8 249:4</p>	<p>indulging 230:11</p> <p>inescapable 227:24</p> <p>inevitably 137:18</p> <p>inexcusable 40:7</p> <p>infer 252:25</p> <p>inferences 253:4</p> <p>inferred 250:10</p> <p>inflame 127:15</p> <p>inflammatory 143:15</p> <p>information 14:24 17:12 19:14 20:2,13 27:25 28:2 33:4 126:3 127:13 135:7 165:4 192:3 193:5 197:16 200:2 211:19 212:7,16 215:5 231:9 254:4</p> <p>informative 177:5</p> <p>informed 18:4</p> <p>inherently 13:11</p> <p>inhumane 219:10</p> <p>initially 251:15</p> <p>initials 189:2</p>	<p>inject 95:1</p> <p>Injured 50:5</p> <p>injustice 229:2</p> <p>inmate 70:10,16</p> <p>innocent 162:24</p> <p>inoculation 73:5</p> <p>input 38:24 168:22</p> <p>inquiry 8:17 31:23 61:24 85:18 104:6 125:5 156:16 159:25 168:14 191:1</p> <p>instance 55:3 126:23 194:7</p> <p>instances 35:17 168:4 183:1 233:18</p> <p>instigated 48:17</p> <p>instigating 48:8</p> <p>instilled 100:14</p> <p>integrity 42:4,10 93:1 137:7 142:11</p> <p>intellect 43:22 67:5 143:11 148:19</p> <p>intend 120:16 188:7</p> <p>intent</p>	<p>45:20 47:7,24 71:13,21 90:17 95:15,23 111:20 112:3 145:7,15 243:11,24</p> <p>interacting 248:12</p> <p>interest 16:2 28:2 32:3 62:5 85:24 88:19,22 104:12 125:11 160:6 177:7 185:6 187:22 197:25 211:1 225:19 227:19 241:23 245:5</p> <p>interested 13:21 27:21 28:7 29:13 187:3,4,18</p> <p>interests 88:24</p> <p>interpret 66:2 142:5</p> <p>interrupt 185:23 242:15</p> <p>interrupted 215:14</p> <p>interrupting 202:18 224:5</p> <p>intersect 97:23</p> <p>intersection 88:21</p> <p>intervene 48:6 72:2 96:5 112:10 145:22 188:22 197:22 244:6</p> <p>interventions 227:25</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>interview 13:11 18:4 25:11 26:4 153:10</p> <p>interviewing 25:14</p> <p>interviews 19:18 25:12</p> <p>intimately 27:14</p> <p>introduce 9:10 62:11 86:5 104:19 138:20 231:24 232:1</p> <p>introduction 96:24</p> <p>introductory 197:3</p> <p>intuit 227:25</p> <p>invested 175:4</p> <p>investigate 24:20 197:12</p> <p>investigated 31:22 61:23 85:17 104:5 125:4 159:24</p> <p>investigation 18:10 33:3 48:24 72:6 96:9 112:14 146:4 244:10</p> <p>investigations 16:14 19:15</p> <p>investigatory 18:12</p> <p>investiture 147:18</p> <p>invite 49:18 60:8,11 86:2 143:8</p>	<p>invited 62:9</p> <p>involved 9:11 18:11 99:6 114:20 119:10, 14 121:20 140:18 149:15 151:3 187:16 200:12 210:7 212:6</p> <p>involvement 33:8 108:5 126:21</p> <p>involves 8:19</p> <p>IRIS 222:25 224:12</p> <p>ironically 77:1</p> <p>irrational 163:18</p> <p>irreparably 187:11</p> <p>isolation 39:9</p> <p>issuance 126:24</p> <p>issue 40:18,21 50:12, 15 78:18 81:5 91:20 98:6 121:13,14,19 128:1 129:8 130:3,6,9,10,13, 16,17 131:9,10, 11 138:11 140:10 141:12, 14,19 152:2,5 154:7 163:23 168:9,11 186:10,20 187:8 188:7,10,14</p>	<p>193:7 195:1,15 196:2 203:24 204:20 221:21 236:3 238:23 239:12 240:17 242:24 253:2</p> <p>issued 20:8 36:6 52:19 169:4 184:24 194:24</p> <p>issues 19:20 20:13 64:23,24 67:19 68:10 70:2 76:8, 13,16 77:17 78:19 79:9,10 89:23 95:14 97:18,20 98:1, 10 119:2 132:17 136:15 140:14, 25 141:13,21 148:7 150:25 182:4 185:9 192:15 229:23 230:8 238:7,9, 13 243:10 246:16,17</p> <p>issuing 98:3 185:11</p> <p>items 161:15</p> <p>iteration 49:18 52:17</p> <p>ivory 248:4</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>J.J. 9:15</p> <p>jail 182:13 195:11</p>	<p>Jan 158:21 159:16, 19,22 189:1 212:22 230:22</p> <p>January 10:3,4 21:24 22:2</p> <p>Jared 23:9</p> <p>Jason 84:13 85:8,12, 14 88:1 92:24 93:4,7</p> <p>Jay 7:3,13 198:10</p> <p>Jimmy 9:18</p> <p>JML 75:4</p> <p>JMSC 14:4,21,24 16:2 20:11 21:3 29:10 32:10,17 33:4 48:20 52:11,17 83:16 137:1 161:25</p> <p>job 13:10 42:20 51:25 53:17 65:5,7 68:24 69:13 74:12,14 76:6 100:20 109:10,11 110:5 113:2 118:12 127:24 128:17 146:20 154:17 171:20 205:11 235:8</p> <p>jobs 197:12</p> <p>Jocelyn 75:7</p>	<p>Joe 56:11</p> <p>John 9:15 30:11,16 31:16,18 42:13 48:12 58:1 150:13 184:18 193:17 195:11 199:19 208:5,13</p> <p>Johnny 251:17,19</p> <p>join 33:21 96:15</p> <p>joined 11:15 27:23 64:14 232:1</p> <p>joint 36:10,12 57:19 226:9</p> <p>joke 100:2</p> <p>Jones 97:1</p> <p>Jordan 7:3,4,13 10:11 11:3 97:10,11, 13 113:17 123:5 229:24</p> <p>journey 38:13</p> <p>JQC 23:12</p> <p>judge 15:24 18:11 21:15 23:18 34:20,21 35:13 41:4 43:14 44:12 45:8 50:8 51:10 53:20 54:5,11 55:9,20, 21 58:15,16,17 59:2,3 63:15,21,</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>23 64:8,10 65:12,13 66:14 67:7,15 68:5,6, 14 69:21 70:12 75:7 78:9 86:24 87:5 88:9 89:5, 11 90:11 91:3 92:8,19,24 93:6, 20 94:18,21,23 99:13,25 100:14,18,19,23 102:11,12,14, 19,24 103:11, 14,20 104:20 105:2,5,11,12, 16,20,21,23 106:4,9,14,16 107:3,4,5,14,18, 22 108:23 109:7,8,13 110:6 111:3,12, 13 112:19,22 114:4 115:11 117:24 118:2,3, 13,18 122:1,6, 24 123:2 127:20 137:1 139:13 141:1 142:1 153:13 155:3,22 156:12 158:15, 17 159:4,7,11 161:5,11,25 162:8,11,14,17, 21 163:4,16 164:19 165:6, 10,16,17,25 166:2,8,11 167:7,12 168:24 169:1 170:1,9 171:23 172:6,23 173:2,3,15,20, 22 175:7,14,15 176:6,20 178:8</p>	<p>180:6,8 181:5 182:19,20 184:5,12,21,24 185:17 186:9 187:2 193:9 195:2 197:24 198:18 199:24 200:25 201:2,11 202:1,5,11 205:16 208:17, 24 210:15 211:23 212:16, 22 213:16,21 216:2,13 217:13 224:15,22 226:2,10 228:17 229:5,7 231:2, 18,23 232:5,11, 17,21 233:5,9, 17,18 234:2,6 235:8,16,22 236:6,13,15 238:14,15,17,22 239:18,22,25 240:1,15 241:3, 11,24 242:2,3, 12 243:1,3 244:15,19 246:3,4,10,11, 12,13,22 247:2, 3 248:20,21,25 249:1,9,11 250:5,17,24 252:7 253:14 254:17 255:9,12</p> <p>judge's 65:5 195:8 205:9 220:23 226:21</p> <p>judge-want-to-be 73:9</p>	<p>judges 14:25 15:3 17:12 21:8,13 22:3 26:3 35:9, 10 50:1,20 51:3, 13,16,24,25 52:2,8 55:8 56:24 58:14,19 70:18,20,21 79:23 81:10 100:1 108:11 118:22 120:13 134:23 154:10 167:21 178:15 179:24 180:5 198:1,22 211:23 218:23 238:11 242:22 245:15 247:4 251:12</p> <p>judgeship 43:12</p> <p>judgeships 24:9</p> <p>judging 246:3</p> <p>judgment 8:16 35:12,18 36:12 37:6 40:7 45:6 131:16 186:18</p> <p>judicial 8:10,13 12:4,17, 21 15:6,12,18 16:10 17:14 20:2 22:25 25:6 31:14,17,21 34:15 35:2,7,8 36:1 37:21 42:2, 9 44:3 49:25 50:15 51:7,15, 22 56:14,15 60:18 61:16,19, 22 65:2 66:5</p>	<p>67:10 68:4 70:6, 18 71:6 83:20 85:7,10,13,16 90:14 91:8,10 95:9 103:23 104:1,4 107:6, 23 111:7 113:20 124:22,25 125:3 131:22 141:4 156:8 159:14, 17,20,23 162:10 171:13 173:13 174:7 177:7 235:17,23 236:1 239:24 241:25 242:20,24 243:6 246:20 247:24</p> <p>judiciary 29:21 108:19 142:5 152:15 247:3</p> <p>judiciary's 107:25</p> <p>Julia 9:19</p> <p>July 233:22 245:13</p> <p>jump 109:4 129:15 152:3 153:6,8 165:3</p> <p>jumped 12:19</p> <p>juries 168:6</p> <p>jurisdiction 39:24 40:15</p> <p>jurisprudence 186:23</p> <p>jurisprudential 186:22</p>	<p>jurist 152:16 168:3 239:22</p> <p>jurists 232:6</p> <p>jury 56:4 57:8,11 74:22,23 75:1 89:17 93:23 130:25 131:3 132:17 253:3</p> <p>jury's 57:16</p> <p>justice 9:5 21:12 30:11, 12,13,25 31:2,6, 10 32:8 33:21 34:3,6,8,12 37:19,21,24,25 38:9,12,16,22, 23,24 42:4 43:18 46:17,22 47:6 48:16,22 49:3,8 54:4,17, 22 59:8,10 60:3 116:18 149:22 166:1 233:19,22 240:21 247:4</p> <p>Justice-to-be 247:5</p> <p>justices 38:3,4,8,11 49:21 211:23 234:15</p> <p>justification 188:2 205:25</p> <p>justify 185:6 205:22</p> <p>juvenile 238:25 239:1,8, 10,14</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

juvenile's 239:6	kindly 212:6 230:6	lacking 130:20 229:6	lastly 156:6	163:11 166:25 167:8,12 168:2, 10 173:2,6 174:7,12,13 180:18 181:10 185:18 193:10, 11,19 195:7 201:18 203:7,8 204:4,11,21 216:1,12 228:3 239:11,23 248:15 251:7, 14,21 253:22,24
<hr/> K <hr/>	kindness 44:24	lacks 131:25	late 16:11 128:21 245:11	law-giver 65:12
Kagan 90:25	kinds 32:21 186:11 204:21 250:2 252:1	ladies 30:5 83:20 102:10 123:16 127:12 158:9 182:3 230:6,10 231:19	latitude 129:11 163:25 215:2	laws 8:12 28:15 32:1 59:16 62:2 82:15 85:21 101:15 104:9 122:11 125:8 142:6 157:20 160:3 254:23
Kali 29:18	Kittredge 30:11,13,16,25 31:2,6,10,16,19 32:8 34:3,8,12 46:17,23 47:6 49:3,8 59:8,11 60:3 247:5	lady 173:19 227:16	Lauren 9:19	lawsuit 69:7 70:9,14 110:7,15 222:12
Karon 169:6,13,22 170:14	Kittredge's 34:6 48:22	Lambert 60:13,15,17,19, 22 61:4,6,9,13, 18,21 62:12,13, 14,23 63:9,13 66:4,23 70:8 71:3,13 72:25 73:2,6,9,10 77:13 78:24 81:18,25 82:3,8, 9 83:1,3 100:3, 11	law 7:8,21 9:3 15:1, 8 23:16 25:23, 24 27:3,4 28:10 35:17,23 37:16 44:19,25 45:23 46:3,4,5,6 53:24 57:24 63:19,24 64:9,24 65:6,7, 8,9,11,20,21,25 66:1,2 67:6,11, 13,14,16,25 68:2 70:11,19 75:24 78:8,15, 16,18 80:25 86:25 87:1,3 88:12,13,14,15, 19,25 89:16,18, 21 90:9,16 91:13 92:17 94:25 98:2,3,23 104:22 106:17 107:2,20 109:11,12,20 117:10 120:23 127:15 134:8 137:16,18 138:23 139:15 141:10,22 142:4,5 150:22 151:25 152:4 154:15 155:4 156:22 162:13	lawsuits 150:23
Kate 9:18	knew 25:24 177:19 190:5 237:4,18	land 44:11 215:11,13		lawyer 17:13 41:21 44:13 54:25 55:4,8,21 59:1 62:14 68:20,22, 25 69:14 72:18 79:8,11 99:1 116:10 118:24 121:20 132:6 136:6 148:16,17 149:22 155:9 170:16 171:4 177:15 194:2,7, 11,12 195:4 196:6,8 205:9
Kawanis 51:1	knowing 89:14 154:17 155:9 174:7 185:10 234:12	lamented 50:19		
KEEFER 126:9	knowledge 76:20 96:22 239:23 253:19 254:3	lane 94:23,24		
keeping 172:18 227:19	knowledgeable 134:12	language 37:3,5 57:18 127:11 143:15 194:11		
key 37:20	kudos 100:15	Lanny 62:14		
kid 182:13	<hr/> L <hr/>	large 23:21,22 78:8, 12		
kids 136:17 185:20 195:22	lack 42:22 67:10 68:4 131:1 163:7 188:20 205:15 227:25 253:19	larger 78:11		
killed 219:19				
kind 24:8 26:10 38:7 48:15 87:15 99:19 109:22 113:1,6,7,10,11 115:2 117:19 118:10 141:13 147:9 150:7,9 153:16 154:1 157:3 164:21 165:22 167:18, 24 173:17 176:9 250:10				

