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PUBLIC HEARINGS

November 19, 2019

Judicial Merit Selection Commission, 2019

REPORTER: Patricia Bachand

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF RICHLAND)

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5 JUDICIAL MERIT SELECTION COMMISSION

6 TRANSCRIPT OF PUBLIC HEARINGS

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

9 SENATOR LUKE A. RANKIN, VICE CHAIRMAN

10 SENATOR RONNIE A. SABB

11 SENATOR TOM YOUNG, JR.

12 REPRESENTATIVE CHRIS MURPHY

13 REPRESENTATIVE J. TODD RUTHERFORD

14 HOPE BLACKLEY-LOGAN

15 LUCY GREY MCIVER

16 ANDREW N. SAFRAN

17 J.P. "PETE" STROM

18 ERIN B. CRAWFORD, CHIEF COUNSEL

19 * * * * *

20 DATE: November 19th, 2019

21 TIME: 9:30 a.m.

22 LOCATION: Gressette Building, Room 105

23 1101 Pendleton Street

24 Columbia, South Carolina 29201

25 REPORTED BY: PATRICIA G. BACHAND, COURT REPORTER

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

INDEX

PAGE:

THE HONORABLE JOE M. CROSBY..... 7

- Examination by Mr. Maldonado..... 10

- Examination by Senator Rankin..... 18

- Examination by Representative Murphy..... 28

- Examination by Senator Young..... 29

- Examination by Chairman Smith..... 32

H. STEVEN DEBERRY IV..... 40

- Examination by Mr. Cohl..... 42

- Examination by Senator Rankin..... 49

THE HONORABLE MARVIN H. DUKES III..... 60

- Examination by Ms. Dean..... 62

- Examination by Representative Murphy..... 71

- Examination by Senator Rankin..... 72

WILLIAM VICKERY MEETZE..... 79

- Examination by Ms. Wilkinson..... 81

- Examination by Representative Murphy..... 86

- Examination by Senator Young..... 87

- Examination by Senator Rankin..... 90

- Examination by Mr. Safran..... 92

- Examination by Senator Sabb..... 95

JANE H. MERRILL..... 100

- Examination by Mr. Hinson..... 102

- Examination by Chairman Smith..... 108

1 - Examination by Representative Murphy..... 113

2 - Examination by Senator Rankin..... 114

3 - Examination by Senator Sabb..... 119

4 - Examination by Senator Young..... 121

5 - Examination by Senator Sabb..... 123

6 Certificate of Reporter..... 127

7 Word Index

8 * * * * *

10 REQUESTED INFORMATION INDEX

11 (No Information Requested.)

13 * * * * *

14 EXHIBIT INDEX

15 EXHIBITS: PAGE:

16 EXHIBIT NO. 1..... 8

17 - JUDICIAL MERIT SELECTION COMMISSION PERSONAL DATA

18 QUESTIONNAIRE OF THE HONORABLE JOE M. CROSBY

19 EXHIBIT NO. 2..... 8

20 - JUDICIAL MERIT SELECTION COMMISSION SWORN STATEMENT

21 OF THE HONORABLE JOE M. CROSBY

22 EXHIBIT NO. 3..... 41

23 - JUDICIAL MERIT SELECTION COMMISSION PERSONAL DATA

24 QUESTIONNAIRE OF H. STEVEN DEBERRY IV

25

	PAGE:
1 EXHIBITS (CONTINUED):	
2 EXHIBIT NO. 4.....	41
3 - JUDICIAL MERIT SELECTION COMMISSION SWORN STATEMENT	
4 OF H. STEVEN DEBERRY IV	
5 EXHIBIT NO. 5.....	60
6 - JUDICIAL MERIT SELECTION COMMISSION PERSONAL DATA	
7 OF THE HONORABLE MARVIN H. DUKES III	
8 EXHIBIT NO. 6.....	61
9 - JUDICIAL MERIT SELECTION COMMISSION SWORN STATEMENT	
10 OF THE HONORABLE MARVIN H. DUKES III	
11 EXHIBIT NO. 14.....	80
12 - JUDICIAL MERIT SELECTION COMMISSION SWORN STATEMENT	
13 OF WILLIAM VICKERY MEETZE	
14 EXHIBIT NO. 15.....	80
15 - JUDICIAL MERIT SELECTION COMMISSION SWORN STATEMENT	
16 OF WILLIAM VICKERY MEETZE	
17 EXHIBIT NO. 16.....	101
18 - JUDICIAL MERIT SELECTION COMMISSION PERSONAL DATA	
19 QUESTIONNAIRE OF JANE P. MERRILL	
20 EXHIBIT NO. 17.....	101
21 - JUDICIAL MERIT SELECTION COMMISSION SWORN STATEMENT	
22 OF JANE P. MERRILL	
23 EXHIBIT NO. 18.....	101
24 - AMENDMENT TO PERSONAL DATA QUESTIONNAIRE OF	
25 JANE P. MERRILL	

1 Court Reporter's Legend:

2 dashes [--] Intentional or purposeful interruption

3 ... Indicates trailing off

4 [sic] Written as said

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1 CHAIRMAN SMITH: All right. I will call the
2 meeting to order. And we're going to get started here. I
3 apologize for being late, but obviously I had a commitment.
4 And we all have our political issues back at home, and I
5 had a teacher's forum at 7:30 this morning that cannot be
6 missed. So I appreciate everybody's indulgence.

7 With that, Representative Murphy moves that
8 we go into executive session. All in favor say "aye."

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

10 CHAIRMAN SMITH: All opposed?

11 (Hearing none.)

12 CHAIRMAN SMITH: The ayes have it. We'll be
13 in executive session.

14 (Off the record.)

15 CHAIRMAN SMITH: We're back on the record.
16 Mr. Strom moves that we lift the veil and come out of
17 executive session. All in favor say "aye."

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

19 CHAIRMAN SMITH: All opposed?

20 (Hearing none.)

21 CHAIRMAN SMITH: Ayes have it. And let the
22 record reflect that while we were in executive session
23 there were no matters decided and no votes taken.

24 All right. Judge Crosby, welcome. I
25 appreciate you being here today. Sorry for the -- you

1 know, I guess we're infamous -- infamously run late. So I
2 appreciate your indulgence. You have a guest here today,
3 it appears?

4 JUDGE CROSBY: I do.

5 CHAIRMAN SMITH: Would you like to introduce
6 your guest to us?

7 JUDGE CROSBY: Please, a little more than a
8 guest. This is my wife, Elise Crosby, also a partner in my
9 firm -- our firm. So she's here with me today.

10 CHAIRMAN SMITH: Good morning. All right.
11 Judge Crosby, if you'll raise your right hand, please, sir.

12 WHEREUPON,

13 THE HONORABLE JOE M. CROSBY, being duly
14 sworn and cautioned to speak the truth, the whole truth and
15 nothing but the truth.

16 CHAIRMAN SMITH: All right. Judge Crosby,
17 you have before you, a personal data questionnaire and
18 sworn statement. Are those documents you submitted to the
19 Commission?

20 JUDGE CROSBY: They are.

21 CHAIRMAN SMITH: Are they both correct at
22 this point?

23 JUDGE CROSBY: They are.

24 CHAIRMAN SMITH: All right. Is there any
25 amendments or updates that you would like to make at this

1 time?

2 JUDGE CROSBY: I do not have any.

3 CHAIRMAN SMITH: All right. Do you have any
4 objection to us making this part of your -- the record of
5 your sworn testimony here today?

6 JUDGE CROSBY: I do not.

7 CHAIRMAN SMITH: All right. Without
8 objection we're going to mark that as an exhibit to your
9 sworn testimony.

10 (EXHIBIT NO. 1 - JUDICIAL MERIT SELECTION
11 COMMISSION PERSONAL DATA QUESTIONNAIRE OF THE
12 HONORABLE JOE M. CROSBY)

13 (EXHIBIT NO. 2 - JUDICIAL MERIT SELECTION
14 COMMISSION SWORN STATEMENT OF THE HONORABLE JOE
15 M. CROSBY)

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

25 We've received no affidavits today filed in

1 opposition to your election. No witnesses are present to
2 testify. Do you wish to make a brief opening statement to
3 the Commission?

4 JUDGE CROSBY: Very brief. And my
5 statement, may it please the Commission, is very, very,
6 again, brief. It's that I appreciate the opportunity to be
7 here. I appreciate you all taking the time to interview
8 all of us. I've been the Master in Equity in Georgetown
9 for the past -- over the past ten years. And I'm pursuing
10 the position of the At-Large seat for the Circuit Court.
11 And I hope to have a fair consideration from all of you
12 all. Thank you.

13 CHAIRMAN SMITH: Thank you very much. Will
14 you answer any questions that Counsel may have.

15 JUDGE CROSBY: Yes, sir.

16 MR. MALDONADO: Thank you, Mr. Chairman.
17 And just before I begin, can we make sure your microphone
18 is on?

19 JUDGE CROSBY: Is there a button I push.

20 MR. MALDONADO: I would note for the record
21 that based on the testimony contained in the candidate's
22 PDQ, which has been included in the record with the
23 candidate's consent, the Honorable Joe M. Crosby meets the
24 constitutional and statutory requirements for this position
25 regarding age, residence and years of practice.

