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**PUBLIC HEARINGS**

*December 04, 2019*

**Judicial Merit Selection Commission, 2019**

REPORTER: Jennifer Nottle

1 STATE OF SOUTH CAROLINA )

2 COUNTY OF RICHLAND )

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5 JUDICIAL MERIT SELECTION COMMISSION

6 TRANSCRIPT OF PUBLIC HEARINGS

7 \* \* \* \* \*

8 BEFORE: REPRESENTATIVE G. MURRELL SMITH, JR., CHAIRMAN

9 SENATOR LUKE A. RANKIN, VICE CHAIRMAN

10 SENATOR RONNIE A. SABB

11 SENATOR TOM YOUNG, JR.

12 MS. HOPE BLACKLEY-LOGAN

13 REPRESENTATIVE CHRIS MURPHY

14 MR. J.P. "PETE" STROM

15 MS. LUCY GREY MCIVER

16 MR. ANDREW N. SAFRAN

17 MS. ERIN CRAWFORD, CHIEF COUNSEL

18 \* \* \* \* \*

19 DATE: December 4, 2019

20 TIME: 10:12 a.m.

21 LOCATION: Gressette Building

22 1101 Pendleton Street

23 Columbia, South Carolina 29201

24 REPORTED BY: JENNIFER NOTTLE, COURT REPORTER

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1 CHAIRMAN SMITH: We'll go on the record right now.  
2 Starting a little late waiting for Senator Young  
3 and Senator Rankin but Ms. McIver moves that we  
4 go into executive session. All in favor say,  
5 aye.

6 (Ayes are heard.)

7 CHAIRMAN SMITH: All opposed.

8 (No replies are heard.)

9 CHAIRMAN SMITH: The ayes have it. We'll be in  
10 executive session.

11 EXECUTIVE SESSION

12 CHAIRMAN SMITH: All right. Mr. Strom moves that we  
13 come out of executive session, seconded by Ms.  
14 McIver . All in favor say aye.

15 (Ayes are heard.)

16 CHAIRMAN SMITH: All opposed.

17 (No replies are heard.)

18 CHAIRMAN SMITH: Ayes have it. So we are out of  
19 executive session. Let me state we were in there  
20 for a legal briefing and while we were in  
21 executive session no matters were decided and no  
22 votes were taken. Judge, appreciate you being  
23 here today. Sorry for, as usual -- I've spent  
24 two weeks now apologizing to everybody for the  
25 delay and us starting, so -- oh, only five



1 minutes, oh, okay. I was 20 minutes late so --  
2 I'm supposed to be here early. They do that to  
3 me on purpose, you know. They tell me to be here  
4 like 30 minutes early, you know, and I'm always  
5 30 minutes late.

6 JUDGE NORTON: I understand.

7 CHAIRMAN SMITH: I hope I don't have to go in front of  
8 your courtroom. I guess I'll be getting  
9 sanctioned. Judge, will you raise your right  
10 hand, please, sir.

11 JUDGE NORTON: Yes, sir.

12 THE HONORABLE RONALD NORTON, having been duly sworn,  
13 testifies as follows:

14 CHAIRMAN SMITH: All right. Judge Norton, before you  
15 you have you PDQ and your Sworn Statement. Are  
16 those both documents you submitted to the  
17 Commission?

18 JUDGE NORTON: Yes, sir.

19 CHAIRMAN SMITH: Are they correct?

20 JUDGE NORTON: They are correct.

21 CHAIRMAN SMITH: Any changes or updates that you need  
22 to make at this time?

23 JUDGE NORTON: One pos- -- I don't know if this  
24 includes cases that I listed. If so, there's  
25 been one case of mine that was on appeal. The

1 State Supreme Court affirmed me, thank goodness,  
2 but they are -- there's also a motion to  
3 reconsider. But at the time I filled out the  
4 questionnaires it had not been heard by the  
5 Supreme Court.

6 CHAIRMAN SMITH: Well, to the extent that it's  
7 necessary, we'll make that an oral amendment to  
8 your PDQ, and then if there's -- without any  
9 objection to that. All right. Do you have any  
10 objection to us making those documents and that  
11 oral amendment an exhibit to your sworn testimony  
12 here today?

13 JUDGE NORTON: No objection.

14 CHAIRMAN SMITH: All right. Without objection, we're  
15 going to enter those into the record. Judge  
16 Norton, the Judicial Merit Selection Commission  
17 has thoroughly investigated your qualifications  
18 for the bench. Our inquiry has focused on nine  
19 evaluative criteria and has included a ballot box  
20 survey, a thorough study of your application  
21 materials, verification of your compliance with  
22 state ethics laws, a search of newspaper articles  
23 in which your name appears, study of previous  
24 screenings and checks for economic conflicts of  
25 interest. We've received no affidavits filed in

1           opposition to your election. There are no  
2           witnesses present here today to testify. Do you  
3           wish to make a brief opening statement to the  
4           Commission?

5           (Exhibit Number 1 was marked for identification  
6           purposes - (13 pages) Personal Data Questionnaire for  
7           The Honorable Ronald R. Norton.)

8           (Exhibit Number 2 was marked for identification  
9           purposes - (5 pages) Sworn Statement of The Honorable  
10          Ronald R. Norton.)

11          JUDGE NORTON: I do not, other than to thank you for  
12          all the hard work. I know this is hopefully your  
13          last day, but I appreciate everything y'all have  
14          done.

15          CHAIRMAN SMITH: Yes, sir. Well, hopefully it is,  
16          too. Never -- it'll be the first time in a few  
17          years it's that way. All right. Answer any  
18          questions that counsel may have for you, please,  
19          sir.

20          JUDGE NORTON: Yes, sir.

21          JUDGE NORTON - EXAMINATION BY MR. HINSON:

22          **Q. Good morning, Judge Norton.**

23          A. Yes, sir.

24          **Q. Judge Norton, after serving over ten years on the**  
25          **Family Court bench, why do you want to continue**

1 **servicing as a Family Court judge?**

2 A. Well, hopefully I do a good job. I like to think  
3 I do. I feel like I'm helping people. I know  
4 half of the time some are not satisfied with the  
5 rulings that I have to make. I always try to be  
6 fair and I hope that what was submitted to this  
7 Committee by those on the outside will support  
8 that.

9 **Q. Thank you. Judge Norton, please explain one or**  
10 **two brief accomplishments that you feel you have**  
11 **completed during your tenure and then a goal you**  
12 **would like to accomplish if reelected.**

13 A. Well, as you probably saw in my materials, I have  
14 been the chairperson of numerous committees. And  
15 I think that's kind of the accomplishment that so  
16 far I've been able to -- I've been honored by my  
17 peers to be put in those positions. I think  
18 there are five or six different committees that  
19 I've chaired over the ten years and continue to  
20 chair some of those. And again, I'm honored that  
21 I'm able to do that and I hope to continue to do  
22 that. And we're also trying to get some things  
23 accomplished. I am one of two judges in the  
24 state, Judge Conits in Greenville and me in  
25 Horry, that this year have done a pilot program.

1 And we were assigned to hear all of the contested  
2 termination of parental rights cases in our  
3 county. That started in January. We are  
4 submitting a report to the Supreme Court this  
5 month, and I think that's probably going to  
6 continue. I don't know whether the same judge  
7 will continue to do that or they'll rotate judges  
8 in and out. But I think it's moved those cases  
9 to either return children to the parents or, if  
10 necessary, free them up for adoption. I think  
11 that's a big accomplishment and it runs smoother  
12 when the same judge is hearing all the motions  
13 that have to be made. We get the cases heard  
14 faster, I think. So I hope to continue that.

15 **Q. Judge Norton, what do you think your reputation**  
16 **is among attorneys that practice before you?**

17 A. I think it's good. I don't seem to have any  
18 complaints or -- they wouldn't complain to me  
19 directly and I understand that but I'm not aware  
20 of any complaints. And I always try to be fair  
21 so I think I have a good reputation.

22 **Q. Judge Norton, the Commission received 513 ballot**  
23 **box surveys regarding you with 39 additional**  
24 **comments. The ballot box survey, for example,**  
25 **contained the following positive comments: The**

1 perfect judge. Another said, we are blessed to  
2 have him as a judge. One said of you, one of the  
3 best judges on the Family Court bench. Two of  
4 the written comments expressed concerns. Both  
5 comments had very positive things to say about  
6 you but felt in recent years you've shied away  
7 from making tough decisions. How would you  
8 respond to that concern?

9 A. It's a little surprising because I make decisions  
10 in every case I have to hear. I'm not sure what  
11 they meant by that but, you know, I don't set my  
12 schedule. As the Committee probably knows, each  
13 county has a scheduling clerk. The litigant or  
14 the attorney sends in the request for hearings.  
15 They have to list information on those requests,  
16 the type of hearing, how long it's going to take.  
17 And then the clerk works up the docket each week.  
18 I hear whatever is on my docket. But I, just the  
19 week before Thanksgiving, started and heard three  
20 days of a six-day case. We'll resume next week  
21 for the remaining three days. And those year-  
22 long termination of parental rights cases, those  
23 are difficult cases. I've got to decide whether  
24 to take children away from their parents  
25 permanently or alternatively return the children.

1 And I can't think of a tougher decision I have to  
2 make. So I'm not sure where that was coming  
3 from.

4 **Q. Thank you, Judge. In addition to the concern you**  
5 **just addressed, one of the comments went on to**  
6 **say that they felt guilty for pointing out any**  
7 **weak points that you have, but -- because they**  
8 **want you to continue as a Family Court judge, but**  
9 **they felt you favored certain attorneys in court.**  
10 **How would you respond to that?**

11 A. I would certainly disagree with that  
12 wholeheartedly. I decide the cases based on the  
13 facts that are presented to me. I have no  
14 quarrels with any attorney so I would disagree  
15 with that statement. Again, I'm not sure why  
16 that was made.

17 **Q. Judge Norton, what do you foresee as being the**  
18 **biggest challenge you would face going forward if**  
19 **you were reelected to the Family Court bench?**

20 A. Challenge for me or in trying to improve the  
21 system or --

22 **Q. Either. You can expand on either.**

23 A. One of my pet peeves is -- I want to start court  
24 on time. I don't know if anybody mentioned it in  
25 any of those ballot boxes but I'm at my desk at

1 7:00 o'clock every morning. I go through every  
2 file that I have to hear that day. I want to  
3 know what I'm facing. I want to know what  
4 problems. I want to make sure all the -- you  
5 know, the Is are dotted, the Ts are crossed, so -  
6 - and I want to start on time. And I think one  
7 of the biggest hurdles I face, not only in my  
8 county but when I travel, is trying to make sure  
9 everybody is there on time and ready to go. Some  
10 counties start at 9:00, some at 9:30. I will be  
11 there on the bench when the clock hits that  
12 particular time. And that's the biggest  
13 challenge is -- because if we start late, we  
14 finish late and we sometimes don't get everything  
15 done. And I don't like to continue cases,  
16 because I don't like to pass the buck to some  
17 other judge.

18 **Q. And Judge Norton, how would you describe your**  
19 **judicial temperament?**

20 A. Calm. I don't get upset, not in the courtroom  
21 anyway. I might go back in chambers and be a  
22 little upset about something but I try not to  
23 display anything on the bench. I try to be fair.  
24 I try to be courteous to all of the attorneys and  
25 the clients. So I don't think I have any problem



1 with that as an issue.

2 MR. HINSON: Mr. Chairman, I would note that the Pee  
3 Dee Citizens Committee found Judge Norton  
4 qualified in the evaluative criteria of  
5 Constitutional qualifications, physical health  
6 and mental stability. The Committee found him  
7 well qualified in the evaluative criteria of  
8 ethical fitness, professional and academic  
9 ability, character, reputation, experience and  
10 judicial temperament. The Committee stated in  
11 summary, Judge Norton has the reputation of a  
12 hard-working, kind, good-hearted judge who loves  
13 his job.

14 **Q. Judge, I have a few housekeeping questions.**

15 A. Okay.

16 **Q. Judge, since submitting your letter of intent,**  
17 **have you contacted any members of the Commission**  
18 **about your candidacy?**

19 A. I have not.

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

23 A. I am familiar with it, yes.

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

1           either prior to this date or pending the outcome  
2           of your 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,  
6           or are you aware of anyone attempting to  
7           intervene in this process on your behalf?

8       A.     I have not contacted anyone and I'm not aware of  
9           anyone attempting to intervene.

10      Q.     Have you reviewed and do you understand the  
11           Commission's guidelines on pledging in S.C. Code  
12           § 2-19-70(e)?

13      A.     I'm familiar with them, yes, sir.

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

20      CHAIRMAN SMITH:  All right.  Thank you very much.

21           Judge Norton, let me just say this.  When I  
22           looked through your ballot box surveys -- and I  
23           know these are anonymous surveys, and people can  
24           make all types of comments and recognitions, but  
25           I'm going to tell you, I've been on here -- I

1 think this is the third or fourth screening I've  
2 been through and you're in a select few of people  
3 -- of judges that I've seen in the state, both  
4 Circuit Court and Family Court, that has -- as it  
5 relates to whether you are qualified, well  
6 qualified or unqualified, it's overwhelmingly  
7 well qualified, and it's over -- and then there  
8 is no one who filled out the ballot box that said  
9 you were unqualified at any of the criteria. And  
10 I tell you, it's literally -- we look at these  
11 things and you're one of the few that's done  
12 that. To do that in Family Court where there's  
13 conscientiousness every -- you know, with issues  
14 and people are fighting over custody and emotions  
15 are at their all-time high, it's really amazing  
16 how you conduct yourself in the courtroom and I  
17 want to commend you on that. I'm very impressed  
18 with that. I don't know if I've seen a Family  
19 Court judge that's had such ballot box surveys.  
20 And you look at your comments and, you know,  
21 you're obviously what we strive to have on the  
22 bench, someone that is even tempered, someone  
23 that makes decisions. While they may not always  
24 be agreed upon by the parties, they're not  
25 walking out of the courtroom saying that they got

1 a bad hearing or something was wrong. So I  
2 really appreciate the way you have conducted  
3 yourself on the bench during this time. And it's  
4 embodied by these comments that we see here and  
5 what your reputation is, and it's a well earned  
6 reputation. And I think you need to be  
7 recognized for it.

8 JUDGE NORTON: Thank you. That -- I appreciate those  
9 words and that's very humbling.

10 CHAIRMAN SMITH: All right. Any questions of Judge  
11 Norton. Senator Young?

12 JUDGE NORTON - EXAMINATION BY SENATOR YOUNG:

13 Q. Thank you, Mr. Chairman. Judge Norton, thank you  
14 for your service to our state. I too want to  
15 echo the Chairman's comments that the Citizens  
16 Committee and the Bar Report and the ballot box  
17 comments and input all indicates that the  
18 assessment of you and the job that you do is  
19 outstanding, and I want to compliment you for  
20 that. I want to ask you -- first also, I want to  
21 thank you and compliment you for being punctual  
22 and running your court on time.

23 A. Thank you.

24 Q. I know that's something that's an issue for some  
25 areas and I just want to thank you for that. I

1 want to ask you about the pilot program that you  
2 mentioned, I think, in your comments. I also  
3 want to talk to you just briefly about the -- is  
4 it correct that there's a mediation program in  
5 Horry County for abuse and neglect cases?

6 A. There is and, quite frankly, I think it works.  
7 But we do not mediate termination of parental  
8 rights cases. That's not one that we -- or any  
9 case involving sexual conduct with minors. Those  
10 do not get mediated, but just the remaining cases  
11 we do mediate. The way that works in Horry  
12 County is if we're having a merits hearing or a  
13 permanency planning hearing and there's not an  
14 agreement, every Friday we have volunteer  
15 attorneys that mediate. They meet at the  
16 courthouse. They'll mediate four or five cases  
17 that morning. We have a judge on duty, so to  
18 speak. And if they reach an agreement at  
19 mediation, they come in, we put it on the record  
20 and that takes care of it. If they don't reach  
21 an agreement then it's set for a trial so -- but  
22 it's almost like having a status conference, if  
23 you will, but we take it just maybe one step  
24 further to try to get an agreement on that  
25 Friday, get it on the record.

1 Q. Is that something that you've been in charge of  
2 or --

3 A. Well, all of the judges in the county now are in  
4 charge of it. But Judge Kinon, who has retired,  
5 she implemented that before she retired, when she  
6 was still on the bench. And we've just continued  
7 with that process.

8 Q. Do you know of any other counties that are doing  
9 the same thing?

10 A. We're the only one, yeah.

11 Q. Have you talked to the Chief Justice about trying  
12 to maybe start it in some other places?

13 A. We -- I have not personally but it has been  
14 presented. And of course, one of the things that  
15 other counties, I think, are going to try first  
16 is to have a status conference on every one of  
17 the DSS cases, meet with the judge to try to  
18 explain what the issues are and to get maybe some  
19 feedback of the judge's feeling about those  
20 issues. A lot of the counties -- and I've had a  
21 chance to talk to judges and the clerks -- they  
22 sort of resist that idea of mediating the DSS  
23 cases and I'm not sure why but ...

24 Q. So you've seen a good success rate on mediating  
25 those DSS --

1 A. We have.

2 **Q. -- cases?**

3 A. We have a good success rate. And we're lucky,  
4 and I don't know how it could work in some of the  
5 smaller counties that don't have, you know, as  
6 many lawyers. We're very fortunate. We have  
7 five lawyers that volunteer their time. They're  
8 not getting paid to be mediators on that Friday.  
9 And they rotate, so, you know, one -- it'll be  
10 one attorney's Friday and then the next Friday a  
11 different attorney. And they rotate throughout  
12 the year but it's worked for us.

13 **Q. Do you have any idea of like what percentage of**  
14 **the cases are resolved that way?**

15 A. Probably 70 percent.

16 **Q. That's a lot.**

17 A. Sixty to 70 percent, I think.

18 **Q. That substantially reduces the backlog.**

19 A. It does.

20 **Q. It allows you and your colleagues more time to**  
21 **focus on the cases that have the real -- the**  
22 **issues that you need to deal with.**

23 A. Right. It has been successful and we are finding  
24 that those cases we have to try, they're taking  
25 longer and longer. I mean, what used to be maybe

1 a one-day trial is now a three-day trial.

2 **Q. Do you have any other suggestions on how the**  
3 **abuse and neglect cases could be improved for the**  
4 **families and children in those cases?**

5 A. I would have to give that some thought. One of  
6 the things that we're trying to implement now is,  
7 you know, when they come to a probable cause  
8 hearing after children have been picked up on an  
9 emergency protective order, that first hearing,  
10 they are not represented by attorneys. And we're  
11 trying to implement a plan where we can get an  
12 attorney assigned to that family at that very  
13 first hearing. Because typically -- I mean, we  
14 don't continue the cases but if they don't have  
15 an attorney and they want one, we will make a  
16 decision. And then we'll give them a de novo  
17 hearing if -- once they get their attorney  
18 onboard and the attorney can look at the facts  
19 and maybe request a new hearing on that.

20 **Q. Do you have any particular policy as far as how**  
21 **long you keep a case under advisement, like when**  
22 **you try to get a case -- you know, a decision?**

23 A. I make it a decision the day I hear the case.  
24 Unless -- if it's a week-long case or something,  
25 I may take it over the weekend but I do not like



1 to take cases under advisement. I know as much  
2 about the case the day the trial ends. And if I  
3 put it off, there are going to be things that I  
4 might forget or miss. So if you ask around, I  
5 make a decision immediately. So -- and I think  
6 it works. I mean, my appeal rate has been pretty  
7 good so I guess it works.

8 **Q. Thank you very much.**

9 CHAIRMAN SMITH: Any further questions? Ms. Logan?

10 JUDGE NORTON - EXAMINATION BY MS. BLACKLEY-LOGAN:

11 **Q. Judge Norton, I haven't had the pleasure of**  
12 **meeting you but I'm grateful to meet you today.**  
13 **I've been a former clerk of court. It's very**  
14 **refreshing to hear a judge wanting to get to**  
15 **court on time, review the documents. And you're**  
16 **correct, the clerk's office schedules those cases**  
17 **unless they've been directed to -- by the**  
18 **administrative judge to change it. That's what**  
19 **goes on the judge's docket. So whoever made that**  
20 **statement really probably doesn't understand the**  
21 **dynamics of how the process is. And mediation**  
22 **has been a great benefit. I will -- I can**  
23 **support you on that. And I would love to see**  
24 **that be implemented across the state. I know**  
25 **when I was working in the court system that did**

1 significantly drop the cases that were going to  
2 court because of required mediation. So thank  
3 you for doing that and thank you for starting on  
4 time and not wanting to continue cases, because  
5 that just causes more work and more time for  
6 people to be off when they could be at work and  
7 be with their families. I commend you on that  
8 and all the positive comments that you've  
9 received in regards to holding court. We need  
10 many, many more judges like you, so thank you.

11 A. I appreciate those words and I totally agree with  
12 you about mediation. It has lessened our case  
13 load tremendously.

14 CHAIRMAN SMITH: Mr. Safran?

15 JUDGE NORTON - EXAMINATION BY MR. SAFRAN:

16 Q. Judge, I apologize. I was running a minute late.  
17 It looks like you left Beaufort when I came  
18 there. And so I guess -- I'm sure the void  
19 wasn't filled but --

20 A. I left in 1985, I think it was.

21 Q. And I came in '85 and I was very familiar with  
22 the people you practiced with. And it seems like  
23 you kind of moved on to something that ultimately  
24 took you to where your calling was. I would echo  
25 that the ballot box surveys are very good. And

1 they certainly speak very highly to your  
2 abilities and how everyone perceives you as a  
3 fair and hard-working person, which is exactly  
4 what you want. Let me ask you this. I've  
5 brought this up various times, and I think I  
6 probably know the answer. But I understand that  
7 in the context of a lot of these hearings that  
8 you may hold, there's not a lot of testimony  
9 taken per se; a lot of it's done based on the  
10 affidavit. But also, from what I'm gathering,  
11 lawyers are given an opportunity to at least  
12 state positions and argue to some extent because  
13 I guess that's what they're there for. Has that  
14 been your practice for the most part?

15 A. It depends on the nature of the hearing.  
16 Obviously, temporary hearings, the rules say we  
17 do not have to take testimony. We make our  
18 decision based on reading affidavits and  
19 typically that's what I will do. If there is a  
20 unique issue in the case, I do want to hear from  
21 the lawyers. You know, I want to hear what their  
22 arguments are, what their position would be. It  
23 helps me make that decision but --

24 Q. And in those situations basically the argument is  
25 something that is an assistance to you at least

1 in terms of looking at what they presented to you  
2 on paper in a full light; is that fair?

3 A. That's fair. And one other point, it's always  
4 difficult for me if at that first temporary  
5 hearing there's a lawyer on one side but not on  
6 the other side. The other side doesn't present  
7 anything because they don't know to do that. And  
8 I try to take a little bit closer look at those  
9 facts because they're -- you know, when you read  
10 these affidavits they're so one-sided anyway, so  
11 ...

12 Q. And so, again, what I'm understanding is, is that  
13 in those situations, hearing from, you know,  
14 representatives is something that number one, you  
15 would find to be beneficial in many instances --

16 A. I would.

17 Q. -- and number two, it would be something that --  
18 again, if you felt the case deserved it, it  
19 wouldn't be an unusual thing because I'm sure  
20 you've done plenty of time.

21 A. I have, yes.

22 Q. All right. Let me ask you also. In terms of  
23 trying to kind of revise things -- I'm not a  
24 Family Court practitioner. One thing that struck  
25 me as being, I guess, a little bit perplexing at

1 times is is that whether we want it to be this  
2 way or not, as a practical matter, so much that  
3 is decided at a temporary hearing becomes what  
4 ultimately happens in these cases down the road  
5 in a final. I mean, given that fact, do you  
6 think at some point if the rules would be allowed  
7 to be modified that allowing more of the evidence  
8 and the argument in the up front would be a  
9 positive thing?

10 A. It would be positive. It would also slow down  
11 the system. Because, you know, when they submit  
12 those request for hearing forms to the clerks,  
13 they're required to put the length of time that  
14 it's going to take. Now maybe if we revised the  
15 system, and if they know they're going to give  
16 arguments, they would increase the length of  
17 time. But, you know, usually I'm -- the most of  
18 the temporary hearings I get they request 15  
19 minutes. And then they present me with a stack  
20 of things to read that I can't read in 15 minutes  
21 but you know ...

22 Q. That's not really a product as much of the judge.  
23 It's just more or less what the rules are that  
24 are in place?

25 A. That's right.

1 Q. Okay. Thank you very much.

2 A. Thank you.

3 CHAIRMAN SMITH: All right. Any further questions?

4 Judge Norton, appreciate you being here. It's  
5 one of the interesting screenings of this term,  
6 because I tell you, I'm really interested in this  
7 mediation that y'all are doing in Horry County  
8 with DSS cases. Because we certainly -- if --  
9 some of us on here, Senator Young chaired a  
10 special subcommittee and has a keen interest. I  
11 had the subcommittee that did funding of DSS,  
12 and, you know, we're all struggling as  
13 policymakers on how to kind of repair the system.  
14 And, you know, there's a number of ways we look  
15 at it but, you know, also the interaction is just  
16 a small component of it, but it's nonetheless a  
17 component. It's the interaction of the  
18 Department of Social Services with the Family  
19 Court system. And having those cases timely  
20 heard and moved through the system because it's  
21 your protection of children. It seems like y'all  
22 have kind of found a success, a recipe for  
23 success down there.

24 JUDGE NORTON: We have and I don't know why it's  
25 resisted across the state. I mean, it has been

1           discussed in other areas but they don't seem to  
2           want to implement it. And I realize we're very  
3           lucky to have the volunteers that we have.

4 CHAIRMAN SMITH: Right.

5 JUDGE NORTON: I mean, they step up. They show up,  
6           and we resolve things based on that.

7 CHAIRMAN SMITH: Well, there's obviously proposals,  
8           and we received the latest budget request, which  
9           was 100 plus million dollars for the Department  
10          of Social Services. And, you know, these are  
11          innovative ideas that I think all of us are  
12          searching for rather than, you know, we need more  
13          money. Which we agree the system needs more  
14          money but, you know, we need to make sure that  
15          the investment into the system produces tangible  
16          results back to us; and that's what we struggle  
17          with over the years. And, you know, here --  
18          we're here and we're learning that somebody's  
19          been innovative and creative and created a system  
20          that's producing results. And, you know, I'd be  
21          interested in not only that 70 percent are  
22          resolved. How many of them, you know, that after  
23          that there's no more interaction into the system  
24          and how you track that. I don't expect the judge  
25          or mediators or anyone to be able to do that.

1 But, you know, I guess what I'm getting to is I  
2 don't know who would be the one to contact for us  
3 to learn more as policymakers. This is not  
4 anything to do with your screening. But as  
5 policymakers who that we could contact to try to  
6 find out about this, and, you know, see if  
7 there's a way to get the director of DSS to start  
8 working with implementing it. I understand the  
9 judicial system would have to be cooperative in  
10 it and they'd have to go through the Chief  
11 Justice and certainly there would be discussions  
12 about that. But there are ways that we could  
13 make this efficient and then track the long-term  
14 results from it. That's what I'm really  
15 concerned about. Does this fix issues that we  
16 don't see, that the environment improves or  
17 children are protected, and is there anymore  
18 interaction in the system. So these are one of  
19 the ways that I think we're looking for. So I  
20 cannot tell you how much I appreciate you  
21 bringing this to our attention today. And, you  
22 know, I hope you don't mind if we get somebody  
23 just to reach out to your office to tell us who -  
24 - how we can learn more about the system, if that  
25 would be okay with you.



1 JUDGE NORTON: That would be fine. And I shouldn't  
2 volunteer for anything but if you need somebody  
3 to come testify to some of the committees, as  
4 long as you give me a little heads up and some  
5 lead time, I'll be glad to do it.