<p>215:21 251:6 lawyer-legislator 119:14 lawyer-legislator's 119:17 lawyer-legislators 119:3,6,10 120:7 lawyers 23:20,22,23,24 26:18 32:25 50:21,22 54:21 66:11 69:15 77:22 78:11 120:20 136:25 140:23 143:8 150:14 152:21 165:7 167:21 172:15 194:1 195:14 201:21 224:3 230:17 236:14 246:5,9, 21 250:1 lay-person 180:1,15 laying 171:20 lead 7:19 67:24 140:8 147:3,9 leaders 42:12 leadership 59:25 148:18 learn 13:21 76:9 learned 76:8 91:3 114:5 143:25 144:12</p>	<p>learning 23:2 75:22,23 76:3 78:4,18 leave 52:7 82:6 101:24 137:24 158:12 250:11 leaves 26:8 lecture 22:21 Lee 42:13 left 63:18 69:25 77:4 78:1 114:10 227:16 legal 11:1 26:7 32:19 44:6 64:6 68:24 69:5,11 89:3 106:14 123:6, 12,19 127:16 130:24 131:9 132:17 137:8 140:3 148:19 162:14 167:20 171:13 180:18 187:21 221:22 229:23 230:7 233:24 legislate 35:10 legislation 35:19 36:11,24 45:3 67:21 legislative 36:9 45:20 46:2, 4,11 49:25 176:23 legislator 79:12 95:24</p>	<p>121:20 legislators 118:24 119:21 legislature 35:12,16,22,24 37:14 45:2 46:12 47:25 57:5,8,24 71:22 112:4 145:16 243:25 legitimacy 92:3 legitimate 188:20 189:24 190:8,12,18 lense 156:24 letter 46:4 47:7,24 59:16 71:13,21 82:15 95:15,23 101:15 111:20 112:3 122:11 145:7,15 157:20 203:7,8 243:11, 24 254:23 letters 16:5 19:6,7 20:20 148:11 letting 87:9 level 41:7 46:15 47:2 76:21 93:2 97:18 113:4 114:13 130:5 150:11 151:3 152:10 156:10, 11 166:7 178:4, 7 180:25 181:1 234:14,16,21 238:23 240:5,8,</p>	<p>19 246:3,23 levels 45:18 leverage 79:15 liability 36:13,15 37:5 57:11,20 liberal 36:5 37:11 Libet 23:9 license 18:16 81:22 82:4 licensed 15:7 215:21 223:17 licks 117:15 life 48:9 74:1 136:24 143:1 144:2 147:25 163:2 213:4,5,7 219:16 225:20 248:2 251:3 lifted 197:23 light 45:13 53:11 97:5 176:15 likes 90:25 Limehouse 62:16 limit 46:1 80:12 limitations 47:12 71:18 95:20 111:25 145:12 243:16,</p>	<p>21 limited 57:20 Lindi 9:24 10:22,23 lines 34:23 117:8 154:21 list 11:23 51:8,9 56:19 93:23,24 listed 21:20 67:4 listen 27:16 58:23 69:9 171:3,10 190:24 listener 58:22 listens 92:25 literally 219:16 litigant 56:5 130:4,11 136:5 150:15 153:17 155:5 241:9 247:22 litigants 18:14 41:9 55:7 66:20 70:2 91:23 94:10 97:22 98:8 167:8,13 242:8 litigate 167:22 191:7 litigating 68:15 litigation 57:1 64:15,17 99:15 106:18 114:21 126:16,</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

22 128:23 129:24 140:19 193:4 litigator 99:20 live 13:10 63:25 65:4 136:17 165:13 lived 162:22 213:8,13 livelihood 55:3 lives 114:12 162:24 163:2,10 165:24 174:9 176:2 177:23 178:22 213:8,9 228:19 249:8 living 55:4 87:7 156:3 LLR 172:23 173:2,7, 11 193:14 199:15,20 200:25 201:10 202:2 213:18 220:2,17 221:23 222:8,9 local 217:1 248:10 location 215:19 locations 236:14 logistically 53:3 long 13:18 41:3 44:5 51:8 56:11 86:8 87:18 106:4	107:11 110:19 115:24 119:19 148:4 152:16 153:3 207:15 249:22 long-term 80:17 long-time 97:1 longer 57:14 119:16 151:22 223:12 245:3,9 longstanding 90:5 longtime 97:2 looked 56:17 144:3 Lord 74:2 lose 44:15 155:9 losing 155:9 lost 74:25 155:8 197:21 251:18 lot 9:10,11 16:8 18:13 26:18,19, 23 58:14 67:23, 24 87:2 89:17, 21,23 90:21 91:24 97:17 106:10,12 107:11 113:8 115:15 116:1 120:8 136:20 143:21,25 147:6 150:21,22,24 151:6 156:1,2	157:15 166:18, 19 176:15 186:23 214:8 215:7 238:8 lots 24:4 249:13 loud 162:20 226:20 Louis 251:17,18 love 22:22 139:15,25 140:1 152:12 177:3 250:17 loved 154:16 lovely 104:20 Loves 67:5 loving 225:19 228:23 249:13 low 129:5 Lowcountry 12:3 16:24 lower 23:13 155:3 165:15,18 166:1,3,9,12 lucidity 218:17 Luckily 224:3 Luke 7:22 8:2 11:16 176:11 198:6 lunch 83:7,8 Luther	84:4,5,9,13,21, 23 85:4,9,12,15 86:6,7,11,21 88:1,6 89:3 90:13 92:7,20 94:8 95:3,5 96:10,14,24 97:8,10,14 101:1,8 102:1 <hr/> M <hr/> Macey 9:20 Machin 36:7 made 12:1 17:4,10 25:8 26:6 39:13 45:1 46:6 47:3 63:22 83:25 87:13,17 103:14 119:24 123:19 126:6,25 133:6 149:23 160:25 163:18 164:24 169:20 170:18 172:22 183:24 191:7,8 192:5 193:3 199:18 208:11 211:9,13 213:17 216:1,7 220:11 223:23, 25 224:10 226:3 230:15,25 231:3,6 241:7 246:4,12 248:11,25 Madison 9:14 magic 241:18	magistrate 53:19 magistrate's 106:20 magistrates 51:24 52:2 maintain 91:11 113:4 117:4 242:12,21 major 34:18 148:16 majority 35:16 37:9 43:20 45:4 51:20 113:23 116:20 118:11 142:9 make 10:21 13:2,16 17:17 18:21 20:3 26:16,21 27:11,25 29:21 32:7 36:12 39:9, 10,19 41:11,25 55:4 67:6 76:13 82:7 86:2,14 92:24 93:5 97:5 104:17 105:1 106:11 107:8,16 108:2,9,17 110:3 111:16 115:24 117:19 127:25 129:23 130:25 137:25 138:17 139:22 140:24 141:20, 22,23 152:14,22 154:18 168:10 169:4 178:17 195:15 197:9 198:23 201:6,10 210:4 211:14
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

212:13,18	18 206:7 216:1,	matter	media	11 77:11 83:12
218:22 227:21	7	15:5 20:19	19:16 118:24	95:16,20 96:4,
232:19 235:20	manner	40:15,20 43:13	mediate	15 97:9 101:5
241:19 244:25	37:14 193:16	90:1 93:8 127:6,	140:20	111:21,25
249:18 250:3,13	Marie	22 136:6 154:24	medical	112:9,19 117:23
251:8	9:23	164:23 178:4,6,	144:15 155:6	118:7 119:3
makes	mark	13 182:3 183:6	medication	123:8 126:6,14
59:1 70:6 95:11	42:25 124:21	201:9 216:3	140:16	134:4 138:11
98:9 114:22	159:13	mattered	meet	145:8,12,21
119:13 247:16	marked	155:17 211:11	15:12 25:10	146:9 149:6
making	12:12	matters	33:1 218:14	157:10 166:21
29:7 31:8 61:11	marry	11:1 20:22 39:7	226:24	168:16 174:15
66:19 85:2	88:24	43:3 63:23	meeting	201:23 203:17
92:11 97:7 98:3,	Martha	89:24 126:17	7:2 166:6	206:18 211:21
10 103:17	232:8	144:14 155:14,	meets	230:2 231:15
124:17 135:15	Mary	17 163:18	26:9,11 34:8	243:12,16,21
157:14 159:9	62:12	164:2,11 184:19	63:9 88:2	244:5,15 252:5
168:19 178:21	Maryland	231:11 236:21	105:16 139:8	254:14
182:16 196:25	254:3	Matthew	233:5	memory
203:10 204:25	mashing	102:12 103:3,25	Meg	252:9
205:16 211:22	56:6	104:3	104:20	memos
226:14 229:9,12	master	maturity	Megan	156:22
232:16 245:18	223:17	50:14 142:25	122:21	men
246:4 248:2	Master-in-	Maura	member	51:19 241:8
251:10	9:4	9:14	7:21 28:20	mental
Maldonado	Master-in-	Maxine	48:20 49:20	15:17 33:9 47:3
9:14 63:4,5,12	equity	9:22	53:22 215:25	71:8 95:7
71:2,11 72:5	15:2 21:6	Maxwell	216:25 253:11,	108:10 111:5
male	matches	225:10	14,16	131:22 145:2
241:9 247:22	18:21	Mciver	members	223:19 225:8
malpractice	material	148:3,5	7:15 8:4 9:9	238:7,9,13
138:7 140:16	16:8 31:3 33:15	Mcnair	10:13,20 11:6,	243:8
155:6	materials	75:15	22 13:20 16:21,	mentioned
man	15:21,23 20:8	meaning	22 17:19 20:11,	41:20 56:1
114:11 153:17,	22:19 31:25	113:22 164:3	14,18 22:4,25	68:16 74:4
23	41:20 48:23	means	23:20 24:3	110:6 199:23,25
Manchin	62:1 85:20	66:15 150:24	25:14 27:14	200:4,25
56:1,6,8	104:8 125:7	meant	28:18 29:15	mentions
mandated	137:20 160:2	57:6 90:19	38:25 39:4 47:8,	18:2
228:3	Matt	measure	12,15 48:5 59:7	mentor
mandatory	86:8	43:24	60:4 68:12	100:18
185:16 193:16,			71:15,18 72:1,	mercy

166:2	million 216:15,18	misconduct 17:16 42:24 51:7	25 177:10,13, 15,17 178:5,9, 11,20 179:2,5,8, 11,13,15,18,21, 25 180:12,16,20 181:3,14,16,19, 22 182:1,5,9,12, 17	moral 135:1
Meredith 9:21	mind 34:13 100:24 125:18,19 148:19 185:23	misheard 147:4	11,20 179:2,5,8, 11,13,15,18,21, 25 180:12,16,20 181:3,14,16,19, 22 182:1,5,9,12, 17	Morant 251:15,20
merit 8:10 12:21 20:2 22:25 31:14,17, 21 61:16,19,22 83:20 85:7,10, 13,16 103:23 104:1,4 124:22, 25 125:3 159:14,17,20,23 177:7 222:13	mindful 13:2 62:25 215:9	misread 186:2	11,20 179:2,5,8, 11,13,15,18,21, 25 180:12,16,20 181:3,14,16,19, 22 182:1,5,9,12, 17	morning 7:1 9:8 11:13 12:20 34:12 60:13,15 63:13, 14 77:8 78:24, 25 86:16 229:2
merits 201:14 212:2	mine 116:20	misrepresented 133:22 134:1	modification 128:22	mother 226:23 228:20
Merry 186:7	mini 25:24	misrepresenting 135:2	modify 128:18	motion 83:9 121:16 127:1,2,4,25 128:2,22 138:2 147:8 229:24
mesh 192:2	minimalist 91:5 141:6,11	missed 77:14 98:19,20 128:4 130:17 195:2,3,4,22 196:6 249:5	Moise 23:8 29:17	motions 75:4 137:13 140:25 245:20 248:17,19,20 249:3
mess 177:22	minimum 15:25	missing 98:22	Mom 136:16	moment 97:5 103:7 215:3 226:16 232:15
message 219:17	ministered 225:13	mission 217:6	momentarily 17:8	moments 75:4 137:13 140:25 245:20 248:17,19,20 249:3
met 100:11,23 134:7 146:12 187:7	ministry 225:11,12	mistake 223:24,25 224:5	Mondale 73:20	motivations 35:21
Methods 69:3 75:7	minor 189:2,5,6,8,11 191:20 220:12 228:14	mistakes 178:17	Monday 119:22,25	motivation 45:7
meticulous 235:20	minute 104:17 190:16 191:13 212:20 215:11,16 217:22,23,25	mistrial 238:2	monetary 110:16	motivations 35:21
Micah 7:7,9 209:13	minutes 16:11 30:2 83:17 102:8 121:17 128:15 158:11,13 164:12 170:13 209:4 215:14 218:4	misunderstand 92:4 205:17	money 50:22,23	motive 39:2
microphone 30:20 128:13	mirrored 51:15	misunderstandi ng 206:9	monitor 252:15	mouth 172:25
middle 50:7 121:25	mirrored 51:15	misunderstood 132:16 134:25 205:21 250:11	monitoring 252:10	move 10:25 11:4,10 30:1 36:12 60:10 65:22 66:16 79:5,13, 19 80:9 83:16 102:4 108:25 203:1
Midlands 12:3 16:25 71:3 95:4 144:25	mirrored 51:15	Mitchell 169:7,8,11,13, 18,23 170:5,6, 12,14 171:18, 21,25 172:4 174:17,21,22, 23,25 175:5,9, 12,23 176:3,17,	month 60:8 80:9 102:5 210:11	months 40:18,21 42:19 73:17 119:16 137:10 176:9
Mike 104:21	mirrored 51:15			moved 96:19 109:6 214:1 245:2