1 EXAMINATION BY MR. MALDONADO:

2 Q. Judge Crosby, how do you feel your legal and
3 professional experience thus far renders you qualified and
4 will assist you in being an effective Circuit Court judge?

5 A. Thank you. One of the points -- or I'm wearing
6 sort of that dual hat that we may have discussed, or some
7 of us have discussed, and that is that I've been in private
8 practice for 25 years and I've been the Master in Equity in
9 Georgetown for over ten years.

10 And part of that is -- is I have experienced
11 everything from the Family Court to the Magistrates Court
12 to the General Sessions Court to the Common Pleas Court.
13 I've argued a case in the South Carolina Supreme Court as
14 well.

15 So certainly, I have a wide range of experiences.
16 I've worked -- argued DUI prosecutions in front of juries.
17 I've made motions in front of Common Pleas courts as well.
18 So I've been on all sides of that over my 25 years of
19 practice.

20 Q. Judge, you've indicated in your PDQ that while
21 you have represented clients in general sessions, that your
22 criminal court experience is somewhat limited. Do you feel
23 that this could be an issue? And if so, how would you
24 handle that?

25 A. Anyone who has -- well, of course in a small town

1 practice, I've represented -- again, I've been in
2 magistrates court a great deal. But I don't believe that
3 it is a disqualifying handicap. Anyone who has been in a
4 large firm and has focused exclusively on civil
5 jurisdiction or civil cases or civil conflicts is going to
6 have that same type of issue.

7 But that being said, I do have those -- that
8 experience, in that I've appeared in front of judges for
9 General Sessions charges. I've handled all of the
10 discovery issues and I've handled the disposition of their
11 charges. So I do not think that it would be a
12 disqualifying condition. And you always have the ability
13 to rely on your rule books and your experience that you
14 gain on the bench as well.

15 Q. Judge, the Commission received 176 ballot box
16 surveys regarding you, with 17 additional comments. The
17 ballot box surveys, for example, contained the following
18 positive comments:

19 "He would make a wonderful Circuit Court judge.
20 He has experience and expertise as well as a fabulous
21 judicial demeanor. He would make an excellent Circuit
22 Court judge."

23 Also, "Joe Crosby is an excellent attorney. He's
24 knowledgeable about the law. He has a pleasant
25 temperament. He has the ability to be fair and impartial.

1 I've always enjoyed working with him."

2 Five of the writing comments expressed concerns,
3 including -- including concerns about your knowledge of the
4 law: "Joe is a bright guy but can be a little difficult to
5 work with. He tends to believe he knows the law better
6 than most other practitioners, which may be true, but I
7 doubt it."

8 Also, "Crosby's temperament and years of
9 experience are fine, but those of us in the legal community
10 question his knowledge of the law and application of the
11 law. Sometimes he'll file an action, and when opposing
12 counsel points out that he has done something wrong,
13 procedurally or substantively, he just shrugs. It's as if
14 he knows what he's doing is not correct, but just hopes no
15 one will bring it up. It is not a rare occurrence, but
16 that has been a pattern over many years."

17 How would you address these concerns?

18 A. We are in an adversarial system. That's what
19 lawyers do. They have disagreements and they have
20 discussions. There's a reason cases go to trial, that
21 somebody thinks that their position is right and the
22 other's position is -- is not right.

23 I make every effort to make sure that my cases
24 are -- my filings are procedurally correct. If there are
25 issues that I think are -- need to be corrected, I will

1 make those corrections.

2 But I don't think that -- I guess at the end of
3 the day, I would disagree with the assessment that there is
4 a pattern. While I'm certainly not perfect, no one who is
5 in practice for 25 years is going to have everyone happy
6 with what they have done over their 25-year legal career.

7 So again, as you heard in some of the other
8 comments, my ability has been respected. But I think if
9 there are disagreements with procedural aspects that I --
10 that they think are wrong and I agree with it, I will make
11 that correction.

12 So I guess really it's -- I do the -- do the best
13 that I can in my 25 years of experience with -- in private
14 practice I think are a reflection of that.

15 **Q. Thank you. Some other comments expressed**
16 **concerns regarding your temperament or possible bias:**

17 "Joe has many qualities sought in a judge, but he
18 is lacking one very -- one very important area. He has an
19 inability to get along with opposing lawyers that do not
20 like him nor trust his work. For that reason I worry about
21 the kind of temperament he may have if he regularly wears
22 the black robe. Quite simply, he is not well liked among
23 the Bar."

24 Also, "Unfortunately, I think this candidate
25 would be inclined to show partiality or bias when it comes

1 to the attorneys or litigants before him. He is seen as a
2 good old boy system."

3 How would you address these concerns?

4 A. Somebody clearly does not like me. That's about
5 as unloading as you can get. But I'm not sure in my ten
6 years on the bench as the Master in Equity, that there have
7 been any complaints about my judicial temperament, my
8 maltreatment of attorneys. It's a -- I can just only
9 disagree with about every single characterization in there.

10 Now, understanding that in a -- in a courtroom --
11 I've had to run a courtroom and there have been -- there
12 have been discussions or disagreements among counsel, but
13 it is -- you know, somebody has to make sure that the case
14 goes forward.

15 You know, again, I think that the vast majority
16 of your comments reflect otherwise. And I just disagree
17 with that characterization.

18 Q. Judge, your SLED report indicated that there were
19 several lawsuits to which you were a party. A few were the
20 result of you being list as the attorney of record.
21 However, please describe your role in the following
22 lawsuits. And I'll just group them, since they're all
23 relatively similar: Lajeane Owens v. Joe Crosby; Alafair
24 Alice Graham v. John Doe; and Larin T. Wilson v. Elkay
25 Industries.

1 A. I was the personal representative appointed by
2 Probate Court, so I was a -- the named party for -- in a
3 foreclosure action, I was representing the estate in that
4 case. Ultimately, it was resolved. The other ones I was
5 appointed as a guardian ad litem for -- for unknowns. So
6 that was the extent of my involvement.

7 I have -- the only time I have been sued
8 individually was a long time ago, and that was when I ruled
9 against somebody in a foreclosure proceeding. And I think
10 Judge Baxley ultimately ended up dealing with that
11 individual.

12 **Q. That's where I was going next. I believe there**
13 **was two federal cases, there was a suit involving a Mark**
14 **Dudley. Please explain --**

15 A. Yes.

16 **Q. -- the situation involving that.**

17 A. Yeah, he was involved in a foreclosure scheme
18 where he would, "If you give me the deed, I'll make the
19 payments." And he was very aggressive in trying to
20 dissuade individuals from pursuing foreclosure.

21 **Q. What happened to him, ultimately?**

22 A. Judge Baxley put him in jail.

23 **Q. Can you please describe your role in the United**
24 **States of American v. Georgetown County School District?**

25 A. That was -- I was the chairman of the Georgetown

1 County School Board, I was a member, and then I ran and was
2 elected on a countywide basis for the chair position. And
3 that was a -- an order regarding the breaking up of the at-
4 large system for the school board system. The Justice
5 Department filed an action which required us from going --
6 to go from an at-large system to a district system. And
7 that was completed by settlement.

8 **Q. So that was -- basically, it was your role as the**
9 **chairman of the board.**

10 A. Correct.

11 **Q. Mr. Crosby, what do you feel is the appropriate**
12 **demeanor for a judge?**

13 A. I think everyone who comes in deserves respect.
14 Very few people come in there because they want to be
15 there, even if they're the moving party. But it is --
16 everyone come -- deserves respect. They deserve an
17 opportunity to be heard. That doesn't mean that they can
18 run or take control of the courtroom, but they deserve
19 their day in court. That is what is very important about
20 our system.

21 So I think that a judge should treat everybody
22 with respect, treat everybody with dignity. And I think my
23 ten-year record has shown that.

24 MR. MALDONADO: I would note that the Pee
25 Dee Citizens Committee reported Judge Crosby to be well

1 qualified in the ethical criteria of ethical fitness,
2 reputation and experience, and qualified in the evaluative
3 criteria of constitutional qualifications, professional and
4 academic ability, character, physical health, mental
5 stability and judicial temperament.

6 BY MR. MALDONADO:

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

11 A. Yes.

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

15 A. No.

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

19 A. No.

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

23 A. I'm sorry, I got distracted?

24 Q. Are you familiar with the law regarding
25 contacting members of the General Assembly?

1 A. Yes.

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

6 A. No.

7 Q. Have you reviewed and do you understand the
8 Commission's guidelines on pledging and South Carolina Code
9 Section 2-19-70(E)?

10 A. Yes.

11 MR. MALDONADO: Mr. Chairman, I would note
12 for the record that any concerns raised during the
13 investigation by staff regarding this candidate were
14 incorporated into the questioning of the candidate today.
15 I have no further questions.