6 CHAIRMAN SMITH: You're going to regret that statement  
7 but we'll take you up on it. Right, senator?

8 SENATOR YOUNG: Yeah.

9 CHAIRMAN SMITH: But I appreciate this. And without  
10 any further questions, this will conclude this  
11 portion of your screening. Appreciate you being  
12 with us today. Let me tell you to remind you  
13 that pursuant to the Commission's evaluative  
14 criteria, the Commission expects candidates to  
15 the follow the spirit as well as the letter of  
16 the ethics law. We'll view violations or the  
17 appearance of any impropriety as serious and  
18 potentially deserving of heavy weight in the  
19 screening deliberations. As you know, the record  
20 will remain open until the formal release of the  
21 Report of Qualifications, and you may be called  
22 back at such time if the need arises. Hopefully,  
23 it won't. I appreciate your patience with us and  
24 you appearing today and you offering for this  
25 reelection, and thank you for your service to the

1 State of South Carolina.

2 JUDGE NORTON: Thank you, thank you.

3 (Off the record.)

4 CHAIRMAN SMITH: All right. We're back on the record.

5 Judge Funderburk, appreciate you being here  
6 today.

7 JUDGE FUNDERBURK: Thank you, Mr. Chairman.

8 CHAIRMAN SMITH: Will you raise your right hand,  
9 please, sir?

10 THE HONORABLE HAROLD FUNDERBURK, having been duly  
11 sworn, testifies as follows:

12 CHAIRMAN SMITH: Judge, you have before you your PDQ  
13 and your Sworn Statement. Are those both  
14 documents that you have submitted to the  
15 Commission?

16 JUDGE FUNDERBURK: Yes, sir. It looks like they are.

17 CHAIRMAN SMITH: All right. And I understand you've  
18 made an amendment, maybe, to your PDQ now?

19 JUDGE FUNDERBURK: Yes, sir. There was an amendment  
20 for a couple of items.

21 CHAIRMAN SMITH: Okay. And other than that, are there  
22 any changes or updates that need to be made to  
23 these documents at this time?

24 JUDGE FUNDERBURK: No, sir.

25 CHAIRMAN SMITH: And without -- do you have any

1 objection to us making those as an exhibit to  
2 your sworn testimony here today?

3 JUDGE FUNDERBURK: No, sir, I do not.

4 CHAIRMAN SMITH: Without objection, if you'll hand  
5 those to Lindi, please, sir, and we're going to  
6 mark those exhibits to your sworn testimony.  
7 Judge Funderburk, the Judicial Merit Selection  
8 Commission has thoroughly investigated your  
9 qualifications for the bench. Our inquiry is  
10 focused on nine evaluative criteria and has  
11 included a ballot box survey, a thorough study of  
12 your application materials, verification of your  
13 compliance with state ethics laws, a search of  
14 newspaper articles in which your appears, study  
15 of previous screenings and checks for economic  
16 conflicts of interest. We've received no  
17 affidavits today in opposition to your candidacy,  
18 and there are not witnesses present to testify.  
19 Do you wish to make a brief opening statement to  
20 the Commission?

21 (Exhibit Number 3 was marked for identification  
22 purposes - (13 pages) - Personal Data Questionnaire  
23 for The Honorable Harold W. Funderburk.)

24 (Exhibit Number 4 was marked for identification  
25 purposes - (4 pages) - Sworn Statement of The

1 Honorable Harold W. Funderburk.)

2 (Exhibit Number 5 was marked for identification  
3 purposes - (1 page) - Amendment to Personal Data  
4 Questionnaire for The Honorable Harold W. Funderburk.)

5 JUDGE FUNDERBURK: Yes, sir. I feel that I should,  
6 but I'm proud to have been elected to the  
7 Administrative Law Court. I have found my term  
8 so far -- it's a wonderful job with wonderful  
9 people, and the cases are interesting and  
10 sometimes challenging. And I enjoy the work.

11 CHAIRMAN SMITH: All right. Thank you very much.

12 Will you answer any questions counsel may have?

13 JUDGE FUNDERBURK: Yes, sir.

14 MR. FIFFICK: Thank you, Mr. Chairman.

15 JUDGE FUNDERBURK - EXAMINATION BY MR. FIFFICK:

16 **Q. Thank you, Mr. Chairman. Judge Funderburk, you**  
17 **just answered my first question but if you'd like**  
18 **to elaborate, we've asked this of everybody.**  
19 **Judge Funderburk, after serving almost five years**  
20 **on the Administrative Law Court, why do you want**  
21 **to continue serving as an Administrative Law**  
22 **Court judge?**

23 **A. Well, it's -- as I said, it's an interesting,**  
24 **challenging job. I enjoy the work. I enjoy the**  
25 **people and I'd love to continue there as long as**

1 the law allows me to.

2 **Q. Thank you, sir. If you could, please explain one**  
3 **or two brief accomplishments you feel you've**  
4 **completed during your tenure and then maybe a**  
5 **goal you'd like to accomplish if reelected.**

6 A. Well, what I would like to believe is that I have  
7 done what the law requires me to do when cases  
8 appear before me, that I have done those  
9 diligently, issued orders in a timely manner.  
10 And I would hope to be able to continue to do  
11 that and perhaps -- we have some ambiguous places  
12 in the law and I guess someday that I'll make a  
13 ruling that will allow a higher court to resolve  
14 those ambiguities.

15 **Q. Thank you, sir. Judge Funderburk, what do you**  
16 **think your reputation is among attorneys who**  
17 **practice before you?**

18 A. I would hope that they would think of -- that  
19 I've been fair, that I've heard what they had to  
20 say, the witnesses and the evidence that they  
21 presented before me, and gave it full and fair  
22 consideration.

23 **Q. Thank you, sir. Judge Funderburk, the Commission**  
24 **received 372 ballot box surveys regarding you**  
25 **with 16 additional comments. The ballot box**

1 survey provided the following comments. He's a  
2 proven jurist, conscientious and brilliant. Two  
3 of the written comments expressed concerns. One  
4 reflects a concern that you may expect more of  
5 the ALC and expect it to run more like a Circuit  
6 Court. What response would you have to this  
7 concern?

8 A. That I thought it should run more like a Circuit  
9 Court. Well, I'm not sure how to respond to  
10 that. I think that it is a court. It is a court  
11 of record. And insofar as some of the cases that  
12 we have used to go to Circuit Court, I guess I  
13 have an expectation that I would treat those the  
14 same way a circuit judge would treat them had  
15 they come before that circuit judge in the  
16 previous years. So I don't know that, as a court  
17 of record, it should operate that much  
18 differently than a Circuit Court.

19 Q. Thank you, sir. Judge Funderburk, the second  
20 concern relates that at some point in an unnamed  
21 case you could have been or should have been  
22 disqualified based on a bankruptcy foreclosure or  
23 warrant issued by an agency you hear appeals  
24 from. What response would you offer to this  
25 concern?

- 1 A. I really don't know what to say about that. As a  
2 citizen of South Carolina, I've had involvement  
3 with a number of state agencies, DHEC, Department  
4 of Revenue, as an attorney. I've had involvement  
5 with more -- in other departments and I don't  
6 know exactly what -- I can't imagine what that  
7 refers to. If I had a case come before me and  
8 someone thought I should recuse myself, I would  
9 evaluate that, and I think I'd be careful in  
10 taking a case that I shouldn't take. I had one  
11 case in which I did recuse myself because I felt  
12 that I -- because of my business interests knew  
13 more about how that business operated than I  
14 would have learned in court. And I found it  
15 would be difficult to draw the line. And I  
16 thought I should recuse myself in that case, and  
17 I did. Other cases, I have told -- disclosed to  
18 the parties or the attorneys what my perceived  
19 conflicts might be. I have assured them that I  
20 would not be influenced by those conflicts. And  
21 out of only one case, which is the case I just  
22 mentioned, did any of the parties think that I  
23 should recuse myself.
- 24 **Q. Thank you, sir. That same comment also expressed**  
25 **concerns that you are unfamiliar with the rules**

1 of evidence. What response would you offer to  
2 that concern?

3 A. I don't believe that I'm unfamiliar with the  
4 rules of evidence. I think sometimes, in all  
5 fairness, sitting without a jury, I have on  
6 occasion assured parties that I would allow  
7 someone to speak and tell me what they thought I  
8 needed to know with the understanding that if  
9 they brought information in that I did not --  
10 would not have passed muster under the rules of  
11 evidence, I, as a finder of fact, would have to  
12 ignore that evidence. And that's -- I don't know  
13 what else to say about that.

14 **Q. Thank you, Judge Funderburk.**

15 MR. FIFFICK: I would note that the Midlands Citizens  
16 Committee Report found Judge Funderburk to be  
17 well qualified in the evaluative criteria of  
18 ethical fitness, professional and academic  
19 ability, character, reputation, experience and  
20 judicial temperament. He was found qualified in  
21 the evaluative criteria of Constitutional  
22 qualifications, physical health and mental  
23 stability. The Report also stated, very  
24 intelligent and excellent qualifications. Judge  
25 Funderburk, I now have some housekeeping issues



1 for you.

2 Q. Judge Funderburk, since submitting your letter of  
3 intent, have you contacted any members of the  
4 Commission about your candidacy?

5 A. No, sir.

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

9 A. Yes, sir.

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

14 A. No, sir, I have not.

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

19 A. I haven't asked anybody and, as far as I know, no  
20 one has acted without my permission.

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

24 A. Yes, sir.

25 MR. FIFFICK: Mr. Chairman, I would just note for the

1 record that any concerns raised during the  
2 investigation regarding the candidate were  
3 incorporated into the questioning of the  
4 candidate today. Mr. Chairman, I have no further  
5 questions.

6 CHAIRMAN SMITH: Thank you. Judge Funderburk, let me  
7 just say the same thing we were just talking  
8 about with the previous candidate. I look at  
9 your ballot box surveys and other than that  
10 outlier of a double question that you were just  
11 asked about the negative, I just want to point  
12 out to you that overwhelmingly everyone's finding  
13 you well qualified. And there are just -- any  
14 unqualified, as one or two, is very few. And so  
15 if you're a judge and you sit as a finder of fact  
16 and the judge of the law, it's very difficult to  
17 make everybody happy sometimes, but it somehow  
18 seems that you have pleased the vast majority.  
19 Most of these comments here are intelligent,  
20 great judge, asset to the bench. I really  
21 appreciate the work you've done over these past  
22 few years since your election. I know you  
23 brought a wealth of institutional knowledge to  
24 the Administrative Law Court from the Employment  
25 Security Commission to do and really appreciate

1 the work you have done over the years. And, you  
2 know, I look at the Midlands Citizens Committee.  
3 I look at the Bar Report, all well qualified. So  
4 I can tell you one thing is that you have shined  
5 while you're on the bench. And you have been --  
6 done a great job and I cannot tell you how much I  
7 appreciate it. It's nice to see judges that come  
8 back here and their peers and the people who are  
9 evaluating them tell them that they're doing a  
10 great job. And you're one of those so I want to  
11 make sure you understand that as you go through  
12 here we've entrusted you in a position and you  
13 represent your court and the integrity of that  
14 court. And you've upheld those ideals and  
15 principles, obviously, very well and I thank you  
16 for that.

17 JUDGE FUNDERBURK: Well, I appreciate it. I'm humbled  
18 by the responses of the member of the Bar.

19 CHAIRMAN SMITH: All right. Mr. Strom?

20 MR. STROM: Mr. Chairman. Judge Funderburk, I just  
21 wanted to echo what the Chairman said. I know  
22 some of the lawyers in my office have appeared in  
23 front of you, and they tell me that you're just  
24 an outstanding judge. The work you guys do is  
25 really important and you have to make a lot of

1 tough decisions. And as the Chairman said -- I  
2 mean, all the comments about you and everything I  
3 hear in the community is nothing but wonderful.  
4 So thank you for your good work and your judicial  
5 temperament and all you do for us.

6 JUDGE FUNDERBURK: Thank you, sir.

7 CHAIRMAN SMITH: All right. Senator Young?

8 SENATOR YOUNG: Thank you, Mr. Chairman. Judge  
9 Funderburk, I too want to compliment you on the  
10 job that you're doing. All of the ballot box  
11 comments -- I mean, nearly -- like the Chairman  
12 said, I mean, almost every one -- there might  
13 have been one -- I think there was just one that  
14 was adverse but everything else was glowing. The  
15 Bar Report, the Citizens Committee Report, and  
16 you should be commended publicly for that. And I  
17 wanted to make sure you hear that from us.

18 JUDGE FUNDERBURK: Well, I appreciate it, Senator.

19 CHAIRMAN SMITH: Mr. Safran?

20 MR. SAFRAN: Good morning.

21 JUDGE FUNDERBURK: Good morning.

22 MR. SAFRAN: I guess I'm running into more and more  
23 people from my past. Judge Funderburk and I also  
24 share some early heritage in Beaufort. I know he  
25 practiced down there a little while even after I

1 left. And he was always extremely helpful to me  
2 when he was counsel over at the Employment  
3 Security Commission, I think. Was that --

4 JUDGE FUNDERBURK: That's right, sir.

5 MR. SAFRAN: Yes. And I mean, I never had a time that  
6 I called over there that I did not get an  
7 outstanding response. And I too have heard just  
8 exemplary comments in terms of your performance  
9 as a judge. And they're certainly borne out by  
10 these ballot box surveys. And candidly, as we've  
11 pointed out to people in the past, it's easy to  
12 basically throw a rock when nobody knows where  
13 it's coming from. And so this is something that  
14 invites people to take their shots. And the fact  
15 that they haven't, really is a very strong  
16 reflection on the kind of job you're doing over  
17 there. And so I think, as I've said before in  
18 some of these hearings, we get accused a lot of  
19 times of being overly critical. But I think the  
20 flip side is is when we see somebody doing a  
21 great job, it's incumbent upon us to tell them.  
22 So I just feel like, you know, you need to know,  
23 and we're happy that you're offering again.

24 JUDGE FUNDERBURK: Thank you, sir.

25 CHAIRMAN SMITH: All right. Any further questions?

1 (No replies are heard.)

2 CHAIRMAN SMITH: All right. With that, Judge  
3 Funderburk, this concludes this portion of your  
4 screening. I want to take this opportunity to  
5 remind you that pursuant to the Commission's  
6 evaluative criteria, the Commission expects  
7 candidates to follow the spirit as well as the  
8 letter of the ethics law. We'll view violations  
9 or the appearance of impropriety as serious and  
10 potentially deserving of heavy weight in the  
11 screening deliberations. As you know, the record  
12 will remain open until the formal release of the  
13 Report of Qualifications, and you may be called  
14 back at such time if the need arises. I think  
15 you for offering for this position, and I thank  
16 you for your service to the State of South  
17 Carolina.

18 JUDGE FUNDERBURK: Thank you, Mr. Chairman.

19 CHAIRMAN SMITH: All right. Have a good day. Thank  
20 you for coming.

21 (Off the record.)

22 CHAIRMAN SMITH: All right. Judge Durden, how are you  
23 doing today?

24 JUDGE DURDEN: I'm doing well. I hope you are.

25 CHAIRMAN SMITH: I am doing well. Sorry we're running

1           behind. I don't -- we're early, so --

2           JUDGE DURDEN: Y'all are getting it this morning.

3           CHAIRMAN SMITH: That is good. All right. Judge

4           Durden, will you raise your right hand, please,

5           ma'am?

6           THE HONORABLE DEBORAH BROOKS DURDEN, having been duly

7           sworn, testifies as follows:

8           CHAIRMAN SMITH: Judge Durden, you have before you

9           your Sworn Statement and your PDQ. Are those

10          both documents you submitted to the Commission?

11          JUDGE DURDEN: They are.

12          CHAIRMAN SMITH: Are they correct?

13          JUDGE DURDEN: With one exception. I did, on the

14          question that asks about lawsuits, I neglected to

15          include a lawsuit that I had filed in a matter

16          about -- with my heating and air contractor. It

17          was filed and very shortly settled. And it

18          slipped my mind when I was filling this out. And

19          I think staff has got all that information before

20          you now, but I apologize for that omission.

21          CHAIRMAN SMITH: That's okay. So have you already

22          prepared an amendment, or you need to make an

23          oral amendment?

24          JUDGE DURDEN: It's already amended, I believe.

25          CHAIRMAN SMITH: Okay. So other than that amendment,

1           are there any other updates or changes that you  
2           need to make at this time?

3 JUDGE DURDEN: There are not.

4 CHAIRMAN SMITH: Do you have any objection to us  
5           making those documents and any amendments a part  
6           of -- an exhibit to your sworn testimony here  
7           today?

8 JUDGE DURDEN: I do not.

9 CHAIRMAN SMITH: All right. Without objection, if  
10          you'll hand those to Lindi, please, ma'am, and  
11          we'll make those exhibits to your sworn testimony  
12          here today. Judge Durden, the Judicial Merit  
13          Selection Commission has thoroughly investigated  
14          your qualifications for the bench. Our inquiry  
15          is focused on nine evaluative criteria, has  
16          included a ballot box survey, a thorough study of  
17          your application materials, verification of your  
18          compliance with state ethics laws, a search of  
19          newspaper articles in which your name appears,  
20          study of previous screenings and checks for  
21          economic conflicts of interest. We've received  
22          no affidavits filed in opposition to your  
23          election. There are no witnesses present to  
24          testify. Do you have a brief opening statement  
25          that you would like to make to the Commission?



1 (Exhibit Number 6 was marked for identification  
2 purposes - (14 pages) - Personal Data Questionnaire  
3 for The Honorable Deborah Brooks Durden.)

4 (Exhibit Number 7 was marked for identification  
5 purposes - (3 pages) - Sworn Statement of the  
6 Honorable Deborah Brooks Durden.)

7 JUDGE DURDEN: I would just really like to thank you  
8 all for the opportunity to serve on the  
9 Administrative Law Court. I have thoroughly  
10 enjoyed my tenure there and I feel like that is  
11 reflected in my work ethic for the job. I left  
12 my office to come over here with every single  
13 thing that was right for a decision, an order has  
14 been issued. So I keep my docket very up to  
15 date. In the ten years I've been on the bench,  
16 I've issued approximately 3,600 final orders and  
17 I've only been reversed 11 times. So I think  
18 that speaks for the quality of the work I've  
19 done. And I'm very proud of the job I've done  
20 and just seek an opportunity to continue.

21 CHAIRMAN SMITH: Thank you very much. Will you answer  
22 any questions that counsel may have for you,  
23 please?

24 JUDGE DURDEN - EXAMINATION BY MS. CRAWFORD:

25 **Q. Thank you, Judge. I believe you've touched on**

1 why you want to continue to serve as an ALJ.

2 Could you discuss -- besides your docket control,  
3 could you discuss any brief accomplishments while  
4 you've served on the bench?

5 A. I guess to me the biggest accomplishment is just  
6 trying to look at every case in front of me and  
7 give it the attention that it deserves, you know.  
8 I say I've got everything up to date right now  
9 but not everything is handled quickly. They all  
10 get -- you know, some things I've had one that  
11 went out this week that we did six drafts on. So  
12 sometimes, you know, it's not always a quick  
13 process. But just trying to make sure that every  
14 case gets the attention it deserves, whether it's  
15 one that garners the headlines or not.

16 Q. And do you have any other goals for the remainder  
17 of your term?

18 A. Just to continue to do a good job.

19 Q. You did mention the SLED report in the case --  
20 you said that was handled quickly. Was the  
21 matter dismissed, the roofing --

22 A. Oh, yeah, it was --

23 Q. -- I mean, the air conditioning?

24 A. Yeah, it was dismissed.

25 Q. It was dismissed.

1 A. It was settled and dismissed.

2 Q. So, thank you. Judge Durden, what do you think  
3 your reputation is among attorneys that practice  
4 before you?

5 A. Well, I think I have a good reputation. I seek  
6 to treat everybody in my courtroom with respect,  
7 and I think that's reflected in the comments from  
8 the Bar.

9 Q. Thank you, Judge. Judge, should you be reelected  
10 for another term, do you plan on serving the  
11 entire term?

12 A. I plan to. I may run for a seat on the Court of  
13 Appeals. There's a seat coming open next year  
14 but I certainly plan to continue to serve.

15 Q. Thank you, Judge. Judge Durden, the Commission  
16 received 368 ballot box surveys regarding you  
17 with 19 additional comments. The ballot box  
18 survey, for example, contained the following  
19 positive comments: Judge Durden is an  
20 exceptionally qualified administrative law judge  
21 with years of experience. Judge Durden is well  
22 qualified to serve another term. And Judge  
23 Durden is very smart, very fair and methodical.  
24 Four of the written comments expressed some  
25 concerns. A few concerns dealt with your

1           **temperament and/or professionalism in the**  
2           **courtroom. And what response would you have to**  
3           **these concerns?**

4       A.    I would be very concerned about anyone who had a  
5            response like that because I pride myself on  
6            being courteous to everyone, treating everybody  
7            fairly, making sure everybody feels heard.  
8            Everybody is not going to be happy with the  
9            decision that I made, but I feel like it's my job  
10           to make sure they feel like they were fairly  
11           heard. And, you know, so I am concerned that  
12           anyone would leave my courtroom and not feel that  
13           way. But I also feel like as a judge you can't  
14           please everybody.

15       **Q.    Yes, ma'am. Another concern raised issue with**  
16           **you taking a results-oriented approach in dealing**  
17           **with cases or in deciding cases versus direct**  
18           **application of the appropriate law to the facts**  
19           **presented. What response would you offer to this**  
20           **concern?**

21       A.    I would say that's not a fair criticism of my  
22            work. I am -- you know, I often am forced to  
23            reach conclusions in cases that aren't the one  
24            that I personally would love to come to but I'm  
25            guided by the law and the precedent. And I just

1 feel very strongly about not overstepping. I  
2 feel like I have a lot of authority that's been  
3 entrusted to me as an administrative law judge  
4 and I feel very strongly about not overstepping  
5 that authority. So I just really can't see that  
6 as a fair criticism of my work.

7 **Q. Thank you, Judge. What do you think the biggest**  
8 **changes are that we should make to the**  
9 **Administrative Law Court system to improve it?**

10 A. I can't really think of any improvements that  
11 need to be made. I think things are running very  
12 smoothly right now.

13 **Q. Thank you, Judge.**

14 MS. CRAWFORD: Mr. Chairman, I would note that the  
15 Midlands Citizens Committee found Judge Durden  
16 qualified in the evaluative criteria of  
17 Constitutional qualifications, physical health  
18 and mental stability. The Committee also found  
19 her well qualified in the remaining evaluative  
20 criteria of ethical fitness, professional and  
21 academic ability, character, reputation,  
22 experience and judicial temperament. The  
23 Committee stated in summary, excellent candidate.

24 **Q. Judge Durden, since submitting your Letter of**  
25 **Intent, have you contacted any members of the**

1 Commission about your candidacy?

2 A. No, I have not.

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

6 A. I am aware of that, yes.

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

11 A. I have not.

12 Q. And have you asked any third parties to contact  
13 members of the General Assembly on your behalf?

14 A. I have not.

15 Q. And are you aware of anyone attempting to  
16 intervene --

17 A. No.

18 Q. -- in this process on your behalf?

19 A. Sorry. No, I have not.

20 Q. And have you reviewed and do you understand the  
21 Commission's guidelines on pledging in South  
22 Carolina Code § 2-19-70(e)?

23 A. I do.

24 MS. CRAWFORD: I would note for the record that any  
25 concerns raised during the investigation

1           regarding this candidate were incorporated into  
2           the questioning of the candidate today. Thank  
3           you, Judge.

4 JUDGE DURDEN: Thank you.

5 MS. CRAWFORD: Mr. Chairman, I have no further  
6           questions.

7 CHAIRMAN SMITH: Thank you very much. Judge, let me  
8           just take this opportunity -- this is kind of a  
9           broken record, but it's a testament to the  
10          candidates that are appearing in front of us this  
11          morning. And I'm again looking through your  
12          ballot box survey, survey of the Midlands  
13          Citizens Committee and the Bar Committee. And  
14          you're seeing a theme go through yours, as we've  
15          seen with the rest, is you're an excellent judge  
16          and doing a wonderful job. The comments, people  
17          who rate you as, you know, your academic ability,  
18          your reputation, your experience, your judicial  
19          temperament are overwhelmingly well qualified,  
20          and very few people are putting unqualified on  
21          there. And so where you sit as a judge, as a  
22          finder of fact and the judge of the law, and  
23          you've got to make decisions, and you only  
24          disappoint people who motivate them enough to  
25          fill out something -- just a handful of them to

1 say you're not qualified, you're doing an  
2 excellent job over there and I want to commend  
3 you on that. Your comments on the ballot box  
4 surveys, Mr. Safran said a little while ago where  
5 this is free to people to throw rocks at you  
6 because no one knows who's tossing the rocks.  
7 And we're getting great things like, well  
8 qualified to serve another term. She's diligent,  
9 professional and ethical, treats litigants with  
10 dignity and respect. So that's the prevailing  
11 theme through all this. The Bar Committee and  
12 the Citizens Committee finds you well qualified.  
13 So as I was just talking to Judge Funderburk, it  
14 instills a lot of confidence in us as members who  
15 elect you to this position that you're doing the  
16 job that we elected you to. You're doing it in  
17 the professional, fair and dignified manner in  
18 which you're developing a reputation as being an  
19 excellent judge; and I think that's something you  
20 ought to be proud of. So, you know, sometimes  
21 we're up here having to criticize candidates and  
22 sometimes we're up here praising them. And  
23 you're one that's getting praised. And, you  
24 know, I thank you for your service. I thank you  
25 for the reputation you've developed on the bench



1           and making the citizens of this state proud and  
2           upholding the integrity of your court, and that's  
3           very important to us. So thank you very much.

4       JUDGE DURDEN: Thank you.

5       CHAIRMAN SMITH: Any questions of Judge Durden.

6                        (No replies are heard.)

7       CHAIRMAN SMITH: All right. Keep up the good work,  
8           Judge. Senator Young.

9       JUDGE DURDEN - EXAMINATION BY SENATOR YOUNG:

10       **Q. Thank you for the job you're doing. As the**  
11       **Chairman said, the comments in the Bar Report and**  
12       **the Citizens Committee Report are all very**  
13       **complimentary of you. I've looked at your CLE**  
14       **materials that you provided and it looks like you**  
15       **have taken a lot of CLE. Is there any particular**  
16       **reason why you've taken so much CLE? It looks to**  
17       **me like you've taken more than I've seen some of**  
18       **the others take?**

19       **A. I just still have to get those hours every year**  
20       **and so sometimes I have more than I need.**  
21       **Because I like to work a year ahead so I don't**  
22       **have to worry about it.**

23       **Q. Well, it looks like you've taken a very wide**  
24       **variety of topics too, and I want to compliment**  
25       **you on that as well.**

1 A. Thank you.

2 **Q. Thank you.**

3 CHAIRMAN SMITH: All right. Any further questions?

4 (No replies are heard.)

5 CHAIRMAN SMITH: Judge Durden, this concludes this  
6 portion of your screening process. Let me take  
7 this opportunity to remind you that pursuant to  
8 the Commission's evaluative criteria, the  
9 Commission expects candidates to follow the  
10 spirit as well as the letter of the ethics law.  
11 We will view violations or the appearance of  
12 impropriety as serious and potentially deserving  
13 of heavy weight in the screening deliberations.  
14 As you know, the record will remain open until  
15 the formal release of the Report of  
16 Qualifications, and you may be called back at  
17 such time if the need arises. Thank you for  
18 offering for this position, and I thank you for  
19 your service to the State of South Carolina.