<p>moves 10:10 11:3 66:13 123:4</p> <p>moving 108:19 165:11 166:23 227:19 229:25 238:6,10 243:10 247:11</p> <p>mule 154:12,14</p> <p>Mullins 23:9</p> <p>multi- 140:18</p> <p>multi-day 121:19</p> <p>multiple 108:24 110:13 140:15 215:20</p> <p>municipal 51:25 52:2 53:20</p> <p>MUS 215:25</p> <p>MUSC 185:13,15,19 213:22 215:23, 24 216:9 226:2, 4</p> <p>MUSC's 216:6</p> <p>myriad 128:5</p> <p>Myrtle 58:2 170:15</p> <p>mystery 45:3</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>named 110:7,12 149:20</p>	<p>names 21:9,12 24:14, 15 70:19</p> <p>nanosecond 163:9</p> <p>narrative 36:23 37:4 128:8 137:15</p> <p>narrow 188:6,7 203:23</p> <p>narrowing 41:7</p> <p>nationally 151:21</p> <p>nature 26:19 39:2 44:16 48:16 53:11 70:13 110:8 175:24 215:10 223:9</p> <p>navigate 32:12 33:19</p> <p>nay 7:16 8:5 10:14 11:7 83:13 230:3</p> <p>necessarily 74:19 113:21 115:11 119:18 156:13 178:16, 17,20 196:7 200:11</p> <p>needed 150:5 251:4</p> <p>needing 141:21</p> <p>nefarious 39:2 54:17</p> <p>negative 20:16 26:15 29:6 44:15,18 250:5</p>	<p>negatively 163:3</p> <p>negotiate 120:6</p> <p>Neil 97:2</p> <p>Nelson 23:9</p> <p>nerdy 76:10</p> <p>nervous 196:25</p> <p>never-ending 14:9</p> <p>Newman 75:7</p> <p>news 108:12</p> <p>newspaper 32:1 62:3 85:22 104:10 125:9 160:4</p> <p>nice 102:19 118:4 226:24</p> <p>Nichol 174:16,20</p> <p>Nichols 42:13 156:7</p> <p>Nichols' 156:14</p> <p>Nicol 160:14,16,19,23 161:2,9,15,20, 23 163:20,21 164:16 165:1,6 166:18,21 167:2,5,15,18 168:19,20,23</p> <p>Nicols 150:8</p>	<p>night 229:2</p> <p>nights 210:18 212:25 219:16</p> <p>Nineteen 240:4</p> <p>no-fault 210:10</p> <p>noise-maker 30:7</p> <p>nominate 7:8,20,22 8:1 14:25 21:4</p> <p>nominated 7:13</p> <p>non-attorney 179:19</p> <p>non-jury 74:23 75:6</p> <p>non-partied 56:5</p> <p>nonetheless 87:19</p> <p>noon 10:3,5 22:2</p> <p>norm 136:19 144:21</p> <p>note 11:15 19:6 21:15 34:5 46:21 48:21 59:20 63:6 71:2 72:5 82:19 87:24 95:4 96:8 101:19 105:13 111:2,9 112:13 122:15 139:6 144:24 146:2 157:24 233:2,21 243:2 244:9 255:2</p>	<p>notebooks 11:22</p> <p>noted 71:9 95:11 145:3 233:18 239:25</p> <p>notes 171:3</p> <p>notice 171:11 176:23 215:1</p> <p>noticed 148:8 171:14 172:9</p> <p>notwithstanding 52:9 205:15 247:23</p> <p>November 233:20 234:7</p> <p>novo 137:23</p> <p>nuance 139:18</p> <p>number 24:10 33:3 53:23 67:19 76:19 77:22 79:10 84:2 93:25 94:4 99:14 118:22 138:4 142:24 146:25 147:3, 13,15,16,19 148:21,22 149:21 151:13 155:15 185:2 247:9</p> <p>numbers 52:1 150:17</p> <p>numerous 179:24</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>nursing 155:6</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>oath 20:6 58:19 131:4,7</p> <p>object 31:7 61:10 85:1 103:17 124:16 159:8 204:7,8, 10,14 205:7,9</p> <p>objected 204:22 212:14, 19 239:6</p> <p>objection 31:10 103:20 124:19 204:17 205:15</p> <p>objectionable 205:7,11</p> <p>objections 12:7,10 133:7 194:15</p> <p>objectively 162:9</p> <p>obligation 114:10 237:15</p> <p>observations 171:23</p> <p>observe 12:23</p> <p>observer 172:11</p> <p>observing 203:24</p> <p>obtain 177:2</p> <p>obvious 163:19</p>	<p>occasions 108:24</p> <p>occupies 175:8</p> <p>occur 22:6 166:9</p> <p>occurred 128:17 212:15</p> <p>occurs 50:19 196:18</p> <p>ODC 41:24 42:2,21 200:13</p> <p>odds 37:4</p> <p>off-the-record 231:22</p> <p>offender 239:4</p> <p>offer 8:15 11:25 35:2 68:18 69:21 93:12 94:11 115:25 161:18 234:16 241:1,4 251:5</p> <p>offered 45:11 68:17 111:10 205:6</p> <p>offering 56:23 60:1 79:2</p> <p>82:23 101:23 118:19 122:2 151:13 157:16 158:3 215:10 250:14 251:25 254:19</p> <p>offers 43:12,14</p> <p>office 8:13 15:6 18:17 23:10 29:16</p>	<p>41:22 42:11,17 54:21 62:16 63:19 64:14,19 66:19 67:18,20 68:15,23,24 75:12,16 77:5 80:2 146:13 182:13 188:4 203:20 248:12, 13,14</p> <p>officer 180:2 218:20</p> <p>officers 195:5</p> <p>offices 219:5 251:21</p> <p>official 227:15</p> <p>officials 27:18</p> <p>oftentimes 13:1 28:3 54:25 141:12 142:22, 23,25 155:1 186:22</p> <p>Ohio 232:12</p> <p>olds 192:20</p> <p>on-line 13:6</p> <p>one's 251:3</p> <p>open 8:23,24,25 9:1, 2,4 13:3 15:25 16:7 20:7 24:9 59:21 82:20 101:20 122:16 157:25 255:3</p> <p>opened 43:9</p>	<p>opening 32:7,9 62:10,19 86:3,20 88:7 104:17 138:24 232:18</p> <p>operated 43:7</p> <p>operating 156:16</p> <p>operations 38:18 39:18 97:22</p> <p>opinion 36:20 37:9 40:18,22 57:4, 10 81:1 145:4 169:4 172:5,10 174:6 186:18 192:8 200:22,24 206:3 222:1</p> <p>opinions 40:14 45:11 46:10 76:4 81:15 116:14, 15,21 152:18</p> <p>opponents 73:16 100:3</p> <p>opportunities 87:2,16</p> <p>opportunity 25:21 27:7 59:13 62:23 66:15 82:12 97:22 101:12 104:16 105:22 107:9,17 122:8 138:17 142:21 157:17 229:19 231:24 232:3 234:6 237:20 238:3 239:15 254:8,20</p>	<p>opposed 7:16 8:5 10:14 11:7 83:13 123:9 230:3 244:21</p> <p>opposing 194:3,12</p> <p>opposition 32:5,15 62:7 86:1 104:14 125:13 126:11 160:8</p> <p>oral 148:23 149:17 235:9,12 240:22,24 245:18,20</p> <p>order 7:2 19:8 102:11 126:25 128:19, 23,24 129:1 137:9 167:17 169:3 184:22,23 185:7,11 187:25 188:1,19 193:13 194:2,3,7,11,12, 13,15,22,24 195:19 196:6,10 199:21 205:17 207:3 210:5,9 216:19 220:23, 24 226:6,8,20 227:6 228:6,12</p> <p>ordered 185:3</p> <p>ordering 189:16 239:6</p> <p>orderly 63:25</p> <p>orders 106:24,25 110:22 129:3</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>188:15 196:19 241:10 245:24 251:12,13</p> <p>original 39:24 40:15 51:18 90:19 194:22</p> <p>Originalism 90:22</p> <p>originalist 90:18</p> <p>ostensibly 55:2</p> <p>outcome 48:1 71:23 81:5 95:25 112:5 145:17 167:11 180:23 181:4 244:1</p> <p>outlier 143:3 144:20</p> <p>outlined 110:1</p> <p>outset 142:17 199:5</p> <p>outstanding 51:25 67:7 114:19 139:1 152:8</p> <p>overarching 41:25</p> <p>overlooked 81:5</p> <p>overrule 110:21</p> <p>overruled 206:2</p> <p>oversaw 162:21</p> <p>overseeing 163:4</p>	<p>overview 14:2 15:19 22:13</p> <p>overwhelming 51:20 171:8,16</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>p.m. 83:18 102:9 123:15 158:14 230:9 255:16</p> <p>PA 251:22</p> <p>packets 103:17</p> <p>pages 13:1</p> <p>paid 27:18 29:20 199:6</p> <p>paint 36:4</p> <p>pandemic 186:4</p> <p>panel 33:1 70:18 76:18 79:24 118:6 236:11 253:11,14,16 254:11</p> <p>panels 245:15</p> <p>paper 13:16 35:8 50:18</p> <p>papers 158:11</p> <p>paperwork 149:16</p> <p>paragraph 130:14</p>	<p>paragraphs 130:8,13,15 131:10</p> <p>paramount 137:4 187:10</p> <p>parent 187:3,4 216:23 225:19</p> <p>parental 213:1</p> <p>Parenthood 69:4</p> <p>parents 216:24 225:17</p> <p>part 17:4,10 31:9 51:3 58:6 61:12 64:11 67:13 85:2 87:8 88:12 89:2 103:18 117:20 118:25 119:7 124:17 126:6 129:15 148:6 150:15 159:9 160:25 164:20 165:3 169:20 172:19 173:13 177:11 183:25 197:8 204:9,17,23 205:8 208:11 223:19 224:6,10 230:25 231:3 232:2 240:17 242:20</p> <p>part-owner 90:8</p> <p>part-time 120:21</p> <p>partial 241:8</p>	<p>partially- affirmed 116:18</p> <p>partially- reversed 116:18</p> <p>participant 52:23</p> <p>participate 189:13,17 191:18</p> <p>participated 29:10 79:3 147:5,14</p> <p>participating 245:20</p> <p>parties 48:4 50:23 65:5 66:11 71:25 96:3 112:8 145:20 191:17 200:12 202:2 231:11 235:20 244:4</p> <p>partner 63:18 97:1 104:22 219:3,4</p> <p>partners 138:23</p> <p>parts 155:21,22</p> <p>party 40:3 45:3 46:7 57:13,14 64:17 194:3 200:14, 17,18,25 205:7 214:9 220:12</p> <p>passed 22:9 67:21</p> <p>passes 35:16</p>	<p>passing 100:23</p> <p>passion 175:2 212:5 233:14 250:25</p> <p>passionate 139:17 152:24</p> <p>passions 127:15</p> <p>past 13:5 16:6 28:16 33:6 34:16 50:6 95:11 105:24 251:1</p> <p>paternal 189:3 228:15</p> <p>path 88:11</p> <p>patience 235:19 255:7</p> <p>patient 44:8 162:12 242:3</p> <p>Patrick 9:17</p> <p>patriotic 28:22</p> <p>pattern 150:8</p> <p>Paula 9:14</p> <p>pause 142:18 163:22 217:14 227:7</p> <p>pay 81:23 210:10</p> <p>paying 80:2</p> <p>PCR 75:21,24 76:4</p> <p>PDQ</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>16:1 17:16 31:13 63:7 70:9 74:18 87:25 105:15 110:6 139:7 143:23 233:3,18</p> <p>peaceful 63:25</p> <p>pediatric 216:6</p> <p>pediatrician 62:13</p> <p>Pee 12:3 16:24 243:2</p> <p>peers 173:9</p> <p>pejorative 53:1</p> <p>penalty 155:5</p> <p>pending 7:12 8:1 10:8 48:1 71:23 95:25 112:5 128:23 145:17 169:3 229:25 244:1</p> <p>people 13:15,24 25:4, 13 32:19 33:3, 12 41:8 43:15, 16 44:14 48:11 51:19,21 53:8 58:21,23 65:11 79:18,20,21,22 80:2,6,22 92:14 96:17 106:19 107:12 108:15 115:4 136:22 137:3 139:19, 22,24 144:10,13</p>	<p>148:13 150:10 151:13,17 152:11,24 154:1,17 155:15 166:14 170:21 173:25 174:8,12 175:24 178:16 226:1 238:8 241:17 244:24 249:14 250:4 252:7</p> <p>peoples' 65:24 165:23 177:23 178:22</p> <p>percent 149:25 219:16</p> <p>percentage 149:17</p> <p>perception 42:6 55:19 108:18 120:17</p> <p>perfect 108:4 178:14</p> <p>perfection 176:16</p> <p>perfectly 130:3,6</p> <p>period 10:3 41:5 119:1 120:18 152:16 175:17 193:14 203:10</p> <p>person 18:23 19:23 34:19 36:14 43:11,14 125:15 170:15 171:12 172:22 176:11 181:6 220:1,3 237:23</p> <p>personal 8:19 16:1 25:15</p>	<p>30:19,22 31:15 33:7 34:6 61:1, 17,20 84:18 85:8,11,14 95:1 103:8,24 104:2 124:9,23 125:1 132:18 143:2,22 147:25 159:1, 15,18,21 172:10</p> <p>personality 88:22</p> <p>personnel 250:2</p> <p>persons 120:16</p> <p>perspective 29:11 38:2 67:17 79:20 80:20 90:10 92:2 101:2 144:8 171:22</p> <p>persuasion 94:19</p> <p>perusing 191:25</p> <p>petition 40:3,5,8 128:18</p> <p>petitioning 161:25</p> <p>petitions 39:23,25</p> <p>Philip 88:1</p> <p>Phillip 85:9,12,15 247:14</p> <p>philosophy 35:2,3,7,8 36:1 44:3 56:14 65:2 90:14 107:6 141:4 235:17</p>	<p>phone 25:2 26:18 27:7 48:11 219:17</p> <p>phrase 176:23</p> <p>physical 15:17 33:9 47:3 71:7 95:6 111:4 131:22 132:10 145:1 185:13 243:8</p> <p>physically 226:4</p> <p>physician 44:8</p> <p>pick 55:5</p> <p>picture 57:10 81:22 82:5</p> <p>Piedmont 12:3 16:25 111:2,9,10</p> <p>pike 115:1</p> <p>pilot 44:11</p> <p>pin 193:22</p> <p>place 52:18 63:25 88:24 90:24 101:2 114:24 153:25 193:19 194:11 235:6</p> <p>places 79:21 121:7</p> <p>plaintiff 70:15 75:2 110:15 173:4</p> <p>plaintiff's 37:9,11 148:17</p>	<p>152:21 195:4 210:13 234:10 245:25 246:14, 22</p> <p>plaintiffs 23:20</p> <p>plan 44:11 237:9</p> <p>plane 44:12 215:11,13</p> <p>Planned 69:4</p> <p>plans 237:12</p> <p>play 45:22</p> <p>Player 183:5,6,8,10,11, 14,18,21,22 184:2,10,16 185:22 186:3,13 187:15,20,25 188:9,13,18,25 189:22 190:1,7, 11,14,22 191:5 192:9,13,22,24 193:2,7,24 194:5,8,16,21, 24 195:10,16,21 196:1,4,12,15, 21,25 197:7,19 198:6,7,10,15, 17 199:3,8,10, 17 200:1,21 201:3,13,15 202:8,11,15,16, 18,24 203:3,13, 15,25 204:7,13, 24 205:3,12,14, 18,24 206:13, 20,22,25 207:2, 8,11,14,17,24,</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>25 220:21 221:1 223:8 226:22</p> <p>players 172:15</p> <p>plays 240:2</p> <p>pleads 239:3</p> <p>pleas 41:13 78:7 99:7</p> <p>pleasure 139:1</p> <p>pled 239:1</p> <p>pledge 47:25 68:11 71:22 95:24 112:4 145:16 243:25</p> <p>pledges 22:4</p> <p>plenary 45:25</p> <p>plenty 171:19</p> <p>podium 29:10 69:10 125:19 135:19 155:13</p> <p>point 7:19 9:6 11:21 17:4 20:23 22:3 27:1 28:18 30:9 31:12 33:23,25 34:15 42:11 51:5 52:2 55:12 63:3 68:3 77:21 80:23 83:6,25 87:21 93:22 97:9 98:7 99:18 102:6 105:8 114:8 117:14</p>	<p>125:14 126:7 127:15 133:6 138:14 140:4 147:13 148:7,10 150:6 151:5,12 160:9 164:6,20 174:4 178:23,24 185:24 188:5, 21,25 191:7 192:7 194:21 196:5 209:3,5 210:5,22 211:2, 13,14 212:12 213:7 214:7,8 215:5 220:17 221:1,2 222:7 232:17 233:15 234:19 248:11 251:3,9,10 252:2</p> <p>pointed 133:21,25 214:16</p> <p>pointers 58:16,17</p> <p>points 226:25</p> <p>policy 35:18,21 36:12 45:6 92:11,15 141:9</p> <p>policy-making 35:11,23</p> <p>political 35:15,21 36:5 37:7,14 45:2,7 50:19 53:4 68:18,24 69:1,8, 11 92:13 94:9, 13,15,19 229:4</p> <p>politically- charged</p>	<p>69:12</p> <p>politics 27:18</p> <p>pool 214:2,5</p> <p>poor 182:7 197:7</p> <p>portal 235:10,13 240:23,25</p> <p>portion 59:12 82:10 101:11 122:7 150:20</p> <p>pose 56:24 120:2</p> <p>posed 56:2</p> <p>position 21:19 30:12 34:9 36:23 37:7, 8 38:22,23 48:16 60:1,18 63:10 88:3 102:17 105:18 116:1 139:9 148:10 178:21 181:4,5 198:23 205:14,17 233:6,14 239:8 245:25 246:10, 12 250:14,15 254:19</p> <p>positions 8:15,16</p> <p>positive 18:6 20:16 43:21 67:1 92:23 93:18 109:16 239:21</p> <p>positively 142:10</p>	<p>possession 237:13,15</p> <p>possibility 62:24</p> <p>possibly 134:24</p> <p>post-trial 75:4</p> <p>posture 57:1 137:23 156:24</p> <p>potential 19:19 66:22 73:22</p> <p>potentially 59:18 81:3,4 82:17 101:17 122:13 157:22 254:25</p> <p>power 92:13 172:16 187:12 201:12</p> <p>powers 35:5,14 37:15 49:24 65:24 94:21</p> <p>practical 155:1 157:5</p> <p>practice 24:16 34:10 44:6 63:11 64:2, 11,13,19 66:9 68:7,14 75:14 77:4 78:1,12 88:4,20 89:6,15, 22 90:5 93:6,24 94:4 98:18,23 99:11,15 101:9 105:18 106:5,18 107:1 113:8,25 116:25 120:22 134:9 136:16</p>	<p>137:13,14 139:10,16,21 140:8 146:19 151:21,23 152:11 154:23 198:14 233:7 245:9 248:4 249:23,24</p> <p>practiced 93:6 251:7,17</p> <p>practicing 79:8 168:1 249:21</p> <p>practitioner 111:14 151:25 247:18</p> <p>praise 247:21</p> <p>praises 148:18</p> <p>prayer 116:1</p> <p>praying 229:1</p> <p>preacher 58:1</p> <p>precedent 89:25 90:6 185:25 187:9,19 188:11,18 191:23</p> <p>precedents 186:21</p> <p>precedes 189:15</p> <p>preceding 15:9</p> <p>precious 216:19</p> <p>predecessors 42:19 43:7</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