16 CHAIRMAN SMITH: All right. Thank you very
17 much. Any questions for Judge Crosby? Senator Rankin.

18 EXAMINATION BY SENATOR RANKIN:

19 Q. Good morning, sir.

20 A. Good morning.

21 Q. I am glad to see you here. And that is your
22 partner?

23 A. And wife.

24 Q. In law and wife?

25 A. Yes.

1 Q. In all legal respect, correct?

2 A. Yes, that is true.

3 Q. Super. I have never appeared before you, but I
4 know you well, know of your work in the 15th Judicial
5 Circuit. I want to know whether you work as many hours in
6 your day as the master in equity as ours in Horry County,
7 Cindy Graham Howe does.

8 A. We --

9 Q. Should I ask that of your wife?

10 A. Well, that would be a -- the fair question, but -
11 -

12 Q. You don't need to answer that.

13 A. Yeah.

14 Q. We are just overloaded in Horry. And she loves
15 to be there at the late hours, but she and Butch Strobin
16 are there, manning a ton of work. Does Butch Strobin also
17 help you?

18 A. He has heard cases where I've had conflict. He
19 has stepped back from that a little bit because,
20 realistically, our case load since the real estate crash
21 has gone down some. But so, yes, he has been a -- he has
22 helped on cases where I have conflicts. That's -- it's a
23 small town. Georgetown County has a -- I think roughly a
24 60- to 70,000 population, so it's -- it's not the large --
25 it's not Horry. So, yes, he has.

1 Q. You have screened before for the Masters
2 position, correct?

3 A. Correct.

4 Q. And that was how long ago?

5 A. This summer. This -- well, no, let me back up.
6 I think it was actually two summers ago. Time flies. I
7 think it was -- but the appointment did not come through
8 until right around the beginning of this year.

9 Q. The difference you see in serving as a Circuit
10 Court judge versus a Master, other than the obvious, what
11 difference in your day-to-day mind set -- again, aside from
12 the difference in the work before you. Do you see any
13 difference that would be required if you were accepted on
14 your application here?

15 A. I think the -- my experience as the Master in
16 Equity, that is what will be required going forward.
17 Because that includes everything from the treating of how
18 you run the courtroom, how you treat court personnel, how
19 you treat the litigants, how you treat attorneys. All of
20 that still matters.

21 The Common Pleas side of it, dealing with
22 motions, ruling on orders, scheduling hearings, all of that
23 still has to happen. The General Sessions, working with
24 the solicitor, that will still have to happen.

25 To the extent that the Commission is not aware,

1 this is -- my Georgetown County position is a 25 percent
2 Master, and so I -- you know, again, I'm wearing those two
3 hats. But I certainly believe that the experience and the
4 mind set that I have to have going through as the Master in
5 Equity will carry through to Common Pleas -- I mean, the
6 Circuit Court.

7 Q. You're the only master -- the only part-time
8 master?

9 A. I'm the only one.

10 Q. And that requires 25 percent of your effective
11 work week?

12 A. That is correct.

13 Q. You've mentioned -- again, this is a common
14 refrain. I call this kind of the Goldilocks mind set of
15 too much, too little, just right in terms of a candidate's
16 experience and their ability to come into a courtroom ready
17 to go to work, and criminal practice -- which would be my
18 case as well if I were standing where you are. I've tried
19 them. It's been a long time. But my practice is zero
20 criminal presently.

21 So other than reading the rule book, other than
22 occasionally magistrates appointment or job -- a case that
23 you have, help those who are listening here today --

24 A. Sure.

25 Q. -- and reading this transcript, that your ability

1 to become a quick study on the criminal practice -- which
2 as you know, given mediation, fewer and fewer civil trials
3 go to verdict. So arguably, criminal is more now in demand
4 of a judge's time than ever.

5 A. Well, first of all, being able to be a quick
6 study, of course, is a -- is a good thing. But part of
7 being a quick study is based on the experience that I
8 already have.

9 For example, the -- our firm -- granted, I was
10 not the lead counsel, but our firm was dealing with a case
11 with -- that involved a baseball bat in a bar and a late
12 night. It was all bad. But, you know, I certainly was
13 making court appearances on that, to make sure that, that
14 went forward, you know.

15 And dealing with officers -- how you deal with
16 officers, how you deal with victims, you know, all of
17 that's going to come into play. But it's a -- it's a
18 system where I'm not coming -- would not be coming in cold.
19 I would be coming in with -- you know, from when I was
20 prosecuting DUIs in the magistrates court, when I was
21 defending other General Sessions charges.

22 So again, it's not a matter of coming in cold.
23 It's based on the experience that I already have. Granted,
24 I have not been doing as much of that recently. But I have
25 a foundation in criminal. It's just that it's not

1 something that I'm doing every day.

2 **Q. Are you also -- and forgive me for not knowing**
3 **this presently, city municipal judge in Georgetown --**

4 A. No, I am not.

5 **Q. Were you?**

6 A. No.

7 **Q. Have you ever been?**

8 A. No.

9 **Q. Okay. And prosecuting you --**

10 A. I was prosecuting for -- under -- I think it was
11 Senator Hembree at the time. Our office had a -- had a
12 contract to prosecute DUIs and CDVs at the magistrate
13 level. And that was 15 -- that was a while -- that was --
14 that was a while ago.

15 **Q. That's the wispiest little answer of number. How**
16 **many -- how long ago? Forever?**

17 A. I think I still had brown hair at the time.

18 **Q. All right.**

19 A. It's probably been -- it was before we left.
20 More than twelve years ago. But again, we were having
21 trials every -- pretty much every week, and having to pick
22 juries and having to deal with procedural issues, and
23 having to deal with sentences and priors and whether or not
24 a case was going to get remanded up or was going to get
25 reduced.

1 So their -- that was a -- that was a long time
2 ago. But again, it's not a matter of coming in cold. It's
3 a matter of all -- I have done these issues in the past.
4 It would be more of a refresher as opposed to coming in
5 cold.

6 And, you know, certainly, the standards have not
7 changed as far as, you know, the burden of proof and -- and
8 the admissibility. Those still all apply. Chain of
9 custody, you know, that's not new issues. The issue is,
10 you know, what is the -- what is the sentence, what has the
11 Legislature decided the crime should be. So those types of
12 things are certainly things that would -- that we would be
13 brushing up on.

14 **Q. Judges that you would aspire to emulate presently**
15 **as a master, but then again if you become a Circuit Court**
16 **judge, who do you -- your top three, here's what I'd like**
17 **to be known as -- or known to emulate.**

18 A. Well, that's a loaded question. I clerked with
19 Judge Maring, 25 years ago. He was a family court judge
20 before I went to law school. Judge Maring was a -- in love
21 with the law. He treated -- he ran a strong -- or a tight
22 courtroom. He was a -- obviously, since I knew him before,
23 went to law school, clerked with him for a year, he has
24 been someone who I've always viewed as someone who ran a
25 very good -- a very good courtroom. And I would like to be

1 remembered with someone with his ability, temperament and
2 reputation.

3 You know, there are -- there are other judges.
4 Judge -- you know, our local judges, Judge Bernard was --
5 is a wonderful man. I've known Judge Norton and dealt with
6 him. You know, he's in the family court. But again he's
7 had a temperament and a knowledge and the ability to deal
8 with parties and litigants and counsel in a way that I
9 would hope to be known as well.

10 You know, I could say I'd also like to be known
11 as some of our Supreme Court justices, but I -- my -- my --
12 I don't -- I don't think that, that would be the case. But
13 there are -- the whole judicial profession itself should be
14 one that I would hope to be able to uphold and be known as
15 someone who did a good job as -- through my temperament and
16 knowledge, experience and -- and work. I would hope that -
17 - I would just uphold the tradition of the judiciary.

18 **Q. Finally, your take on how we vet candidates, each**
19 **brush you have as a candidate getting to appear before**
20 **JMSC. Comment on the good, the bad. And do you support**
21 **and endorse the way that we are vetting candidates?**

22 REPRESENTATIVE RUTHERFORD: Tell me I did a
23 good job.

24 **Q. You can tell that to Todd outside. That truly is**
25 **a loaded question.**

1 A. Yes. Yes.

2 Q. But you know that. But it is -- you're under
3 oath, I will remind you. But answer as best you can.

4 A. As best I can?

5 Q. Yeah.

6 A. I think that the way that we do vetting,
7 traditional candidates and screening -- and I am certainly
8 not going to take a position on the numbers that come out.
9 That's not really up to me. But the point that -- I just
10 have a issue with electing judicial candidates at large.

11 And that may just be me, but I think a system
12 where their backgrounds are reviewed and -- and examined is
13 a good thing ultimately for the judiciary. I don't want to
14 be -- I don't want it to win as the popularity contest, or
15 I don't want to win it as the one who's got the bigger --
16 the bigger backer.

17 I hope to be judged on my merits and my ability.
18 And I think that going through here, I may not be the -- I
19 may not be the TV candidate, but here I have the
20 opportunity to look at people who are involved in the
21 judiciary, who are here doing this in and out. And I would
22 certainly hope that the -- that this results in candidates
23 who are vetted fairly, impartially and -- and weighed out.