20 JUDGE DURDEN: Thank you. Thank all of you for your  
21 service as well.

22 CHAIRMAN SMITH: Have a great day.

23 JUDGE DURDEN: I know this is sometimes not a happy  
24 place to be.

25 (Off the record.)

1 CHAIRMAN SMITH: All right. Back on the record.

2 Judge McCormick. I mean, Ms. McCormick, sorry.

3 We've been screening judges today --

4 MS. MCCORMICK: Yes, sir.

5 CHAIRMAN SMITH: So, I apologize. I just want to make  
6 sure now we're on candidates. So Ms. McCormick,  
7 appreciate you being here today. I see you've  
8 got a guest. Would you like to introduce him to  
9 the Commission?

10 MS. MCCORMICK: Yes, sir, thank you. This is my  
11 husband, Harvey McCormick. He's also a lawyer.

12 CHAIRMAN SMITH: Okay, welcome. Good to see you here  
13 today.

14 MR. MCCORMICK: Thank you very much.

15 CHAIRMAN SMITH: All right. Ms. McCormick, will you  
16 raise your right hand, please, ma'am.

17 MS. JEAN MCCORMICK, having been duly sworn, testifies  
18 as follows:

19 CHAIRMAN SMITH: All right. Ms. McCormick, before you  
20 have your Personal Data Questionnaire and your  
21 Sworn Statement. Are those both documents you  
22 submitted to the Commission?

23 MS. MCCORMICK: Yes, sir.

24 CHAIRMAN SMITH: Are they correct?

25 MS. MCCORMICK: Yes, sir.

1 CHAIRMAN SMITH: Any changes or updates that need to  
2 be made at this time?

3 MS. MCCORMICK: No, sir.

4 CHAIRMAN SMITH: And do you have any objection to us  
5 making those as exhibits to your sworn testimony  
6 here today?

7 MS. MCCORMICK: No, sir.

8 CHAIRMAN SMITH: All right. Without objection, if  
9 you'll hand those to Lindi and we're going to  
10 mark those as exhibits to your sworn testimony.  
11 Ms. McCormick, the Judicial Merit Selection  
12 Commission has thoroughly investigated your  
13 qualifications for the bench. Our inquiry has  
14 focused on nine evaluative criteria and has  
15 included a ballot box survey, a thorough study of  
16 your application materials, verification of your  
17 compliance with state ethics laws, a search of  
18 newspaper articles in which your name appears,  
19 study of previous screenings and checks for  
20 economic conflicts of interest. There have been  
21 no affidavits filed today in opposition to your  
22 candidacy, and no witnesses are here today to  
23 testify. Do you wish to make a brief opening  
24 statement to the Commission?

25 (Exhibit Number 8 was marked for identification

1 purposes - (18 pages) - Personal Data Questionnaire  
2 for Jean K. McCormick.)

3 (Exhibit Number 9 was marked for identification  
4 purposes - (6 pages) - Sworn Statement of Jean K.  
5 McCormick.)

6 MS. MCCORMICK: No, sir. I'd waive that statement. I  
7 just thank y'all for your service and the  
8 opportunity to be here.

9 CHAIRMAN SMITH: Thank you very much. Answer any  
10 questions that counsel may have for you, please.

11 MS. MCCORMICK - EXAMINATION BY MS. BAKER:

12 **Q. Good morning, Ms. McCormick. Please state for**  
13 **the record the city and circuit in which you**  
14 **reside.**

15 A. Beaufort, South Carolina, 14th Circuit.

16 MS. BAKER: Mr. Chairman, I note for the record that  
17 based on the testimony contained in the  
18 candidates PDQ, which has been included in the  
19 record and with the candidate's consent, Ms.  
20 McCormick meets the statutory requirement for  
21 this position regarding age, residence and years  
22 of practice.

23 **Q. Ms. McCormick, why do you want to serve as a**  
24 **Family Court judge and why do you feel that your**  
25 **legal and professional experience qualify and**

1           **will assist you to be an effective judge?**

2       A.    I want to serve as Family Court judge.  I believe  
3            you can see from my resume, most of my legal work  
4            the majority of my 29 years, has been in a  
5            service type profession, public defender, a  
6            prosecutor who did juveniles.  I've done guardian  
7            ad litem work.  I've always wanted to be a Family  
8            Court judge.  This time in my life I'm an empty  
9            nester.  My baby just went to the Citadel and I'm  
10           pretty much semi-retired.  I still do private  
11           guardian work.  But I think I do have the  
12           experience, the focus, from every side of a  
13           Family Court case and I would be fair and  
14           patient, which is -- which a family judge needs.  
15           I believe a Family Court judge is one of service  
16           and I think I can do that.

17       **Q.    Thank you.  Ms. McCormick, are there any areas of**  
18           **the law for which you would need additional**  
19           **preparation in order to serve as a Family Court**  
20           **judge, and how would you handle that additional**  
21           **preparation?**

22       A.    I will say recently I have not done the property  
23            distribution cases, mainly child custody.  You  
24            know everything that involves children I have  
25            done and I'm up to speed, I believe.  I think the

1 equitable distribution, I would need, you know,  
2 to do extra work on that but I have. I think I  
3 have excellent judges in Beaufort County that  
4 would assist me and direct me in the right  
5 direction.

6 **Q. Ms. McCormick, please briefly describe your**  
7 **experience in handling complex, contested Family**  
8 **Court matters and specifically discuss your**  
9 **experience with the financial aspects of Family**  
10 **Court work.**

11 A. A while ago I worked with Pete Fuge, who is  
12 retiring, whose seat is open that I'm running  
13 for. He was just -- he's a brilliant man. He  
14 handled the most highly contested cases in  
15 Beaufort. We handled business valuations. We  
16 handled physician practices, the valuation of  
17 that. We handled a party who had marital assets  
18 and put them offshore. We tracked those down. I  
19 worked with forensic accountants. So I have done  
20 it in the past but I will say I've not done it  
21 recently.

22 **Q. Ms. McCormick, the Commission received 199 ballot**  
23 **box surveys regarding you with 24 additional**  
24 **comments. The ballot box survey, for example,**  
25 **contained the following positive comments: She**

1 will make an excellent Family Court judge. Her  
2 temperament, intellect and ethics are perfectly  
3 suited for a Family Court judgeship. South  
4 Carolina will be lucky to have her as a Family  
5 Court judge. Jean McCormick has vast experience  
6 in all facets of family law. She is thoroughly  
7 knowledgeable in the rules of procedures of  
8 Family Court. Ms. McCormick is respected by her  
9 peers and the judiciary. She is known for her  
10 integrity, fairness and genuine compassion for  
11 others. Jean McCormick would be an excellent  
12 Family Court judge for the 14th Judicial Circuit.  
13 Five of the written comments expressed some  
14 concerns, including that you may not have the  
15 experience to be a Family Court judge,  
16 particularly in complicated divorce actions or in  
17 private family cases. How would you respond to  
18 that comment?

19 A. Again, I have had the experience. I have done  
20 the work. I certainly have the experience in all  
21 the children-based issues. And so I've done it.  
22 I think some of the younger lawyers might not  
23 remember that I did it, but I think I have the  
24 ability and the intellect to do a good job on  
25 those complex cases and know that they are very



1 important and will learn. I will tell you when I  
2 went back from the public defender's office to  
3 the prosecutor's office we only had fingerprints  
4 back then. And then -- now we have DNA. So I  
5 went to the DNA lab, talked to the experts and I  
6 was -- you know, I knew all about it. So I would  
7 plan to do the same thing.

8 **Q. What would you do if you had to master an**  
9 **unfamiliar area of the law in a relatively short**  
10 **period of time?**

11 A. I would, you know, look at the advance sheets.  
12 I've got Stuckey's Marital Litigation, which I've  
13 gone cover to cover through. I would ask the  
14 other fellow judges.

15 MS. BAKER: I would note that the Low Country Citizens  
16 Committee found Ms. McCormick qualified in the  
17 evaluative criteria of Constitutional  
18 qualifications, physical health and mental  
19 stability. The Committee found her well  
20 qualified in the evaluative criteria of ethical  
21 fitness, professional and academic ability,  
22 character, reputation, experience and judicial  
23 temperament. The Committee stated in summary,  
24 highly qualified, good range of experience in  
25 Family Court.

1 Q. I have a few housekeeping questions. Ms.  
2 McCormick, are you aware that as a judicial  
3 candidate you are bound by the Code of Judicial  
4 Conduct as found in Rule 501 of the South  
5 Carolina Appellate Court Rules?

6 A. Yes, ma'am.

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

10 A. No, ma'am.

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

14 A. Yes, ma'am.

15 Q. Since submitting your Letter of Intent, have you  
16 sought or received the pledge of any legislator,  
17 either prior to this date or pending the outcome  
18 of your screening?

19 A. No, ma'am.

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

24 A. No, ma'am.

25 Q. Have you reviewed and do you understand the

1                   **Commission's guidelines on pledging in South**  
2                   **Carolina Code § 2-19-70(e)?**

3           A.    Yes, ma'am.

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

9           CHAIRMAN SMITH:  All right.  Any questions for Ms.  
10                   McCormick?  Senator Young.

11   MS. MCCORMICK - EXAMINATION BY SENATOR YOUNG:

12           **Q.    Thank you, Mr. Chairman.  Ms. McCormick, thank**  
13                   **you for your interest in serving our state on the**  
14                   **Family Court bench.  I have a few questions.  One**  
15                   **is, what do you think is the appropriate demeanor**  
16                   **for a Family Court judge?**

17           A.    Even keeled, patient, understanding and treating  
18                    everyone with dignity and respect.

19           **Q.    Are there any particular judges that you have**  
20                   **appeared in front of over the years that you**  
21                   **would attempt to emulate yourself in terms of**  
22                   **their demeanor, how they handled the courtroom?**

23           A.    Yes, sir.  Would you like to know?

24           **Q.    Who would those be?**

25           A.    Gerald Smoak, Jr.  I also appeared before his

1           dad, but that would be one I would put there.

2   **Q.   I've looked at your Personal Data Questionnaire,**  
3           **and it has in it -- I think question 11 it**  
4           **requires you to list all of the experience that**  
5           **you've had in Family Court in the different**  
6           **practice areas. One of the areas is in the area**  
7           **of adoption cases, and it says that you handled**  
8           **adoption cases when you worked with Mr. Fudge.**

9   A.   Yes, sir.

10 **Q.   And that was over 20 years ago?**

11 A.   Yes, sir.

12 **Q.   So do you believe that you're prepared to handle**  
13       **adoption cases if you're elected to the Family**  
14       **Court?**

15 A.   I do. I recently was a guardian ad litem on a  
16       contested adoption case, and it was very unusual.  
17       And I got my feet back in on that. So I started  
18       as a guardian ad litem recently on adoption  
19       cases.

20 **Q.   And then in the area of divorces and equitable**  
21       **division of property, are you back doing those**  
22       **types of cases now in your practice?**

23 A.   No, just mainly guardian work on a part-time  
24       basis.

25 **Q.   Do you feel like you're up to speed on the issues**

1 in that particular area of practice?

2 A. Yes, sir. And if not I certainly can be.

3 Q. On the abuse and neglect cases, it's my  
4 impression that you've had a lot of experience in  
5 those cases.

6 A. Yes, sir.

7 Q. One question I have in that area is, if you could  
8 improve the system as it currently exists for the  
9 families and the children in the system on abuse  
10 and neglect cases, what would you recommend to  
11 do?

12 A. A couple of ideas. I would like -- you know,  
13 would think if you could assign a chief  
14 administrative judge just to those cases and  
15 maybe just have a time line to be screened. And  
16 I know it's a lot of work but maybe give them a  
17 couple more chambers weeks to handle that type of  
18 docket. Another possibility, and I know they did  
19 this in Charleston County but I'm not sure they  
20 do it anymore. They mediate those type cases,  
21 and I was surprised to hear they even do  
22 termination of parental rights. So that would be  
23 the other suggestion.

24 Q. We actually heard this morning about mediation of  
25 abuse and neglect cases in Horry County. What is

1           your view of parents who are behind on paying  
2           child support?

3       A.    You know, they need to support their children but  
4           certainly if they're in jail, they can't support  
5           their children.

6       Q.    So if -- how would you handle cases in front of  
7           you where parents appear before you as a Family  
8           Court judge and they're behind in their child  
9           support? I mean, what is your -- I know every  
10          case has its own set of facts.

11      A.    Yes, sir.

12      Q.    But I think I get from your first answer that you  
13           have little tolerance for folks that don't pay  
14           their child support?

15      A.    Correct, yes, sir.

16      SENATOR YOUNG: Those are all my questions.

17      CHAIRMAN SMITH: All right. Thank you. Mr. Strom.

18      MR. STROM: Mr. Chairman. Ms. McCormick, of course I  
19           remember you from your days in the public  
20           defender's office here, and you did an  
21           outstanding job there. I think my daughter  
22           followed you down in Beaufort in the solicitor's  
23           office. And while I haven't seen you, I feel  
24           I've kept up with you because of all the  
25           wonderful things I've heard about you and what

1           you've been doing down there.

2   MS. MCCORMICK: Thank you.

3   MR. STROM: I know that the solicitor has written a  
4           letter of support. And one of my favorite Family  
5           Court lawyers, Ken Lester, who would not say  
6           anything nice about somebody if he didn't  
7           absolutely mean it, also wrote you a very kind  
8           letter. And I just want to thank you for  
9           offering them up and I think you're going to make  
10          an excellent judge.

11   MS. MCCORMICK: Thank you, sir.

12   CHAIRMAN SMITH: Representative Murphy.

13   REPRESENTATIVE MURPHY: I just want to echo what Mr.  
14          Strom said about thank you for offering to serve.  
15          And I noticed on your PDQ that you had one son to  
16          graduate from the Citadel in '18, and then the  
17          other one is a knob?

18   MS. MCCORMICK: Yes, sir.

19   REPRESENTATIVE MURPHY: What company is he in?

20   MS. MCCORMICK: They're both in Kilo.

21   REPRESENTATIVE MURPHY: Okay. Well, good. My  
22          nephew's a knob in India company, and my son's in  
23          sophomore in November company.

24   MS. MCCORMICK: Wonderful.

25   REPRESENTATIVE MURPHY: Thank you for your willingness

1 to serve.

2 MS. MCCORMICK: Thank you.

3 REPRESENTATIVE MURPHY: And sending two of your three  
4 sons to the Citadel.

5 MS. MCCORMICK: They needed the Citadel. Thank you.

6 REPRESENTATIVE MURPHY: Mine did, too.

7 CHAIRMAN SMITH: All right. Any further questions?  
8 Mr. Safran.

9 MS. MCCORMICK - EXAMINATION BY MR. Safran:

10 Q. Appreciate your being here this morning. It's  
11 really odd. You're the third candidate. You're  
12 also the third that seemingly has these Beaufort  
13 roots. I started back there years ago and  
14 practiced for a little while but --

15 A. You look familiar.

16 Q. Well, you probably didn't see me in Family Court  
17 any more than I had to be, but I did have my  
18 experiences there and learned enough to decide I  
19 wanted to do something else. Let me just ask a  
20 few things. You've certainly been doing this a  
21 long time. I'm very familiar with Judge Fuge,  
22 because I think I was in some respects on the  
23 other side of some cases on appeal years ago that  
24 he was involved with, but you had kind of wound  
25 down a little bit. What was it that prompted you



1 to want to kind of more or less say, okay, I  
2 don't want to be retired or semi-retired anymore  
3 and take on the rigorous -- and it is rigorous,  
4 of being a Family Court judge?

5 A. Thank you for that question. I wanted to tell  
6 y'all. You know, I've looked back at my career,  
7 and I'm very happy with the service that I have  
8 done. I think I've made a difference. But I  
9 think I can make a bigger difference. And I  
10 certainly have the time and just the passion to  
11 do that right now.

12 Q. And I guess the thing is, is that I understand  
13 that the nest is empty. And I know that the  
14 judges don't travel as much as they used to but  
15 they still travel a good bit, because I actually  
16 think we had somebody in here the other day  
17 talking about having Judge Smoak somewhere far  
18 away from down in his home. I guess, is that  
19 something that, at this stage, you really are  
20 embracing as to what you want to do?

21 A. Yes, sir. I really look forward to it. You  
22 know, with having three kids, I mean, I pretty  
23 much stayed home for, you know, all those years.  
24 And I'm up for that and I look forward to it.

25 Q. Just a couple of other things. I am the first to

1 agree that just because certain things that  
2 you've done in your career may be some years ago  
3 and remote doesn't mean you forgot how to do them  
4 or that you're not capable of doing them. So I'm  
5 sure that what experience you had with Judge Fuge  
6 when y'all were in private practice is something  
7 that has a carryover.

8 A. Yes, sir.

9 Q. But again, do you feel up to some of the things  
10 that you'd have to confront that may not have  
11 been what your daily activities were as a  
12 solicitor when you were working down there?

13 A. Yes, sir. I really do and I'm excited to get my  
14 brain learning new things and digging back in.

15 Q. You know. And I think your pointing to Judge  
16 Smoak as a model is really spot on. We were in  
17 law school together and I think the absolute most  
18 of him. I mean, his demeanor and his way of  
19 handling things is about as good as you can find.

20 A. Yes, sir.

21 Q. I mean, I think that there are very few people  
22 who I'd call unflappable. He is. And his father  
23 was equally outstanding, both very good friends  
24 over the years. And I guess if you want to use  
25 him as kind of the criteria, I think you've got

1           **something good going.**

2       A.    Yes, sir.

3       **Q.    And we appreciate your offering.**

4       A.    Thank you.

5       CHAIRMAN SMITH: All right. Any further questions?

6                    (No replies are heard.)

7       CHAIRMAN SMITH: All right. Ms. McCormick, this  
8                    concludes this portion of your screening process.  
9                    Let me take this opportunity to remind you that  
10                   pursuant to the Commission's evaluative criteria  
11                   the Commission expects the candidates to follow  
12                   the spirit as well as the letter of the ethics  
13                   law. We will view the violations of the  
14                   appearance of impropriety as serious and  
15                   potentially deserving of heavy weight in the  
16                   screening deliberations. As you know, the record  
17                   will remain open until the formal release of the  
18                   Report of Qualifications, and you may be called  
19                   back at such time if the need arises. Thank you  
20                   for offering for this position and I thank you  
21                   for your service to the State of South Carolina.

22       MS. MCCORMICK: Thank y'all.

23       CHAIRMAN SMITH: All right. Safe travels back there  
24                    on I-26 to 95.

25       MS. MCCORMICK: Thanks again.

1 CHAIRMAN SMITH: All right. Take care.

2 (Off the record.)

3 CHAIRMAN SMITH: All right. We're back on the record.

4 Judge Novak, will you raise your right hand,  
5 please?

6 THE HONORABLE JOSEPH NOVAK, having been duly sworn,  
7 testifies as follows:

8 CHAIRMAN SMITH: You have before you your PDQ, your  
9 Personal Data Questionnaire and your Sworn  
10 Statement. Are those both documents you have  
11 submitted to the Commission?

12 JUDGE NOVAK: Yes, sir, they are.

13 CHAIRMAN SMITH: Are they correct?

14 JUDGE NOVAK: They are.

15 CHAIRMAN SMITH: Any changes or updates that need to  
16 be made at this time?

17 JUDGE NOVAK: No, sir.

18 CHAIRMAN SMITH: Do you have any objection to us  
19 making those as exhibits to your sworn testimony  
20 here today?

21 JUDGE NOVAK: No, sir, I do not.

22 CHAIRMAN SMITH: All right. Without objection, we'll  
23 make those exhibits to the sworn testimony here  
24 today. Judge, the Judicial Merit Selection  
25 Commission has thoroughly investigated your

1            qualifications for the bench. Our inquiry is  
2            focused on nine evaluative criteria, and has  
3            included a ballot box survey, a thorough study of  
4            your application materials, verification of your  
5            compliance with state ethics laws, search of  
6            newspaper articles in which your name appears,  
7            study of previous screenings and checks for  
8            economic conflicts of interest. We've received  
9            no affidavits in opposition to your candidacy  
10           today, and there are no witnesses present to  
11           testify. Do you wish to make a brief opening  
12           statement to the Commission?

13           (Exhibit Number 10 was marked for identification  
14           purposes - (17 pages) - Personal Data Questionnaire  
15           for The Honorable Douglas L. Novak.)

16           (Exhibit Number 11 was marked for identification  
17           purposes - (6 pages) - Sworn Statement of The  
18           Honorable Douglas L. Novak.)

19           (Exhibit Number 12 was marked for identification  
20           purposes - (2 pages) - Amendment to Personal Data  
21           Questionnaire for The Honorable Douglas L. Novak.)

22           JUDGE NOVAK: I know you've had plenty before me and  
23           more after me. I will dispense with an opening  
24           statement. I just thank you for the opportunity.

25           CHAIRMAN SMITH: Okay. Thank you very much. Answer

1 any questions counsel may have for you.

2 JUDGE NOVAK: Yes, sir.

3 JUDGE NOVAK - EXAMINATION BY MR. FIFFICK:

4 **Q. Judge Novak, please state for the record the city**  
5 **and circuit in which you reside.**

6 A. Bluffton, which is in Beaufort County. And that  
7 is in the 14th Circuit.

8 **Q. Thank you, sir.**

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

16 **Q. Judge Novak, why do you want to serve as a Family**  
17 **Court judge, and why do you feel your legal and**  
18 **professional experience qualify and will assist**  
19 **you to be an effective judge?**

20 A. I would tell the members of the Commission, I  
21 don't know that I ever intentionally put myself  
22 on a road to this position where I find myself  
23 today offered for this candidacy, for this  
24 judgeship. But I would tell you I came from a  
25 family of six kids so I'm not sure Family Court

1 was going to be completely out of my wheelhouse.  
2 I went to law school, wasn't sure where I was  
3 going to practice but found my way into a family  
4 law clinic. My first job out of law school was  
5 as a special grant attorney representing  
6 juveniles in the public defender's office. When  
7 I moved over to the solicitor's office, in  
8 addition to general sessions work, I also rode  
9 the circuit prosecuting those same juvenile  
10 adjudications. Every law firm I've worked in to  
11 date I have always handled the law firm's Family  
12 Court practice. About ten years ago when I  
13 decided to hang my own shingle, and since that  
14 time, I've done almost exclusively Family Court  
15 litigation. About seven years ago I was tapped  
16 to be a magistrate and very quickly realized the  
17 magistrate's court docket and the Family Court  
18 docket didn't necessarily jive all the time. So  
19 I developed a mediation practice, which has  
20 turned into a very successful practice where I'm  
21 mediating upward of two complex Family Court  
22 cases a week, which has been very rewarding. And  
23 to supplement that work, I've also done a great  
24 deal of guardian work where I'm appointed by the  
25 Family Court judges and colleagues to represent

1 juveniles in Family Court. So while I don't know  
2 that there was a determined path, I do feel like  
3 there's someone with a bigger hand out there that  
4 was having me in this system for a reason.

5 **Q. Thank you, Judge. Judge Novak, are there any**  
6 **areas of the law which you would need additional**  
7 **preparation in order to serve as a Family Court**  
8 **judge, and how would you handle that additional**  
9 **preparation?**

10 A. I would say based on that experience that I just  
11 outlined, I feel like I've been in every nook and  
12 cranny of the Family Court system. I certainly  
13 am offering my candidacy today as an attorney,  
14 but an attorney who has been practicing in the  
15 Family Courts of our state for 26 years now, as  
16 hard as that is to believe. But I'm also  
17 offering, and I think just as importantly, as a  
18 dad, as a husband, as a guardian, as a mediator,  
19 as a judge and as a small business owner. I  
20 think all those matters are important and  
21 relevant in Family Court. There's one area I've  
22 not done, juvenile justice, in quite a few years,  
23 but it's also where I started and cut my teeth,  
24 so I don't feel like getting up to speed in that  
25 area will take too much work.



1 Q. Thank you, sir. In addition to what you've  
2 already told the Commission, please briefly  
3 describe your experience in handling complex,  
4 contested Family Court matters and specifically  
5 discuss your experience with the financial  
6 aspects of Family Court work.

7 A. Certainly. In the private litigation and Family  
8 Court world, I've represented innumerable clients  
9 in that world. And obviously that's much more  
10 than just custody and visitation cases, that has  
11 to do with child support, spousal support,  
12 division of assets, sometimes more importantly,  
13 division of debts, and that certainly is a  
14 regular mainstay of litigation. As I've moved  
15 into mediation, with all due respect to my  
16 colleagues that still litigate on a regular  
17 basis, I think mediation requires a different  
18 level of experience and expertise, in that you're  
19 given the materials usually the night before or  
20 the morning of the mediation and you have to  
21 quickly figure out exactly what's going on in the  
22 case, what the assets are, what the debts are,  
23 what the liabilities are going to court, earn the  
24 parties' trust and still work them towards a  
25 resolution somewhere in the middle that they can

1 buy into and invest. So that would be the  
2 experience that I bring to the bench.

3 Q. Judge Novak, the Commission received 234 ballot  
4 box surveys regarding you with 23 additional  
5 comments. The ballot box survey, for example,  
6 contained the following positive comments:  
7 Excellent, amazing, impeccable reputation and the  
8 very best in judicial temperament. The only  
9 negative written comment expressed that you were  
10 haughty, politically motivated, and not well  
11 versed in law, unpredictable and lack of good  
12 work ethic. What would offer to respond to these  
13 concerns?

14 A. I would tell the members of the Commission, since  
15 I learned of that comment, I have lost sleep over  
16 that comment because it is so far away from who I  
17 am as a person on the bench or off the bench.  
18 But as I just said, I'm a dad, I'm a husband, I'm  
19 an attorney, so I'm not adverse to criticism. I  
20 certainly would take it as constructive  
21 criticism. I have taken it as constructive  
22 criticism since I learned of it. But I would  
23 also mention, when I became a magistrate, I'm  
24 reminded of a judge that's older and much wiser  
25 than myself that I'm also very proud to call my

1           dad told me, son, when you're on the bench you be  
2           the judge that you want to appear in front of,  
3           and you wear the robe lightly. And those are  
4           words that have stuck with me. I certainly  
5           approach the bench in that respect. That is not  
6           a judge that I would want to appear in front of.  
7           And I certainly hope that I have an opportunity -  
8           - whoever that person was, to have another  
9           opportunity so they see that's not the way I am  
10          on a daily basis.

11       **Q. Thank you, sir. Judge Novak, how would you**  
12       **compare your experience as a mediator with your**  
13       **experiences as a magistrate?**

14       A. Two different worlds, obviously. The mediation  
15       has been exclusively in the Family Court world.  
16       The magistrate world is civil and criminal. It's  
17       been a good outlet because it's a good diversion.  
18       It's something completely different. The  
19       magistrate -- when I first joined the magistrate  
20       bench, I had practiced for a number of years and  
21       thought that joining as a judge would be an easy  
22       transition for me. You knew everything, how to  
23       do it. Getting on the bench, you learn that  
24       there's a steep learning curve, which is  
25       important, I think, to realize in that there's a

1 lot going on. You have to not only rule on the  
2 case but you have to rule on procedure and rules  
3 and know what's going on in the courtroom.  
4 There's just a lot to learn and that's where I --  
5 I'd like to think that I'm coming to the Family  
6 Court world, as far as offering for this  
7 position, with some experience. So I'm not going  
8 to have to learn from day one to actually have  
9 that experience. Whereas the mediation world, as  
10 I just outlined, it's a lot of very quick  
11 learning as to exactly what's going, using your  
12 experience and your expertise to try to earn  
13 peoples' trust in a very short amount of time to  
14 bring them to a resolution that they have taken a  
15 part in.