preeminent 58:11	presentation 13:20 14:3,21 28:4 204:4	32:2 62:4 85:23 104:11 125:10 160:5 176:23 245:8	25 130:5,12	24 32:11,13 33:11,19,23 40:14 41:3 48:6 49:17,19 53:5,8 59:12 72:2 76:4 79:3,16 82:11 84:2 87:8,13 95:2 96:5 97:15 98:8 99:6 101:12 112:10 122:7 123:14,21 125:16 129:1,21 130:24 131:2 134:12,19 135:1 138:5 140:9 145:22 149:1,2 153:3 157:15 170:24 172:7 178:15 179:24 196:19 197:20, 21 212:6 218:9 230:13 244:6
preference 152:6	presented 20:5 22:9 37:17 39:3 45:18 67:21 165:9 204:2 231:9 235:19	PRICE 103:3,25 104:3	pro-business 36:21 37:8	processing 39:22
preferences 94:16,19 95:1	presently 234:24	pride 106:24	probate 106:20 113:11 153:21	produce 45:4
prejudice 134:16 135:10	presents 64:24	primarily 35:8 120:6 142:13 184:25 249:24	probative 203:18	produced 52:8
prejudiced 134:19,21 135:5	preservation 140:25	primary 64:16 98:15,17 185:7	probing 182:3	profession 51:14
premise 45:24 54:2	preserve 63:24 91:12	principles 162:14 242:5	problem 79:10 108:21 186:14 198:21 236:3,9	professional 8:20 15:16 33:8 46:24 64:6 71:5 89:4 95:8 106:15 111:6 131:21 132:9, 12,15 140:3 143:3,5 162:5, 13 172:20 185:1 215:22 228:23 233:24 243:5
preparation 19:24	preserved 246:17	prior 38:8 44:5 47:18 48:1 71:22 95:25 110:22 112:5 145:17 156:8 191:19 210:5 216:9 244:1 245:21 253:9,25	problems 171:16 241:12	professionalism
prepare 13:19 87:4 89:11 98:25 245:24	presided 110:13 241:11	prison 70:16 237:23	procedural 25:22 26:7 77:23 162:15 223:23 230:16	
prepared 78:19 90:6 99:5 142:15 161:16, 21 172:12 174:5 246:5	president 62:15 148:14 216:24	private 20:19 43:12 64:11,18 66:9 68:14 75:14 77:4 78:1 89:22 93:6,23 99:14 106:5,17 107:1 120:22 140:7 146:19	proceed 14:2 62:21 127:7 129:5,25 130:5 206:21 230:18 232:19	
prepares 74:12	presidents 23:19	privilege 140:6 156:7	proceeded 130:25 237:2	
preparing 245:20,23	press 211:5	pro 18:14 110:17 127:3,7 129:6,	proceeding 129:24 130:12	
prerogative 35:12 37:13 229:4	pressure 29:1		proceedings 13:5,14 164:5 167:21 175:3,11 223:12	
prerogatives 204:25	presumed 46:4		process 12:22,25 13:3, 19,21,25 14:3 15:20,22 17:9 19:19 22:14,16 23:2 24:5,20 26:4,17,22 27:15,19,21 28:7 29:10,13,	
Presbyterian 58:2 148:15	presumption 46:6			
present 11:17 32:6 62:7 80:13 86:1 104:14 107:17 125:13 160:9 169:7 187:6 219:18 232:7 238:12	pretty 51:2,8 114:11 202:18 231:12 254:2			
	prevailed 127:5 128:21			
	previous			

<p>23:5,6 27:10 44:24 137:7 173:5 174:7 229:6</p> <p>professionals 215:21 216:8</p> <p>professor 27:4</p> <p>professors 23:17</p> <p>profile 68:21</p> <p>progressed 88:19</p> <p>progresses 66:20</p> <p>progressive 227:20</p> <p>prohibited 19:8 185:12</p> <p>projecting 128:14</p> <p>promise 178:14</p> <p>promote 42:9 166:5 193:9 197:5</p> <p>promoted 162:3,4 219:21</p> <p>promoting 37:10 166:6</p> <p>promotion 166:8</p> <p>promptly 70:22</p> <p>proper 35:13 138:2,3 202:1 204:5 234:18 238:3 242:1,12,16 246:16 253:25</p>	<p>properly 231:9</p> <p>property 252:19,21,23,25 253:1</p> <p>proposed 196:11</p> <p>propriety 221:22</p> <p>prosecutions 99:4</p> <p>prosecutor 99:3</p> <p>protect 163:14 216:8,10</p> <p>protected 65:24 173:12 195:15</p> <p>protection 119:15,21 163:4</p> <p>proud 70:7 143:6,7</p> <p>provide 22:5 137:7,20 165:3 169:1 209:19 225:14 248:21</p> <p>provided 126:5,14 136:3, 10 165:15 183:18 206:1</p> <p>providence 92:16</p> <p>provider 193:18</p> <p>providers 185:16 210:19</p> <p>providing 225:13</p> <p>proving 46:8</p>	<p>psychological 189:17 191:18 209:6 210:6,8, 11,17,21</p> <p>PTO 216:25 218:20</p> <p>public 8:21 12:13 13:6, 20 14:22 18:8 20:6,10,11,22 23:19 40:21 42:6,9 43:1,4 50:16 53:4,9,12 63:17 68:1 75:3 88:13 89:1 91:17 141:9 154:3 169:4 217:1 244:25</p> <p>public's 42:4</p> <p>publically 120:19</p> <p>publicly 50:20</p> <p>published 16:9 21:24 116:13,15</p> <p>pulling 44:8,9,11,12,13</p> <p>punish 186:14 201:4 216:13</p> <p>punished 201:11</p> <p>punishing 201:4</p> <p>punishment 239:8</p> <p>punt 74:25</p> <p>purpose 8:22 154:12</p>	<p>161:3 169:24 184:3 191:1 208:15 211:18 224:13 233:14 251:1</p> <p>purposes 126:17</p> <p>pursuant 7:20 8:11 59:14 82:13 101:13 122:9 129:2 157:18 254:21</p> <p>pursue 87:2 100:20 178:8</p> <p>push 143:16</p> <p>pushed 119:19</p> <p>pushing 19:23</p> <p>put 20:14 22:19 48:13 52:4 69:17 88:13 89:13 99:19 148:24 164:16 176:18 193:22 194:14 198:1,22 199:18 210:8, 21,22 214:19 224:6 225:23</p> <p>Putnam 9:24 33:13 87:11</p> <p>puts 42:25 86:23</p> <p>putting 97:14 148:25 173:2</p>	<p style="text-align: center;">Q</p> <p>qualifications 12:5,17 15:15 31:22 47:2 58:9 59:22 61:24 71:7 82:21 85:18 95:6 100:17 101:21 104:6 111:4 122:17 125:5 131:20 132:4,5 145:1 158:1 159:25 161:4 169:25 184:4 208:16 211:8,13 217:14 224:14 243:8 255:4</p> <p>qualified 8:16 21:4,5,8,9, 12,16 46:23 47:2 68:6 71:4,6 95:5,7,12 111:3, 5 113:2 114:22 118:19 145:1,2, 4 161:6 170:2 184:6 208:18 224:16 241:2 243:4,7 245:4 246:7,8</p> <p>qualities 59:3</p> <p>quality 41:1 50:13 77:18</p> <p>question 8:1 10:8,10 17:16 28:12 30:20 42:24,25 56:2,3,8,24 58:9,13 74:17 75:17 81:19</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