24 Q. The citizens committee, that exchange with them,
25 healthy? Thorough, or not?

1 A. It was -- it was healthy. Not very much in-
2 depth. Which, you know, as one who's been through it four
3 times, you know, it's -- it's good to know that you have to
4 go through that and you have your local committee coming
5 through. So it's a -- you know, I don't know.

6 **Q. You've done it, as you've said, four times,**
7 **right? And is the -- is the makeup of that committee, has**
8 **that changed --**

9 A. It has changed --

10 **Q. -- since --**

11 A. It has changed every time.

12 **Q. And I say "healthy." I mean, you endorsed that.**
13 **But the exchange that you have with that committee, is that**
14 **a short shrift treatment? Or do you feel like you've**
15 **gotten an opportunity to pitch your candidacy fully and**
16 **fairly?**

17 A. I think that it is a frank discussion, much like
18 -- you know, sort of what we're having here. But it is --
19 it's not as formal, it's not as long. But certainly they
20 have -- we are there for -- as long as it -- the other one
21 wants.

22 Yes, there are scheduling constraints, but I have
23 yet to feel that I have been ushered out of the door, or
24 that I have not been able to address or answer any
25 questions that were asked.

1 SENATOR RANKIN: That's all I have. Thank
2 you again for being here and your continued service.

3 JUDGE CROSBY: Thank you.

4 CHAIRMAN SMITH: Representative Murphy.

5 REPRESENTATIVE MURPHY: Thank you, Mr.
6 Chairman.

7 EXAMINATION BY REPRESENTATIVE MURPHY:

8 Q. Judge, I noticed that -- and forgive me if you
9 mentioned this, but you've been appointed as a special
10 circuit court judge --

11 A. Correct.

12 Q. -- on occasion?

13 A. Actually, for about the past ten years.

14 Q. In addition to your duties as Master in Equity.

15 A. Correct.

16 Q. Have you had the occasion to hold -- to do any
17 General Sessions work while as a special circuit court
18 judge?

19 A. I have made myself available. But, no.

20 Q. Is there currently a resident judge and a Circuit
21 Court judge in Georgetown County?

22 A. Ben Culbertson is our resident judge.

23 Q. Okay. We were discussing that. I see you're a
24 '91 grad --

25 A. Yeah.

1 Q. -- correct?

2 A. I am.

3 Q. Tango Company?

4 A. Romeo.

5 Q. Romeo?

6 A. Uh-huh.

7 Q. And your son?

8 A. Actually, he's on Battalion Staff. But he's a --
9 he's a junior. He is -- was in Romeo.

10 Q. Okay. My son's a sophomore in November Company.

11 REPRESENTATIVE MURPHY: All right. That's
12 all I have.

13 CHAIRMAN SMITH: Fortunately, you must have
14 attended at the same time as Representative Murphy over
15 there. And we'll talk later about those stories you have
16 about him. Any further questions? Senator Young.

17 EXAMINATION BY SENATOR YOUNG:

18 Q. Just one question I have. First of all, Judge
19 Crosby, I want to thank you for your interest in continuing
20 your service on the circuit bench. One question I have is,
21 I look at your PDQ and one of the questions was -- it was a
22 voluntary question. In other words, you didn't have to
23 respond. It was the last one, and it was a question
24 related to how would your life experiences influence the
25 type of judge you would be. And I don't see where you

1 responded to that one. Some candidates don't.

2 And so I'm going to ask you now to respond to
3 that and tell us how your life experiences would influence
4 the type of judge you would be.

5 A. There are -- I think my life experiences reflect
6 a lifetime -- at least an adult lifetime of public service.
7 That can be when I ran for the school board, when I was
8 chairman of the school board. I'm involved with Scouts
9 which -- you know, aside from my own background in Scouts,
10 my son has -- you know, I look back -- he's a junior at The
11 Citadel.

12 But I look back now and I see him -- when we're
13 sitting around the table at elementary school in first
14 grade, and they're saying, "Who's going to be the leader in
15 the Cub Scout group?" Well, me and Mr. Baker, a friend of
16 mine, the fingers are pointing at us.

17 So now that -- my 12-year-old is in Scouts, so
18 that means I've had twenty -- twenty years of scouting
19 involvement. So anything, just in dealing with dozens of
20 dozens of boys in Georgetown.

21 In our troop I'm currently the Eagle Scout
22 coordinator, helping the guys who are right there, to try
23 and get them over that line, to the times as Master in
24 Equity -- you know, and I want to step back a little bit.
25 Because before I started doing the Master in Equity, I

1 would -- I'm a contract attorney for the guardian ad litem
2 program.

3 So I see -- I've seen abuse and neglect of
4 children since the late '90s, because I've been doing it
5 for that long. And for a period of time I did it for Horry
6 County as well, so that was just -- we're in DSS trials
7 every day.

8 So I think serving in the capacity as a Circuit
9 Court judge is -- is again more of the public service
10 aspect of it. You know, again, I believe that I have a
11 long track record of doing that. And I think it's an
12 opportunity to continue to do that.

13 **Q. And you may have already covered this in some of**
14 **the questions that Senator Rankin asked you, but I would**
15 **like to know in your capacity as the Master in Equity, have**
16 **you served as the special circuit judge?**

17 A. I have. Not in General Sessions. But I have
18 done some -- well, individual cases, obviously, they needed
19 a special Circuit Court judge, and very -- you know, they
20 have been fairly short. But, yes.

21 **Q. Can you elaborate on the types of matters?**

22 A. These have been some -- well, one, just because
23 of the time frame, I did a special referee -- I'm sorry,
24 special Circuit Court judge in just a very straightforward
25 damages hearing. Also, we have done minor settlements as a

1 special Circuit Court judge.

2 **Q. Thank you very much.**

3 CHAIRMAN SMITH: Any further questions?

4 (Hearing none.)

5 CHAIRMAN SMITH: Judge Crosby, let me just
6 ask you a couple of questions if I could, please, sir.

7 EXAMINATION BY CHAIRMAN SMITH:

8 **Q. When I'm looking at this, and Senator Rankin was**
9 **getting into it a little bit, I look at your PDQ and you do**
10 **25 percent criminal and 25 percent civil and then a lot of**
11 **domestic, and then the other. And obviously you're a part-**
12 **time master. And so in the civil arena, what type of cases**
13 **do you generally handle?**

14 A. I represent HOAs on -- and I've been on both
15 sides of those. You know, y'all may well know that, that
16 is a very --

17 **Q. A very lucrative area of practice.**

18 A. Very good.

19 **Q. A lot of people, they like being homeowner**
20 **association presidents.**

21 A. That's right. That's right. So I represent
22 several HOAs. Also, I've been trying some -- I had a case
23 just a couple of weeks ago with Judge Hyman, involving a
24 property line dispute. We have some cases -- other cases
25 that are pending, that involve, you know, personal injury.

1 And that can be everything from a -- well, a fall on a
2 sidewalk to a pet. So, you know, there is the -- there is
3 the wide range of cases that --

4 **Q. Have you tried any cases in front of a jury in**
5 **the last five years?**

6 A. Not in Common Pleas.

7 **Q. Okay. How about in criminal work, is it**
8 **generally magistrate criminal work? Or do you do General**
9 **Sessions also?**

10 A. Well, I do General Sessions also. But it's going
11 to be -- you know, just like any other criminal attorney, I
12 think that most of their appearances are going to be in
13 magistrates court.

14 **Q. Right.**

15 A. But they will have the appearances -- I've had
16 three -- three cases over the past two years, that have
17 involved General Sessions.

18 **Q. So you're familiar with the procedure and --**

19 A. Oh, yes.

20 **Q. -- in General Sessions court --**

21 A. Yes. Yes, sir.

22 **Q. -- and how to handle guilty pleas and/or a jury**
23 **trials and things of that effect.**

24 A. That's correct.

25 **Q. Okay. And, likewise, several -- I mean, have you**

1 tried a Common Pleas case before, before a jury, in your
2 career?

3 A. I have.

4 Q. And you're familiar with that --

5 A. Yes.

6 Q. -- aspect of --

7 A. Yes, I am.

8 Q. And you may have been asked some of these
9 questions. But, you know, obviously you're a Master in
10 Equity, and you have to deal with conflicts from time to
11 time, and you're a -- your court's not on the top of the
12 rung of the -- in accordance to -- what's it, 607? 608? I
13 can't remember which Appellate Court rule it is.

14 But how will you handle when -- when there are
15 conflicts or you were successful in this candidacy and --
16 you know, we have a General Sessions court and somebody's
17 got to be over in family court two counties over that's
18 been scheduled for a while, that needs to be heard on an
19 emergency hearing or a -- you know, you've got to be in
20 depositions for a case that you're getting ready to try in
21 two or three weeks, how are you going to handle conflicts
22 like that?

23 A. Well, there's a -- there is that balancing act
24 because -- you know, I -- and I have seen it on both sides,
25 where sometimes I'm going to be in a deposition that

1 suddenly doesn't happen, or I'm going to have a case that
2 is going to take two days and it settles. You know, it's
3 funny how that -- from the bench perspective, how often
4 that occurs.