16 **Q. Thank you, sir.**

17 MR. FIFFICK: I would note that the Low Country  
18 Citizens Committee found Judge Novak to be well  
19 qualified in the evaluative criteria of ethical  
20 fitness, professional and academic ability,  
21 character, reputation, experience and judicial  
22 temperament and found qualified in the evaluative  
23 criteria of physical health, mental stability.  
24 And the Report also stated that Judge Novak is  
25 very well qualified, very personable, projects

1 well, caring, energetic, plus experienced as a  
2 judge, super candidate.

3 Q. Judge Novak, I now have some housekeeping issues  
4 for you. Judge Novak, are you aware that as a  
5 judicial candidate you are bound by the Code of  
6 Judicial Conduct that's found in Rule 501 of the  
7 South Carolina Appellate Court Rules?

8 A. Yes, sir.

9 Q. Judge Novak, since submitting your Letter of  
10 Intent, have you contacted any members of the  
11 Commission about your candidacy?

12 A. I have not.

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

16 A. Yes, sir.

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

21 A. I have not.

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

1 A. No, sir.

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

5 A. Yes, sir.

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

11 CHAIRMAN SMITH: All right. Mr. Safran moves we go in  
12 Executive Session real quick. Seconded by Mr.  
13 Strom. All in favor say, aye.

14 (Ayes are heard.)

15 CHAIRMAN SMITH: All opposed.

16 (No replies are heard.)

17 CHAIRMAN SMITH: Ayes have it. We're going into  
18 Executive Session.

19 EXECUTIVE SESSION

20 CHAIRMAN SMITH: Mr. Safran moves that we lift the  
21 veil and come out of Executive Session, seconded  
22 by Vice Chairman Rankin. All in favor say, aye.

23 (Ayes are heard.)

24 CHAIRMAN SMITH: All opposed.

25 (No replies are heard.)

1 CHAIRMAN SMITH: The ayes have it. We're out of  
2 Executive Session. Let me state while we were in  
3 Executive Session we were discussing a  
4 confidential matter, and there were no votes  
5 taken and no matters decided while in Executive  
6 Session. All right. So any questions for Judge  
7 Novak? Senator Young.

8 JUDGE NOVAK - EXAMINATION BY SENATOR YOUNG:

9 Q. Judge Novak, thank you for your interest in  
10 continuing your service to the state on the  
11 Family Court bench. I've read over your Personal  
12 Data Questionnaire and I have some questions.  
13 The thing I did notice is it looks like you  
14 worked in the governor's office --

15 A. Yes, sir, I did.

16 Q. -- as an attorney?

17 A. Governor David Beasley.

18 Q. Yeah, I was going to say, was that Governor  
19 Beasley.

20 A. It was, yes, sir.

21 Q. And it looks like you worked on issues involving  
22 the Savannah River site?

23 A. Yes, sir, I did.

24 Q. How did you end up assigned to do that work?

25 A. That's a very strange question because I came

1 right from the solicitor's office into the  
2 governor's office. But that's who the attorney  
3 was -- had my position previously, that was her  
4 area so I had to get up to speed very quickly and  
5 become immersed in the nuclear power world.

6 **Q. And that can be very complicated?**

7 A. It can be very complicated.

8 **Q. Do you believe that you have enough experience to**  
9 **handle cases involving equitable distribution?**

10 A. Yes, sir.

11 **Q. Okay. And do you believe that you've handled**  
12 **enough cases involving juvenile sentencing? I**  
13 **know you used to be a solicitor.**

14 A. Yes, sir, I was. I was a solicitor and a public  
15 defender. At this point I'm primarily doing  
16 guardian work so it's not as much in the juvenile  
17 justice area.

18 **Q. What is your -- I know that Representative**  
19 **Rutherford's not here today. And if he was here,**  
20 **he'd probably want to know what your view is on**  
21 **sentencing of juveniles and kind of what your**  
22 **view is on that.**

23 A. Obviously I've been following the legislation  
24 closely. I know that it's been an ongoing debate  
25 about the age of juveniles. And I would tell you



1 that I think that the recent move on the 17 year  
2 olds was probably a smart one. I've never been a  
3 big believer that -- as much as I'm a fan of  
4 accountability as a solicitor, I've never been a  
5 believer that 17 year olds in the adult prison  
6 system where they're going to learn anything that  
7 was going to help them rehabilitate themselves.  
8 So I think unburdening the general session  
9 system, moving to the Family Court system, is  
10 probably smart, giving them a little more sense  
11 of environment to rehabilitate and get back on  
12 track. At the same time, I also believe that the  
13 Family Court's got to come up with some unique  
14 programs to be able to deal with those unique  
15 situations.

16 **Q. What is your view of parents who don't pay child**  
17 **support timely? How would you handle those**  
18 **cases?**

19 A. It's something we run into on a regular basis.  
20 And I'm sorry that one of the only remedies that  
21 seems to be for Family Court is to put people in  
22 jail. Although I've had plenty of experiences  
23 with plenty of judges to see how they handle it,  
24 where it's not an absolute decision whether they  
25 put in jail. They're given an opportunity.

1 They're reminded how important it is. And I've  
2 also seen situations in mediations where parents  
3 have tried to negotiate away child support. And  
4 I certainly try to remind them that that's not  
5 their right to negotiate it away. It's the  
6 child's right to be supported. So I think it's a  
7 very important element but I think it also needs  
8 to be handled by the court very carefully to make  
9 sure that the person understands why it's  
10 important, and that it's also important for them  
11 to make sure it gets paid.

12 **Q. And every case is different?**

13 A. Absolutely.

14 **Q. So in the area of abuse and neglect cases, do you**  
15 **have any suggestions on how the system can be**  
16 **improved for the families and children who are in**  
17 **those cases?**

18 A. I think the most important thing -- and I guess I  
19 would draw on my experience as a solicitor,  
20 having dealt with those cases, and even as a  
21 magistrate. I'm reminded of a case not too long  
22 ago where a doctor had come in for a restraining  
23 order and secured that restraining order against  
24 the defendant who didn't show up. And within an  
25 hour of that doctor returning home with the

1           restraining order physically in his hand, was  
2           shot six times by the defendant. So I'm reminded  
3           how important it is what we do. And I think from  
4           that perspective, having judges on the bench that  
5           have real-world experience both in the system and  
6           life experience to be able to identify which  
7           cases demand extra time and attention, is very  
8           important. So you can identify those cases  
9           versus -- unfortunately there's many cases in the  
10          DSS world and the Family Court world where  
11          litigants are just trying to game the system to  
12          try to get leverage. So I would say identifying  
13          those cases that the need extra time and  
14          attention are very important.

15       **Q. In Beaufort County have you seen where there has**  
16       **been mediation of abuse and neglect cases?**

17       A. Specifically?

18       **Q. Like in the -- we heard this morning that they've**  
19       **had success mediating in Horry County abuse and**  
20       **neglect cases.**

21       A. Well, we certainly get cases -- I certainly get  
22       cases in my office where there's allegations of  
23       abuse and neglect, which makes it a little more  
24       difficult, because usually there's a no contact  
25       order involved. So having the parties in the

1 same building discussing and negotiating makes  
2 things difficult, but certainly those are issues  
3 that are sacrosanct. You can't involve the  
4 criminal with the Family Court world. And so  
5 that's very important to remember, as we're  
6 mediating cases, that we can resolve the Family  
7 Court issues a great many times as far as the no  
8 contact order, that goes with the Family Court.  
9 Where there's a restraining and criminal orders,  
10 it's a completely separate system and we can't  
11 meld the two.

12 **Q. That's all the questions. Thank you very much.**

13 A. Thank you, sir.

14 CHAIRMAN SMITH: All right. Any further questions?

15 (No replies are heard.)

16 CHAIRMAN SMITH: Judge Novak, let me just reiterate  
17 what, I think, was pointed out. I've looked  
18 through your ballot box survey. I've looked  
19 through your Citizens Committee Report and looked  
20 through your Bar Report. And the prevailing  
21 theme of all those are you have an excellent  
22 temperament and well suited for this position.  
23 So I think it's nice to see that. And we talk  
24 about receiving anonymous surveys and anyone from  
25 the Bar, and you've obviously had to serve as a

1 magistrate for some period of time, and, you  
2 know, I presume always -- old lawyer, I see his  
3 picture up on the wall over there. He was a  
4 senator at one time from Sumter used to comment  
5 that the magistrate's court was what we call the  
6 people's court because most citizen's  
7 interactions were with the magistrate court. And  
8 so obviously you've had some interaction with a  
9 lot of people over there. And you're in Beaufort  
10 County and it appears to me that, at least from  
11 the attorneys who could anonymously say whether  
12 you're doing a good job or a horrible job, and  
13 you really have no way to figure it out, they all  
14 are overwhelmingly saying you're well qualified  
15 for this position, have a great judicial  
16 temperament, would make a fine judge, so that's  
17 nice to see. So I congratulate you on that on  
18 the job you're doing as a magistrate and the  
19 reputation you've earned over your years as  
20 practicing law.

21 JUDGE NOVAK: Thank you, sir.

22 CHAIRMAN SMITH: And so appreciate that. Without any  
23 further questions, this will conclude this  
24 portion of your screening process. Let me remind  
25 you that pursuant to the Commission's evaluative

1 criteria the Commission expects candidates to  
2 follow the spirit as well as the letter of the  
3 ethics laws. And we will view violations or the  
4 appearance of impropriety as serious and  
5 potentially deserving of heavy weight in the  
6 screening deliberations. As you know, the record  
7 will remain open until the formal release of the  
8 Report of Qualifications. You may be called back  
9 at such time if the need arises. Thank you for  
10 offering for this position, and thank you for  
11 your service to the State of South Carolina.

12 JUDGE NOVAK: Thank you, sir. And thank y'all for  
13 your service. I appreciate it.

14 CHAIRMAN SMITH: All right. Have a safe trip back  
15 home.

16 JUDGE NOVAK: Thank you very much.

17 CHAIRMAN SMITH: All right. Take care. Mr. Strom  
18 moves we go in Executive Session, seconded by  
19 Representative Murphy. All in favor say, aye.

20 (Ayes are heard.)

21 CHAIRMAN SMITH: All opposed?

22 (No replies are heard.)

23 CHAIRMAN SMITH: The ayes have it. We are now in  
24 Executive Session.

25 EXECUTIVE SESSION

1 CHAIRMAN SMITH: Senator Saab moves that we come out  
2 of Executive Session, seconded by Mr. Strom. All  
3 in favor say aye.

4 (Ayes are heard.)

5 CHAIRMAN SMITH: All opposed.

6 (No replies are heard.)

7 CHAIRMAN SMITH: The ayes have it. And let me state,  
8 while we were in Executive Session there were no  
9 matters decided and no votes taken. We received  
10 a legal briefing. We are now going to proceed to  
11 vote on the candidates that appeared before us  
12 this morning. So I'll turn that over to you,  
13 Erin.

14 VOTE

15 MS. CRAWFORD: Thank you, Mr. Chairman. The first  
16 candidate was the Honorable Ronald R. Norton,  
17 reelection Family Court, Fifteenth Circuit, Seat  
18 3.

19 CHAIRMAN SMITH: All right. Ms. Logan moves that we  
20 find Judge Norton qualified and nominated. All  
21 in favor signify by raising your hand.

22 (Hands are raised.)

23 CHAIRMAN SMITH: All opposed. Let the record reflect  
24 that was a unanimous vote. And let me also note  
25 that Representative Rutherford has given me his

1 proxy and votes for Judge Norton to be qualified  
2 and nominated.

3 MS. CRAWFORD: The next candidate, the Honorable  
4 Harold W. "Bill" Funderburk, Jr., reelection ALC,  
5 Seat 3.

6 CHAIRMAN SMITH: All right. Senator Saab makes a  
7 motion to find him qualified and nominated,  
8 seconded by Ms. McIver. All in favor, signify by  
9 raising your hand.

10 (Hands are raised.)

11 CHAIRMAN SMITH: All opposed?

12 (No replies are given.)

13 CHAIRMAN SMITH: Representative Rutherford votes his  
14 proxy as qualified and nominated. And let the  
15 record reflect that the vote was unanimous.  
16 Next?

17 MS. CRAWFORD: The Honorable Deborah Brooks Durden,  
18 reelection, Administrative Law Court, Seat 4.

19 CHAIRMAN SMITH: All right. Ms. McIver moves that we  
20 find Judge Durden qualified and nominated,  
21 seconded by Mr. Strom. All in favor,  
22 signify by raising your hand.

23 (Hands are raised.)

24 CHAIRMAN SMITH: All opposed.

25 (No replies are given.)



1 CHAIRMAN SMITH: Let the record reflect that  
2 Representative Rutherford had voted Judge Durden  
3 to be qualified and nominated and that this vote  
4 was unanimous. Next?

5 MS. CRAWFORD: Mr. Chairman, for the Family Court,  
6 Fourteenth Circuit, Seat 2, we have two  
7 candidates. They are Jean K. McCormick and the  
8 Honorable Douglas L. Novak.

9 CHAIRMAN SMITH: All right. Representative Murphy  
10 moves that we find both of the candidates  
11 qualified. All in favor, please raise your hand.  
12 (Hands are raised.)

13 CHAIRMAN SMITH: Let the record reflect that  
14 Representative Rutherford votes his proxy,  
15 finding all the candidates qualified, and the  
16 vote was unanimous. And we'll move to ballot on  
17 the two. Senator Saab moves that we nominate  
18 Jean K. McCormick, seconded by Mr. Safran. All  
19 in favor, raise your right hand.  
20 (Hands are raised.)

21 CHAIRMAN SMITH: And let the record reflect  
22 Representative Rutherford has voted proxy to  
23 nominate her. And then for Douglas Novak, Mr.  
24 Safran moves that we find Judge Novak -- that we  
25 nominate Judge Novak, and that's seconded by

1 Senator Rankin. All in favor, raise your hand.

2 (Hands are raised.)

3 CHAIRMAN SMITH: All right. And let the record  
4 reflect that Representative Rutherford votes for  
5 him to be qualified and nominated, and that the  
6 vote was unanimous. All right. With that being  
7 said, we'll adjourn into Executive Session.  
8 Representative Murphy moves we go into Executive  
9 Session, seconded by Senator Saab. All in favor,  
10 say, aye.

11 (Ayes are heard.)

12 CHAIRMAN SMITH: All opposed.

13 (No replies are heard.)

14 CHAIRMAN SMITH: We're going to adjourn and eat lunch  
15 and receive a legal briefing. We'll probably be  
16 back and try to start in the next 45 minutes.

17 EXECUTIVE SESSION

18 CHAIRMAN SMITH: Back on the record. Representative  
19 Murphy moves we lift the veil, seconded by  
20 Senator Rankin. All in favor say, aye.

21 (Ayes are heard.)

22 CHAIRMAN SMITH: All opposed.

23 (No replies heard.)

24 CHAIRMAN SMITH: The ayes have it. And let me say,  
25 while we were in Executive Session there were no

1 votes taken and no matters decided, and we're  
2 going to start with the candidates for the at-  
3 large seat number 2, and we're going to adjust,  
4 if that's okay with Commission members, depending  
5 upon who's available because we are running about  
6 45 minutes ahead of time. So -- by an hour, so  
7 we'll see who's here and we'll start the  
8 screenings.

9 (Off the record.)

10 CHAIRMAN SMITH: Let's go back on the record. Mr.

11 Cone, how you doing today?

12 MR. CONE: I'm good, Mr. Smith, how are you?

13 CHAIRMAN SMITH: I'm well. I appreciate you coming  
14 early and I presume you have no objection to us  
15 taking you out of order.

16 MR. CONE: Not at all. I'm happy to be able to  
17 accommodate you.

18 CHAIRMAN SMITH: Thank you. Appreciate it. First  
19 time in the screening we're early.

20 MR. CONE: I've heard I may be making history.

21 CHAIRMAN SMITH: Yes. All right. Mr. Cone, if you'll  
22 raise your right hand, please, sir.

23 MR. ROBERT CONE, having been duly sworn, testifies as  
24 follows:

25 CHAIRMAN SMITH: Mr. Cone, before you, you have your

1           Personal Data Questionnaire and your Sworn  
2           Statement. Are those both documents you have  
3           submitted to the Commission?

4 MR. CONE: Yes, sir.

5 CHAIRMAN SMITH: Are they both correct?

6 MR. CONE: Yes, sir.

7 CHAIRMAN SMITH: Any changes or updates that you need  
8           to make in those?

9 MR. CONE: No, sir.

10 CHAIRMAN SMITH: Do you have any objection to us  
11           making those as exhibits to your sworn testimony  
12           here today?

13 MR. CONE: Not at all.

14 CHAIRMAN SMITH: All right. Without objection, we'll  
15           make those exhibits to the sworn testimony. If  
16           you'll hand those, and we will give them to the  
17           court reporter. All right. Mr. Cone, the  
18           Judicial Merit Selection Commission has  
19           thoroughly investigated your judicial  
20           qualifications for the bench. Our inquiry is  
21           focused on the nine evaluative criteria, and has  
22           included a ballot box survey, a thorough study of  
23           your application materials, verification of your  
24           compliance with state ethic laws, search of  
25           newspaper articles in which your name appears,

1 study of previous screenings and checks for  
2 economic conflicts of interest. We have received  
3 no affidavits in opposition to your testimony  
4 here today and no witnesses present to testify.  
5 Do you wish to make a brief opening statement to  
6 the Commission?

7 (Exhibit Number 13 was marked for identification  
8 purposes - (17 pages) - Personal Data Questionnaire  
9 for Robert W. Cone.)

10 (Exhibit Number 14 was marked for identification  
11 purposes - (5 pages) - Sworn Statement for Robert W.  
12 Cone.)

13 MR. CONE: I will, Mr. Chairman, if that's all right.

14 My statement is that I have been practicing  
15 family law in South Carolina for 21 years. I  
16 have worked in private practice, representing  
17 defendants in child custody cases and divorce  
18 cases and related matters. I also during that  
19 time developed a broader experience in areas of  
20 law such as probate law and bankruptcy work.  
21 I've done some debt collection work. I also  
22 served for a time as a municipal judge, so I have  
23 some experience in the criminal system. And for  
24 the last, well, it'll be 13 years shortly, I've  
25 been working with the Department of Social

1 Services handling abuse and neglect cases for the  
2 Department. First as a contract attorney, and  
3 then since 2012 I've been a full-time attorney  
4 with the Department. Family court is where I  
5 spend the bulk of my time. I am very much aware  
6 of the importance Family Court judges play to the  
7 system, the kind of work that they have to do.  
8 It's -- while it's always a great honor to be  
9 elected to any judgeship, I am first to  
10 acknowledge that Family Court judges have to work  
11 awfully hard and have to keep odd hours. They're  
12 not the kind of judge that gets to leave every  
13 day at 5:00 o'clock but neither am I. I don't  
14 leave early. I'm here to work and I have been  
15 for a number of years now, so for me, serving in  
16 the Family Court is the next step in my -- I hope  
17 the next step in my career. It's how I've always  
18 wanted to end my career in state service. And I  
19 feel that I bring a lot of experience in these  
20 areas dealing with a lot of complex and difficult  
21 issues, and would look forward to the opportunity  
22 to serve the people of South Carolina in that  
23 capacity.

24 CHAIRMAN SMITH: All right. Thank you very much.

25 Will you answer any questions that counsel may

1           have for you, please?

2           MR. CONE: Yes, sir.

3           MS. DEAN: Thank you, Mr. Chairman.

4           MR. CONE - EXAMINATION BY MS. DEAN:

5           **Q. Mr. Cone, please state for the record the city**  
6           **and circuit in which you reside.**

7           A. I reside in Greenwood, South Carolina, and that's  
8           in the Eighth Judicial Circuit.

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

16          **Q. Mr. Cone, why do you want to serve as a Family**  
17          **Court judge, and why do you feel that your legal**  
18          **and professional experience qualify and will**  
19          **assist you to be an effective judge?**

20          A. My -- the reason I want to be a Family Court  
21          judge, as I said in my opening statement, we need  
22          good judges. It's a hard job that has to make  
23          difficult decisions frequently with not a lot of  
24          information and not a lot of time to do the kind  
25          of research that you might like. You have to do

1           it without a lot of support staff and frequently  
2           with not a lot of -- not necessarily a lot of  
3           information being presented to you, but at the  
4           same time you're called upon to make life  
5           changing decisions that affect parents, husbands,  
6           wives, children and have lifelong consequences.  
7           My experience has been that I have had to deal  
8           with those issues. I've had to make those kind  
9           of decisions without necessarily all the  
10          information I'd like to have and have had to make  
11          those tough calls about what needs to happen  
12          next, whether that's terminating parents'  
13          parental rights, giving custody to a grandparent  
14          over a parent or barring children from ever  
15          seeing a parent again or splitting families up  
16          across state lines, if need be. I believe we  
17          need good people in the state who are able and  
18          willing to make those decisions. And while I  
19          can't say that I'm filled with wisdom and always  
20          have the right answer, one of the important  
21          qualities needed in judges is the willingness to  
22          make a decision. And I've never had a problem  
23          making decisions, even on the tough calls.

24       **Q. Thank you. Mr. Cone, are there any areas of the**  
25       **law for which you would need additional**



1 preparation in order to serve as a Family Court  
2 judge, and how would you handle getting that  
3 additional preparation?

4 A. The main area that I would have some concern  
5 about, while I've been involved in Department of  
6 Juvenile Justice hearings to some extent, because  
7 there is overlap between those hearings and with  
8 the Department of Social Services, I have not --  
9 that's not been -- and I've been a guardian ad  
10 litem a few times in juvenile justice cases. I  
11 have not practiced extensively in that area. So  
12 I would want to spend some time not only  
13 reviewing the law regarding juvenile justice  
14 cases, but also I'd be consulting with other  
15 judges and attorneys who have -- do practice in  
16 that area to make sure I understand all the  
17 ramifications of those and the various options  
18 that are open for dealing with juveniles.  
19 They're related to what we do at DSS, but they  
20 are different. They have different consequences  
21 and different choices that are available to them  
22 that are not -- that don't apply in a civil  
23 matter. So that would be my -- I'd say that's my  
24 major weakness in terms of not being as  
25 comfortable in that area of the law.

1 Q. Thank you. Mr. Cone, please briefly describe  
2 your experience in handling complex, contested  
3 Family Court matters and specifically discuss  
4 your experience with financial aspects of Family  
5 Court work.

6 A. I have handled -- in terms of complex matters,  
7 the most complex ones I deal with financially  
8 tend to -- I've handled several matters that  
9 involved a family business where -- and it was  
10 operated by one spouse but not -- and the parties  
11 were separating and were having to try to come up  
12 with a valuation of what the business was worth  
13 and how you make the -- how can you determine  
14 what interest, if any, the other spouse who's not  
15 involved in the business is entitled to, and how  
16 do you compensate with that without destroying  
17 the business by forcing it to liquidate or to  
18 incur substantial debt. Those are -- and I've  
19 also just dealt with the difficulty -- I've had  
20 several cases where I've had very high income  
21 families where the income was generated by one  
22 spouse, and the other spouse had either no income  
23 or little income and would have to deal with  
24 pretty contentious issues about alimony and child  
25 support in those situations. Most of them we

1 were able to resolve by negotiation ultimately,  
2 but you have to be comfortable with the fact that  
3 -- and be able to articulate why you believe a  
4 person is entitled to alimony. That's becoming a  
5 more complex issue these days with more and more  
6 two-income households, but you still have to deal  
7 with the fact that if you have one parent that's  
8 making \$250,000 a year and the other spouse makes  
9 30, you've got to find a way to equalize that and  
10 make it fair to both sides. So those are the  
11 issues that I certainly had spent a lot of time,  
12 usually with either -- I think most of the ones  
13 I've dealt with we ultimately resolved either  
14 through mediation or through an informal  
15 conference. I've had to try one case on the  
16 issue of alimony where a substan- -- you know,  
17 where there was a substantial award, more of a --  
18 I think it ended up being about \$2,000 a month in  
19 alimony, but it was for a finite period of time.  
20 It was not permanent. It was for -- I think we  
21 ended up doing it for seven years, so the wife --  
22 I represented the wife -- so she could go back to  
23 school and complete her education.

24 **Q. Thank you, Mr. Cone. The Commission received 173**  
25 **ballot box surveys regarding you with 27**

1 additional comments. The ballot box survey, for  
2 example contained the following positive  
3 comments: Mr. Cone would make an outstanding  
4 addition to the bench. He is knowledgeable and  
5 even tempered in the best sense of the word.  
6 Along with, Mr. Robert Cone has an excellent  
7 judicial temperament, incredible grasp of the law  
8 and the respect of lawyers he works with. He  
9 would be an incredible judge. One of the written  
10 concerns expressed -- one of the written comments  
11 expressed concern. That comment had a concern  
12 regarding your experience with domestic relations  
13 in juvenile justice. What would you offer as a  
14 response to that?

15 A. Well, I think as I mentioned on the juvenile  
16 justice, I have not handled a large number of  
17 those cases. So I would agree I don't -- but  
18 again, I'm familiar with the process, and I had  
19 to work with a lot of juvenile delinquents in my  
20 -- and children who have dual involvement with  
21 social services and DJJ, so I don't see that as  
22 any kind of insurmountable obstacle. I'm not  
23 sure why they would say that I'm not com- -- I  
24 wouldn't be experienced in domestic relations  
25 law. I've handled divorces, child custody and

1 related actions for over a decade before I came  
2 to work full time for the Department of Social  
3 Services, and I've served as a guardian ad litem  
4 in custody disputes. I've represented husbands  
5 and wives in divorce actions as well as parents  
6 on both side in child custody proceedings, so  
7 it's unfortunate that someone feels that way, but  
8 I don't really think -- I just have to  
9 respectfully disagree with them. I think I have  
10 enough experience to handle it.

11 **Q. Thank you. Mr. Cone, your SLED check noted two**  
12 **lawsuits. One was McKinney v. Arahill. Do you**  
13 **remember your involvement with that case?**

14 **A.** Yes. That was a dispute involving some real  
15 estate, and I was a trustee for one of the named  
16 litigants. It was a child, and so I was named in  
17 the suit because my ward under the trust was  
18 named as a party as far as adjudicating some  
19 interest in a piece of real property.

20 **Q. Thank you. Mr. Cone, you're also, we believe,**  
21 **named in a second lawsuit filed in 2013 in the**  
22 **U.S. District of South Carolina dealing with a**  
23 **Teresa L. King. You have since provided**  
24 **documentation that that was actually a General**  
25 **Robert W. Cone --**

1 A. Yes, ma'am.

2 **Q. -- and you're not a general, correct?**

3 A. Unfortunately, no. I think that would be a great  
4 way to start my military career but I don't think  
5 that would work out.

6 **Q. Thank you.**

7 A. I was very interested to find out there was  
8 another Robert W. Cone roaming around and getting  
9 sued in South Carolina.

10 **Q. And you're listed as a plaintiff in Newton v.**  
11 **Caldwell but you were actually the attorney**  
12 **representing the plaintiff in that case?**

13 A. Yes. That was an eviction action. I represented  
14 the plaintiff, but the county website listed me  
15 as plaintiff rather than plaintiff's attorney.