83:9 97:25 100:13 113:17 114:18 115:10 118:1 120:16 127:16 135:2 151:9 178:12 198:13 203:18 204:10 217:8, 16,19 223:5,14 228:24 229:25 230:16,18 235:15 237:17 238:18,19,24 240:18 243:18	72:9,11 73:12 75:20 77:11,23 78:22 81:16 87:22 89:12 93:19 96:12,14 97:10 101:4 105:9 111:20 112:17,19 117:24 118:21 122:3,6 123:6 133:11 134:4 136:3 138:9,10 146:6,10 149:7 166:21 168:16 174:15 181:19, 24 188:23 203:6 206:24 218:5 229:15 231:14 232:20 244:13, 15 252:4,8 254:15	71:9 145:4 226:3,6 227:6 239:22,25	Rankin 7:22 8:2,8 10:9 11:4,16 14:12 29:8 49:4,5,6,7, 10 72:12,13,23 73:1,4,8,11 77:9 78:3 82:1 99:22, 23,24 134:6,13 135:9 146:10,11 148:6,8 194:6 195:24 198:6,8, 12,16 199:1,5,9, 11 207:9 232:9 244:16,18 249:16	read 13:15 36:22 56:12 57:10,18 69:5 76:4 80:24, 25 113:4 118:4, 24 132:2 133:18 136:12 152:4 172:12 194:13 209:3,25
question-and- answer 50:11	quibble 197:3	R	Rankin's 250:9	readily 134:14
questioned 176:20 177:17	quick 14:9 30:1 42:23 46:19 106:12 145:6 158:13 198:13	race 73:16 152:8 244:21	rape 238:25	reading 78:18 188:19 191:15 192:7,9 211:16 234:10 252:14
questioning 26:18 48:24 72:7 96:10 105:4 112:16 146:5 147:11 244:12	quicker 79:6,19 109:6	races 52:23	rare 154:5	ready 14:15,17,18 74:14 80:19 139:2 147:25
questionnaire 16:2 25:15 30:22 31:15 34:7 61:2,17 84:18 85:8,11 103:8,24 124:10,23 159:2,15,18	quickly 12:20 26:2 40:20 43:3,11 47:6 66:13,16 76:14 80:5 86:16	radar 39:4	rarely 51:9	Reagan 73:19
questions 7:12 20:13,16 24:19 25:5,23 26:2,3,5,7 27:3, 6 28:18,20 34:2, 13 38:20 41:15, 18 46:16 49:2, 15 57:21 59:8 62:21 63:2 65:16 71:12	quorum 11:17	radars 39:8	rationale 189:16,20	real 46:18 88:20 152:23 165:23 185:2 245:10
	quote 36:21 67:2,5	raise 30:14 60:19 84:11 102:25 123:25 125:21 130:3,6,17 135:20 158:19 160:17 169:11 183:12 208:3 222:22 242:13, 22	Ray 97:1	reality 42:7 120:17 141:18 156:15
		raised 18:6,7 27:6 48:23 72:6 75:3 96:9 109:22 112:14 119:3 130:2,3 142:13 146:3 191:9 230:17 241:3,24 242:4 244:10	re- 191:6	realize 25:9 33:12 55:1 240:9 249:7,21
		raising 55:12 195:1	re-litigate 161:7 170:3 184:7 192:25 208:19 212:2 224:17	realized 234:7
		rambling 110:19	re-litigating 214:9	realm 118:20 167:9
		ran 52:16	re-verbalize 164:14	reap 242:6
		randomly 25:4	reach 25:1	reason 100:16,20 143:16 149:21 151:18 177:25
			reacting 202:5	

<p>179:6 184:22 189:25 199:24 213:21 253:1</p> <p>reasonable 46:9 92:25 187:14</p> <p>reasoning 141:16 200:3 213:15</p> <p>reassign 53:25</p> <p>recall 14:14 57:9 66:9 70:24 76:19 79:3</p> <p>receive 19:14 77:3</p> <p>received 18:9 20:21 32:4 43:19 47:25 62:6 66:23 71:22 85:25 92:20 95:24 104:13 109:13 112:4 123:19 125:12 142:7 145:16 160:7 234:15 239:18 243:25</p> <p>receives 20:3 78:6</p> <p>receiving 81:3 252:16</p> <p>recent 27:17 213:10 245:22</p> <p>recently 42:14 108:1,2 177:20</p> <p>recess 30:4 102:9 158:14 212:17</p>	<p>recessed 255:15</p> <p>recognition 51:2</p> <p>recognize 7:3 9:6 11:19 27:15 33:25 63:4 68:20 81:20 86:14 87:16 96:16 104:18 105:9 113:18 125:16 137:2 153:11 160:10 230:19 232:2,4,18 246:20</p> <p>recognized 23:17 70:17 134:17 203:22</p> <p>recognizing 86:21 102:16 155:10 224:1</p> <p>recommendatio n 16:5</p> <p>record 11:14,15,19 12:7,8,13 17:4, 10,14 19:17 20:14 31:9 34:5, 7 48:22 49:10 59:20 61:12 63:6,8 68:1 72:5 78:19 80:25 82:19 83:22,23 85:3 87:24 88:1 96:9,25 101:20 103:18 105:14, 15 111:12 112:14 122:15 123:17 124:17 126:7 139:6,8</p>	<p>146:3 151:7 157:25 159:10 160:25 164:11, 15 168:11 169:20 176:18 180:14 182:24 183:25 192:11 193:5 194:14 196:18 204:5,9, 11,18,23 205:8 208:11 209:20, 22 210:8,12,13 211:18 212:14, 18 214:13,19 218:19,20 219:8 221:9,13 224:2, 6,7,10 226:19, 20,21,22 228:7 230:14,25 231:4 233:2,4 234:11 235:3 236:17 237:4 244:10 245:7 246:15 247:12 252:19, 20 255:2,16</p> <p>recorded 13:6</p> <p>recording 182:23</p> <p>records 12:1 20:2 21:1 81:15 151:4 181:9</p> <p>rectify 166:13</p> <p>reelected 52:15,16</p> <p>reelection 8:23,25 9:2,3,4 244:20</p> <p>reference 32:10 119:24</p>	<p>148:12 151:12 247:13</p> <p>referenced 172:23 173:3 183:1 252:10</p> <p>referencing 116:13</p> <p>referred 38:22</p> <p>reflect 35:17 182:24 196:19 245:7</p> <p>reflective 69:23</p> <p>reflects 45:4 212:18</p> <p>refocus 227:21</p> <p>regarded 111:13</p> <p>region 16:25 24:10,16</p> <p>regions 24:8,10</p> <p>register 239:4</p> <p>regular 115:3,14</p> <p>regularly 50:10 134:10 240:11,13</p> <p>rehearing 40:2</p> <p>reinstated 249:4</p> <p>related 11:1 128:10 183:6 211:7 223:10 240:5,19</p> <p>relates 118:24 154:22</p>	<p>186:23 201:21, 22 203:9 204:20 222:10</p> <p>relating 188:11</p> <p>relationship 186:19</p> <p>relative 18:3 142:14 189:3 196:3 211:15 228:15</p> <p>release 59:21 82:20 101:20 122:16 157:25 255:3</p> <p>released 13:6,8</p> <p>releases 12:25</p> <p>relevant 93:12 220:5,9</p> <p>relied 165:7 205:16</p> <p>Relocation 136:15</p> <p>rely 211:21 235:4</p> <p>relying 165:8,13,14,20 199:23 234:25</p> <p>remain 59:21 82:20 101:20 122:16 157:25 255:3</p> <p>remainder 138:15</p> <p>remaining 102:5 145:3 183:4</p> <p>remand 66:22</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

remarkably 235:8	26:12 27:9 51:6 52:19 59:21	106:19 126:16 127:6 129:7,9,	240:15	35:11 38:3
remarks 86:20 105:3 138:24 232:18	82:20 101:21 122:16 158:1 193:18 206:7,16 211:22 255:3	25 130:4,11 131:5 132:21 149:25 167:3 184:18 195:11	requires 26:23 28:10 46:5 221:3 246:2	44:23 58:21 93:2 100:16 107:7 138:11 191:2 211:12,23 215:9 217:10 218:2,4,24 231:15 242:9
remember 38:15 50:9 100:10 119:23 147:18 244:19	reported 46:22 56:20 71:3 111:3 144:25 243:3	representing 235:5	requiring 8:12	respected 72:18 250:7
remind 59:13 82:12 101:12 122:8 157:18 254:20	reporter 31:13 182:23	represents 142:24	requisite 234:8 240:14	respectful 37:15,23 162:12
remiss 32:16 81:20 207:7 217:11	reporting 193:17	Republican 35:16,17	reread 228:5,6	respectfully 70:2 160:25 169:20 183:24 208:11 221:10 224:10 230:25
remnant 57:19	reports 12:2,15 16:6,15, 16,17 17:1,3,6, 11 18:9,10 185:15,16 216:1	reputation 15:17 46:25 71:5 95:9 111:7 131:21 132:9 162:6,18,22 164:19 166:15 229:6 243:6 247:17	research 54:3 64:20 76:15 80:25 106:7	respecting 35:23
removed 212:23 219:15 225:19 248:5	represent 184:19	request 10:1 128:1 160:25 164:24 169:20 183:24 208:11 224:10 230:25 239:15	residence 34:10 63:10 88:3 105:18 139:10 233:7	respite 230:11
Removing 219:8	representation 127:14 171:5	requested 171:2 186:5	residences 248:10	respond 34:2 41:15 44:1, 4,15 50:14 56:13 58:14 67:11 87:21 142:16 182:20 221:6 240:7 241:25
render 180:24	representative 7:3,4,13 28:21 42:17 97:11,13 113:17 120:9 123:5 188:24 189:23 190:2,9, 12,16,24 191:13 192:6 199:13, 14,22 200:6,23 201:13,16 202:9,13 203:5, 12 214:4,6 220:1,6,10,22 222:7 229:24	require 164:1	resident 15:8	responded 43:25 127:1
repeat 243:19 252:11	repeated 193:12	required 7:5 177:12 186:9 194:3 229:7 233:17 239:11	resolution 22:8 40:24 66:22 79:16	respondent 248:22
repeated 193:12	repetitious 215:10	requirement 142:3	resolve 64:24 89:24 91:4	respondent's 246:24
replace 95:2	replace 95:2	requirements 34:9 63:10 88:2 105:17 131:20 132:4,5 139:9 203:20 233:6	resolved 230:18	respondents 235:1
reply 133:21,23 134:2 136:10 137:11	reply 133:21,23 134:2 136:10 137:11		resolves 254:12	responding 45:13 182:3
report 10:1,2,9,17,20 12:5,11,12,17, 25 13:7 18:16, 17 20:8 21:14, 21,22 22:1,6	report 10:1,2,9,17,20 12:5,11,12,17, 25 13:7 18:16, 17 20:8 21:14, 21,22 22:1,6		resolving 90:2	response 42:23 44:5 68:19 69:21

<p>93:13 94:11 109:24 126:5 136:7,11 168:25 221:3 230:21,24 231:1,3,4 235:3 241:4 246:9</p> <p>responses 44:18</p> <p>responsibility 36:13 53:17 64:16 162:8 191:4 195:6,8, 14 227:20 228:2</p> <p>responsible 36:25</p> <p>responsive 97:24</p> <p>rest 54:22 63:21 117:19 122:22 164:9 207:16 253:4</p> <p>restrain 200:17 201:20, 22,24</p> <p>restraining 200:18</p> <p>restraint 35:7,9</p> <p>restraints 56:15</p> <p>restriction 188:21 197:22</p> <p>result 37:10 39:10 57:18 70:17 81:2 143:21 150:17 161:8 170:4 184:8 208:20 224:18 236:12</p>	<p>resulted 36:9</p> <p>results 16:16 17:23</p> <p>resume 123:13,20</p> <p>resuming 230:12</p> <p>resumption 230:19</p> <p>retained 57:19</p> <p>retire 234:5</p> <p>retired 9:5 15:4 21:8,13</p> <p>return 127:1</p> <p>reunification 225:15</p> <p>Revenue 89:19 94:3</p> <p>reversed 75:2 81:6 116:16,17 117:3,11</p> <p>review 8:12 19:16 33:9 80:4 81:3 82:15 103:8 126:24 133:5 156:17 161:4 169:25 184:4 207:3 208:16 224:14 239:15 246:13, 15 254:23</p> <p>reviewed 253:12</p> <p>reviewing 81:15 161:10 165:18 170:7 184:11 196:8</p>	<p>208:22 224:20 253:18,20 254:6</p> <p>reviews 78:5</p> <p>revisit 223:5 229:10</p> <p>revisited 186:12</p> <p>rewarding 105:24</p> <p>rewrite 51:13</p> <p>RGG 226:4</p> <p>rhetorical 56:25</p> <p>Richland 75:6</p> <p>rid 80:18</p> <p>ridicule 189:3 228:15</p> <p>riding 125:16</p> <p>rise 127:9 128:10</p> <p>road 90:4</p> <p>robe 58:5</p> <p>robeitis 58:5</p> <p>Roberta 172:24 220:13 222:10</p> <p>role 35:11,13,24 42:19 75:21 90:11 91:16 92:1,4,19 94:20 142:5 234:22,23</p>	<p>244:22</p> <p>room 52:6 144:10 158:12 210:7 230:7</p> <p>Ross 9:21</p> <p>Rotaries 51:1</p> <p>Rotary 50:5</p> <p>rounded 141:2</p> <p>row 86:7 213:25</p> <p>RSV 72:25 73:1,2</p> <p>rude 129:20 133:2 164:6 194:18</p> <p>rule 19:3 26:2 35:23 37:16 39:14 47:15,18 50:18 51:12,13 63:24 80:14 88:25 91:12 107:7 142:6 156:25 180:5,6 235:18</p> <p>rule-maker 137:24</p> <p>rules 19:8 20:20 40:11 43:7 51:11 52:18 141:7 162:15 164:1 167:7 194:1 234:12,13 236:24,25 237:6 246:15</p> <p>ruling 76:14 107:8</p>	<p>141:20 154:20 155:1 186:15 231:6 246:1</p> <p>rulings 152:21 157:3,6 168:3,5 231:8 246:12 248:25</p> <p>run 9:12 18:17 46:18 47:7 48:11 50:15 53:23 71:13 107:14 109:20 111:21 144:23 145:6,8 146:13 243:11</p> <p>running 15:25 32:14 48:12 74:16 129:5</p> <p>rush 80:14 81:2</p> <p>rushed 80:15 81:4</p> <p>Rutherford 28:21 188:23,24 189:23 190:2,9, 12,16,23,24 191:9,13 192:6 199:13,14,22 200:6,23 201:13,16 202:9,13,21 203:4,5,12,25 205:21 214:4,6, 13,25 219:25 220:1,6,10,20, 22</p> <p>Rutherford's 215:9 222:7</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