5 So, you know, it's not a matter of you just
6 simply tell me I have a case scheduled, I'm going to not go
7 -- you know, I'm going to allow this Common Pleas case or
8 this General Sessions case to be continued.

9 I mean, I understand the hierarchy, but there --
10 by the same token, you don't want to hamstring the
11 attorneys who have had this long-planned event, deposition
12 or -- or a lower court, so to speak, hearing because all of
13 a sudden the solicitor all of a sudden calls --

14 **Q. Notice of a case --**

15 A. Sort of the back pocket trial, you know, we don't
16 want to go there. So, you know, I think that there is a
17 balancing act. It's -- and I've had to do that. You know,
18 I've certainly had attorneys ask, "Hey, look, I've got this
19 deposition and I know we're set." Well, you know, you
20 leave it. And it's remarkable how often that conflict, one
21 way or the other, gets resolved.

22 So, you know, I'm not going to say that I will
23 always say that if I have a -- if I have a General Sessions
24 court you have to always miss the deposition you've
25 scheduled six months out. I'm not always going to do that.

1 So it's a case-by-case basis.

2 **Q. It's a balancing act?**

3 A. It is.

4 **Q. And just for my own edification, the 25 percent**
5 **of your practice in Georgetown -- I heard you say earlier**
6 **that your Master in Equity with the -- I want the real**
7 **estate crash, obviously there was a boon for a while. I**
8 **presume you were very busy, and now it's kind of waned a**
9 **little bit?**

10 A. It has waned a little bit. It was -- as Judge
11 Howe up in Conway will tell you, it was -- it was crazy.
12 And 25 would be a way -- a very, very low estimate of how
13 much time it was taking at that point.

14 It is an accurate -- I think it's an accurate
15 reflection currently. But back in those days, it was just
16 -- it was just...

17 **Q. What are you mostly hearing now in the masters?**

18 A. I'm still hearing a fair amount of foreclosures.
19 But we are also seeing more of the non-jury cases. For
20 example, we had a case that involved whether or not
21 somebody could preempt filing requirements and, you know
22 that -- it was a -- well, pretty expensive, pretty big
23 case.

24 But so we're hearing more of those non-jury
25 cases. We're hearing -- obviously, you know, I can't do a

1 fact-finding or a jury question finding, but we're
2 certainly hearing more damages casing -- cases from
3 automobile injuries or personal injury. So a lot more of
4 those are coming down.

5 Q. But again referred some -- when somebody's in
6 default and have a damages hearing --

7 A. Absolutely.

8 Q. -- Circuit Court referring you damages and you're
9 hearing testimony and setting those?

10 A. Absolutely.

11 Q. Okay. And, likewise, are you hearing, like, non-
12 jury cases? I know I send some cases, sometimes they get
13 sent to a special referee or to a -- to a master to be
14 heard, and we have a trial, an issue and it's a --
15 obviously, a bench trial. But nonetheless, we go forward
16 with that. Are you trying cases as Master in Equity and
17 presiding and having to make rulings on law and findings of
18 fact?

19 A. Absolutely. And I would say that, that has
20 changed from -- again, back when the real estate market
21 crashed, they were going to be basically -- you know, you
22 had a bunch of foreclosures and you had some cases you had
23 to try. But, you know, now we're certainly hearing much
24 more in the way if non-jury cases.

25 Q. And how often -- how many cases would you in a

1 year you're presiding over, that are trials in which you're
2 having to make findings of fact and rulings of law with
3 cross-examination and witness testimony and all that?

4 A. I'd say it's at least a hundred. I mean, you
5 know, it's -- it -- so that -- that's a regular, every week
6 occurrence it is -- some of those cases.

7 Q. So you're a different scale, different subject
8 matter of Circuit Court, but the same -- the same issues or
9 same way you preside. You're doing a lot of what circuit
10 courts do now; is that right?

11 A. Absolutely correct. And I guess really the
12 distinction is I don't -- I don't have a jury. Now, you
13 know, again I've been on the private side, and I would have
14 to work, but I'm still making the procedural decisions, the
15 evidentiary decisions. And so all of that -- yes, I've
16 been doing that for --

17 Q. And the jury takes a hard decision, the fact-
18 finding decision off your --

19 A. Yes, sir. Yes, sir.

20 Q. I appreciate it.

21 CHAIRMAN SMITH: Any further questions?
22 Senator Sabb.

23 SENATOR SABB: Thank you, Mr. Chairman. No
24 question, really. Just a comment. I read the ballot box
25 surveys as well. And I think many of you know that

1 Georgetown is in my senatorial district, and so I get the
2 opportunity to be around the lawyers and various people.
3 And I will just tell you I've never heard any kind of
4 complaints as it relates to Judge Crosby's demeanor or how
5 he treats litigants and everybody with dignity and respect.
6 And so I would just say from my standpoint, he's held in
7 very high regard with regard to his reputation as a jurist.

8 CHAIRMAN SMITH: Any further questions?

9 (Hearing none.)

10 CHAIRMAN SMITH: Judge Crosby, I appreciate
11 this. Thank you. This will conclude this portion of your
12 screening process. I want to take this opportunity to
13 remind you that pursuant to the Commission's evaluative
14 criteria, the Commission expects candidates to follow the
15 spirit as well as the letter of the ethics law. And we
16 will view violations or the appearance of impropriety as
17 serious and potentially deserving of heavy weight and
18 screening deliberations.

19 And as you know, the record will remain open
20 until the formal release of the report of qualifications,
21 and you may be called back at such time if the need arises.
22 We appreciate you being here today. Appreciate your
23 indulgence. And thank you for your service to the State of
24 South Carolina.

25 JUDGE CROSBY: Thank you for your time.

1 (Candidate excused.)

2 CHAIRMAN SMITH: Mr. DeBerry, good morning.
3 Let me place on the record, I advised members of this
4 Commission that you are my first cousin. I don't think
5 I've seen you but maybe in January of this year. We don't
6 see each other often enough. I'm sure you don't even like
7 me, by the way. But by the -- by the same token, we --
8 you're not under oath yet.

9 Let me say we've talked to staff and we do
10 not -- and you don't meet the definition of a family member
11 or immediate family member. So I'm not going to recuse
12 myself from this, but I wanted to place it on the record so
13 everybody's aware of the same.

14 All right. Will you raise your hand,
15 please, sir.

16 WHEREUPON,

17 H. STEVEN DEBERRY IV, being duly sworn and
18 cautioned to speak the truth, the whole truth and nothing
19 but the truth.

20 CHAIRMAN SMITH: Mr. DeBerry, you have
21 before you the -- your personal data questionnaire and your
22 sworn statement. Are those both documents that you have
23 submitted to the Commission?

24 MR. DEBERRY: They are.

25 CHAIRMAN SMITH: And are they both correct?

1 MR. DEBERRY: Yes, sir.

2 CHAIRMAN SMITH: Does anything need to be
3 changed or updated at this time?

4 MR. DEBERRY: No, sir.

5 CHAIRMAN SMITH: All right. Do you object
6 to these documents and any amendments being a part of the
7 record of your sworn testimony here today?

8 MR. DEBERRY: No, sir.

9 CHAIRMAN SMITH: All right. Without
10 objection, if you'll hand those documents, we're going to
11 make that as an exhibit to your sworn testimony here today.

12 (EXHIBIT NO. 3 - JUDICIAL MERIT SELECTION
13 COMMISSION PERSONAL DATA QUESTIONNAIRE OF H.
14 STEVEN DEBERRY IV)

15 (EXHIBIT NO. 4 - JUDICIAL MERIT SELECTION
16 COMMISSION SWORN STATEMENT OF H. STEVEN DEBERRY
17 IV)

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

1 conflicts of interest.

2 We have received no affidavits filed in
3 opposition to your election, and there are no witnesses
4 present to testify. Do you wish to make a brief opening
5 statement to the Commission?

6 MR. DEBERRY: I'd just like to say thank you
7 to everybody for serving on this committee and for serving
8 our state. And I appreciate the opportunity to be here
9 today.

10 CHAIRMAN SMITH: All right. Thank you very
11 much. Answer any question that Counsel may have of you,
12 please, sir.

13 MR. COHL: Thank you, Mr. Chairman. Good
14 morning. I note for the record that based on the testimony
15 in the candidate's PDQ, which has been included in the
16 record with the candidate's consent, Steven DeBerry meets
17 the constitutional and statutory requirements for this
18 position regarding age, residence, and years of practice.

19 EXAMINATION BY MR. COHL:

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

23 A. Thank you. Well, I've got nearly 14 years of
24 experience practicing law. I've got experience as a
25 prosecutor. I've got experience in private practice. I

1 clerked for Judge Cothran. Since being in private practice
2 I've been a criminal defense attorney. Also on either side
3 of the civil Bar, I've handled many cases.