16 **Q. Thank you, Mr. Cone, for going through those with**  
17 **us. Mr. Cone, what improvements to the Family**  
18 **Court would you seek to make if you were serving**  
19 **on the Family Court bench?**

20 A. Well, if I could -- in terms of improvements, as  
21 I said, one of the struggles we deal with right  
22 now in all types of cases is we've got too many  
23 cases and not enough court time and not enough  
24 judges. So a lot of that is outside the control  
25 of members of the judiciary as far as the number

1 of judges. And for me what you can do is focus  
2 on -- as a judge is focus on what is within your  
3 control, which is to make sure you're operating  
4 your courtroom as efficiently as possible, that  
5 you're making good use of the time that's  
6 available. I still get troubled when I walk  
7 around some of the courthouses that I visit and  
8 there may be judges presiding but cases have been  
9 settled, and they're just kind of there finishing  
10 up paperwork, but they're not conducting  
11 hearings. And I know full well there are people  
12 who've been waiting two years, three years, you  
13 know, to have their case heard in court. I think  
14 that there is more judges can do to be aggressive  
15 about scheduling hearings and making sure that,  
16 even though it may inconvenience people at times,  
17 we've -- at DSS we've been moving towards using a  
18 multiple-day docketing to where we have multiple  
19 cases set for the same day, even though we know  
20 we can't reach all of them, and we get push back,  
21 and we get complaints from some of the litigants  
22 because we make them come to court. But our  
23 explanation is always we don't want to -- we'll  
24 waste a day of court time because we settled the  
25 first case and then there's nothing else

1 scheduled for the day. I'd rather have four  
2 cases and if we settle two and try one, we still  
3 took care of three. And I think that can be  
4 done, not only in the context of DSS, but also in  
5 private matters. And from what I -- some  
6 counties do that but I notice it seems to be  
7 uneven across the state whether they're doing  
8 that or not, taking advantage of what we call ABC  
9 docketing and scheduling cases. I think if  
10 you're a judge, you're there working from 8:30 to  
11 5:00 the same as every other employee, and you  
12 ought to be using that time to resolve disputes.  
13 That's what you're there to do.

14 **Q. Thank you, Mr. Cone. And what challenges do you**  
15 **anticipate facing from the Family Court bench if**  
16 **you're elected to serve?**

17 A. Well, again, the flip side of what I just said is  
18 while there are days you may not have much to do,  
19 there are also days where you have 30 cases to  
20 hear. And as I mentioned, one of the challenges  
21 I see is trying -- is trying to make good  
22 decisions in a very short span of time with very  
23 limited information. The reality is, you know --  
24 I think one of the challenges is how do you make  
25 those decisions in a 15-minute hearing or a 30-



1 minute hearing. Still making a good decision  
2 that's going to be fair to the litigants and fair  
3 to the parties, but at the same time move along  
4 so that everybody who's waiting for their day in  
5 court gets it done. Time management is a  
6 struggle and I know it's up and down. There are  
7 days where you think you have a lot to do and it  
8 goes away quickly. But then you have other days  
9 where you have so much to do it's hard to get  
10 done. End of the day, I know from my work I've  
11 been doing over the last decade, that's a huge  
12 problem in the Department of Social Services  
13 arena. We have, you know, cases that are -- I'm  
14 trying a case next week where the children have  
15 been in foster care for four years. And that's  
16 unacceptable but we're going to finally get it  
17 done because those kids need to know where  
18 they're going once and for all. But it's a  
19 frustration that it's dragged on that long.

20 **Q. Thank you, Mr. Cone.**

21 MS. DEAN: I would note that the Piedmont Citizens  
22 Committee found Mr. Cone qualified in the  
23 evaluative criteria of constitutional  
24 qualifications, physical health and mental  
25 stability. The Piedmont Citizens Committee found

1 Mr. Cone well qualified in the criteria of  
2 ethical fitness, professional and academic  
3 ability, character, reputation, experience and  
4 judicial temperament. The Piedmont Citizens  
5 Committee added the following comments: Mr. Cone  
6 served as a private practitioner with a heavy  
7 family law emphasis for over ten years before  
8 joining the Department of Social Services, where  
9 he has served as a practicing lawyer and a  
10 managing lawyer at multiple levels. He would  
11 bring to the Family Court bench a breadth and  
12 depth of Family Court experience, especially in  
13 child abuse and neglect cases that would be of  
14 great service to our state.

15 **Q. I just have some housekeeping issues now, sir.**

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

20 A. Yes, I am.

21 **Q. Mr. Cone, since submitting your Letter of Intent,**  
22 **have you contacted any members of the Commission**  
23 **about your candidacy?**

24 A. No, I have not.

25 **Q. Are you familiar with § 2-19-70, including the**

1 limitations on contacting members of the General  
2 Assembly regarding your screening?

3 A. I am.

4 Q. Since submitting your Letter of Intent, have you  
5 sought or received the pledge of any legislator,  
6 either prior to this date or pending the outcome  
7 of your screening?

8 A. I have not.

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

13 A. I haven't asked anyone and I'm not aware of  
14 anyone doing that for me.

15 Q. Thank you. Have you reviewed and do you  
16 understand the Commission's guidelines on  
17 pledging in South Carolina Code § 2-19-70(e)?

18 A. I am.

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

24 CHAIRMAN SMITH: All right. Any questions for Mr.  
25 Cone?

1 MR. CONE - EXAMINATION BY CHAIRMAN SMITH:

2 Q. Mr. Cone, let me start off with just a couple of  
3 questions. And Senator Young had to step out  
4 briefly but one area we've been asking people  
5 about is the Department of Social Services. And  
6 I see you're an attorney with the Department of  
7 Social Services. You've been there how long?

8 A. I worked as a contract attorney for them from  
9 2006 until 2012 and became a full-time attorney  
10 in 2012.

11 Q. And I notice in your PDQ you're doing a region  
12 maybe or three counties?

13 A. I started out as the managing attorney for  
14 Greenwood, for the Eighth Circuit, which is  
15 Greenwood, Abbeville, Newberry and, later,  
16 Laurens. And through 2016 I became the regional  
17 attorney where I supervise the legal departments  
18 for the Eighth, Second and Eleventh Circuits,  
19 which is the Lexington and Aiken area. And as of  
20 July, I am now the assistant managing attorney  
21 statewide for our legal operations.

22 Q. Okay. Are you still operating out of Greenwood,  
23 or are you operating here in Columbia?

24 A. Technically my office is in Greenwood. I'm here  
25 in Columbia two or three days a week, depending

1 on what my schedule has.

2 **Q. And you mentioned you've got to try a case here**  
3 **next week or something. Are you still having to**  
4 **handle abuse and neglect cases?**

5 A. At this point I am handling some cases that have  
6 become particularly problematic for the agency  
7 and are taking up more time and resources than  
8 the county legal staff are really able to do and  
9 keep up with their regular case load, so -- and  
10 this case is one of those.

11 **Q. So you get that difficult cases that nobody else**  
12 **wants, huh?**

13 A. That's -- yes, sir. That's a fair assessment.

14 **Q. So you've obviously been doing this abuse and**  
15 **neglect, and I think, not to be critical of the**  
16 **agency, but DSS has had a lot of scrutiny over**  
17 **the past few years and obviously a lot involved**  
18 **in the children's first lawsuit. On your end of**  
19 **it with abuse and neglect, what ways are there**  
20 **that, you know, if you had a magic wand, would**  
21 **you help improve the system?**

22 A. A magic wand. Well, the easy answer everyone  
23 says is, well, more funding, more staff, more  
24 resources.

25 **Q. We hear that often.**

1 A. I'm sure you hear that a lot. To be more  
2 specific, I think the biggest issue that I've  
3 seen in my time at DSS is we've got to find a way  
4 to stem the brain drain. My experience is it  
5 takes about three to five years to make a good  
6 DSS caseworker who knows their job and  
7 understands what the job is. And a good  
8 supervisor needs to be there for about five to  
9 seven years. Right now we're turning over staff  
10 at about a year and a half, maybe two years.  
11 We're supervisors who have three years or less of  
12 experience. And the reality is you just can't  
13 learn -- this job's an art, it's not a science,  
14 and we're not running McDonald's. We can't just  
15 give you the color-coded instruction sheet, say  
16 do it this way and it'll be fine. And until we  
17 address that problem, we're going to struggle,  
18 because -- and we have that on the legal side  
19 too. We turn over a lot of attorneys, and it  
20 troubles me that frankly I'm one -- I consider  
21 myself one of the new guys at DSS and it turns  
22 out I'm actually one of the old guys, which is  
23 quite discouraging for me but that's where we are  
24 right now.

25 **Q. That's the one thing that I've come to notice. I**

1 was going to ask about that. I've seen a lot of  
2 turnover in the legal department over at DSS, not  
3 only in Columbia to some degree, but also at the  
4 county level. Why is that?

5 A. We have three categories of attorneys. The vast  
6 majority of the attorneys in our agency are  
7 classified as Attorney IIs. Their average  
8 salary's about \$55,000 a year. Our Attorney  
9 IIIs, who tend to be the managing level attorneys  
10 -- we don't have many of them, but they make  
11 about between 60 and 65 for the most part. And  
12 the problem is they're asked to carry a caseload  
13 of 100 plus cases or more, be in trial sometimes  
14 as many as four days a week, and we give them a  
15 set of expectations that is at best difficult, if  
16 not impossible to meet, in terms of getting  
17 orders produced timely, getting their paperwork  
18 caught up, noticing hearings and so forth. It's  
19 a lot of work. And the truth is you could go  
20 into private practice and chase DUI cases and  
21 simple divorces and do a few real estate  
22 transactions and the occasional personal injury  
23 case, and you'll make more money than \$55,000 a  
24 year or even \$65,000 a year. So it's very  
25 difficult to compete. And we're at a situation

1 now, we're finding that even the legal services,  
2 which provides, you know, aid for indigent  
3 parties, they pay their attorneys more than we  
4 pay ours. That's awfully hard -- and the  
5 attorney generals and solicitor's offices. It's  
6 just hard to compete. You know, good, talented  
7 people are going to move on.

8 Q. You know, one thing I found interesting last  
9 year, I had a philosophical concern with the  
10 bill, but there was a bill that was placed --  
11 actually made it out of the judiciary committee  
12 and was on the floor of the House that  
13 essentially said that attorneys who represent the  
14 Department of Social Services need to have --  
15 take into consideration that their sole duty was  
16 not to represent the desires of the caseworkers  
17 in essence. And basically saying you have to do  
18 what you believe as an attorney is in the best  
19 interest, akin to being a solicitor. Your job is  
20 not to win a conviction, your job is to make sure  
21 that you see justice is carried out. And  
22 sometimes you have to dismiss a case that you  
23 don't feel like you should. And so what was  
24 perpetrated on the floor by the sponsor of this  
25 bill was that DSS is not really concerned about



1 protecting families or doing what's in the best  
2 interest of children. They're more concerned  
3 about following the desires of a caseworker.  
4 And, you know -- you know, again, it went back to  
5 committee as it should because I don't think that  
6 the General Assembly needs to be telling  
7 attorneys who their clients are and what their  
8 ethical obligations are. We have rules of  
9 professional conduct that dictate that to us.  
10 But nonetheless, it was an interesting concept  
11 that the perception out there was that the DSS  
12 attorneys are not acting in the best interests of  
13 the children. And, you know, I don't know where  
14 that was -- how that came about but what's your  
15 comment on that?

16 A. Well, we follow the civil model of  
17 representation. We're considered civil  
18 attorneys, which means we have to represent the  
19 interests of our clients, and our client is the  
20 Department of Social Services. Now what you're  
21 discussing about representing a specific  
22 caseworker, we shouldn't be doing that. And we  
23 do -- now the caseworker obviously has a lot of  
24 say because they're the ones that have worked,  
25 you know, with the family the most. And I do see

1 folks who kind of dig their heels in on a  
2 particular issue. And certainly in my capacity  
3 as an attorney part of our role is as an advisor  
4 and I also have to inform my clients all the  
5 time. I say, look, I can't present something to  
6 the court that, you know, against -- contrary to  
7 the law or unethical and I'm sorry you feel this  
8 way about this family or about these foster  
9 parents, or whatever, but we can't present what  
10 you're asking for. It contradicts the law. And  
11 sometimes my folks are not real happy with me  
12 when I explain that to them but -- so we are a  
13 gatekeeper, I guess, in that sense, but at the  
14 end of the day if our client says this is what we  
15 want, and it's not illegal or unethical, we are  
16 obligated to go and present that information to  
17 the court as the agency's recommendation in a  
18 particular case. And I remember when that bill  
19 came out it would like -- it might switch us to  
20 more of a solicitor's model. What I can say  
21 about that is there are a lot of days where I  
22 wish we had that authority because I could get a  
23 lot more done. And I could take care of some of  
24 the problematic -- particularly as time goes on,  
25 and I've become more experienced than a lot of

1 the caseworkers I'm dealing with and would like  
2 to believe I know better than they do as far as  
3 what's realistic and what's not. But then there  
4 are other cases where I'm not sure I want that  
5 responsibility, to be honest, because those are -  
6 - there's a danger there because I'm making  
7 decisions about people I've never met and don't  
8 know anything about. So I don't know the answer.  
9 One of the tricks about -- one of the things I  
10 find difficult about DSS is we're a hybrid.  
11 Where it's a civil proceeding from a procedural  
12 standpoint, but there's a lot of it that feels  
13 like a criminal proceeding. And we're trying to  
14 move away from that perception because it's not  
15 our -- I get a lot of folks who -- caseworkers  
16 who think they're on an episode of Law and Order,  
17 and they're going to convict parents of abuse and  
18 neglect, and that's not what we do. Our job is  
19 to try to work with these families and fix what's  
20 broken, not -- we don't punish people. That's --  
21 you know, if they've committed a crime, that's --  
22 law enforcement and the solicitor's office takes  
23 care of that. And sometimes there's over --  
24 there's certainly overlap with what we do, but I  
25 get very -- it's very hard, particularly as

1     inexperience factors into that as far as not  
2     understanding the role.  And I get folks who have  
3     the mentality of, we're going to go in there and  
4     we're going to get these people.  I say, we need  
5     to get them their families back.  We're not going  
6     to get them.  I mean, we're trying to help -- our  
7     job is to help the children, first and foremost,  
8     but not everybody understands that.  And it tends  
9     to be -- and we're a little too adversarial.  But  
10    I guess my answer to your question, in a way I'd  
11    like to have the authority to be the final  
12    decider, if you will, on what to do in these  
13    cases but at the same time I don't know a whole  
14    lot about these people that we're talking about.  
15    And I'd be -- I'd certainly -- if I had that kind  
16    of authority, I'd have to do a lot -- have a lot  
17    of discussions with -- and make sure that my --  
18    and it's my job to make sure our folks have done  
19    a thorough job in their investigation anyway.  
20    And if they're not, it's the job of our -- we try  
21    to teach -- I spend a lot of time instructing our  
22    attorneys and caseworkers now to make sure -- if  
23    you don't do a thorough job, you know, the court  
24    can't make a good decision either.  The court  
25    gets 30 minutes or an hour or two hours to figure

1 out what's going on with a situation that may  
2 have been taking place for years. We've got to  
3 paint them a picture that's complete. Otherwise,  
4 they're just going to act on whatever little bit  
5 of information we give them, and that's going to  
6 be harder to lead to the right result.

7 Q. Well, that just reminds me back to my days when I  
8 did Family Court work, and as you know, we were  
9 all appointed at some point before we had the 608  
10 contracts and it rolled downhill in my law firm,  
11 as I'm sure it did with everyone else. And I was  
12 usually the one taking the DSS appointments for a  
13 number of years. And so we would try the TPRs,  
14 and I'll never forget Judge Wright Turbeville  
15 from Manning would always take those a lot more  
16 serious. And he would say, that's the death  
17 penalty in the Family Court. There's nothing  
18 more akin to an action of taking someone's  
19 parental rights as someone having to sacrifice  
20 their life. And so, you know, he would take it  
21 very serious and make sure we followed -- dotted  
22 all the Is and crossed the Ts. And I just think  
23 that's an interesting aspect of how you look at  
24 the Family Court as there are -- I mean,  
25 obviously when you get involved with the

1 Department of Social Services, there are reasons  
2 and generally there's some horrific circumstances  
3 that happen, but also there's substantial rights  
4 that have to be balanced in that regard.

5 A. And actually for my first -- before 2006, from  
6 '98 to '06 I was on that appointment list and my  
7 job was at the largest law firm in Greenwood. It  
8 had 11 attorneys and I got to do all of their  
9 appointment work too. It's actually how I  
10 developed an interest in family law, because  
11 before that I was doing insurance defense work  
12 mainly but I found I enjoyed family law work  
13 better. But I represented parents in DSS cases  
14 for a decade. And I have sympathy for parents  
15 too because a lot of them are not evil, they're  
16 not malicious, they're just people who have, for  
17 one reason or another, been born into tough  
18 circumstances. Maybe they didn't have, you know,  
19 a good parent as an example. They have a lot of  
20 poverty issues. And to be honest, in some ways  
21 the cases we deal with involving things like  
22 sexual abuse and severe physical abuse, while  
23 they're horrible to participate in, they're  
24 actually pretty easy to know what we need to do.  
25 The harder ones are the folks who are just kind

1 of -- having a run of bad luck and need to know -  
2 - you know, and are looking -- we should be  
3 trying to help them rather than trying to punish  
4 them for having a run of bad luck in their life.

5 Q. Let me say this. I noticed on your PDQ that law  
6 firm you practiced with I wish you were still  
7 there because -- and we still had appointments  
8 because I would like for you to make sure that  
9 Lee Roper would have to go the department to --  
10 the Family Court to handle DSS cases, because I  
11 think he would be a treat for the Family Court  
12 judges.

13 A. I can see if I can get him back on the list.

14 Q. Okay. Would you do that? Can you try to make  
15 sure like put him on the conflict list of 608  
16 appointments in that circuit? Tell him it's  
17 courtesy of me.

18 A. I'll let him know. I'll make sure the clerk puts  
19 him at the top of the list.

20 Q. Thank you very much.

21 CHAIRMAN SMITH: Any other questions for Mr. Cone?  
22 Senator Young.

23 SENATOR YOUNG: Thank you, Mr. Chairman.

24 MR. CONE - EXAMINATION BY SENATOR YOUNG:

25 Q. Mr. Chairman, I had to step out for a moment. I

1 had a telephone conference with a judge and an  
2 attorney in a matter. And so I was not here when  
3 you were asked a few questions, one of which is  
4 an area that I'm trying to cover with a lot of  
5 the candidates, and that is in the questions  
6 about abuse and neglect cases. I know the  
7 Chairman asked you some questions. Based on your  
8 experience with abuse and neglect cases, if you  
9 could recommend ways that the system could be  
10 improved for the children and the families in  
11 that system, what would those recommendations be?

12 A. Well, one of the things I mentioned is we need to  
13 build our stable of experienced caseworkers and  
14 supervisors. Because a lot of the problems that  
15 we're dealing with are the result of workers not  
16 really understanding their role and not  
17 understanding how you do investigations and how  
18 you provide -- you know, how you determine what  
19 services are needed. We see a lot of cookie  
20 cutter, you know, type plans for -- and the  
21 situations we deal with are too complicated for  
22 cookie cutter. You're dealing with families with  
23 a wide variety of issues. To me that's the --  
24 the first step is dealing with the brain drain.  
25 And -- because once you -- when I first started



1 out, the Greenwood office that I worked out of,  
2 all the caseworkers had been there for 15 plus  
3 years, and they never had any problems. Their  
4 cases went very well and we never had any major  
5 problems, but they were experienced. And then in  
6 the space of a year or so they all retired or  
7 left. And now when I go up to that office, the  
8 next most experienced person's been there about  
9 three years. So that -- and they're struggling a  
10 little bit and I see that statewide. In terms of  
11 systems -- and we're trying various ways now to  
12 try to streamline it. I was at a meeting today.  
13 We're trying to go to and create a system where  
14 we do what we call pre merits conferences before  
15 trial to see if we can work out cases before  
16 court. Only a few counties have had any sort of  
17 formal system to resolve disputes and meet with  
18 the litigants ahead of time. It's difficult to  
19 sit on the courthouse steps or outside the  
20 courtroom and try to negotiate what might be a  
21 life-changing decision for these families and  
22 dealing with defense attorneys who may have just  
23 been appointed a few weeks ago and don't really  
24 know a whole lot about the case themselves. So  
25 we're trying to build more in where we're

1 communicating with the parents earlier in the  
2 process and are communicating with -- and we're  
3 getting them attorneys appointed as early as  
4 possible. We're trying to move away from having  
5 a lot of folks who are unrepresented. I think  
6 our cases are too complicated for the vast  
7 majority of folks in our -- who come -- who are  
8 involved in our cases to come to court and defend  
9 themselves. We -- I've always encouraged people  
10 to go -- if they qualify for a free attorney, to  
11 go apply for one, because we're going to have --  
12 it's going to make my job easier and it's going  
13 to make their life easier to have someone  
14 experienced in these issues help them. And we  
15 also tend to get cases resolved more quickly.  
16 But a lot of it is training and experience and  
17 teaching our staff how to handle these cases and  
18 how do you approach them. As I mentioned, we've  
19 got too many folks who think they're law  
20 enforcement officials and are recreating an  
21 episode of Law and Order, trying to prosecute  
22 parents for abuse and neglect and we're there to  
23 help them. We're not there to prosecute them.  
24 But that's not the mentality and we're trying to  
25 -- through training and other things to help

1 people understand that and help our staff do it.  
2 But it's an art not a science, and it's very  
3 difficult to communicate that sometimes.

4 **Q. I had noticed that you have a semester of medical**  
5 **school.**

6 A. Yes. I -- when I was in -- when I was at Furman,  
7 I guess by way of background, I am the son,  
8 grandson and great-grandson of physicians. And  
9 while I was at Furman, MUSC at the time had a  
10 program called the early assurance program where  
11 you could apply during your freshman year of  
12 college to get into medical school. And if you  
13 were admitted, based on your SAT scores and  
14 basically high school grades, you did not have to  
15 take the MCAT, and you could enter into -- you  
16 would start MUSC your first -- right after your  
17 graduation. And I got admitted to the program,  
18 and I asked, well, do I need to major in biology  
19 or chemistry or something like that. And they  
20 said, oh, no, we want you to be well rounded and  
21 study whatever you want because we're going to  
22 give you all the science that you need when you  
23 come to medical school. And in that first  
24 semester they did -- and my description of that  
25 is that it's been like trying to drink water from

1 a fire hose, because they covered in a day what  
2 would have been an entire semester of  
3 biochemistry at Furman. And I actually passed  
4 most of my classes. I flunked biochemistry. I  
5 enjoyed some of it but towards the end of that I  
6 said, you know, I'm going to be a mediocre  
7 doctor, because I'm not -- I just don't have the  
8 academic background to do it. And I was doing it  
9 not -- necessarily because I wanted to do it but  
10 because I thought that's what my father and  
11 grandfather would have wanted, to sort of keep on  
12 the family tradition. So after that first  
13 semester I spent some time talking with my  
14 family, and my parents, and my dad let me off the  
15 hook by saying, no, I don't want you to do it  
16 because I did it. I want you to do it because  
17 it's what you want, and I made a decision not to  
18 go back.

19 **Q. Your father was a doctor in Greenwood?**

20 A. He is. He just retired this past year. He's an  
21 internist.

22 **Q. Thank you.**

23 CHAIRMAN SMITH: All right. Any further questions?

24 (No replies are heard.)

25 CHAIRMAN SMITH: This concludes this portion of your

1 screening process. Let me take this opportunity  
2 to remind you that pursuant to the Commission's  
3 evaluative criteria, the Commission expects  
4 candidates to follow the spirit as well as the  
5 letter of the ethics law. We will view  
6 violations or the appearance of impropriety as  
7 serious and potentially deserving of heavy weight  
8 in the screening deliberations. As you know, the  
9 record will remain open until the formal release  
10 of the Report of Qualifications, and you may be  
11 called back at such time if the need arises. I  
12 appreciate you offering for this position, and  
13 thank you for your service to the State of South  
14 Carolina.

15 MR. CONE: Thank you. I thank you for your  
16 consideration today.

17 CHAIRMAN SMITH: All right. Have a safe drive home.

18 MR. CONE: Thank you, sir.

19 CHAIRMAN SMITH: Appreciate you getting here early  
20 too.

21 MR. CONE: Glad that worked out.

22 (Off the record.)

23 CHAIRMAN SMITH: All right. Judge Able, you're an  
24 associate probate judge, aren't you?

25 JUDGE ABLE: Yes, sir, that's right.

1 CHAIRMAN SMITH: All right. We'll make sure we called  
2 you -- got straight on that.

3 JUDGE ABLE: Thank you, sir.

4 CHAIRMAN SMITH: I see you're here today and you have  
5 a guest. Would you like to introduce your guest  
6 to us, please, sir?

7 JUDGE ABLE: Yes, sir. This is my best friend and my  
8 wife, Toni. Her real name's Esther, we call her  
9 Toni.

10 CHAIRMAN SMITH: Welcome. Appreciate you being here  
11 today.

12 MS. ABLE: Thank you. Thank y'all.

13 CHAIRMAN SMITH: All right, Judge Able. If you're  
14 raise your right hand, please.

15 THE HONORABLE BRYAN C. ABLE, having been duly sworn,  
16 testifies as follows:

17 CHAIRMAN SMITH: All right. Before you, you have your  
18 Personal Data Questionnaire and your Sworn  
19 Statement. Are those both documents you have  
20 submitted to the Commission?

21 JUDGE ABLE: Yes, sir.

22 CHAIRMAN SMITH: Any changes or updates that you need  
23 to make?

24 JUDGE ABLE: I don't believe so, sir.

25 CHAIRMAN SMITH: All right. Are they both correct?

1 JUDGE ABLE: Yes, sir, to the best of my knowledge.

2 CHAIRMAN SMITH: Do you have any objections to us  
3 making that an exhibit to your sworn testimony  
4 here today?

5 JUDGE ABLE: No, sir, I would not.

6 CHAIRMAN SMITH: All right. Without objection, we'll  
7 make those two exhibits to your sworn testimony.  
8 Judge Able, the Judicial Merit Selection  
9 Commission has thoroughly investigated your  
10 qualifications for the bench. Our inquiry is  
11 focused on nine evaluative criteria and had  
12 included a ballot box survey, a thorough study of  
13 your application materials, verification of your  
14 compliance with state ethics laws, search of  
15 newspaper articles in which your name appears, a  
16 study of previous screenings and checks for  
17 economic conflicts of interest. We have received  
18 no affidavits in opposition to your candidacy  
19 today, and there are no witnesses present to  
20 testify. Do you wish to make a brief opening  
21 statement to the Commission?

22 (Exhibit Number 15 was marked for identification  
23 purposes - (16 pages) Personal Data Questionnaire for  
24 The Honorable Bryan C. Able.)

25 (Exhibit Number 16 was marked for identification

1 purposes - (7 pages) Sworn Statement of The Honorable  
2 Bryan C. Able.)

3 JUDGE ABLE: Well, sir, I would just like to thank  
4 everybody for having me here today. I'm offering  
5 for this position because I believe I have  
6 something to offer. It's not just because I want  
7 to be a judge. I enjoy being an attorney but I  
8 believe I have something to offer to the state as  
9 a judge And I think I would enjoy the position.

10 CHAIRMAN SMITH: All right. Thank you very much.

11 Answer any questions counsel may have for you,  
12 please.

13 JUDGE ABLE - EXAMINATION BY MR. TRIPPLETT:

14 **Q. Judge Able, please state for the record the city**  
15 **and circuit in which you reside.**

16 A. I live in the Eighth Circuit, Laurens County,  
17 South Carolina.

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

25 **Q. Judge Able, why do you want to serve as Family**



1           **Court judge, and why do you feel that your legal**  
2           **and professional experience qualify you and will**  
3           **assist you to be an effective judge?**

4    A.    Well, as I just said, I think I have something to  
5           offer.  I've been practicing law now for 32  
6           years.  I've been the associate probate judge in  
7           Laurens County for about six -- right at six  
8           years.  I was elected -- well, not elected.  I  
9           was chosen -- selected by Judge Friday when Judge  
10          Hocker got elected to the Circuit Court bench,  
11          and they asked me if I would fill that position.  
12          I told them I would.  I think that serving in  
13          that position has helped me a lot in developing  
14          an understanding of what a Family Court judge  
15          would do.  I've been doing that for six years.  
16          I've never had a jury trial in probate court.  
17          You can't have jury trials, but most of the time  
18          they're non-jury.  And I believe I've developed a  
19          sense of what a Family Court judge would be doing  
20          holding court, listening to the litigants without  
21          the assistance of a jury.  And I believe that  
22          would help me hit the ground running as a Family  
23          Court judge.  I believe I could start holding  
24          court fairly quickly.