S	<p>samples 16:6 69:2</p> <p>sanctions 127:2 138:3</p> <p>Sanders 65:14</p> <p>Sandhills 62:14</p> <p>Santee 150:16</p> <p>sat 29:9 156:12 236:11,24 246:11 248:25</p> <p>satisfaction 175:11 211:12</p> <p>satisfied 203:19</p> <p>saving 224:7</p> <p>SCAJ 23:19</p> <p>Scalia 90:25</p> <p>scared 144:16</p> <p>SCE&G 150:16</p> <p>scene 33:14</p> <p>scenes 32:18</p> <p>schedule 86:22 96:19 102:6,18 119:17 121:3,18</p> <p>scheduled 10:5 121:2</p> <p>scheduling 119:13 120:3 121:11,22</p>	<p>122:20</p> <p>schemes 37:13 205:25</p> <p>school 25:24 27:3,4 32:20 50:7 64:9 65:15 86:25 87:1,3 90:9 106:17 170:14 180:19 182:5 216:25 217:1,2</p> <p>schools 50:4</p> <p>Scott 23:8</p> <p>screen 8:22 11:23 14:25 15:3</p> <p>screening 8:22 9:10,13,17 12:21,25 13:12 14:3 15:20,22 17:2 18:5 19:13, 17,21 20:12 21:20 22:10 24:20 30:2,10 47:13 48:2 59:12,18 60:11, 12 62:22 71:19, 23 82:11,18 84:2 95:21 96:1 101:11,17 102:5 112:1,6 122:7, 13 123:14,20 145:13,18 157:23 230:13, 20 243:17,22 244:2,19 255:1, 14</p> <p>screenings 32:2 60:7 62:4 85:23 104:11</p>	<p>125:10 160:5</p> <p>scrutinized 162:17</p> <p>Scstatehouse.gov 13:7 28:1 177:6</p> <p>Scstatehouse.gov. 177:2</p> <p>search 32:1 62:3 85:22 104:10 125:9 160:4</p> <p>seat 8:23,24 9:2,3,4 15:25 16:7 21:5 32:14 47:7 60:18 71:14 84:7 95:15 102:22 111:21 123:23 142:15 145:8 160:12 223:25 243:11 249:10</p> <p>seated 155:3</p> <p>seats 8:24,25 9:1 11:23</p> <p>seconded 7:11,25 11:4 83:10 229:24</p> <p>secondguess 65:19</p> <p>seconds 10:11 123:5 218:1,25</p> <p>secret 53:7</p> <p>Section 47:11 71:17 92:12 95:19 111:24 145:11</p>	<p>243:15,20</p> <p>seek 8:16 22:3 47:16 69:16 70:5</p> <p>seeking 110:16 166:1</p> <p>seemingly 86:15</p> <p>sees 197:25</p> <p>segments 150:19</p> <p>segue 45:1</p> <p>select 36:3 50:1 135:7</p> <p>selected 25:3</p> <p>Selection 8:10 12:21 20:3 22:25 31:14,17, 21 61:16,19,23 83:21 85:7,10, 13,17 103:23 104:1,5 124:22, 25 125:4 159:14,17,20,24 177:7</p> <p>self-serving 49:17</p> <p>sell 177:3</p> <p>seminar 108:10</p> <p>Senate 9:13,22 55:22</p> <p>senator 7:10,11,21,22, 24 8:1,8 10:9 11:4,16 14:11 29:8 49:4,6,7, 10,24 50:12</p>
----------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>55:24 72:12,13, 23 73:1,4,8,11, 23 75:13 77:9 78:2,22,23,25 82:1 83:9,10 99:22,23,24 117:24 118:1,4, 15,16,17 119:22 120:12 123:4 134:6,13 135:9 146:10,11 148:6,8 166:22, 23 167:3,6,16, 24 168:13,15 185:21,22 186:8,16 187:17,23 188:5,10,17 189:18 190:3 191:24 192:14 193:20,21,22,25 194:6,10,20,23, 25 195:13,20,24 196:2,5,13,17, 22 197:20 198:5,6,8,12,16 199:1,5,9,11 201:23 203:23 204:8,14 205:1, 4 207:6,9,13,16, 19 217:15,18 218:5,7 232:9 244:16,17,18 249:15,16,17</p> <p>send 17:18 53:19 182:12</p> <p>senior 23:23 64:15</p> <p>sense 13:10 34:23 35:16 53:1 58:21 59:1</p>	<p>63:22 74:9 80:7 87:6,7 133:2</p> <p>sentence 222:4</p> <p>separated 225:17</p> <p>separately 126:18</p> <p>separation 35:5,14 37:15 49:24 65:24 94:21</p> <p>September 162:21 212:21</p> <p>series 118:21 128:20</p> <p>seriousness 215:3</p> <p>servant 38:10</p> <p>serve 7:7 15:3 19:22 33:10 37:23,24 63:15 64:4,15 70:4 88:8,17 93:5 100:15 105:20 106:3,13 139:22,25 149:4 228:4 233:9,23 240:6,15,20 245:18 246:8 250:24</p> <p>served 18:14 23:12 24:3 34:18,20 38:2,10 70:23, 24 93:6 110:10, 24 127:15 147:8 233:13 234:13 240:21 244:22 247:5 250:7</p>	<p>serves 13:23</p> <p>service 34:17 53:25 59:25 63:17 69:16,17 73:22 82:24 88:13 91:13 122:2 148:19 153:12 157:16 158:3 206:12 218:20 234:16 240:23 241:1 245:11 254:18 255:7</p> <p>services 110:8 223:18 251:4,5</p> <p>servicing 185:8</p> <p>serving 62:24 63:20 64:22 89:1 118:25 139:23 233:19 234:1 245:22</p> <p>session 11:1,4,10,12,14, 18 14:12 20:22 83:8,11,16,18, 24 84:1 121:6 123:6,12,15,18 229:22 230:1,9, 12,15</p> <p>sessions 41:13 78:6 106:21 120:25 237:1</p> <p>set 16:11 43:7 45:10 68:8 74:11 78:17 88:11,22 89:7,</p>	<p>20 92:15 94:18 152:1 156:10 158:13</p> <p>setting 22:10 138:8 195:17</p> <p>settle 64:1 127:16</p> <p>settled 137:16 210:9 222:12</p> <p>settlement 57:12</p> <p>settles 55:1</p> <p>seventeen 67:8 163:13</p> <p>sex 239:4</p> <p>sexual 239:2</p> <p>sexually 226:5</p> <p>sexy 177:4</p> <p>SHANDA 160:19 161:2</p> <p>share 35:25 36:2 50:2 58:18 129:12 168:24 194:3</p> <p>shared 143:23 149:22</p> <p>shares 197:10</p> <p>sharing 168:21</p> <p>Sharon 9:15</p> <p>sharp 92:25</p>	<p>She'll 14:5</p> <p>Shedd 62:16 64:11 70:12 91:3 99:25 100:4,5, 14,18,23</p> <p>Shedd's 67:15</p> <p>sheriff 247:14</p> <p>shift 151:21</p> <p>shoes 212:4</p> <p>Shoot 222:5</p> <p>short 41:5 75:22 76:21 163:6 245:8</p> <p>short-term 80:18</p> <p>shortage 245:16</p> <p>shortly 17:9 110:25</p> <p>shot 228:8</p> <p>shoulders 67:3</p> <p>show 15:20 56:13 68:1 108:7 144:13 148:23 154:17 174:11 188:1 241:21</p> <p>showed 130:23</p> <p>shows 10:2 131:1</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>shut 107:18</p> <p>sick 72:20</p> <p>side 19:6 23:19 29:9 36:5 67:6 69:1 74:1 76:10 89:13 99:11 137:19 148:17 152:19 153:1 155:1 176:5 180:11 181:6 194:12 213:2 235:4,5</p> <p>sides 89:10 90:23 180:10</p> <p>sign 17:12</p> <p>signature 10:19 67:22</p> <p>signed 222:11</p> <p>significant 74:6 98:18 165:24 240:1</p> <p>significantly 14:22 38:4</p> <p>signify 7:14 8:3 10:12 11:5 83:11 123:7 230:1</p> <p>signing 196:10</p> <p>signs 57:13</p> <p>similar 17:8 161:17 200:13</p> <p>similarly 146:15</p>	<p>simple 185:2</p> <p>simply 14:12 32:9 35:22 42:2 66:1, 2 137:12,20 142:5 187:13 197:5 202:9 203:6 228:1,5</p> <p>sincere 100:13</p> <p>sing 148:18</p> <p>single 126:11 136:25 139:18 222:8</p> <p>sir 29:2 30:25 31:6, 10 34:3,13,16, 25 41:15 47:17, 19 48:3 60:2 72:10,17 84:10 102:24 103:6 112:18,23 113:9 116:4 117:21 123:1 124:8,12, 19 126:1 128:3 129:22 131:14 132:3,7,19 134:3 135:14,17 145:10,24 146:8 149:19 150:12 167:15 171:21 175:5 176:17 177:10 178:5 179:5 183:9,17, 20 191:7 192:4, 21 193:21 194:5 195:10 196:4, 21,24 198:4,7 199:8,12 201:17 203:11 207:5 208:8 212:11</p>	<p>217:20 220:22 221:10 222:14, 16</p> <p>sister-in-law 138:22</p> <p>sit 66:10 141:16 154:14 155:23 170:22 171:3,10 174:3 182:14 219:1 229:1 233:21 234:7</p> <p>sits 76:18 184:24 245:15</p> <p>sitting 15:24 26:1 53:22 68:3 86:8 101:2,3 118:22 137:23 144:16 147:17 171:1 179:20 191:24 210:7 223:4,25 249:10 253:10, 14 254:7,10</p> <p>situation 33:9 50:24 54:16 147:7 162:23 163:13, 15 165:19,21 166:15 178:6 188:19 195:12 201:4 218:16 241:19,20 242:17</p> <p>situations 175:22 198:24 225:16 248:24</p> <p>sixteen 144:5 233:13 250:18 251:1</p> <p>sixty</p>	<p>140:8 146:21,23 147:4,8 149:14 219:5</p> <p>skill 68:8 78:17 88:22 89:7,20 152:1 156:10</p> <p>skilled 134:7</p> <p>skills 64:3,21 87:4 163:8 233:16 234:8,9,11,13</p> <p>skip 41:19</p> <p>slash 220:11</p> <p>SLED 16:17 18:9,10</p> <p>sleeping 147:24</p> <p>slight 100:1</p> <p>small 23:21,22 90:9 106:18 113:13</p> <p>smile 49:8</p> <p>smiling 49:11</p> <p>Smith 36:6,7,17 56:1,7 57:4</p> <p>smoothly 215:8</p> <p>snap 182:14</p> <p>So-and-so 48:13</p> <p>sober 130:24 132:17</p>	<p>social 19:16 110:8 215:25 216:6 223:18</p> <p>society 63:24 88:16</p> <p>solely 54:12 234:25</p> <p>solicit 50:21</p> <p>solicitor 23:18 120:21, 24,25 237:11,12 254:3</p> <p>solicitor's 237:13,14</p> <p>Solomon's 56:22</p> <p>solutions 81:10</p> <p>somebody's 136:24</p> <p>someone's 81:13</p> <p>son 189:8 227:5</p> <p>son's 217:2</p> <p>song 154:9</p> <p>sort 12:19 38:17 40:12 51:4 52:14 80:18 88:11 97:18 124:14 185:25 250:3</p> <p>sorts 26:2 252:1</p> <p>sought 15:6 47:25 71:22 95:24</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>112:4 145:16 163:3 215:20 243:25 sound 162:20 sounds 109:1 120:1 191:23 254:2 sources 16:13,18 19:15 South 7:8,20 8:11 12:4,12,16 14:7 15:7,9 28:15 34:18 35:5 36:11 43:15 46:3 51:10,17 57:18 60:18 82:24 110:7 130:1 131:5 133:22 134:22 135:4 137:13,16 140:7 149:24,25 152:14 153:17 156:21 162:18 163:11 193:11 213:18 219:5 223:19 225:11 243:20 255:8 sow 242:6 space 137:5,6 spade 241:15 Spartanburg 120:11 speak 30:17 33:17 35:4 50:25 60:23 65:15 84:14 98:22</p>	<p>103:4 124:4 125:24 135:24 158:22 160:20 164:9 169:14 183:15 186:5 208:6 223:1 242:23 247:13 speaking 50:3,6,8,10,16 162:5 164:18 185:12 212:24 specific 51:12 93:14 161:16 182:21 specifically 35:4 44:2 57:8 137:14 161:11 162:11 164:17, 19,24 170:8 184:12 187:18 208:23 224:21 233:25 specificity 165:4 spectrum 36:5 speech 28:22 173:17 201:20,22,24 speed 80:5 108:19 speedy 66:20 spend 33:22 101:10 216:18 spent 89:6 99:14 156:20 216:15 228:19 spirit 59:15 82:14</p>	<p>101:14 122:10 157:20 254:22 split 121:24 spoke 43:21 50:4,5 88:6 142:10 202:2 212:16 spoken 65:15 sports 217:3 219:14 spot 74:16 88:20 spotlight 53:4 spring 237:24 squad 75:8 squarely 137:10 141:19 143:13 144:3 stability 15:17 47:3 71:8 95:7 111:5 131:22 145:2 243:8 staff 9:11,22 13:19 18:19 23:7 31:12 32:10,17 33:18,22 34:1 63:4 66:18 79:9 80:2,7,8,24 81:11 87:11,17 139:1 232:24 248:13 staff's 248:12 stage 14:2 149:13</p>	<p>164:4 stand 14:15 29:16 79:4 102:7 138:1 155:13 158:10 169:2,3 222:13 231:4 255:14 standard 40:19 156:16 232:2 standards 51:12,15 78:5 162:17 standout 147:20 standpoint 37:7 38:21 39:15 152:15 204:1 246:19 stands 149:21 221:1 Starnes 9:20 start 21:19 24:13 30:21 81:14 84:2 151:18 202:21 209:5 212:17 231:21 started 30:6 170:21,25 171:9 172:7,18 175:2 233:11 starting 68:3 104:25 state 16:3,24 17:21, 22 19:4 32:1 34:17,22 49:20 50:25 51:20 52:4 55:9 59:25</p>	<p>62:2,25 64:5 65:14 68:6 70:7 76:25 82:23 83:23 85:21 89:18,22,25 93:7 99:12 104:9 106:13 125:8 126:24 142:4 143:8 153:6 158:4 160:3 178:13 190:4 219:7 232:12 239:2 253:3 254:18 255:8 state's 37:21 63:18 177:3 247:3 state-level 54:5 stated 57:8 94:8 109:17 172:21, 22 189:4,24 190:18 226:3,6 227:6 228:16 240:24 statehouse 68:25 statement 16:2,4 18:20 30:23 31:13,18 32:7,9 61:2,20 62:10,19 84:18 85:14 86:3 103:9 104:2,17 124:10 125:1 138:18 159:2,21 169:2 189:6 209:4 210:1 211:15,17 219:13 221:6 231:12</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>statements 212:17 244:25</p> <p>states 15:7 50:17,20 235:1</p> <p>stating 17:14 209:3 219:3</p> <p>status 163:8,9</p> <p>statute 7:5 21:2,7 22:1, 5 37:3,5 47:14 57:3 65:10 185:17 206:1,6 239:3,9</p> <p>statutes 45:6 185:10</p> <p>statutorily- mandated 191:3</p> <p>statutorily- provided 201:7</p> <p>statutory 34:9 37:13 45:19 46:8 63:9 69:7 78:16 88:2 105:17 131:20 132:4 139:9 141:7 185:16 193:11 197:6 203:19 205:25 211:8 216:1 228:4 233:6</p> <p>statutory- protected 200:2 213:20</p> <p>stay 60:9 80:3 102:4 186:16,17 211:6</p>	<p>steep 75:22 76:2</p> <p>stemmed 110:12</p> <p>step 12:21 230:6</p> <p>stepping 141:24</p> <p>sterling 239:24</p> <p>Steve 9:18</p> <p>Stewart 253:3</p> <p>stick 60:7</p> <p>stint 76:21</p> <p>stolen 227:4 252:17,18</p> <p>stood 156:21 176:12</p> <p>stop 41:16 98:8 113:19 117:18 153:17 202:17 235:14 247:6</p> <p>stopped 150:2 191:15 224:4</p> <p>stopping 171:1</p> <p>store 48:12</p> <p>story 51:5 129:16 218:15 252:11 253:5</p> <p>straight 22:21 106:17</p> <p>strain</p>	<p>72:24</p> <p>strategy 99:4</p> <p>street 115:4</p> <p>street's 114:11</p> <p>strengths 43:22</p> <p>stress 189:9</p> <p>Strickland 247:19</p> <p>strictly 20:4</p> <p>strikes 156:4 247:21</p> <p>strong 38:23 152:18</p> <p>stronger 144:5</p> <p>struck 23:5 27:22 112:24</p> <p>structure 44:10</p> <p>Stuckey 138:23</p> <p>student 182:7</p> <p>students 51:1</p> <p>studied 37:2</p> <p>studies 22:15</p> <p>study 31:24 32:2 62:1, 4 85:20,23 104:8,11 125:7, 10 160:2,5</p>	<p>studying 98:10</p> <p>stuff 77:6 186:7 191:25</p> <p>subcommittee 24:8 26:8,17</p> <p>subcommittees 25:10 26:11</p> <p>subject 20:4</p> <p>subjected 189:3 228:14</p> <p>subjects 115:13</p> <p>submission 234:10</p> <p>submissions 246:22</p> <p>submit 16:5 21:12 24:14 137:19 197:15 201:25 225:20</p> <p>submitted 30:24 36:19 57:7 61:3 69:3 84:19,24 103:9 124:11 126:4 129:17 130:7 133:5 137:19 159:3 161:9 163:7 164:2 170:6 184:10 191:19 192:11 208:21 211:17 218:10 220:25 224:19</p> <p>submitting 47:6,24 71:13, 21 95:15,23 111:20 112:3</p>	<p>145:7,15 201:1 243:11,24</p> <p>Subsequently 210:14</p> <p>substance 220:16</p> <p>substantial 32:22 77:16</p> <p>substantiating 189:4 228:15</p> <p>substantive 25:25 28:8</p> <p>successful 53:15 75:23 155:12 168:8</p> <p>sudden 173:16,20</p> <p>sue 70:18</p> <p>sued 70:20</p> <p>sufficient 46:15 66:17 79:22 191:8</p> <p>suggest 10:25</p> <p>suggested 44:2</p> <p>suggesting 201:17,18</p> <p>suggestions 38:6 41:11</p> <p>suggests 45:10</p> <p>suit 110:8,11 225:23</p> <p>suitable 127:20</p> <p>suited 64:3 70:1 93:5</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>suits 138:14</p> <p>summarize 127:21</p> <p>summary 126:15 183:18 184:17</p> <p>summer 34:16 37:25 128:21 213:25</p> <p>super-legislature 65:18</p> <p>supersedeas 140:13</p> <p>supervising 99:2</p> <p>supplement 103:14 189:6</p> <p>support 19:6,7 37:6 97:7 171:5 232:7</p> <p>supported 38:11</p> <p>supporting 19:2 136:4</p> <p>supposed 11:11 19:1 65:17 173:7,8 186:1,9 213:19</p> <p>Supreme 8:23 14:25 17:15,20 30:12 34:22 53:25 54:14 65:17 69:9 74:7 75:4, 10 76:25 90:23 98:2,5 115:7 116:17 126:19, 24 127:5,7 129:2,8 130:1,5, 12 131:6 133:22 134:1 135:3</p>	<p>140:11 146:25 147:2 154:6 200:7 233:19 234:1,7,14,17 239:13,14 240:22 245:19 253:2</p> <p>Supremes 146:21</p> <p>surely 206:16 248:4</p> <p>surprise 147:20</p> <p>surprised 44:18 48:17</p> <p>surrounds 23:6</p> <p>survey 16:16 17:18,19 31:24 62:1 85:20 92:22 104:8 109:15 125:7 160:2 239:20 240:10</p> <p>surveys 43:19 66:24,25 92:21 109:14 142:8 239:19</p> <p>Susan 9:23</p> <p>suspend 53:19 54:5,21, 25</p> <p>suspension 55:8</p> <p>sustain 155:25</p> <p>sway 165:7</p> <p>swearing 125:19</p>	<p>swearing-in 58:14</p> <p>sweet 88:20</p> <p>swimming 214:2,5 225:24</p> <p>sworn 16:2 18:25 19:9 30:17,23 31:9, 13,18 60:22 61:2,12,20 84:13,18 85:3, 14 103:4,9,18 104:2 124:3,10, 17 125:1,23 135:23 158:22 159:2,10,21 160:19 169:13 180:2 183:14 208:5 222:25</p> <p>Symmes 9:18 87:12,22, 23 88:5 95:4,13 96:8,13</p> <p>system 26:14 37:21 38:5 40:13 42:4, 5,10 44:6,7,13, 14 45:16,17 51:2,6 52:4,8, 24,25 53:13 55:14,20,23 66:5 78:5 79:6, 13,14 90:10 91:8,10,17,20 107:23 113:20 121:8,9 140:1 153:9 156:21 167:7 168:1 170:19,20 198:22 211:4 235:23 236:1</p>	<p style="text-align: center;">T</p> <hr/> <p>Tab 11:22</p> <p>table 49:14 94:16</p> <p>tactics 127:19</p> <p>takes 9:11 40:4 41:3 148:24</p> <p>taking 79:13 101:9 119:19 128:15 150:20 185:20 192:6 200:3 201:5 216:9 227:16</p> <p>talk 14:23 24:6 76:15 97:17 134:21 141:17 171:19 200:15 202:22,23 210:2 214:7 220:15 222:11,12 242:11 250:4</p> <p>talked 48:13 58:24 77:22 108:23 143:4 220:16</p> <p>talking 23:11 144:11 165:10 166:7 192:14 220:20, 23 227:18 235:14 237:22 252:12,13</p> <p>talks 26:11</p> <p>Talley</p>	<p>7:10,11,24,25 78:22,23 83:10 117:25 118:1,4 119:23 120:12 123:4</p> <p>task 222:1</p> <p>taught 157:4</p> <p>teacher 170:15 172:11 176:10 182:5</p> <p>team 216:6 217:3 219:14</p> <p>technicality 187:21</p> <p>technology 236:4</p> <p>tedious 232:22</p> <p>teenager 86:24 88:11</p> <p>telephonic 189:11</p> <p>telling 176:8,10 177:18 178:1 198:1</p> <p>temper 163:6</p> <p>temperament 15:18 25:6 46:25 69:20,25 71:6 93:2 95:10 109:19 111:8 131:23 163:1 173:13,14,22 174:8 181:10 185:1,10 229:6 231:6 239:24 241:25 242:2, 19,25 243:6</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