4 Since in private practice, I've handled in excess
5 of 2,000 files. I would assume that there's probably that
6 many more that I handled as a prosecutor. I think my
7 experience is very diverse. I think I've practiced for
8 most -- most any circumstance that can come before the
9 Circuit Court. I've been very successful. I've got many
10 repeat clients.

11 I've only had one complaint filed against me in
12 my 14 years, and it was -- it was very quickly resolved. I
13 continue to represent that client. I don't really -- I
14 don't really represent that, that complaint was against me.
15 It was really more against the court system.

16 But, you know, all these things put together, my
17 experience, my temperament and my -- my attention to
18 detail, impartiality, fairness and integrity that I hold
19 myself to such a high standard for, I believe all lend --
20 lend their selves to a -- to making me a well-qualified
21 candidate to serve on the Circuit Court.

22 **Q. Thank you. Mr. DeBerry, the Commission received**
23 **99 ballot box surveys regarding you, with 11 proving**
24 **additional comments. The ballot box surveys, for example,**
25 **contained the following positive comments:**

1 **"Mr. DeBerry is a tremendous lawyer. He has an**
2 **excellent demeanor and temperament."**

3 **Several of the written comments expressed a**
4 **concern that you do not possess the experience and**
5 **qualities necessary to serve in a judicial capacity. What**
6 **response would you offer to these concerns?**

7 A. Well, I'd like to echo much of what I just said.
8 But I can just point to my experience and that it's very
9 diverse. I'm not an attorney that stands before this
10 Commission, today, that only has experience in one -- in
11 one area of the law.

12 I've tried cases before juries. I've tried cases
13 before judges. I've tried cases in magistrates courts,
14 Circuit Court, civil -- in the civil arena and in the
15 criminal arena. I just think that I have a very diverse --
16 a diverse set of experiences, and that qualifies me well
17 for this position.

18 **Q. Thank you. An additional concern raised was over**
19 **your ability to remain impartial, and that you may be**
20 **swayed by the identity of litigants. What response would**
21 **you offer to this concern?**

22 A. Well, and I don't take offense to any of these
23 comments, for one. I understand everybody has their right
24 to an opinion. I take exception, though. I can tell you
25 that -- you know, every time I've ever stood before a jury,

1 I've asked for a fair and impartial trial. I ask that from
2 the jury, from the judge. And that's what I expect.

3 And what really disappoints me is I'll sometimes
4 see some impartiality or to sometimes see or experience
5 some unfairness. And that's really one of the biggest
6 motivators for me being here today is that -- you know, I
7 want to have some -- some role in maintaining the integrity
8 of the bench, and also to make sure that our litigants and
9 our citizens are treated fairly and impartially.

10 **Q. Thank you. The South Carolina Bar provided that**
11 **concerns were raised during its survey of your knowledge of**
12 **procedural law. What would you offer to this concern?**

13 A. Well, again, I understand the comment. I'm not
14 mad about the comment, but I take exception to the comment.
15 I can tell you that during the Bar interview, I missed one
16 procedural question. And that had to do with Rule 59 of
17 the South Carolina Rules of Civil Procedure. And I
18 promise, I'll never need to look at that rule again.

19 But what I can tell you is I've handled, you
20 know, in excess of 4,000 cases, the best I can tell. I
21 have never had a procedural issue that caused any problem
22 whatsoever. Just last week I litigated a declaratory
23 judgement action to the very end, and won that case.

24 I've never been overturned -- on any issue that
25 I've ever been involved with, to my knowledge, have never

1 been overturned by an appeals court. The several PCR
2 hearings that I've been a part of, I've never been found
3 incompetent or as an ineffective assistance of counsel.
4 I've never been overturned or decided that way on a PCR
5 appeal.

6 So for all of those reasons, you know, I just --
7 I don't feel that I'm lacking in procedural knowledge. And
8 I -- and I also feel that anywhere that I may be lacking,
9 you know, I certainly have the ability to research and to
10 figure it out and to make the appropriate rulings at the
11 appropriate times.

12 **Q. Thank you.**

13 MR. COHL: I would note that the Pee Dee
14 Citizens Committee found Mr. DeBerry to be qualified in all
15 evaluative criteria, including constitutional
16 qualifications, ethical fitness, professional and academic
17 ability, character, reputation, physical health, mental
18 stability, experience and judicial temperament.

19 The Pee Dee Citizens Committee stated in
20 summary: "Concerns exist in the community regarding this
21 candidate's work ethic and lack of maturity for the seat."

22 BY MR. COHL:

23 **Q. What response would you offer to this concern?**

24 A. Well, again, I appreciate the comment. But I
25 certainly take exception to those comments. And the only -

1 - the only conclusion I can come up with as a basis for
2 those comments is that they must have been made by somebody
3 that does not know me.

4 And it's unfortunate. But I thought long and
5 hard about how to address this question and these comments.
6 And I don't talk about this much, but I'd just like to
7 share with you that about 23 years ago, I was 16 years old
8 and I lost my father. He was a practicing attorney in
9 Florence. And it was a very hard and difficult time.

10 I was never really concerned about myself, but
11 what I was concerned about was that I had two sisters and a
12 mother. I had one sister that was 7 years old, okay? And
13 at the time, I was 16. And this really comes into
14 perspective today, because I have a 7-year-old daughter as
15 well, and I just know my father's relationship with my
16 younger sister and I know my relationship with my daughter.

17 But I really had to step up to the plate, to be
18 honest with you. I looked out for her. My older sister
19 was away at school. I always worried about my mother, you
20 know, and I did the best I could.

21 And a couple of years down the road from that
22 incident, it was time for me to decide what to do. So I
23 decided I'd go to The Citadel. And I graduated from The
24 Citadel and that's what I did. Then I decided at some
25 point that I'd go to law school. And I graduated from law

1 school and I passed the Bar and I came to Florence and I
2 practiced law. And that's what I did.

3 But when I returned to Florence, you know, I was
4 met with some adversity. I really didn't know the
5 situation would be as it was. It was difficult. I didn't
6 have somebody there offering jobs or anything along those
7 lines.

8 But eventually, and it didn't take long, I was
9 hired by Solicitor Clements. And that relationship has
10 just been one of the best relationships I've ever had in my
11 life. You know, he wrote a letter of recommendation for me
12 here today. I still have a message saved on my cell phone
13 from him, and it was a -- notifying me that this seat was
14 available.

15 And I didn't know how -- had no idea that he --
16 that he knew I may be interested. But he was the one that
17 notified me that this seat was available. And he
18 encouraged me to run for it.

19 But as I was working for him, you know, I was
20 creating great relationships among the county Bar, the
21 South Carolina Highway Patrol. I've represented most of
22 those guys and ladies throughout my practice, you know, and
23 great relationships were made.

24 At the time, I got married and my wife and I
25 remodeled a house that was built in the early 1800s. And I

1 did most of that work myself on nights and weekends, you
2 know. And then I decided to resign and open my private
3 practice. My wife and I were married, we had just
4 converted our construction loan to a permanent loan, and I
5 had not made the first mortgage payment yet.

6 But as I stand here today, you know, I'm in very
7 good financial shape. My house is paid for less than ten
8 years later. I've had a highly successful practice. I've
9 done some things that I didn't think were even possible.
10 But only by the grace of God, here I stand before you
11 today.

12 You know, I work night jobs as a business law
13 professor at Florence-Darlington Tech. Early on in my
14 private practice, I was -- I was approached by some members
15 of my community and asked to run for county council. I
16 prayed about it. I talked about it. I decided I'd do it
17 to try to put forth some community service.

18 It's been a great experience. But none of that
19 was easy, you know. I found myself in a very contested
20 election. I worked very hard. I had two or three jobs
21 going on. And it just hasn't been easy, but I've been very
22 successful.

23 And as I stand here today, you know, if I thought
24 I had any problem with my maturity or with my work ethic or
25 with my knowledge of the law, I promise you I would not be

1 here today.

2 And I'd like to say, you know, that 7-year-old
3 sister that I have, she's in her final year of residency.
4 She's an anesthesiologist at MUSC today. I know I didn't
5 have much to do with that, but I'd like to think I had
6 something to do with that.

7 So, you know, all those things are a combination
8 of the reasons that I don't agree with those comments. And
9 it's the reason that I came to the conclusion that I think
10 that the only way somebody must have made those comments,
11 is that they just couldn't have known -- they just didn't
12 know me.

13 **Q. Thank you. Now for a few housekeeping issues.**
14 **Mr. DeBerry, are you aware that as a judicial candidate you**
15 **are bound by the Code of Judicial Conduct as found in Rule**
16 **501 of the South Carolina Appellate Court Rules?**

17 A. I am.

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

21 A. I have not.

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

1 A. I have not.

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

5 A. I'm familiar.

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

10 A. I have not.

11 Q. Have you reviewed and do you understand the
12 Commission's guidelines on pledging and South Carolina Code
13 Section 2-19-70(E)?

14 A. Yes, sir.

15 MR. COHL: Mr. Chairman, I would note for
16 the record that any concerns raised during the
17 investigation by staff regarding the candidate were
18 incorporated into the questioning of the candidate today.
19 And no further questions.