25    **Q.    Okay.  Judge Able, are there any areas of the law**

1           **for which you would need additional preparation**  
2           **in order to serve as a Family Court judge, and**  
3           **how would you handle that additional preparation?**

4    A.    I don't think there's -- in the waiting area, I  
5           was trying to think of any style action that I  
6           have not handled in the Family Court.  I think  
7           I've handled just about every type of action  
8           there is to handle in a Family Court setting.  I  
9           don't know that I would need any additional  
10          education or guidance and anything of that  
11          nature.

12   **Q.    Judge Able, please briefly describe your**  
13          **experience in handling complex, contested Family**  
14          **Court matters, and specifically discuss your**  
15          **experience with the financial aspects of Family**  
16          **Court work.**

17    A.    Well, I mean, I've had a lot of experience in  
18           handling cases ranging from, you know, simple  
19           divorce cases to complex litigation.  I find that  
20           most of the complex litigation involves two  
21           things, child custody and the division of marital  
22           assets.  Just recently I had a mediation  
23           involving -- or two mediations involving sizeable  
24           estates.  Those are things that I've handled  
25           quite regularly, employing -- sometimes employing

1 experts to assist me in those areas. I don't  
2 think those would be -- as a Family Court judge,  
3 I don't believe it would be hard for me to grasp  
4 the fact pattern of complex marital litigation.  
5 And I don't remember the last part of your  
6 question.

7 **Q. So discuss the experience with the financial**  
8 **aspects.**

9 A. Okay. As far as that, again, it goes back to  
10 just first of all the discovery process, making  
11 sure you have all the financial information  
12 that's necessary to try a case and then employing  
13 experts to assist you in trying to get ready for  
14 the litigation.

15 **Q. Judge Able, the Commission received 182 ballot**  
16 **box surveys regarding you with 28 additional**  
17 **comments. The ballot box survey, for example,**  
18 **contained the following positive comments: Bryan**  
19 **Able is one of the most well-qualified candidates**  
20 **for any position in our judiciary. Bryan Able**  
21 **would make an excellent Family Court judge. I've**  
22 **had the privilege to observe Mr. Able in both**  
23 **family and criminal court, and he has the**  
24 **patience, compassion, skill and intelligence**  
25 **required to make both an excellent attorney and**

1 an excellent judge. I have encountered Mr. Able  
2 as opposing counsel in litigation as well as  
3 appeared before him in his capacity as associate  
4 probate judge. He's a man of high character and  
5 has the demeanor and temperament that makes for  
6 an outstanding trial judge. Four of the written  
7 comments expressed concerns. One comment  
8 expressed concerns that you lack courtesy and  
9 humility towards litigants when handling cases.  
10 What response would you offer to that concern?

- 11 A. You know, I remember us discussing that earlier.  
12 You know, how do you respond to that? First of  
13 all, I respond by saying I don't believe it to be  
14 true. I've always prided myself on the fact  
15 that, in holding court as probate judge, I'm a  
16 very patient judge. A lot -- I'd say, not a  
17 majority, but a significant number of cases in  
18 probate court are pro se litigants. And of  
19 course somebody coming into that setting not  
20 having the background, not having the knowledge  
21 of the rules that are applied in any court, I  
22 find that I have to be, you know, overly patient  
23 sometimes in making sure people understand the  
24 process and what's going on. But I do not  
25 remember a single time when I have not been

1 patient with somebody, have not been courteous to  
2 somebody who has appeared in front of me as a  
3 judge. I just don't know where something like  
4 that would be coming from. Now I can say that  
5 when I've had people come back before me for  
6 purposes of maybe a Rule to Show Cause being  
7 issued and they have done things like gone into a  
8 conservatorship and taken out money that wasn't  
9 supposed to be taken out, and they're having to  
10 explain to me why they've essentially stolen  
11 somebody's money, the child -- their child's  
12 money. I can be forceful. I can let them know  
13 that I'm not happy about the decisions they've  
14 made and what they've done but I've never been --  
15 I've never been anything but courteous to them  
16 and patient with them. But I let them know that  
17 I'm not happy.

18 **Q. Another comment expressed concerns with your**  
19 **temperament on the bench and that you take**  
20 **matters personally, having sometimes vendettas**  
21 **against certain attorneys and their clients.**  
22 **What response would you offer to this concern?**

23 **A.** I have no response for something like that.  
24 That's just not true. That's just -- I can't  
25 imagine a time when that would have happened.

1 And I'm ethically barred from holding any kind of  
2 vendetta against anybody anyway. If I had that  
3 strong a feeling toward a lawyer or a litigant, I  
4 would recuse myself from that case.

5 **Q. And lastly, one comment expressed concerns with**  
6 **you having trouble getting hearings scheduled for**  
7 **you. What response would you offer to that**  
8 **concern?**

9 A. Again, I don't schedule -- as an associate  
10 probate judge, I don't schedule the hearings.  
11 The probate court will receive a request for a  
12 hearing. They will contact my assistant in my  
13 office and she'll schedule a hearing. There's  
14 never been a situation where somebody's got to --  
15 had to delay -- there's been a delay in my trying  
16 to schedule somebody, a hearing if I'm contacted  
17 about that. Again, I tell attorneys that I know  
18 in Laurens and other places if they need a  
19 hearing, make sure they contact the probate  
20 court. They'll contact my office -- and I can  
21 usually scheduled a hearing within a week or two  
22 weeks if they need a -- if they're -- you know,  
23 if it's pressing. I think at one time somebody  
24 earlier -- it may have been when we had our  
25 discussion -- that there had been like a two-year

1 delay in getting a hearing scheduled. That's  
2 either not a true statement or they didn't  
3 request the hearing. And they didn't actually go  
4 the probate court and say I need a hearing. So  
5 that's not true.

6 MR. TRIPPLETT: I would note that the Piedmont  
7 Citizens Committee found Judge Able qualified in  
8 the evaluative criteria of constitutional  
9 qualifications, physical health and mental  
10 stability. The Committee found him well  
11 qualified in the evaluative criteria of ethical  
12 fitness, professional and academic ability,  
13 character, reputation, experience and judicial  
14 temperament. The Committee stated in summary,  
15 Mr. Able has served as a part time associate  
16 judge of probate in Laurens County since 2013 and  
17 as a general practitioner, specializing in family  
18 law issues for three decades. The Committee  
19 believes that his breadth of experience has given  
20 him the skills, subject matter expertise and  
21 judicial temperament that would make for a well-  
22 qualified and capable Family Court judge.

23 **Q. A few housekeeping issues. Judge Able, are you**  
24 **aware that as a judicial candidate you are bound**  
25 **by the Code of Judicial Conduct as found in Rule**

1 501 of the South Carolina Appellate Court Rules?

2 A. Yes, sir.

3 Q. Judge Able, since submitting your Letter of  
4 Intent, have you contacted any members of the  
5 Commission about your candidacy?

6 A. No, sir.

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

10 A. Yes, sir.

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

15 A. No, sir.

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

20 A. No, sir.

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

24 A. Yes, sir.

25 MR. TRIPPLETT: I would just note for the record that



1 any concerns raised during the investigation  
2 regarding the candidate were incorporated into  
3 the questioning of the candidate today. And Mr.  
4 Chairman, I have no further questions.

5 CHAIRMAN SMITH: Okay. Any questions for Judge Able?  
6 Senator Rankin.

7 JUDGE ABLE - EXAMINATION BY SENATOR RANKIN:

8 Q. Judge.

9 A. Yes, sir.

10 Q. It's been a while since I've seen you perhaps at  
11 screening --

12 A. Yes, sir, uh-huh.

13 Q. -- a while back, but always glad to see you and  
14 congratulations to your bride in joining you  
15 here. We were in law school together.

16 A. Yes, sir.

17 MS. ABLE: Yes, sir.

18 Q. So I am glad you're back. And I want to ask  
19 about your thoughts on what can be done to  
20 improve Family Court day to day. Your suffering  
21 from -- I won't name anybody -- or basking in the  
22 good work of, what can be done, either by you as  
23 a judge or by us as a court or the Supreme,  
24 whatever fiats to make for a better experience  
25 for everybody?

1 A. One thing I've thought about is -- you know, of  
2 course now in the Family Court we have to mediate  
3 all the cases. And I would like to be the kind  
4 of judge who, if -- a lot of times in mediations,  
5 you get that mediation done, you get it signed,  
6 everybody goes home. The next day your client or  
7 the other attorney's client calls and says, I  
8 don't know if I'm really happy with that. And  
9 the longer the period of time is before the  
10 mediation and that final hearing to adopt that  
11 mediation as an agreement between the parties, I  
12 find that the longer period of time that you have  
13 there, it's more likely that you're going to get  
14 that call from your client saying, I don't know  
15 if I like that. I've talked to my friend. I've  
16 talked to my girlfriend or boyfriend or spouse,  
17 whatever, and the things starts to fall apart. I  
18 think if you could -- I'd like to be the kind of  
19 judge that let's the attorneys know, if you get a  
20 mediated agreement on Monday, you call me on  
21 Tuesday and we'll have a hearing -- or try to  
22 have a hearing set up between Wednesday and  
23 Thursday or some time that week so we can get  
24 that mediated agreement on the record so there's  
25 not that period of time of lag between the

1 mediation conference and the final hearing. I  
2 think that would help -- that would benefit in  
3 just putting the case to bed, just -- you know,  
4 you've just taken 15 minutes out of the day to  
5 fit somebody in at the beginning of the day or at  
6 lunchtime or at the end of the day. I think that  
7 might help, or even set aside some time maybe on  
8 a Friday morning where you could say, okay, this  
9 is -- if anybody's got any mediated agreements  
10 within the past week or two, here's a period of  
11 time where y'all can, you know, call up and  
12 schedule a quick hearing. I think that might  
13 help.

14 **Q. Is that a function of you, the judge, or these**  
15 **mean, old tight-fisted clerks that won't allow**  
16 **you to schedule --**

17 A. Well, no, I think --

18 **Q. -- as immediately as you would like?**

19 A. I think you could have a word, you know, with the  
20 clerk about doing it, but I think as long as your  
21 assistant in your office knew that if an attorney  
22 called up and said, look, I've got this agreement  
23 we came to yesterday or this afternoon and we'd  
24 like to get a hearing before Judge Able, if  
25 you've instructed your assistant to say, yeah,

1 just come on up. We'll do it at this time.  
2 We'll slide you in. We've got a hearing that  
3 time but we'll go ahead and give you 15 minutes  
4 to get it done or 15 minutes at the end of the  
5 day to get it done. But I think the clerks would  
6 be happy to do that, just incorporate a few cases  
7 in here and there but I think it would help.

8 Q. Kinda look to your left, and don't divert the  
9 eyes of the former clerk to your right. And, you  
10 know, we've heard of your past experiences, and  
11 typically another person asked about this, but  
12 the crush of a roster in some places versus  
13 perhaps the laxity of others in the litigant's  
14 day in court, their time in court, not for an  
15 extended contested hearing on all fronts, but  
16 where they need more than 15 minutes to have a  
17 temporary matter resolved --

18 A.

19 Q. -- should you be beholding to the roster and  
20 appointed times per each, or should you, as a  
21 judge, allow for one case to go over longer than  
22 15 minutes or even 30, depending on --

23 A. You know, I've found, Senator, over my practice  
24 it's gotten to where most temporary hearings  
25 don't last just 15 minutes. I mean, the simplest

1 temporary hearing is going to take 30 minutes.  
2 And I think that's just the way it is now. No, I  
3 think it's going to happen in any docket. It's  
4 going to happen on any day that you're going to  
5 have some cases that take longer than they're  
6 supposed to, and I think -- you know, it's very  
7 fluid. I mean, it's basically you might take a  
8 little bit of time here but you try to catch up  
9 on the next one or the next two to try to get  
10 everything back on schedule. I think the big  
11 issue is making sure -- and I would try as a  
12 Family Court judge to make sure we started on  
13 time. You know, if you say, you know, we're  
14 going to start at 9:30, the docket starts at  
15 9:30, everybody's ready to go at 9:30. You start  
16 on time and then I think you kind of gauge during  
17 the day about where you might need to take a  
18 little extra time for something and then maybe  
19 make it up on some things later. But I think  
20 that's one of the biggest factors, is starting on  
21 time in the morning and starting back on time,  
22 you know, after the lunch break.

23 **Q. Mediation. You are a mediator as well?**

24 A. Yes, sir, I've had the training. Yes, sir.

25 **Q. So with the advent of good mediators and both**

1 side represented and understanding the benefits  
2 of good mediation where really no one wins, but  
3 both win as a result, the docket in your area as  
4 you are practicing, are you seeing where there is  
5 less demand for a judge's time or greater for the  
6 small matters that build up to a final  
7 resolution?

8 A. Right. You know, I have to say about mediation,  
9 you know, I took the Family Court mediation  
10 course probably, you know, five or six years go.  
11 And I'm a convert to mediation. At first I  
12 didn't think mediation was going to be that  
13 valuable a tool. But now that I am a mediator  
14 and I'm -- we -- of course, we mediate all the  
15 cases, I'm a convert. I think mediation's a  
16 great thing. A lot of cases that I don't believe  
17 would ever settle get settled in mediation. And  
18 I find -- the experience I have is now that I  
19 think a lot of cases are being settled through  
20 mediation, it's causing less time on the docket  
21 as far the mediated cases. Which some of the --  
22 you know, it's hard nowadays in Family Court if  
23 there are really any contested issues for a  
24 contested case to take less than a day, I think.  
25 Some of them now take two and three days just as

1 a, you know, a run of the mill divorce case with  
2 child custody issues and things of that nature.  
3 But I think mediation is helpful in that respect  
4 and that it's causing the dockets to kind of be  
5 cleared up and released -- and allow some of that  
6 time to be used for, you know, longer temporary  
7 hearings and things of that nature.

8 **Q. All right, that's all.**

9 A. Thank you, sir.

10 CHAIRMAN SMITH: Ms. Logan.

11 MS. BLACKLEY-LOGAN: Nice to meet you, Judge Able.

12 JUDGE ABLE: Nice to meet you too.

13 MS. BLACKLEY-LOGAN: I'm the former clerk of court --  
14 so I'm a former clerk of court --

15 JUDGE ABLE: That's right.

16 MS. BLACKLEY-LOGAN: -- and so that's why Senator  
17 Rankin is saying I'm -- speaking of clerk of  
18 courts, I wanted to commend you on your comment  
19 about starting on time because the solution to  
20 the docket part of scheduling cases on the docket  
21 would be judges starting on time. And having  
22 seen that, and if you start late, it just makes  
23 the whole day go by when you could probably  
24 actually get some time in, so you definitely get  
25 that. I don't think enough people understand and

1 know that and it's been an issue of mine when  
2 we're scheduling. If we scheduled cases to start  
3 at 9:00 and the judge doesn't walk in the door  
4 until 9:30, that's 30 minutes lost. And then it  
5 just -- it just spins out of control. And then  
6 most judges are going to end before 5:00 if not  
7 right at 5:00 --

8 JUDGE ABLE: Yes, ma'am.

9 MS. BLACKLEY-LOGAN: -- so you've taken away maybe two  
10 cases if not -- probably could have got three,  
11 and it just depends on what type of cases that  
12 are going on. So I'm sure the clerk in this area  
13 would love to be able to work with you if are  
14 appointed to this seat to help schedule cases. I  
15 think you've got some bright ideas.

16 JUDGE ABLE: Thank you.

17 CHAIRMAN SMITH: All right. Any further questions.  
18 Senator Saab.

19 SENATOR SAAB: Mr. Chairman, I just wanted to make an  
20 observation. If I heard one of the judges  
21 correctly, the gentleman from Horry, I thought  
22 that what he indicated was they had the volunteer  
23 mediators there while the judge was on the bench,  
24 which alleviated the points that are being made  
25 now about the parties and mediating and changing



1           their mind shortly after the mediation. So I  
2           found it interesting that being one of his  
3           observations. And that the way that they're  
4           doing it in Horry is actually working because a  
5           judge is available while the volunteer lawyers  
6           are engaging in the mediation. And so I was  
7           delighted to hear you say that.

8 JUDGE ABLE: I've had that experience. We are -- and  
9           it doesn't happen often but I've had that  
10          experience where I've been an attorney in a  
11          mediated case and the other attorney -- you know,  
12          we are worried about this thing holding together.

13 SENATOR SAAB: Yeah.

14 JUDGE ABLE: And we've had the benefit of calling a  
15          judge and say, judge, we've got this case, can  
16          you hear us in the morning? And the judge would  
17          say, yes, and so we run up there and get this  
18          mediated case -- it's a good mediation but it's  
19          just human nature when people go back home and  
20          they start talking to their family and their  
21          friends --

22 SENATOR SAAB: That's exactly right.

23 JUDGE ABLE: -- well, this is what happened in my  
24          divorce case.

25 SENATOR SAAB: Yes, sir.

1 JUDGE ABLE: You know, things can fall apart, so I'm  
2 not saying we're trying to rush anybody into  
3 doing something they don't want to do. They've  
4 signed the agreement. Let's get the agreement  
5 adopted and the judge has accommodated us on  
6 several occasions and said, yeah, come on up here  
7 in the morning and we'll put it on the record.

8 SENATOR SAAB: Yeah, and I totally agree. But I  
9 wanted to make the point with the Commission that  
10 we had one of our judges earlier who was talking  
11 about it. And our Chairman was essentially  
12 soliciting an opportunity to contact him later.  
13 Because I think many of us who listened to him  
14 and now listening to you believe that that could  
15 be one of the answers to alleviating some of the  
16 DSS backlog --

17 JUDGE ABLE: Yes, sir.

18 SENATOR SAAB: -- because of the space that it's  
19 creating, because something has to change with  
20 DSS. I think --

21 JUDGE ABLE: Yes, sir.

22 SENATOR SAAB: -- all of us are convinced that there  
23 are nothing but opportunities to improve it. And  
24 to the extent that we can take some of the  
25 pressure off of the docket through mediation,

1           then it frees up an opportunity for us to, from a  
2           court standpoint, do some things relative to DSS.  
3           So I was just really complimenting you because I  
4           think that the more of us that gives some thought  
5           to how mediation can help us, the better off we  
6           are.

7           JUDGE ABLE: Yes, sir.

8           SENATOR SAAB: And so thank you for the comment.

9           JUDGE ABLE: Thank you, sir.

10          CHAIRMAN SMITH: All right. Any further questions.

11                     Senator Young, did I see you had one?

12          JUDGE ABLE - EXAMINATION BY SENATOR YOUNG:

13           **Q. Judge Able, I want to thank you for your interest**  
14           **in continuing your service to our state.**

15           A. Thank you, sir.

16           **Q. I want to ask you a few questions. I'm looking**  
17           **at your Personal Data Questionnaire and I noticed**  
18           **that -- have you handled many abuse and neglect**  
19           **cases in the last ten years or so?**

20           A. Well, I've handled my share. From '92 to 2004 I  
21           was the DSS contract attorney for four counties,  
22           the four counties of the Eighth Circuit. I was  
23           the only attorney they had and I acted in that  
24           capacity for Laurens County from 1992 to 2004 and  
25           then the other counties shortly thereafter. So I

1 handled hundreds if not thousands of abuse and  
2 neglect cases. In that past ten years, I've  
3 handled cases as they've been referred to me or  
4 have come -- you know, people have hired me to  
5 handle those cases. As far as a number, I really  
6 can't say but I would say that I've handled --  
7 you know, I don't handle as many as I used to. I  
8 don't handle as many as the contract attorneys  
9 now but I handle probably a comparable number to  
10 any private attorney.

11 **Q. How much time does your probate -- your service**  
12 **as a probate judge, how much time does that take**  
13 **currently from your weekly schedule?**

14 **A.** It's not a great deal, to be honest about it. As  
15 I said earlier, when a request comes in for a  
16 hearing, the clerk in the probate court will call  
17 my office and, you know, have my assistant  
18 schedule the hearing. You know, the longest  
19 trial I think I've had in the past six years in  
20 probate court has been like a three-day trial.  
21 And, you know, that can take, you know, three  
22 days away from my law practice. But most of the  
23 time, you know, as in all courts, approval of  
24 agreements, 15 minute approval hearings, 15-  
25 minute or 30-minute appointment of personal

1 representative or appointment of conservator,  
2 things like that. I would say on a week -- it  
3 might take, on average, two or three hours a  
4 week.

5 **Q. Do you have any suggestions on how we can improve**  
6 **the system for children and families who are in**  
7 **the abuse and neglect cases in the Family Court?**

8 A. I've thought about that a lot. Yes, I don't know  
9 if I have any suggestions though. I can say --  
10 well, it's just an observation because, as I  
11 said, I'm not a contract attorney for DSS anymore  
12 like I was all those years ago. But the couple  
13 of observations I have about the Department of  
14 Social Services, and not to knock on anybody, is  
15 number one, they have a considerable turnover  
16 among the rank and file. The caseworkers that I  
17 see -- and a lot of times I'll go to court this  
18 month and then next month I'll go back and I  
19 don't see any of the same faces. And I can say  
20 when I was the contract attorney for DSS, they  
21 had people were with that office for, you know,  
22 ten, 15, 20 years, and I don't think that's the  
23 case anymore. I can't begin to think of the  
24 number of county directors we've had in Laurens  
25 County in the past ten years. It's just a

1 revolving number. So I think that the turnover  
2 there. And I think just the fact that a lot of  
3 these people that are being hired are straight  
4 out of school. And I don't know that the  
5 supervisors have as much experience as they used  
6 to, because they're young also. And I'm not --  
7 as I said, I'm not trying to say that in a  
8 critical way. I'm just saying I don't know if  
9 they have as much experience as some of the  
10 people who used to work for DSS.

11 **Q. All right. What is your view of parents that**  
12 **don't pay their child support timely?**

13 A. You mean, personally or as a judge?

14 **Q. Well, I guess, you know, how would you view that**  
15 **if you were elected. I mean, I assume you -- let**  
16 **me ask it this way. I assume each case would be**  
17 **different, decided on the facts?**

18 A. Right, yes, sir. But under the law you have a  
19 responsibility to support your children and that  
20 responsibility cannot be negated for any reason  
21 in my opinion. If you have children, you've  
22 elected to produce children and bring them into  
23 this world, you're going to have to support them.  
24 And as a judge, I would think it would be my  
25 responsibility to make sure that you do support

1           them.

2   **Q.**   **I appreciate your comments. I have one final**  
3           **question and it's based on one of the ballot box**  
4           **comments. A ballot box comments says that you**  
5           **make the best barbecue in the world. My question**  
6           **to you is, tomato based, mustard based or vinegar**  
7           **based or none of the above?**

8   **A.**   Well, I have a competition barbecue team. And  
9           we're currently two-time state champion. And for  
10          competition we cook tomato based, but for the  
11          holidays, things like that, we have a  
12          vinegar/mustard based sauce that we use on those  
13          things, but we're pretty good barbecue cookers.

14   **Q.**   **Thank you.**

15   CHAIRMAN SMITH: And so -- you can go ahead. Best  
16          barbecue in the state.

17   SENATOR SABB: Thank you, Mr. Chairman for yielding,  
18          but have you been down Williamsburg County way,  
19          sir?

20   JUDGE ABLE: No, sir, I haven't.

21   SENATOR SABB: Well, I would just encourage you to  
22          consider Brown's and Scott's in those places that  
23          are world famous.

24   JUDGE ABLE: Yes, sir. Well, I'll certainly try to  
25          get down there, but we started doing this about

1           eight years ago. I have a friend who goes with  
2           me. Our wives help with it and we've been pretty  
3           successful in the competition area.

4    SENATOR SABB: Well, that's great. Congratulations.  
5           I'm going to pass your name and information to  
6           some of my locals and let them know about you.

7    JUDGE ABLE: Thank you, sir.

8    CHAIRMAN SMITH: All right. Any further questions?  
9           And let me echo what Senator Sabb says. That's  
10           the best barbecue in the state is Brown's and  
11           Scott's Barbecue. And they exported Scott's down  
12           to Charleston and now Mobile, Alabama, Senator  
13           Sabb --

14   SENATOR SAAB: That's right.

15   CHAIRMAN SMITH: -- so the rest of the southeast is  
16           starting to get to experience the good barbecue  
17           we know in Williamsburg County. All right.  
18           Well, Judge Able, that concludes this portion of  
19           your screening process. Let me take this  
20           opportunity to remind you that pursuant to the  
21           Commission's evaluative criteria, the Commission  
22           expects candidates to follow the spirit as well  
23           as the letter of the ethics law. We will view  
24           violations or the appearance of impropriety as  
25           serious and potentially deserving of heavy weight



1 in the screening deliberations. As you know, the  
2 record will remain open until the formal Release  
3 of the Report of Qualifications, and you may be  
4 called back at such time if the need arises. I  
5 thank you for offering for this position, and I  
6 thank you for your service to the State of South  
7 Carolina.

8 JUDGE ABLE: Thank you, sir. Y'all have a good  
9 evening.

10 CHAIRMAN SMITH: All right, you too.

11 JUDGE ABLE: Merry Christmas.

12 CHAIRMAN SMITH: Same to you. Safe travels home.

13 JUDGE ABLE: Thank you, sir.

14 (Off the record.)

15 CHAIRMAN SMITH: All right, Mr. Madden. How are you  
16 doing today?

17 MR. MADDEN: Pretty good, thank you, sir.

18 CHAIRMAN SMITH: Will you raise your right hand,  
19 please, sir.

20 TIMOTHY E. MADDEN, having been duly sworn, testifies  
21 as follows:

22 CHAIRMAN SMITH: Mr. Madden, before you you have your  
23 Personal Data Questionnaire and your Sworn  
24 Statement. Are those both documents that you  
25 submitted to this Commission?

1 MR. MADDEN: They are.

2 CHAIRMAN SMITH: Are they correct?

3 MR. MADDEN: They are.

4 CHAIRMAN SMITH: Any changes or updates that you need  
5 to make at this time?

6 MR. MADDEN: My office address has changed but I can  
7 give that to staff after the hearing.

8 CHAIRMAN SMITH: We'll make an oral amendment to it  
9 and just give it to staff, and they'll become  
10 part of the record.

11 MR. MADDEN: Okay.

12 CHAIRMAN SMITH: Other than that, any other changes or  
13 updates that need to be made?

14 MR. MADDEN: No, sir.

15 CHAIRMAN SMITH: Do you have any objection to those  
16 documents becoming an exhibit to your sworn  
17 testimony here today?

18 MR. MADDEN: I do not.

19 CHAIRMAN SMITH: Will you let Lindi get that, and  
20 we'll place that and make that as an exhibit to  
21 your sworn testimony. All right. Mr. Madden,  
22 the Judicial Merit Selection Commission has  
23 thoroughly investigated your qualifications for  
24 the bench. Our inquiry is focused on the nine  
25 evaluative criteria and has included a ballot box

1 survey, a thorough study of your application  
2 materials, verification of your compliance with  
3 state ethics laws, search of newspaper articles  
4 in which your name appears, a study of previous  
5 screenings and checks of economic conflicts of  
6 interest. We have received no affidavits filed  
7 in opposition to your candidacy today and there  
8 are no witnesses here to testify. Do you wish to  
9 make a brief opening statement to the Commission?

10 (Exhibit Number 17 was marked for identification  
11 purposes - (20 pages) Personal Data Questionnaire for  
12 Timothy E. Madden.)