247:17,24	testify	thing	thirteen	three-hundred-and-some-odd
temporary	18:24 19:10	14:9 41:2 55:19	8:25	13:1
43:22 59:1 70:6	32:6 62:8 86:2	66:7 68:10 91:2,	thirty	threw
121:16 126:25	104:15 125:14	18 107:10,13	24:17 25:4,9	165:22
128:20,22,24,25	156:7 160:9	108:13 109:2	121:17 152:17	thrilled
129:3 137:9	161:11 170:8	113:6 115:6	153:6 218:25	37:10
167:9 198:19	184:12 208:23	121:2 144:7	thirty-	throwers
212:15,20	224:21	153:13 162:3	34:16	50:16
ten	testimonies	175:20 186:11,	thirty-five	Thursday
16:21 20:11	220:17	24 188:7 199:15	207:18	10:2 21:24
40:17 216:18	testimony	201:8 204:5	thirty-plus	50:10
219:16	31:9 34:6 61:12	236:22 239:16	32:11 93:25	tie
tendency	63:6 85:3 87:24	things	thirty-six	54:18 81:21
38:23	103:19 105:14	12:20 15:23	168:2 249:21	Tiffany
tender	124:18 137:17	20:16 25:24	thirty-three	36:6,7,18 56:1
233:12	139:6 159:10	27:22 38:13,14	225:9	57:4
tending	161:19 163:25	39:24 41:24	thirty-two	tight
72:20	164:1 165:13	46:18 50:2,11	37:18 38:2,9	141:22
tension	176:19 183:19	53:24 76:6 78:4	44:17 52:11	till
97:6	184:17 192:1,12	79:11 88:15	56:20 247:6	87:19
terms	219:22 223:7	90:6,22 97:23	Thomas	time
40:24 43:6,12	229:18 231:1	108:7,16 109:6	62:16 110:7	7:6,7,15 8:4
48:8 53:22	233:3	121:2 136:22	Thompson	9:25 10:13,18,
55:10 75:24	Texas	137:3 144:9,23	247:15	24 11:6,16,21,
108:25 117:18	17:22	157:6 164:5,17	thought	25 20:25 21:17
120:20 121:3,7	text	165:16 166:13	27:19 28:17	22:5 23:4 24:2
134:15 154:2	90:16,18 92:18	174:4 175:1	56:13 63:21	28:13 29:7,19,
156:8 176:16	94:25 219:17	177:8,21,23	64:2 69:25	24 31:5 32:7,25
194:14 205:1	textualist	178:17 184:16,	90:21 116:1	33:23 35:3 36:2
234:9,25	90:16 141:5	25 185:2 197:20	170:20 173:23	39:22 41:5,7,18
235:11,25	thankful	203:7 204:15,21	213:19 225:5	52:15 56:11
236:1,4,18	232:24	211:25 214:8	234:5 250:10	57:2 59:22 60:2
238:12 240:8,23	Thanksgiving	218:18,21 219:8	thoughtful	61:8 64:12
245:2,18,23	219:18	227:15,19 249:8	69:23 92:25	70:11 76:15,17
246:7,21	theme	250:2,4 252:1	thoughts	77:4 79:2,13
Terry	113:3	thinker	41:13 129:12	80:12 82:21
129:3	themes	92:25	thousand	83:12 87:10
test	18:6,7	thinking	117:6 209:7	96:17 97:7
186:1	thighs	63:20 64:22	thousands	101:9,10,22
testified	185:14 213:23	77:23 81:23	223:16	103:13 105:6,23
98:14 179:25	215:25	90:3 115:23		106:10 107:12
192:18		155:23 163:8		