20 CHAIRMAN SMITH: All right. Thank you very
21 much. Any questions for Mr. DeBerry? Senator Rankin.

22 EXAMINATION BY SENATOR RANKIN:

23 Q. Mr. DeBerry, Luke Rankin. Nice to meet you.

24 A. Thank you.

25 Q. And notwithstanding your bloodline relation to

1 the Chair of the JMSC, would you like to talk about him in
2 any respect? Thanksgiving? Did he bring good food? Not
3 about his wife, but him. Does he do anything towards the
4 family by way of food at any gathering?

5 A. I'd say our biggest -- our biggest challenge is
6 just his attendance. But we love it when he's -- when he
7 comes.

8 Q. That is our challenge, too, he is too attendant.
9 We would prefer his lack of attendance.

10 Your story is most compelling. And I listened
11 closely to an answer that I didn't -- wasn't sure was going
12 to be responsive to the question, but nonetheless, it was.
13 And you tell a wonderful, beautiful story about
14 perseverance in the face of folks who effectively don't
15 know you.

16 And so this Pee Dee Citizens Committee, every --
17 everyone within their area of practice appears before that
18 committee, as well as other steps along the way as you
19 appear here. To that point and that experience, did you
20 have a full, open discussion with them? Did you feel like
21 that committee process was healthy and thorough?

22 A. Yeah, I do. I felt very good about it. I
23 thought we had a great meeting. It was cut a little short
24 on time, you know. I answered all the questions as best I
25 could, and I thought I gave great answers. You know, I

1 don't know, you know, if the comments came from -- directly
2 from the committee or if they sought -- sought comments
3 from other people.

4 You know, we don't know where they come from, but
5 I don't -- you know, I didn't personally know anybody on
6 the committee, so I -- you know, and again, I don't have
7 any ill will or any problem with anybody's opinion. I
8 understand that. You know, it's just I take exception to
9 it.

10 **Q. And less that, but just the process itself and in**
11 **terms of the -- again, the ballot box surveys, do you --**
12 **have you ever participated in those yourself? Or do you**
13 **presently when you get the solicitation from the Bar?**

14 A. I've completed some surveys. I'm not prepared to
15 tell you how many and which candidates or --

16 **Q. No, no.**

17 A. -- anything like that, but I've done some. I
18 wouldn't say I've --

19 **Q. Did you participate in yours by chance? Don't**
20 **answer that.**

21 A. All right.

22 **Q. So but that is a process -- do you think that,**
23 **that is healthy for us, a healthy metric or barometer for**
24 **checking the pulse of folks who participate?**

25 A. Well, the only thing that I think -- you know, I

1 thought about this some in the process, and the only thing
2 that I wish maybe could have been incorporated is to maybe
3 speak with some members of the committee who are not in the
4 legal profession.

5 'Cause I think it's very important for our judges
6 to be able to relate to all types of people, and to mingle
7 with many, and to be able to relate to any kind of
8 situation. And I think sometimes our judges just become so
9 enthralled in academia, that they just miss some of the
10 bigger issues and some of the bigger pictures to be as fair
11 and as impartial as possible.

12 And so I wish maybe that we could incorporate
13 some sort of a -- more community action, you know, more so
14 than just from the Bar.

15 Q. You mentioned Ed Clements' letter -- Solicitor
16 Clements' letter. And you stole my thunder. I can't --
17 occasionally, we will get a standout or outlier-type
18 letter, and he really goes to the point of a servant's
19 heart about you and your ability to interact with people.
20 Which is an exceptional gift to have, whatever the field
21 you're in.

22 As a lawyer, certainly that's a high premium. As
23 a judge, it's a premium that oftentimes you lose because of
24 the heaviness of the robe. If you're successful, how do
25 you -- how do you see yourself wearing the robe?

1 A. As modestly as possible. I'll just be honest
2 with you, you know, I've seen -- I've seen that happen,
3 I've seen it take place with friends of mine who've been
4 elected to the bench. And it's a disappointing situation
5 sometimes. And I think it's important to keep into
6 perspective where we've been and where we come from and who
7 we are.

8 And I've always been able to do that. You can
9 speak to anybody that really, truly knows me, and I think
10 they would say the same. You know, it's very important to
11 just keep a good even temperament and good consistent
12 qualities -- you know, to keep your -- all of your
13 qualities very consistent.

14 And, you know, we just don't need wildcards as
15 judges, in my opinion. And I think -- I think that's what
16 sometimes can give this profession a bad name. And I think
17 that's something that we should be very focused on in this
18 day and time.

19 You know, I love this system of justice. I think
20 it's the greatest in the world. And I think we have to do
21 everything we can to preserve that. And I think, you know,
22 it starts with really electing our judges and -- and
23 because they -- they have the biggest influence, I believe,
24 on the Bar.

25 And my experiences -- and I've been more

1 influenced by judges than I have any lawyers, you know.
2 Especially the judge I worked for, Judge Cothran, was just
3 a fantastic individual. And still is. And is a great
4 friend of mine. I speak to him on a regular basis.

5 Q. And he wrote a letter on your behalf as well,
6 correct?

7 A. Judge Cothran?

8 Q. Did he write -- no, no. That's on your -- I
9 mean, your work history. So two last points and you --
10 you're leading into the next with the comment of who would
11 you like most -- or likely want to aspire to be compared to
12 as a judge? You can give me one, two, or three. I assume
13 Judge Cothran would be one of them.

14 A. Absolutely. You know, Judge Cothran, he just
15 displays at all times a great temperament. You know, he
16 came on the bench as a lifelong prosecutor. And I'm pretty
17 sure I'm correct about that. And just absolutely the most
18 -- displays just the most fair and considerate qualities
19 that I've ever seen a person be able to do.

20 You know, and then Judge Nettles in my home
21 circuit, he just carries himself in such a way that's very
22 admirable. He's always been very, extremely fair. And in
23 my opinion, you know, always been considerate to the
24 attorneys and to the litigants and to the defendants and
25 plaintiffs, whoever they may be, and also the court staff.

1 You know, he's understanding and compassionate,
2 and I just think those are the qualities that we need to
3 make sure that our integrity on the bench is maintained,
4 and that we, you know, keep a high standard moving forward.

5 **Q. You don't do any family law?**

6 A. Very early on in my career I did some family law,
7 and I almost had to have a career change. I just decided
8 that wasn't for me. I think I got some bad cases, right
9 off the bat. And so by the grace of God, I'm standing here
10 and I've made it and I'm very successful without having to
11 do that, you know.

12 But I was told when I -- when I decided to leave
13 my job at the solicitor's office, you know, you're going to
14 have to do family law if you want to make it. And --

15 **Q. You weren't in it long enough to realize that one**
16 **of the sure-firest ways to get into marital discord is to**
17 **try to build or renovate an 1800-age house, right?**

18 A. That's right.

19 **Q. So you didn't know what you were doing, but you**
20 **survived and your marriage is healthy and happy.**

21 A. Well, that's right. We're doing very well. You
22 know, I was torn as to whether or not to bring my wife
23 Jessica here today. I just wanted to really concentrate on
24 what we needed to do here, and try to communicate to this
25 Commission, you know, everything that I wanted to say.

1 **Q. Thank you.**

2 CHAIRMAN SMITH: Any other questions for Mr.
3 DeBerry? Senator Sabb.

4 SENATOR SABB: Mr. DeBerry, I remember when
5 you were clerking with Judge Cothran. Tell me who was the
6 best prosecutor you saw try a case.

7 MR. DEBERRY: Well, I saw Mr. Sabb try many.
8 Senator Sabb, I tell you what, he did a real good job. The
9 people in Williamsburg County really listen to what you
10 have to say.

11 SENATOR SABB: Now, y'all won't believe
12 this, but I had no conversations with him, not knowing what
13 his answer would be, but I believe it was the correct
14 answer.

15 I'm a sucker for personal stories. And I'll
16 just tell you that what you shared was extremely heartfelt.
17 It gave me an in-depth peek into who you are. And so I
18 just wanted to express to you how much I appreciated the
19 thought that you gave that.

20 And I, like Senator Rankin, wonder -- nobody
21 goes around the bush as much as Senator Rankin and
22 ultimately comes back home with his response. And you did
23 it in a masterful way. And I have a deep appreciation for
24 it. And I appreciate all of your experiences and the fact
25 that an individual like you would offer for a position like

1 this. I think it's admirable. So thank you.

2 MR. DEBERRY: Thank you so much.

3 CHAIRMAN SMITH: Any further questions?

4 (Hearing none.)

5 CHAIRMAN SMITH: All right. Mr. DeBerry,
6 this concludes this portion of your screening process. I
7 want to take this opportunity to remind you that pursuant
8 to the Commission's evaluative criteria, the Commission
9 expects candidates to follow the spirit as well as the
10 letter of the ethics law. And we will view violations or
11 the appearance of impropriety as serious and potentially
12 deserving of heavy weight in screening deliberations.

13 As you know, the record will remain open
14 until the formal release of the Report of Qualifications,
15 and you may be called back at such time if the need arises.
16 I thank you for participating today. I appreciate your
17 indulgence in us running behind. And I thank you for your
18 service to the state of South Carolina.