13 (Exhibit Number 18 was marked for identification  
14 purposes - (6 pages) Sworn Statement of Timothy E.  
15 Madden.)

16 (Exhibit Number 19 was marked for identification  
17 purposes - (2 pages) Amendment to Personal Data  
18 Questionnaire for Timothy E. Madden.)

19 MR. MADDEN: No, sir. Respectful for your time, I'm  
20 happy to answer any questions the Commission may  
21 have for me.

22 CHAIRMAN SMITH: All right. Thank you very much.  
23 Answer any questions counsel may have, please,  
24 sir.

25 MR. MADDEN: Thank you.

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

2 MR. MADDEN - EXAMINATION BY MR. FIFFICK:

3 Q. Thank you, Mr. Chairman. Mr. Madden, please  
4 state for the record the city and circuit in  
5 which you reside.

6 A. Greenville, and that's the Thirteenth Circuit.

7 Q. Thank you sir.

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

15 Q. Mr. Madden, why do you want to serve as a Family  
16 Court judge, and why do you feel your legal and  
17 professional experience qualify and will assist  
18 you to be an effective judge?

19 A. My desire to serve is based on a commitment to  
20 public service that I've maintained throughout my  
21 entire life. I'm fortunate to be at a point in  
22 my legal career where I have the opportunity to  
23 look for a second act. And over the last three  
24 years I have carefully considered what that  
25 second act might be. And as I went through a

1 variety of options, it became very clear that the  
2 way that I can help the most people, with my  
3 skills, talents and background and training, is  
4 in the capacity of a Family Court judge. It  
5 would be very easy for me to continue in the role  
6 that I'm in as a partner in the state's largest  
7 law firm, where I have enjoyed the benefit and  
8 blessing of a lot of success in my practice. But  
9 if I do that, I'm going to be helping one person  
10 at a time and maybe over the next ten years I  
11 might help 200 families, 200 people that might  
12 come to me and hire me to represent them. If I'm  
13 able to take the last 31 years and pivot that  
14 into the role as a Family Court judge, where some  
15 of the most meaningful decisions in the lives of  
16 South Carolinians are made, then I believe I will  
17 be able to help thousands of people. And I'll be  
18 able to help thousands of people not only in the  
19 same atmosphere that I've spent most of my  
20 practice, which is the private divorce world, but  
21 also in the areas that they really mattered most  
22 in catching our falling juveniles, those who we  
23 need to try to rehabilitate and in trying to  
24 protect our children and our elderly.

25 **Q. Thank you, sir. And to that point, are there any**

1           **areas of the law for which you would need**  
2           **additional preparation in order to serve as a**  
3           **Family Court judge, and how would you handle that**  
4           **preparation?**

5       A.    So the two areas where I'd have the least amount  
6           of training in substantive law would be the  
7           juvenile -- the delinquency of the juvenile  
8           criminal aspect and the DSS child abuse sections.  
9           And with respect to both of those, I have some  
10          experience. In the course of my career, I've  
11          handled cases in both of those areas. But  
12          certainly those have been few and far between and  
13          remote in time. As I embarked on this process, I  
14          have already begun to try to learn what I don't  
15          know. I've spent a day watching and observing  
16          juvenile delinquency hearings, or the juvenile  
17          detention hearings. I've spent an hour meeting  
18          with Director Pough at the Department of Juvenile  
19          Justice to understand what he's got going on and  
20          what's in his mind and what his challenges are.  
21          I spent a half a day touring the Department of  
22          Juvenile Justice facility here in Columbia, and I  
23          met some of those juveniles who were there and  
24          some of their teachers and some of their  
25          instructors. And so I thought that it was

1 important for me to gather that sort of  
2 background information before I jumped head first  
3 into even more of the substantive law. I've done  
4 similar things with abuse and neglect proceedings  
5 already. I've sat through hearings. I've met  
6 judges who've handled these. I've studied  
7 materials that have been presented. So I'm  
8 trying to get ahead of that as fast as I can so  
9 in the event I am elected, my curve will be a  
10 little less steep. But those are the areas where  
11 I'll need to spend a little time.

12 **Q. Thank you, sir. Could you please describe your**  
13 **experience in handling complex, contested Family**  
14 **Court matters and specifically discuss your**  
15 **experience with the financial aspects of Family**  
16 **Court work?**

17 A. Okay. For 31 years, the bread and butter of my  
18 practice, 90 percent of it, has been complex  
19 divorce cases. Most of those cases for the last  
20 11 to 12 years -- no, for the last 20 years, have  
21 been complex financial cases. I have litigated  
22 every facet of equitable apportionment that you  
23 can litigate, character of assets, the value of  
24 assets, the value of closely held assets, the  
25 transmutation of assets and the division of those

1 assets, the effectuation of the division, the  
2 compliance with the division, everything that  
3 there is to do about money in dividing property  
4 in a Family Court case I've done, I've tried it,  
5 and I've appealed. I am on at least 26 opinions  
6 issued by our Appellate Courts. At least 15 of  
7 those came out of Family Court cases. At least  
8 three of those I can identify that address some  
9 unique questions of law, all of which were in the  
10 area of money. So I have handled I don't know  
11 how many individual cases. I think I have tried  
12 to a decision in a contested environment in  
13 Family Court 100 cases or more. I conservatively  
14 estimate that based on just some rough math in my  
15 head about how many times I end up in a  
16 courtroom. And most of those involved the areas  
17 that you're talking about or compliance with  
18 orders issued in those areas. I believe that I  
19 tried the case which resulted in the highest  
20 alimony awarded in Greenville County. I believe  
21 that I tried the case which is used by most, and  
22 appealed the case, which is used by many Family  
23 Court practitioners as a guidepost for how the  
24 Supreme Court looks at an amount of alimony. I  
25 know I tried and appealed the seminal case on



1           closely held business valuation in Family Court.  
2           So -- and I know that I tried and appealed one of  
3           the leading cases that relates to trust and their  
4           impact in the division of marital property. So  
5           when it comes to the areas of money in Family  
6           Court, that's my sweet spot. That's what I do.  
7           I teach business valuation to other lawyers. I  
8           teach it at a trial school in Houston every year  
9           for ten days for lawyers that want to learn how  
10          to try that issue. I teach an advanced course  
11          every other year. I've taught that same topic in  
12          other states and in South Carolina.

13       **Q. Thank you, sir. Mr. Madden, the Commission**  
14       **received 604 ballot box surveys regarding you**  
15       **with 112 additional comments. Ninety-nine of**  
16       **those comments were positive. The ballot box**  
17       **survey, for example, contained the following five**  
18       **positive comments: Excellent, widely considered**  
19       **to be the best family law attorney in South**  
20       **Carolina. He has a very conciliatory manner,**  
21       **which would translate in superb judicial**  
22       **temperament, extremely organized, but makes**  
23       **complicated issues easy to follow. The strongest**  
24       **candidate in the field. He has vast experience**  
25       **and legal knowledge. His reputation is beyond**

1 reproach, and his temperament is exactly which  
2 you would want from a judge. One additional  
3 comment addresses your DJJ experience. Concerned  
4 that you don't have DSS or DJJ experience, but  
5 also explained that you're always over prepared,  
6 a quick study and that you should have no problem  
7 getting up to speed on those issues. Three of  
8 the written comments express concerns. Two  
9 comments indicated that you're arrogant and could  
10 be prone to robitis. What would you offer to  
11 this concern?

12 A. I disagree. I would like to repeat the earlier  
13 one where it said I'm conciliatory and all those  
14 other good things.

15 SENATOR RANKIN: Note for the record he is smiling  
16 when he says that.

17 Q. Mr. Madden, the third concern indicated that you  
18 may be prone to insensitive language. What would  
19 you offer to this concern?

20 A. I disagree, unless that comment came from someone  
21 I cross-examined in a trial. It's highly  
22 possible that in cross-examination I would have  
23 used language that someone found insensitive to  
24 their position, but I say that somewhat in jest.  
25 I know the comment you're talking about. You and

1 I have talked about that prior to today. I know  
2 I did not make the comment that was reported as  
3 it was reported. One of the things that I have  
4 tried to do is to respect everybody in the  
5 process of the case that I'm handling. And that  
6 starts with the person that comes to see me on  
7 day one for a consultation who is in the worst  
8 point of his or her life and who was probably in  
9 their first or second meeting ever with a lawyer  
10 and who is opening up in that meeting and telling  
11 me, a total stranger, things about themselves and  
12 their personal life that they don't want to tell  
13 anybody. And so I've tried to be very sensitive  
14 to that, tried to be a very good listener to  
15 that, but also tried to give those kind of folks  
16 a very candid assessment of their situation.  
17 Because I believe the only way that you can be  
18 successful as a lawyer, and the only way that  
19 litigants can be accepting of the result, is if  
20 you start the educational process early. And so  
21 I try very early in that consultation to educate  
22 and inform and sometimes I may be brutally honest  
23 with someone. But if I am brutally honest with  
24 them, it would not be to be insensitive about  
25 that person or what they may have done. I tell

1 every single person it's a judgment free zone in  
2 my office when I'm talking to you about your  
3 case. But I might, for example, tell them what  
4 the other side might say about them. And people  
5 are in an emotional fog when they're in that  
6 meeting. And they leave there, and I'm not sure  
7 but about half of it sinks in, if that much. And  
8 so there's no telling where that particular  
9 comment came from but I'm certain that it did not  
10 arise out of me being insensitive to someone or  
11 using language with someone which would be  
12 judgmental in any way.

13 **Q. Thank you, sir. Mr. Madden, you've been involved**  
14 **in three lawsuits. The first lawsuit, Bank of**  
15 **New York as Trustee, Plaintiff versus Yancey**  
16 **Johnson, et al., Defendants, in 2001 was filed as**  
17 **a foreclosure action against an opposing party**  
18 **from which you were awarded attorney's fees on**  
19 **behalf of a client. Could you please explain the**  
20 **nature and disposition of this lawsuit to your**  
21 **knowledge?**

22 **A. Not really because I don't remember anything**  
23 **about it. I found it when you asked me to pull**  
24 **those lawsuits. Every time I was awarded**  
25 **attorney's fees in a case in a court order, it**

1 appeared as a lien, and someone searching real  
2 property records would find it and name me as a  
3 party if they pursued the foreclosure action, and  
4 that's exactly what that was. I know that -- I  
5 happen to remember Mr. Johnson because he was an  
6 adverse party who had to pay my fees and I happen  
7 to remember that I got paid. But I don't know  
8 what happened within that lawsuit because, the  
9 minute I got it, I did the same thing I do with  
10 all those lawsuits, and I wrote back and said,  
11 you don't need to keep me in this case.

12 **Q. Thank you, sir. Would your answer apply to GBH**  
13 **Enterprises, Plaintiff, et al. versus RHD**  
14 **Enterprises, Defendant?**

15 A. Yes. I don't remember that one at all but it had  
16 to be the same sort of thing.

17 **Q. Thank you, sir. In October of 2013, you filed a**  
18 **transcript of judgment in the matter of Timothy**  
19 **Madden, Plaintiff versus Joseph Alford Cruise**  
20 **Beason for unpaid court orders attorney's fees.**  
21 **Please explain the nature and disposition of this**  
22 **lawsuit.**

23 A. Sure. I filed that in Greenville County because  
24 the case was tried in Anderson County. I was not  
25 the lawyer who tried the case. I was the lawyer

1 for Mrs. Beason earlier in the case. At the time  
2 of trial Mrs. Beason had other counsel. When the  
3 court resolved the case and issued an order, the  
4 court specifically ordered attorney's fees for my  
5 part of the case when I represented Ms. Beason  
6 and made a specific award of attorney's fees for  
7 the second part of the case. Well, because the  
8 case was in Anderson County and because I knew  
9 that Mr. Beason owned property in Greenville  
10 County, I filed the action you're describing to  
11 record that judgment in Greenville County so that  
12 I could be sure that my lien would be perfected  
13 against his assets. It was and I got paid.

14 **Q. Thank you, sir.**

15 MR. FIFFICK: I would note that the Upstate Citizens  
16 Committee report found Mr. Madden to be well  
17 qualified as to ethical fitness, professional and  
18 academic ability, character, reputation,  
19 experience and judicial temperament and qualified  
20 in the evaluative criteria of constitutional  
21 qualifications, physical health and mental  
22 stability. The report also stated, Mr. Madden  
23 has an extensive amount of experience in private  
24 cases, including all types of divorce, equitable  
25 division, custody, child support et cetera and is

1 well respected by members of the Bar and the  
2 community. However, he has little to no  
3 experience with DJJ cases. While he has  
4 experience in DSS cases, it is also limited.

5 **Q. Mr. Madden, I have a few housekeeping issues to**  
6 **take care of with you. Are you aware that as a**  
7 **judicial candidate you are bound by the Code of**  
8 **Judicial Conduct as found in Rule 501 of the**  
9 **South Carolina Appellate Court Rules?**

10 A. I am.

11 **Q. Mr. Madden, since submitting your Letter of**  
12 **Intent, have you contacted any members of the**  
13 **General Assembly about your candidacy?**

14 A. I have contacted members of the General Assembly  
15 to make them aware of my candidacy, that is to  
16 announce my candidacy to them and to let them  
17 know I'm running.

18 **Q. Have you contacted any members of the Commission**  
19 **about your candidacy?**

20 A. I have not contacted any members of this  
21 Commission. I have run into a couple of members  
22 of this Commission accidentally at different  
23 events and spoken to them, but I didn't contact  
24 them about my candidacy.

25 **Q. Are you familiar with § 2-19-70, including the**

1 limitations on contacting members of the General  
2 Assembly regarding your screening?

3 A. I am.

4 Q. Since submitting your Letter of Intent, have you  
5 sought or received the pledge of any legislator  
6 either prior to this date or pending the outcome  
7 of your screening?

8 A. No.

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

13 A. No.

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

17 A. I do. I have and I do.

18 MR. FIFFICK: I would just note for the record that  
19 any concerns raised during the investigation  
20 regarding the candidate were incorporated in the  
21 questioning of the candidate today. Mr.  
22 Chairman, I have no further questions.

23 CHAIRMAN SMITH: All right. Any questions for Mr.  
24 Madden? Mr. Strom.

25 MR. STROM: Mr. Chairman, I want to put on the record



1           that Mr. Madden I have -- are on the opposite  
2           sides of a piece of litigation right now. And I  
3           have found him to be highly ethical, highly  
4           professional, an outstanding attorney, and I  
5           really hope that he gets elected Family Court  
6           judge do he'll get out of that litigation. But  
7           on a serious note, you know, Mr. Madden, you  
8           enjoy a reputation of being certainly one of the  
9           top ten domestic lawyers in the state. I've  
10          never heard anybody say anything negative about  
11          you. You're at the top of your game. And you  
12          have the opportunity to make a lot of money if  
13          you wanted to stay in private practice. Your  
14          willingness to give that up and go into public  
15          service is something I really admire, and I want  
16          to thank you personally for stepping into this.

17       MR. MADDEN: Thank you.

18       CHAIRMAN SMITH: Ms. McIver.

19       MS. MCIVER: Thank you, Mr. Chairman. I want to echo  
20          what Mr. Strom just said, and I wanted to read  
21          part of one of the ballot box comments about you  
22          into the record. The strongest candidate in the  
23          field. He has had a successful statewide  
24          practice and is the kind of person we hoped would  
25          be attracted to the bench as a result of the

1 recent pay increase. His personal demeanor and  
2 temperament leads me to believe he could be one  
3 of the most exceptional judges to have ever been  
4 on the bench if elected. This is just one of a  
5 lot of comments like this that were submitted  
6 about you. And not only the ballot box comments,  
7 which takes a lot of effort -- I'm sure you've  
8 filled out quite a few of them -- to go in and  
9 actually put the comments. And to see this  
10 number of comments and written responses as well  
11 as the recommendations that you've received from  
12 such pillars, not of your community, but of our  
13 state, it is incredibly impressive. And it would  
14 be so easy for you just to rest on your enormous  
15 reputation in Family Court working with the  
16 wonderful law firm that you work for. But the  
17 fact that you came in today and said you had been  
18 to meet with people over at DJJ, that you had  
19 observed different actions over there and met  
20 with some of these young people was really  
21 inspiring and humbling for me to hear. And I  
22 just want to thank you for offering to serve.

23 MR. MADDEN: You're welcome. Thank you.

24 MS. BLACKLEY-LOGAN: Well, Mr. Madden, I haven't had  
25 the pleasure of meeting you. I think we may have

1 passed each other in the hallway since my offices  
2 were where you used to be located. I got to see  
3 the Letter of Reference from Ambassador Wilkins,  
4 who I consider a great mentor, and all the  
5 comments have been phenomenal. I don't know --  
6 I'm new to the Commission. I don't think I've  
7 seen that many comments for a candidate since  
8 I've been here. That speaks volumes of your  
9 work, and I understand that since you are a  
10 partner and Nelson and Mullins you know my good  
11 friend Trey Gowdy, who works there. How is he  
12 doing?

13 MR. MADDEN: He's doing pretty good if we can ever see  
14 him. He seems to spend a lot of time on  
15 airplanes and television and not much time in the  
16 office. But we didn't hire him to spend time in  
17 the office, so he's doing what he's supposed to  
18 be doing.

19 MS. BLACKLEY-LOGAN: Well, probably a good portion of  
20 that time is also in front of a mirror making  
21 sure his hair is straight.

22 MR. MADDEN: He's working on that and also his golf  
23 game, I think, but I also saw you at the oral  
24 arguments in Spartanburg, I think.

25 MS. BLACKLEY-LOGAN: Yes, you --

1 MR. MADDEN: Yeah.

2 MS. BLACKLEY-LOGAN: -- yeah, that is correct. You  
3 were one of the legal counsel.

4 MR. MADDEN: I argued an appeal that day, the last one  
5 that they did.

6 MS. BLACKLEY-LOGAN: Yes. You did a great job.

7 MR. MADDEN: Well, thank you. Thank you.

8 MS. BLACKLEY-LOGAN: So I'm very happy to officially  
9 meet you.

10 MR. MADDEN: Thank you.

11 MS. BLACKLEY-LOGAN: And wish you all the best, and I  
12 do want to echo Lucy's comments for someone who -  
13 - we've seen candidates who may not have all the  
14 offerings. But to take the steps that you've  
15 done mean -- let's me know and makes me feel that  
16 you're serious, especially when it comes to youth  
17 and being involved in trying to figure out the  
18 understanding of how -- or the makeup of the  
19 Department of Juvenile Justice. So that's going  
20 to be a big play, but I've heard nothing but  
21 great things about you.

22 MR. MADDEN: Thank you very much.

23 MS. BLACKLEY-LOGAN: Proud to finally meet you.

24 MR. MADDEN: Thank you, me too.

25 CHAIRMAN SMITH: All right. Senator Rankin.

1 MR. MADDEN - EXAMINATION BY SENATOR RANKIN:

2 Q. Tim, I'm glad to see you here. And I want to  
3 first say for the record that you and I met for  
4 the first time, I think, in our service on the  
5 first slate of state infrastructure bank board  
6 members.

7 A. That's right.

8 Q. And as I saw your name and reviewed everything, I  
9 could not help but take a picture of the picture  
10 that adorns my wall in my office of a much  
11 younger looking Tim Madden who has no wisp of  
12 salt in his hair at that time, about as much as  
13 me. We are the two visibly wet behind the ears  
14 members of that commission and that bank board  
15 where you and I served with another upstate guy,  
16 Champ Covington, a wonderful who has left us --

17 A. Right.

18 Q. -- but tales of that fellow's life I continue to  
19 hear about. So when you stated at the outset  
20 your calling of public service, it is not  
21 insincere, and it is not without sacrifice. And  
22 I know in these comments that have been made  
23 about you and the anonymous surveys but echoed by  
24 other Commission members. And it is a strange  
25 thing but it is a beautiful that you are doing

1 this. There are other great candidates as well  
2 in your race, and politics will dictate but your  
3 personal story is a compelling one because it is  
4 heartfelt, I do believe. So I want to commend  
5 you for your willingness to get into the race  
6 again with the other candidates to offer yourself  
7 for public service. We say that about everybody.  
8 And not in your specific race but in many others,  
9 folks are really looking to move up, both in  
10 position, but as well as financially. You are  
11 not doing it for that reason so that too is  
12 commendable. You have been in the trenches in  
13 Family Court from day one. This is the path  
14 you've chosen, correct?

15 A. I'm not sure if it's the path that I chose or  
16 that chose me but one thing's for sure, I never  
17 left it. For some reason or another, you know, I  
18 stayed with this path and found it to be my  
19 calling as a lawyer -- or my primary calling.  
20 And I actually considered moving into different  
21 areas. When I joined Nelson, Mullins 13 years  
22 ago, I didn't think I'd ever try another divorce  
23 case. And what happened was we took family law  
24 to that law firm and then it blossomed. And so  
25 it moved the platform from more Greenville to

1 more statewide. And I kept coming back to it  
2 because I felt like I was doing good for people.  
3 And I think -- I mean, that's what a lawyer's all  
4 about, you know, helping people solve problems in  
5 their life. I don't get a lot of energy out of  
6 helping companies solve their problems. I've  
7 done some of that but I get a lot of energy out  
8 of helping people solve their problems.

9 **Q. Have you ever been accused of being a plaintiff's**  
10 **lawyer? No, you don't have to answer that.**

11 A. I have been a plaintiff's lawyer. I've had  
12 several wrongful death cases and others before I  
13 joined Nelson, Mullins and they put up a big wall  
14 and said you can't do that anymore but ...

15 **Q. Your -- and you've represented folks all around.**  
16 **I know that you were on the other side of a**  
17 **family that I was familiar with from home, and**  
18 **they kept complaining about you and complaining**  
19 **about the judge. And I said to myself and**  
20 **finally to them -- I said, it may be those areas**  
21 **you need to be complaining about. It might be**  
22 **the facts of your case and what's been going on**  
23 **on your side of the aisle. So there are great**  
24 **judges and then there's some good judges. Give**  
25 **us the attributes of a great judge that you would**

1           **hope to exemplify.**

2       A.    Patient, a good listener, dignified, thoughtful,  
3           respectful of all involved, punctual, diligent.  
4           Those are the ones that come to mind.

5       **Q.    So is it fair to say that the attributes of one**  
6           **you would not want to follow would be the**  
7           **opposite of all of those?**

8       A.    Sure.  I don't generally like to be in any  
9           environment with lazy people.  So judges who --  
10          and I certainly could not identify today by a  
11          name --

12       **Q.    Wouldn't want you to.**

13       A.    -- anyone who might be lazy --

14       **Q.    Wouldn't want you to name them.**

15       A.    -- but there are judges are lazy.  There are  
16          lawyers who are lazy and I don't enjoy working  
17          with either one of them.  I don't enjoy working  
18          with judges who do not take things as serious as  
19          the circumstances dictate.  You know, this --  
20          Family Court particularly is a real court.  And  
21          unfortunately, there are times where I have seen  
22          it devolve into a casual administrative process.  
23          It's not a casual administrative process.  We are  
24          hitting people and impacting people at some of  
25          the most serious points in their life.  And I



1 think judges need to maintain those attributes  
2 that I described in order to maintain the  
3 integrity of the court system and protect the  
4 judicial system overall.

5 Q. One of the comments in the ballot box surveys was  
6 the wealth of Family Court attorneys in  
7 Greenville. And this was -- I don't know this,  
8 but that there are apparently a number of judges,  
9 some of whom we've screened this go round. But  
10 speak to the fact that, though it is an at-large  
11 position, if you or the other candidates are  
12 successful, you're planning to hang out in  
13 Greenville, I assume.

14 A. I'm planning to go where I'm sent. As I  
15 understand the way the system works, at-large  
16 means we're electing these candidates from the  
17 state at-large, wherever they come from, and as I  
18 further understand the system, the Chief Justice  
19 through court administration directs where people  
20 go. And I have no preconceived expectation that  
21 I get to spend all my time two miles from my  
22 house. In fact, it's the opposite. I would  
23 assume -- this hasn't been true in the past but I  
24 would assume that if you're in an at-large seat,  
25 you're more likely being sent places for longer

1 periods of time because you're not a resident  
2 judge, and I enter into it with that expectation  
3 and embrace that.

4 **Q. Years ago it used to be somewhat of a perhaps**  
5 **off-color jestal (sic) not true statement, but**  
6 **perhaps the bane of certain judges was an**  
7 **assignment in Walhalla. That would not be**  
8 **offensive to you, would it?**

9 A. Not at all. It's eight miles from my lake house.

10 **Q. Thank you for your willingness to do this.**

11 A. Thank you.

12 CHAIRMAN SMITH: All right. Any other --

13 MR. MADDEN: And I would say, if I may, Senator  
14 Rankin, that initial bank board that you and I  
15 served on, you and I got out at the right time.  
16 We went in, we funded those five major projects,  
17 we were congratulated by everybody and then we  
18 left it. And so, thank goodness, we left when we  
19 did.

20 SENATOR RANKIN: And there was money still in the  
21 bank.

22 MR. MADDEN: That's right. That's right. And they're  
23 all paid for now, I think.

24 CHAIRMAN SMITH: Which five major projects were those?  
25 I'm sure that was in Greenville County --

1 MR. MADDEN: I can't remember the all but --

2 SENATOR RANKIN: Well, the first was Horry.

3 MR. MADDEN: I can promise you the first was Horry,  
4 and it started with the Conway Bypass and they're  
5 still finishing the south end of that and the  
6 Ravenel Bridge. I remember going to New York and  
7 picking up the check for the Ravenel -- for part  
8 of the Ravenel Bridge. It was part of the whole  
9 deal in Greenville and then Lexington had  
10 something over the dam. I don't remember what it  
11 was and I don't remember -- it was important,  
12 whatever it was.

13 SENATOR RANKIN: And Hilton Head.

14 MR. MADDEN: It was. It was 170. You know, York may  
15 have been in there for Highway 5. I can't  
16 remember because they passed.

17 CHAIRMAN SMITH: No. York's getting all the money now  
18 --

19 MR. MADDEN: Oh, okay. I understand, yes, sir.

20 CHAIRMAN SMITH: -- but don't worry about it. They're  
21 making up for lost time. All right. Any further  
22 questions. Senator Young.

23 SENATOR YOUNG: Thank you, Mr. Chairman.

24 MR. MADDEN - EXAMINATION BY SENATOR YOUNG:

25 Q. Mr. Madden, thank you. You know, I'm not going

1 to rehash what everybody said. I just want to  
2 say thank you for your willingness to serve our  
3 state. I do want to ask you about abuse and  
4 neglect cases. I've asked every candidate in  
5 every race these questions. And the main thing I  
6 want to find out is I know that you stated in  
7 your earlier comments that in your practice you  
8 have not had as many abuse and neglect cases  
9 because you have been so focused on other  
10 domestic matters in Family Court. But of the  
11 cases that you have handled and your general  
12 knowledge of those cases, do you have any  
13 suggestions on what can be done to improve the  
14 system for the children and the families who are  
15 involved in those cases?

16 A. Yes. The thing that strikes me the most about  
17 every abuse and neglect proceeding that I've been  
18 in or been involved with is the overworked staff,  
19 and I know they're overworked. I mean, they have  
20 more things to do than they have time to do it in  
21 and seem to treat every case the exact same.  
22 It's almost like a checklist approach as opposed  
23 to taking a step back, taking the big picture  
24 into account, looking at the context of what's  
25 happening and where it's coming from and then

1 fashioning a remedy for that. So I'm not sure  
2 how to effectuate that change but that's the  
3 sing- -- because most of the experience I've had  
4 with abuse and neglect recently has been where an  
5 abuse and neglect case arose out of a divorce  
6 case. You know, there's a private divorce case  
7 going on, somebody's mad, grandmama calls and  
8 reports them to DSS and something happens, and  
9 all of a sudden DSS gets involved. And the  
10 process and the focus is as -- the allegation  
11 could be emotional abuse in a very isolated way,  
12 but the process is as if the baby got scalded in  
13 the bathtub. And so there doesn't seem to be  
14 much attention given to the necessity of uniquely  
15 approaching each case. And maybe that's because  
16 the resources do not allow it. I don't know but  
17 to me that's been the one area where I could see  
18 an immediate opportunity.