110:3 115:12,24 116:15 117:11 121:7 122:17 123:8 126:14 135:15 150:19 152:16 154:7 158:2,4 160:11 161:1,24 166:12 167:5 168:19 169:21 176:4 179:1 181:17,25 183:25 192:19 197:15 199:3 202:17 203:8 204:12 207:15 208:12 210:10 213:6,13 214:2, 7,18,23 216:23 218:13 219:3,24 221:14,16 222:15 223:24 224:11 226:14 227:3,11,14,18 229:9,12,18 230:2 231:19 232:16,23 236:7 237:4,7 238:20 245:4 247:13 248:22 249:1 250:1 255:4	182:21 215:8 217:5 219:4 223:5 242:3,9, 22 tip 56:21 Title 8:11 67:19 titles 154:13 Toal 149:22 today 23:1,8 24:22 28:10 32:24 41:17 48:24 58:23 59:11 60:2,16 62:11, 18 72:8 81:21 82:25 96:11 97:15 101:8,24 104:19 112:16 113:17 127:10 133:19 135:15 136:2,12 138:19,21 143:4 146:5,14 157:14 158:4 160:9 161:21,24 162:4 164:21 176:13, 18 184:21 191:1 198:24 199:4,6 210:21 229:12, 18 232:1,15 241:9,14 242:10 244:12 247:4,10 254:19 255:6 today's 7:2 161:3 169:24 184:3 208:15 224:13 255:14	Todd 197:19 206:2 207:15 Todd's 207:14 token 248:16 told 18:5 70:25 86:11 108:11 192:3 218:14 tomorrow 50:6 255:15 tone 242:16 top 27:24 47:14 110:2 254:1 tort 69:6 153:21 tortfeasor 36:14 Tortfeasors 36:10 total 146:20 totality 221:3 touch 67:18 248:6 touched 109:22 148:7 153:14 tough 115:20 151:8 tower 248:4 town 62:13 106:18 113:13 track	236:18 tracking 206:11 traffic 18:16 training 156:19 trajectory 163:2 transcribed 182:22 transcript 31:12 126:7 176:20,24 177:20 227:16 transcripts 177:8 transition 52:13 transparency 41:21 42:1,8 43:6,10 91:13 transparent 13:3 Trask 9:19 traumatic 55:6 traumatized 227:3 travel 50:25 136:21 treasure 177:8 treat 44:22 70:2,5 107:7 174:8 242:6,8 treated 151:22 242:7 treating	58:21 treatment 130:13,16 tremendous 42:12 89:1 239:23 trenches 150:25 trends 26:15 Trey 9:20 138:22 trial 41:10 75:6 76:14 89:17 93:12,14,19 94:6 106:9 108:21 117:2,4 119:17 121:12, 15,19,22,23 126:18,22 143:18 150:23 155:16,22 156:11 233:11 234:5 235:6,8 236:8 237:2,3,6, 9,25 238:1 252:24 253:9,25 trials 74:17 89:17 93:23 94:4,6 99:8 121:1 236:19 triggered 254:5 trip 105:1 182:16 Triplett 9:20 troubled 237:2,5
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

trove 177:8	123:2 153:14	204:20	185:18 186:18	90:10 151:13
true 78:10 214:11 226:11,12	turnover 66:18	ultimately 127:4 151:4 153:16 167:11 196:10 197:17	193:19 194:22 197:11,24 203:3 204:24 205:20 209:11,13,18 211:14 217:7 218:8,12 221:25 225:7 226:10 239:9 248:24 250:13 251:25 252:11	244:24 uniquely 114:22
trust 143:9	twelve 43:23 70:19 249:20 251:7	ultra 154:14	understandable 180:9	United 15:6
truth 30:17,18 60:23, 24 84:14,15 103:4,5 124:4,5 125:24,25 135:24,25 158:22,23 160:20,21 169:14,15 183:15,16 208:6,7 223:1,2	twenty 139:21 146:24 149:19,20,23 150:3,5,6 218:1	unaccounted 166:13	understanding 7:5 84:6 98:7 99:11 113:21 131:1 140:24 149:11 156:3, 23,24 157:5 165:12 180:6,15 223:9 250:14 254:6	university 148:15
Tucker 183:10,14 184:1	twenty-fourth 217:3 219:14	unanswered 57:21	unprofessional 231:5	unjust 219:10,19
Tuesday 10:4 22:2	twenty-minute 198:24	unassigned 54:11	unpublished 116:14,20	unjustly 228:22
Tuner 104:21	twenty-one 104:21	unaware 145:24 210:16	unqualified 21:10	unnecessary 127:14
turn 30:20 46:19 96:14 133:8 146:6 207:14 237:7,12,15,16	twisting 190:22	uncharacteristic 86:16	unquestioned 239:23	unprofessional 231:5
Turner 102:12,14,19,24 103:3,11,14,20, 25 104:3,20 105:2,5,11,12, 16,20 107:5,22 109:7,13 111:3 112:19,22 117:24 118:3,13 122:1,6,21,24	two-week 121:23,24	uncles 227:5	untrue 131:5,7 216:5	unpublished 116:14,20
	type 68:16 69:19 97:20 131:11 140:9 154:7,15 155:4 171:13 175:22 231:7 247:2,3	unconstitutional 46:11 75:9 200:20	untrue 131:5,7 216:5	untrue 131:5,7 216:5
	typical 196:13	unconstitutional 46:9	untrue 131:5,7 216:5	untrue 131:5,7 216:5
	typically 14:14 22:10 39:23 166:5 167:6 186:25 193:25 194:2 196:18,20	unconstitutionality 46:9	untrue 131:5,7 216:5	untrue 131:5,7 216:5
	U	uncontested 236:21	untrue 131:5,7 216:5	untrue 131:5,7 216:5
	Uh-huh 79:7	undeniably 229:11	untrue 131:5,7 216:5	untrue 131:5,7 216:5
	ultimate 39:10 81:5	underlying 35:21 45:6 183:5	untrue 131:5,7 216:5	untrue 131:5,7 216:5
		understand 90:19 92:1 98:11 113:16 115:18 117:13 130:23 133:24 140:23 148:5 150:25 155:21 159:8 165:21 176:4 179:23 180:23 181:13	untrue 131:5,7 216:5	untrue 131:5,7 216:5
		understand 90:19 92:1 98:11 113:16 115:18 117:13 130:23 133:24 140:23 148:5 150:25 155:21 159:8 165:21 176:4 179:23 180:23 181:13	untrue 131:5,7 216:5	untrue 131:5,7 216:5
		understand 90:19 92:1 98:11 113:16 115:18 117:13 130:23 133:24 140:23 148:5 150:25 155:21 159:8 165:21 176:4 179:23 180:23 181:13	untrue 131:5,7 216:5	untrue 131:5,7 216:5
		understand 90:19 92:1 98:11 113:16 115:18 117:13 130:23 133:24 140:23 148:5 150:25 155:21 159:8 165:21 176:4 179:23 180:23 181:13	untrue 131:5,7 216:5	untrue 131:5,7 216:5

<p>upset 174:9 175:25</p> <p>upside 174:10</p> <p>Upstate 12:3 16:24 46:22</p> <p>urge 229:5</p> <p>utmost 44:23 242:9</p> <p>utterly 216:12</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>vacancy 21:20</p> <p>vacated 81:6</p> <p>vacation 121:12</p> <p>valid 130:17 142:20</p> <p>values 91:12,14</p> <p>variation 150:12</p> <p>varied 106:22 148:12</p> <p>varies 147:9</p> <p>variety 110:2 140:22 143:6</p> <p>vast 43:20 113:23 116:20 118:11</p> <p>venture 236:7,23</p> <p>ventured</p>	<p>236:4</p> <p>verdict 74:18,22,23 93:23 94:1 140:15 155:19 180:13</p> <p>verification 31:25 62:2 85:21 104:9 125:8 160:3</p> <p>versed 162:14</p> <p>versus 49:20 54:19 116:14 146:16 151:7 165:8</p> <p>vested 92:13</p> <p>vet 32:25</p> <p>veto 67:22</p> <p>vetting 32:13,22,24 33:11,19 49:17 51:18 52:3</p> <p>vice 7:20,22 8:2,8 16:22 216:24</p> <p>victim's 179:23</p> <p>video 13:16 235:10,12 240:23,25</p> <p>view 38:7 45:4 56:14 59:16 82:16 92:2 101:15 122:12 131:24 157:21 197:10 227:1 254:24</p>	<p>viewpoint 156:15</p> <p>vigor 98:10</p> <p>village 9:11</p> <p>violate 193:11</p> <p>violation 196:3 201:18 254:2</p> <p>violations 59:17 82:16 101:16 122:12 157:21 254:24</p> <p>violative 195:7 204:3</p> <p>violence 163:15</p> <p>vision 66:4 91:7,11 107:22 235:22, 25</p> <p>visitation 186:11 189:11 191:20</p> <p>Vogle 172:25</p> <p>voice 30:8 144:17 242:14,22</p> <p>volume 28:3</p> <p>voluminous 33:7 206:16</p> <p>volunteer 24:24 26:10 28:19 53:8</p> <p>volunteered 216:21</p> <p>volunteering</p>	<p>24:4</p> <p>volunteers 23:7,11,12,16 24:7,12 26:16, 23 27:11 29:18</p> <p>vote 10:1 22:4 40:6 188:4</p> <p>voted 21:14</p> <p>votes 21:3 22:4 47:16 83:25 123:19 230:15</p> <p>vow 70:4</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>wait 40:18,21 52:19 155:23 190:2,16 191:13 203:22 217:22</p> <p>waited 218:3</p> <p>waiting 66:21 102:8</p> <p>waive 204:15</p> <p>waived 204:17</p> <p>waiver 17:12 204:11</p> <p>walk 49:23</p> <p>Waller 9:23</p> <p>Walpole 9:20</p> <p>wand 241:18</p>	<p>wanted 86:24 96:16 118:10 128:25 129:5,22 148:7 155:20,21 167:25 168:10 180:14,22 186:20 188:11 192:13 196:18 207:19 211:14 216:13 252:1</p> <p>wanting 69:16</p> <p>warrants 81:4</p> <p>watch 12:23 235:13</p> <p>watchdog 171:9</p> <p>watching 13:13 23:4 28:25 175:3 177:2</p> <p>waterfront 78:15</p> <p>ways 54:11 56:15 66:12 67:20 143:22 150:22 216:13</p> <p>weather 116:6</p> <p>Webb 9:20</p> <p>Webex 236:5,8,18</p> <p>website 28:1,5 177:3,4</p> <p>Wednesday 10:6</p> <p>week 22:11 51:6 80:9</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

108:11 119:23 120:11 weeks 22:5 50:4 63:1 84:24 105:6 156:1 213:24 weigh 166:9 weighed 98:5 200:8,9 weighing 192:15 weight 59:18 77:16 82:17 101:17 122:13 157:22 254:25 weird 211:4 welcomed 109:17 well-behaved 65:15 whatsoever 190:5 whistle 193:8 Whitney 123:22 124:3,23 125:1 135:23 136:8 who've 78:11 104:18 138:19 197:15 wide 93:4 110:2 140:21 wife 62:12 72:20 86:7 96:25 wife's 97:1	Wilkinson 9:15 William 42:14 61:17,20 63:8 125:23 126:8,12 Williams 41:4 108:24 Williamsburg 249:25 willingness 49:13 Willis 70:10 wisdom 65:19 142:23,24 wished 129:25 wishes 18:23 57:25 withdraw 20:24 withdraws 21:16 witnessed 181:11 242:10 witnesses 32:6 62:7 86:1 104:14 160:8 witnessing 176:8 woman 173:24 women 51:19 241:8 won 58:7 155:7 181:5 wonderful 42:5 154:10 167:20 216:19	249:14 wondering 254:10 word 24:21 44:3 48:14 100:22,24 206:25 218:15 words 13:16 41:21 65:10 87:16 90:15 127:12 190:22 196:7 197:7 217:9 227:17 work 15:20 23:5,6 24:6,12 32:17 40:5 41:1 53:7 66:15 68:23 69:17 73:25 74:4,14 80:21 81:8,13 87:12, 17 88:20 89:7, 17 99:4,16,18 100:19 106:6 115:7 121:10 128:5,13 139:2 148:19 154:13, 15 157:4 162:17 190:23 195:18 227:14 234:8 235:11 246:21 248:9 250:23 worked 42:15 69:12 70:20 86:25 100:2 140:9,17 170:19 179:24 233:15 251:15 worker 215:25 216:6 223:18 240:2	Workers 50:5 workers' 56:8 113:11 153:21 working 41:6 66:14 70:11 89:19 98:11 109:2 121:3 150:19 236:2 workplace 32:21 works 40:10 99:12 117:17 167:7 168:1 251:23 world 108:16 248:1 worries 148:5 worry 150:5 worse 212:23 248:2 worst 107:13 241:18 would-be 100:3 wrap 133:15 wreaked 50:23 wrecker 162:19 wrestle 89:11 writ 126:23 127:1,3 128:1 129:9 write	156:22 173:11 227:17 writes 18:2 251:12 writeup 137:8 writing 16:6 64:21 69:2 106:7,24,25 152:18 156:23 251:12 writs 140:12 written 35:9 43:23 46:10 57:19 67:8 93:10 109:21 126:5 136:7,10 142:6, 9 154:9 164:10 169:1,2 212:8 230:21,24 231:3,4,13 240:4 wrong 36:15 110:21 147:3 185:19 194:14 206:5 wrongdoing 43:5 wrote 37:9 247:19 <hr/> <p style="text-align: center;">Y</p> <hr/> y'all 29:15,18 56:3 62:25 83:4 139:2 153:10 155:18 158:5 Yay 179:21
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>year 8:9,22 11:24 13:4 23:12,15 27:23 32:11 40:5 73:16 100:2 119:16 120:5 143:24 144:1 155:17 185:4,13,25 186:4 200:21 205:20 206:3 213:5 225:13,20 227:3 229:1 238:19 244:20 245:14 247:7</p> <p>year-old 187:16</p> <p>years 15:7,8,9 16:6 24:3 29:11 33:6 34:10,17,22 37:18 38:2,10 44:17 52:11 56:20 58:4 63:11 64:15 66:10,21 75:18 88:3 89:20 94:2 99:14 100:6 104:21,22 105:18,24 106:19 113:8 114:1 115:17 132:6 139:10,21 144:5 150:19 151:16,17 152:18 154:10 156:20 162:25 168:2 195:22 218:3 223:22 225:8,9 233:7, 13 237:23 238:22 245:9 249:20,21</p>	<p>250:18,20,22 251:2,7</p> <p>years-plus 153:6</p> <p>yell 242:22</p> <p>young 23:24 73:15,18 74:8 146:14 149:21 177:18 250:20,21,22</p> <p>younger 23:25 74:1</p> <p>youth 73:21 142:14 146:15 217:3</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>zeal 98:10</p>	
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--