19 **Q. Any other ideas that you might try to encourage**  
20 **to be implemented if you're elected to the Family**  
21 **Court bench?**

22 A. I don't have any today. But I certainly look  
23 forward to looking for those opportunities and if  
24 circumstances dictate, making those suggestions.

25 **Q. Are you aware of mediation being used in abuse**

1           **and neglect cases in Family Court in Greenville**  
2           **County?**

3       A.    Not in Greenville County.  I'm aware of it --  
4            I've used it once in a Charleston County matter,  
5            but I have not -- I've not been involved with one  
6            in Greenville.

7       **Q.    We heard earlier today from a Family Court judge**  
8            **in Horry who said that they implemented a**  
9            **countywide mediation program in Horry for trying**  
10           **to reduce the docket for abuse and neglect cases.**  
11           **And they had reduced it by 70 percent.**

12      A.    That makes sense.

13      **Q.    And so I know you're taking notes and going to**  
14            **keep up with these ideas, so I would hope and**  
15            **encourage that if you are elected that you would**  
16            **follow up on that.**

17      A.    I appreciate that information.  You know, DSS  
18            cases are a lot of times one big mediation.  And  
19            so corralling those folks and pushing them into  
20            that formal environment where you work through it  
21            and try to knock it out is a great idea.  There  
22            also are a lot of lawyers who are in the final  
23            chapter of their career who want to donate their  
24            time, who want to do what I'm doing and try to  
25            give back a little bit and would love to serve in

1           that capacity because it would be rewarding. So  
2           I think a program could be put together without a  
3           whole lot of effort that would move those cases  
4           along.

5    **Q.**    And even if this is not a successful run for you  
6           -- I don't want the transcript to sound like that  
7           we've already predisposed this in any way, shape  
8           or form, but even if it's not a successful run  
9           for you, you work with Nelson, Mullins law firm,  
10          and if you're not successful, I assume you're  
11          going to stay at Nelson, Mullins.

12   **A.**    Yes, sir, that's right.

13   **Q.**    Y'all have a long history of being able to get  
14          involved and make change in the court system for  
15          the public good and I would encourage you, if  
16          you're wearing that hat, to follow up in that  
17          regard.

18   **A.**    Noted. Thank you.

19   CHAIRMAN SMITH: All right. Any further questions.

20                   (No replies are heard.)

21   CHAIRMAN SMITH: Mr. Madden, I also want to thank you  
22          for offering for this position. It's clear you  
23          bring a wealth of experience. I noted in one of  
24          the responses to the question you talk about  
25          teaching classes at a trial advocacy in Houston.

1 And one thing that I'm most impressed with, which  
2 has been mentioned, is in preparation of your  
3 candidacy and determining whether you were  
4 interested in running and actually presenting is  
5 the work you did with DJJ, going to court, with  
6 watching abuse and neglect. But more  
7 importantly, even going over and looking at the  
8 facility here in Columbia and visiting with the  
9 teachers, the staff, the children who are  
10 committed to that facility is really something  
11 that we sometimes have candidates who don't have  
12 the requisite amount of experience, and we try to  
13 impress upon them to go out and gain that  
14 experience. And simple things as to what you did  
15 is ways that they could do that, so maybe it  
16 would behoove some of the aspiring young  
17 attorneys who want to become judges -- maybe you  
18 can advise them of things that can make you  
19 prepared in order to run for a judge. So  
20 appreciate you offering for this position, and we  
21 look forward to hopefully seeing you as a  
22 candidate. We'll see how the vote goes here in a  
23 little bit but we wish you much luck with any  
24 future endeavor that you have. So with that,  
25 this will conclude --



1 SENATOR YOUNG: Mr. Chairman, real quick, and I forgot  
2 to mention this. The letters of reference that  
3 you have, you are called by some a lawyer's  
4 lawyer. You -- this case with one of the letters  
5 of reference that is most meaningful to me is a  
6 lawyer's teacher letter, which again, can that be  
7 a lawyer's lawyer three times. Alan Medlin's  
8 letter is incredibly meaningful to the personal  
9 level that he goes in the family situation that  
10 you helped him with. So as the Chairman has  
11 mentioned, saluting you for teaching. A lawyer  
12 who taught you, a law school professor who taught  
13 you to be a lawyer, is singing your praises.

14 MR. MADDEN: Thank you.

15 SENATOR RANKIN: And on the tenor that he does, the  
16 personal side of it, Alan Medlin is an incredible  
17 person, a great person for the benefit of the  
18 next members of the Bar. So I cannot let this  
19 record go without mentioning him and you don't  
20 need to say a word except to him. You have  
21 impressed him, which is impressive to me.

22 MR. MADDEN: Thank you.

23 CHAIRMAN SMITH: All right. So Mr. Madden, this  
24 concludes this portion of our screening process.  
25 I want to take this opportunity to remind you

1           that pursuant to the Commission's evaluative  
2           criteria, the Commission expects candidates to  
3           follow the spirit as well as the letter of the  
4           ethics law and will view violations or the  
5           appearance of impropriety as serious and  
6           potentially deserving of heavy weight in the  
7           screening deliberation. As you know, the record  
8           will remain upon until the formal release of the  
9           Report of Qualifications, and you may be called  
10          back at such time if the needed arises. Thank  
11          you for offering for this position, and thank you  
12          for your service to the State of South Carolina.

13       MR. MADDEN: Thank you, sir.

14       CHAIRMAN SMITH: All right. Have a safe trip back.

15       MR. MADDEN: Thank you.

16                                       (Off the record.)

17       CHAIRMAN SMITH: Good afternoon, Ms. West. How are  
18           you doing.

19       MS. WEST: I'm doing well, thank you.

20       CHAIRMAN SMITH: All right. Are you ready?

21       MS. WEST: Yes, sir.

22       CHAIRMAN SMITH: Would you raise your right hand,  
23           please, ma'am?

24       REBECCA WEST, having been duly sworn, testifies as  
25       follows:

1 CHAIRMAN SMITH: All right. Before you you have your  
2 Personal Data Questionnaire and your Sworn  
3 Statement. Are those both documents you have  
4 submitted to the Commission?

5 MS. WEST: Yes, sir.

6 CHAIRMAN SMITH: Are they correct?

7 MS. WEST: Yes, sir.

8 CHAIRMAN SMITH: Any changes or updates that need to  
9 be made at this time?

10 MS. WEST: No.

11 CHAIRMAN SMITH: And do you have any objections to us  
12 making those as exhibits to your sworn testimony  
13 here today?

14 MS. WEST: I don't.

15 CHAIRMAN SMITH: Without objection, if you'll give  
16 those to Lindi, and we'll make those as exhibits  
17 to the sworn testimony. Ms. West, the Judicial  
18 Merit Selection Commission has thoroughly  
19 investigated your qualifications for the bench.  
20 Our inquiry is focused on nine evaluative  
21 criteria and has included a ballot box survey, a  
22 thorough study of your application materials,  
23 verification of your compliance with state ethics  
24 laws, a search of newspaper articles in which  
25 your name appears, study of previous screenings

1 and checks for economic conflicts of interest.  
2 We have received no affidavits filed in  
3 opposition to your election, and there are no  
4 witnesses present to testify here today. Do you  
5 wish to make a brief opening statement to the  
6 Commission?

7 (Exhibit Number 20 was marked for identification  
8 purposes - (20 pages) Personal Data Questionnaire for  
9 Rebecca West.)

10 (Exhibit Number 21 was marked for identification  
11 purposes - (8 pages) Sworn Statement of Rebecca West.)

12 MS. WEST: Extremely brief. Thank you very much for  
13 having me. I'm humbled to be here.

14 CHAIRMAN SMITH: Thank you very much. Answer any  
15 questions counsel may have.

16 MS. WEST: Thank you.

17 MS. WEST - EXAMINATION BY MR. HINSON:

18 **Q. Good afternoon, Ms. West. Ms. West, please state**  
19 **for the record the city and circuit in which you**  
20 **reside.**

21 A. Lexington County, and I'm in the Eleventh  
22 Judicial Circuit.

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

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

5 **Q. Ms. West, why do you want to serve as a Family**  
6 **Court judge, and why do you feel that your legal**  
7 **and professional experience qualify and will**  
8 **assist you to be an effective judge?**

9 A. I believe that people who have the ability to  
10 serve the public must do so, and I believe that  
11 I'm especially well suited for this position.  
12 I've been a trial lawyer my entire career. I  
13 just began my 20th year of practice, and during  
14 that time I've focused solely on Family Court  
15 practice for 16 years of that, I believe. I've  
16 had experience across the board, trying all  
17 manner of cases, both simple and very complicated  
18 and complex. I also have a mediation practice,  
19 and I also teach CLE continuing education and use  
20 that along with my appellate practice to stay  
21 sharp.

22 **Q. Thank you. Ms. West, are there any areas of the**  
23 **law which you would need additional preparation**  
24 **in order to serve as a Family Court judge, and**  
25 **how would you handle that additional preparation?**

1 A. Yes. My career -- I've never handled a juvenile  
2 matter in Family Court. And I would continue to  
3 familiarize myself with the statute but I have  
4 updated myself in preparation for this public  
5 hearing and for this application process on  
6 changes in the law in that area. I would also  
7 observe matters that are pending in the Family  
8 Court and consult with some friends and  
9 colleagues of mine who handle the prosecution  
10 side and the defense side in juvenile matters.  
11 The other area that I'm probably not experienced  
12 in is adoption. I had an associate and later  
13 partner who specialized and was an expert in that  
14 area, and so I always defer to her. I've gone  
15 with her on several cases and I feel confident  
16 that I would have the ability to learn that area  
17 and again consult folks who are much more well  
18 versed in that area before I ever heard a case.

19 **Q. Ms. West, please briefly describe your experience**  
20 **in handling complex contested Family Court**  
21 **matters, and specifically discuss your experience**  
22 **with the financial aspects of Family Court work.**

23 A. Certainly. I've handled cases in that realm  
24 upwards of millions dollars as far as the value  
25 of the marital estate. I've dealt with issues of

1 business valuation, various forms of executive  
2 compensation and complex matters of transmutation  
3 of property. I've also dealt with on many  
4 occasions experts in those areas, CVAs, certified  
5 valuation analysts and CPAs, and I consulted with  
6 those experts as well. I have tried various  
7 issues of transmutation and complex financial  
8 matters. I've also handled complex custody  
9 relocation matters and matters of jurisdiction.  
10 In fact, that's often an area that my colleagues  
11 consult with me on, are matters of jurisdiction.

12 **Q. Ms. West, the Commission received 360 ballot box**  
13 **surveys regarding you with 56 additional**  
14 **comments. The ballot box survey, for example,**  
15 **contained the following positive comments: I**  
16 **think Ms. West would be an asset to the**  
17 **judiciary. Another said you will serve the bench**  
18 **with honor. Multiple others said you would make**  
19 **an excellent judge. Other written comments**  
20 **expressed concerns related to your experience and**  
21 **temperament. How would you address those**  
22 **concerns?**

23 **A. Depending on the nature of the concern, I would**  
24 **certainly say that I strive every day to make**  
25 **sure that I conduct myself in a way that is**

1 respectful to other members of the Bar, to  
2 litigants and to the judiciary. And if I've ever  
3 failed to do that, I would certainly take notice  
4 and try to remedy it immediately. And I'm always  
5 very conscious of that given the adversarial  
6 nature of our practice. I would never want to be  
7 thought of in a way that was disrespectful to  
8 another attorney or to a litigant or a judge.  
9 Would you help me as far as the rest of that  
10 question?

11 **Q. It was temperament and experience.**

12 A. I certainly believe that I have the requisite  
13 experience in the Family Court, especially having  
14 been a trial lawyer in that area for many, many  
15 years and having taught the subject matter many  
16 times over. I would have to know more specifics  
17 about the nature of the comment regarding my  
18 experience.

19 **Q. Thank you. Ms. West, another concern indicated**  
20 **that you favor friends when it comes to**  
21 **recommending providers for your clients as**  
22 **opposed to other more qualified providers. How**  
23 **would you respond to that concern?**

24 A. I'm not sure exactly what providers means. If  
25 the comment is in the nature of who do I refer



1 cases to that I can't handle, I certainly do  
2 refer to friends, professional friends, and  
3 colleagues because I trust that I know their  
4 practice area and that I know that they're  
5 competent and capable of taking a matter if I  
6 have a conflict, or if it's just simply not a  
7 good fit with a prospective client.

8 **Q. Since your last screening in 2014, your PDQ lists**  
9 **a lawsuit filed by Corley Family Trust against**  
10 **you. What's the disposition of that case?**

11 A. The plaintiff entered a voluntary dismissal. I  
12 paid no money. Basically after the deposition  
13 they dropped their case.

14 **Q. Thank you. Also you were a plaintiff in a suit**  
15 **in 2017 against Forest Specialty Insurance among**  
16 **others. What was the disposition of this case?**

17 A. I successfully negotiated a settlement of that.  
18 And that was a bad faith claim from when they  
19 failed to cover the defense of the Corley matter.

20 **Q. Ms. West, what do you believe will be the**  
21 **toughest challenge you will face if you're**  
22 **elected as a Family Court judge?**

23 A. Probably the adjustment from advocacy to  
24 judgment. I think that the thing that I've  
25 learned over the past several years is that

1 mediation has helped me realize that that  
2 adjustment can be major. And it needs to be  
3 recognized that when you go from representing a  
4 client's interest to viewing a case in an  
5 impartial and unbiased way, that's a big  
6 adjustment. And it's worth paying close  
7 attention to the skills that are needed to view a  
8 case impartially.

9 **Q. Thank you. Ms. West, what do you believe to be**  
10 **the appropriate judicial temperament that a**  
11 **Family Court judge should possess, and is there a**  
12 **former or sitting Family Court judge you would**  
13 **aspire to be should you be elected?**

14 **A.** Sure. I believe that a Family Court judge has to  
15 be patient, number one. They have to be firm and  
16 courteous without being overly friendly or  
17 casual. I have always revered Judge Kellum Allen  
18 as a judge and a practitioner that I aspire to be  
19 like. Judge Allen has a unique ability to spot  
20 issues quickly and to reach a resolution that  
21 balances interests but also encourages litigants  
22 to settle their case. And for lack of a better  
23 way to explain it, I think he makes everybody  
24 realize that they have skin in the game and that  
25 typically it is in the kids' best interest to

1 resolve their case on their own. But he always  
2 struck me as one that was very curious and had a  
3 genuine interest in the subject matter that we  
4 deal with in Family Court.

5 **Q. Ms. West, in your PDQ you list the case of**  
6 **Montgomery versus Montgomery as one of your most**  
7 **significant cases. What can you tell the**  
8 **Commission about what you learned from that**  
9 **experience? And I understand that may still be**  
10 **under litigation, so we're not necessarily**  
11 **looking for facts but just --**

12 **A.** I understand. And my role in that has now pretty  
13 much gone away but I was appellate counsel in  
14 that matter. And I had no decision making  
15 authority at the trial level but I became  
16 involved in that, first of all, through defending  
17 a writ of supersedeas and then ultimately arguing  
18 that case in front of the Supreme Court. It was  
19 fascinating. It taught me how to organize and  
20 distill a massive amount of information and  
21 present that in a way that is intelligible. It  
22 was extremely -- it dealt with very intimate  
23 details of this family's life and parenting. And  
24 so it also emphasized to me how major these  
25 issues can be in peoples' lives and how certain

1 actions, certain advice from counsel, can change  
2 the trajectory of a family and how they parent  
3 their children. It was humbling in addition to  
4 being a very terrifying experience in front of  
5 the Supreme Court for the first time.

6 **Q. Thank you.**

7 MR. HINSON: I would note that the Midlands Citizens  
8 Committee found Ms. West qualified in the  
9 evaluative criteria of constitutional  
10 qualifications, physical health and mental  
11 stability. The Committee found her well  
12 qualified in the evaluative criteria of ethical  
13 fitness, professional and academic ability,  
14 character, reputation, experience and judicial  
15 temperament. The Committee stated in summary  
16 that lots of experience with excellent  
17 qualifications.

18 **Q. Just a few housekeeping questions. Ms. West, are**  
19 **you aware that as a judicial candidate you are**  
20 **bound by the Code of Judicial Conduct as found in**  
21 **Rule 501 of the South Carolina Appellate Court**  
22 **Rules?**

23 A. Yes.

24 **Q. Since submitting your Letter of Intent, have you**  
25 **contacted any members of the Commission about**

1           your candidacy?

2       A.    No.

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

6       A.    Yes.

7       Q.    Since submitting your Letter of Intent, have you  
8           sought or received the pledge of any legislator  
9           either prior to this date or pending the outcome  
10          of your screening?

11      A.    No.

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

16      A.    No.

17      Q.    Have you reviewed and do you understand the  
18           Commission's guidelines on pledging in South  
19           Carolina Code § 2-19-70(e)?

20      A.    Yes.

21      MR. HINSON: I would just note for the record that any  
22           concerns raised during the investigation  
23           regarding the candidate were incorporated into  
24           the questioning of the candidate today, and with  
25           that, I have no further questions.

1 A. Thank you.

2 CHAIRMAN SMITH: Any further questions. Mr. Safran,  
3 did I see --

4 MR. SAFRAN: No.

5 CHAIRMAN SMITH: Okay. All right. Any questions.  
6 You suffer from both the curse and the blessing  
7 of being the last candidate of the last screening  
8 of two weeks -- so it is 4:00 o'clock, so --

9 MS. WEST: I understand.

10 CHAIRMAN SMITH: -- so I don't think the lack of  
11 questions is any indication. I remember you ran  
12 a few years ago. And I'm very familiar with your  
13 qualifications, so normally a lot of questions I  
14 would ask, I would do that -- Mr. Strom.

15 MR. STROM: Just quickly, Mr. Chairman. Ms. West,  
16 I've known you a number of years. You enjoy an  
17 excellent reputation in what you do and you'd be  
18 a real asset to the bench and to the Bar. I just  
19 want to thank you for offering.

20 MS. WEST: Well, thank you for saying that.

21 CHAIRMAN SMITH: Senator Young, surely you can't let  
22 the screening go without asking a few questions.

23 SENATOR YOUNG: Thank you, Mr. Chairman.

24 MS. REBECCA WEST - EXAMINATION BY SENATOR YOUNG:

25 Q. Thank you, Mr. Chairman. Ms. West, thank you so

1 much for your interest in serving our state on  
2 the Family Court bench and I too have been  
3 impressed with the ballot box comments. And  
4 practicing in an adjoining county, I too am  
5 familiar with your reputation and you enjoy an  
6 excellent reputation.

7 A. Thank you very much.

8 Q. So one question I have is in the area of abuse  
9 and neglect cases. I've noticed from your  
10 Personal Data Questionnaire that you have handled  
11 a number of those; is that correct?

12 A. Earlier in my career, not recently, yes.

13 Q. So my question to you would be, do you have any  
14 recommendations on how the system can be improved  
15 for the children and the families who are in that  
16 system to make it better for them?

17 A. I wish I knew. My thoughts on it are that it  
18 starts at the caseworker level at the very first  
19 interaction, in making sure that caseworkers are  
20 well trained and well invested in their task of  
21 investigating the allegation. So often in the  
22 private Family Court matters we see DSS  
23 allegations of abuse and neglect used as a weapon  
24 in order to gain an advantage or some sort of  
25 leverage in the private Family Court divorce or

1 custody matter, and that's a shame. But I  
2 believe all allegations have to be investigated  
3 thoroughly no matter where they're originated  
4 from. I think the next step is for us to improve  
5 the way these cases work their way through the  
6 system. And I think that's a combination of  
7 holding DSS' feet to the fire and making sure  
8 that cases are brought in time frames that are  
9 required under the statute and for judges to  
10 enforce that. I think it's also incumbent on the  
11 attorneys involved that cases don't sit and that  
12 folks make their way through safety plans or  
13 whatever other treatment services are needed.  
14 But allowing a child and a family to remain in  
15 limbo is simply not in anybody's best interest.  
16 And certainly protecting children is always in  
17 the state's and the community's best interest.

18 **Q. Are you familiar at all with the mediation of**  
19 **abuse and neglect cases?**

20 A. They did not mediate those cases when I was  
21 involved in them. I do think that that could be  
22 helpful, maybe not initially when matters are  
23 still being investigated and treatment services  
24 are still being gone through by the parent. But  
25 I do think that once these cases and once the



1 facts are gathered it would be appropriate in a  
2 lot of those cases to mediate.

3 **Q. I noticed that you wrote an article about the law**  
4 **of workers' compensation in South Carolina.**

5 A. That was a long time ago.

6 **Q. 1997. It was published by the University of**  
7 **Texas.**

8 A. At Arlington, yes.

9 **Q. That was apparently when you started law school?**

10 A. No, sir, that was actually my undergraduate  
11 thesis in history. I dealt with -- or considered  
12 the question of how the workers' compensation law  
13 came out of progressive era in South Carolina. I  
14 was in school at Lander at the time and there are  
15 plenty of mills and families that earn their  
16 livelihood through the mills and gained an  
17 interest in that.

18 **Q. Thank you very much.**

19 A. You're welcome.

20 CHAIRMAN SMITH: All right. Any further questions?

21 (No replies are heard.)

22 CHAIRMAN SMITH: Ms. West, let me also thank you for  
23 offering for this position. Sort of what we're  
24 looking for, people with a wealth of experience  
25 and a great reputation coming back and offering

1 to serve the State of South Carolina in the  
2 capacity as a Family Court judge or Circuit Court  
3 judge, and you've earned a great reputation  
4 throughout the Bar and throughout South Carolina.  
5 And it's as a result of your hard work and we  
6 appreciate you offering today. And so with that  
7 said, this will conclude this portion of your  
8 screening process. Let me remind you that  
9 pursuant to the Commission's evaluative criteria,  
10 the Commission expects candidates to follow the  
11 spirit as well as the letter of the ethics law  
12 and will view violations or the appearance of  
13 impropriety as serious and potentially deserving  
14 of heavy weight in screening deliberations. As  
15 you know, the record will remain open until the  
16 formal release of the Report of Qualifications,  
17 and you may be called back at such time if the  
18 need should arise. Thank you for offering for  
19 this position, and I thank you for your service  
20 to the State of South Carolina.

21 MS. WEST: And thank you as well.

22 CHAIRMAN SMITH: All right. You don't have as far a  
23 drive as everyone else.

24 MS. WEST: No.

25 CHAIRMAN SMITH: Still hopefully you don't have to go

1 over malfunction junction.

2 MS. WEST: Yes. Thank you.

3 CHAIRMAN SMITH: All right. Ms. McIver moves that we  
4 go in Executive Session, seconded by Senator  
5 Rankin. All in favor say, aye.

6 (Ayes are heard.)

7 CHAIRMAN SMITH: All opposed?

8 (No replies were heard.)

9 CHAIRMAN SMITH: Ayes have it. We're in Executive  
10 Session.

11 EXECUTIVE SESSION

12 VOTE

13 CHAIRMAN SMITH: Senator Sabb, with Senator Rankin  
14 seconding, move that we lift the veil and come  
15 out of Executive Session. Let me state while in  
16 Executive Session no decisions were made and no  
17 votes were taken. So we're going to proceed to  
18 the ballot on the Family Court at-large seat,  
19 number 2. And so Senator Rankin moves, and  
20 seconded by Representative Murphy, that all the  
21 candidates are found qualified. All in favor,  
22 raise their hand.

23 (Hands are raised.)

24 CHAIRMAN SMITH: Representative Rutherford votes his  
25 proxy as finding they're all qualified, so let

1 the record reflect that was a unanimous decision,  
2 and we'll move to ballot on the nominations.

3 MS. CRAWFORD: Mr. Chairman, let me say the candidates  
4 first and then we'll go through each one. Bryan  
5 C. Able, Robert W. Cone, Timothy E. Madden,  
6 Rebecca West are all candidates for the Family  
7 Court at-large, seat 2. The first candidate,  
8 Bryan C. Able.

9 (Hands are raised.)

10 CHAIRMAN SMITH: We've got six. All right. So  
11 Representative Rutherford will vote proxy on  
12 that.

13 MS. CRAWFORD: Robert W. Cone.

14 (Hands are raised.)

15 MS. CRAWFORD: Timothy E. Madden.

16 (Hands are raised.)

17 CHAIRMAN SMITH: Senator Rutherford votes his  
18 proxy for Timothy Madden.

19 MS. CRAWFORD: Rebecca West.

20 (Hands are raised.)

21 CHAIRMAN SMITH: Representative Rutherford votes his  
22 proxy for Rebecca West.

23 MS. CRAWFORD: So the three candidates qualified and  
24 nominated are Bryan C. Able, seven votes, Timothy  
25 E. Madden, ten votes, Rebecca West with ten

1 votes.

2 CHAIRMAN SMITH: All right. Any business before  
3 the Commission?

4 SENATOR RANKIN: I would like, on the record, to thank  
5 both of our court reporters for their incredibly  
6 strong will and bladders of steel.

7 CHAIRMAN SMITH: I was going to say stamina but  
8 that's --

9 SENATOR RANKIN: I want that in the record.

10 MADAM COURT REPORTER: It's a pleasure as always.

11 Thank you very much for having us.

12 CHAIRMAN SMITH: Thank you for your time and let me  
13 also say again, it's a pleasure, first, we can't  
14 do this without staff, Erin, Emma, all you who  
15 are still here. Jimmy I can't see. Lindi's the  
16 best. Okay, we'll say that. She brings the food  
17 to us makes sure it gets here, and Michele.  
18 Well, thank you all. Again, members, thank you  
19 all. It's an honor to serve with you on this  
20 Commission and, you know, I know this job's not  
21 easy. And we have to make hard decisions that  
22 aren't popular with people and we have to tell  
23 people -- some of the worst things is to have to  
24 tell them no and that we can't -- you know, not  
25 that they're not going to be a good judge or they

1 wouldn't be a good judge, just now is not their  
2 time. And so, you know, I think the one thing  
3 that I'm most proud of when we do this is that we  
4 all are making sure that we're trying to maintain  
5 the integrity of the profession and of the body  
6 of this Commission here and trying to do what's  
7 right, not what's easy or what's expedient but  
8 what's right. So thank you for your commitment.  
9 And, you know, this isn't for the faint of heart  
10 nor is it for someone that doesn't have a lot of  
11 time on their hands because I don't think I've  
12 been home, and I'm only an hour drive from here,  
13 before 9:00 so far, so we spend a lot of long  
14 nights here. So I thank you for your dedication.  
15 Thank you for your commitment and look forward to  
16 continuing to serve with you all in one capacity  
17 or the other, I guess. So with that, I hope  
18 everybody has a great holiday and season, and  
19 we'll let the vice chairman adjourn. And then  
20 come January 1 the vice chairman now will be our  
21 chairman. And I'd be happy to nominate you and  
22 let you handle it from here, Mr. Chairman.

23 SENATOR RANKIN: Very good. Lord willing and the  
24 creek don't rise, I hope to see every one of you  
25 back not too soon.

1                   CHAIRMAN SMITH: All right. With that, Senator  
2                   Rankin moves we adjourn. All in favor, say  
3                   Aye.

4   (Ayes are heard.)

5                   CHAIRMAN SMITH: Ayes have it. We stand adjourned.  
6 (There being nothing further, the proceeding concluded at  
7 4:35 p.m.)

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I, JENNIFER NOTTLE, COURT REPORTER AND NOTARY PUBLIC  
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