19 MR. DEBERRY: Thank you.

20 (Candidate excused.)

21 CHAIRMAN SMITH: Judge Dukes, welcome back.
22 Is this the third year in a row?

23 JUDGE DUKES: Not in a row, but third year.
24 Thank you, sir.

25 CHAIRMAN SMITH: Judge Dukes, will you raise

1 your right hand, please, sir.

2 WHEREUPON,

3 THE HONORABLE MARVIN H. DUKES III, being
4 duly sworn and cautioned to speak the truth, the whole
5 truth and nothing but the truth.

6 CHAIRMAN SMITH: Judge Dukes, before you,
7 you have the -- your personal data questionnaire and your
8 sworn statement. Are these documents that you have
9 submitted to the Commission?

10 JUDGE DUKES: They are.

11 CHAIRMAN SMITH: Are both of them correct?

12 JUDGE DUKES: They are.

13 CHAIRMAN SMITH: And do you need to make any
14 updates or amendments at this time?

15 JUDGE DUKES: I do not believe so, sir.

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

19 JUDGE DUKES: None.

20 CHAIRMAN SMITH: All right. Without
21 objection we'll mark those as an exhibit to the sworn
22 testimony of Judge Dukes.

23 (EXHIBIT NO. 5 - JUDICIAL MERIT SELECTION
24 COMMISSION PERSONAL DATA QUESTIONNAIRE OF THE
25 HONORABLE MARVIN H. DUKES III)

1 (EXHIBIT NO. 6 - JUDICIAL MERIT SELECTION
2 COMMISSION SWORN STATEMENT OF THE HONORABLE
3 MARVIN H. DUKES III)

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

13 We have received no affidavits in opposition
14 to your election, and no witnesses are present here to
15 testify. Do you wish to make a brief opening statement to
16 the Commission?

17 JUDGE DUKES: I'm told I'm all that stands
18 between you and lunch, so I would waive the opening.

19 CHAIRMAN SMITH: That's a very good answer,
20 Judge. Answer any questions that Counsel may have, please,
21 sir.

22 JUDGE DUKES: Thank you.

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

1 the candidate's consent, Judge Dukes meets the
2 constitutional and statutory requirements for this position
3 regarding age, residence and years of practice.

4 EXAMINATION BY MS. DEAN:

5 **Q. Judge Dukes, how do you feel your legal and**
6 **professional experience thus far renders you qualified and**
7 **will assist you in being an effective Circuit Court judge?**

8 A. Well, my father was an attorney and many of his
9 friends were attorneys, so I was raised in a legal family
10 dealing with the law pretty much since -- through my entire
11 childhood.

12 I graduated from law school in 1987, which when
13 you say it out loud, sounds like a really long time ago,
14 but -- and entered the Bar that year in 1987. So I
15 practiced for 20 years, a small town practice.

16 I started with a firm of about ten to twelve
17 people. The configuration of that firm changed over the
18 years, but primarily small town law, plaintiffs-oriented.
19 Sort of everything that came in the door. I did a little
20 bit of family court contract work.

21 When I was the low man on the totem pole there, I
22 did all the court appointments, both family court and
23 criminal court. Eventually, I opened my own LLC that came
24 from -- that those firms that I was a part of eventually
25 turned into a series of LLCs.

1 And so I practiced on my own, probably for five -
2 - eight years. And of course as many of you know, the
3 practice of law in a small firm is also running a fairly
4 complicated small business. So I did that as well.

5 During those 20 years I -- additionally, I was on
6 a number of boards and commissions. I was vice chairman of
7 Beaufort County Council. I was chairman of the Planning
8 Commission. I was chairman of the Waterway Commission. I
9 was a member of a number of subcommittees and that sort of
10 thing, associated with -- with those commissions and
11 committees. So I stayed very active.

12 I learned a lot about government. I learned a
13 lot about small business and the practice of law. I
14 learned a lot about various aspects of the law.

15 In 2007, the -- my predecessor as Master in
16 Equity announced that he was retiring. And a number of
17 older attorneys came to me and asked me to run for the
18 position; they thought I would be suited for the position.
19 At that point, I was doing some family court, also some
20 non-jury.

21 And I ran for the position and was appointed in
22 2007 to be Master in Equity. So I've been Master in Equity
23 since 2007. As you all recall, I'm sure, in about 2009 the
24 economy fell apart and the job of Master in Equity in
25 Beaufort went from a fairly small job with about 15

1 foreclosures a month, which is about our low, to a high of
2 about 300 in 2010.

3 So we were pretty busy. And the Master in Equity
4 office evolved into something fairly small into what it is
5 today, which is a pretty large -- a large office in
6 Beaufort, with twice as many employees as we previously
7 had, and a fairly large -- large case load.

8 Additionally, since I've been Master in Equity
9 since 2007, which is, I guess, twelve and a half years, I
10 was appointed special circuit judge by the Supreme Court.
11 And those are orders that are issued annually from the
12 Supreme Court, and I've received them from all the Supreme
13 Court justices, that go back to 2007. They're annual
14 orders that allow me to do essentially everything except
15 the jury trials.

16 And so many of the non-jury cases -- in fact,
17 perhaps, most of the non-jury cases are referred to me to
18 try to conclusion. The special Circuit Court order also
19 allows me to do basically everything in General Sessions
20 court except the trials themselves. And I have copies of
21 that, if anyone is interested, of that order.

22 The order has changed a little bit over the
23 years, but is substantially the same over the twelve and a
24 half years. And so during the twelve and a half years that
25 I have been Master in Equity, I've handled practically

1 every kind of case that a master can handle. All of the
2 complex litigation that is -- gets referred to me, I
3 handle.

4 Of course the foreclosures, some of those are
5 complicated and some aren't. I do a week of motions a
6 month, both jury and non-jury case motions. I have done
7 that for many years. And basically, everything else that
8 is referred to me, I will handle and try to conclusion.

9 Q. Thank you, Judge. Judge, the Commission received
10 501 ballot box surveys regarding you, with 77 additional
11 comments. The ballot box surveys, for example, contained
12 the following positive comments:

13 "Judge Dukes is a thoughtful jurist. He seeks to
14 find the right answer and to be fair to all. Intelligent,
15 thoughtful and hardworking."

16 Four of the written comments expressed concerns.
17 Two of those concerns related to a concern about your
18 ability to make a tough decision. Would you like to
19 respond to that?

20 A. All I can say is I would respectfully disagree.
21 I make a decision in every case that I hear. That might be
22 referring to my affinity for ADR, which I believe to be the
23 law of this state, and the judicial rules. And I often
24 refer cases to ADR and have great success with that. I'm a
25 believer in alternative dispute resolution. And that may

1 be a part of that. But without knowing more about what the
2 exact concern was, all I can say is I do make tough
3 decisions. I make them every day. I've made them by the
4 thousands.

5 Q. Thank you, Judge. Another two commenters raised
6 a concern about perceived partiality towards local
7 attorneys. Can you respond to those concerns?

8 A. Again, that one disturbs me more than the first
9 one. Because I do my best to make sure everyone in the
10 courtroom, the observers, the litigants, the attorneys,
11 everyone understands that they're getting a fair shake and
12 they're getting due process. And so all I can say is I try
13 to give everyone a fair trial and not favor one attorney,
14 or where they're from, over another.

15 Q. Thank you, Judge. Judge Dukes, you indicated in
16 your PDQ -- in your PDQ, that a lawsuit was filed against
17 you in 1996 called Cannady v. Toole, and this involved a
18 disbursement issues. Is that correct, it was a
19 disbursement?

20 A. That is correct. That was the basis of it.

21 Q. You also indicated you were named in Infinger v.
22 Dukes filed in 2001, which was withdrawn and dealt with as
23 an internal law firm disagreement --

24 A. That's right.

25 Q. -- is that accurate? Your SLED report also

1 indicated a lawsuit filed in 2000, Bull Pointe v. Beaufort
2 County, where you were named in your official capacity as a
3 member of county council. So that was an official capacity
4 lawsuit; is that correct?

5 A. That's right. I don't even think I was ever
6 served with that. I'm not sure what became of that, but
7 that was when I was in county council.

8 Q. Thank you, Judge. Your SLED report also
9 indicated three lawsuits in 2007, where you were named as a
10 party because you were serving as guardian ad litem; is
11 that correct? But that was again official capacity --

12 A. That would have been official capacity.

13 Q. And also in your PDQ you disclosed three cases in
14 2014, naming you in your official capacity as Master in
15 Equity, related to a recent foreclosure. And you reported
16 all three of those cases were dismissed as to you; is that
17 correct?

18 A. That is correct. And back to the guardian one, I
19 was guardian in -- those were condemnation actions, I
20 think. And so the lawsuit itself was the condemnation
21 action. So that was the purpose --

22 Q. And that was why you were named.

23 A. Yeah, it wasn't an adverse issue.

24 Q. Thank you, Judge. Judge Dukes, how do you
25 believe your experience -- and you've talked about this a

1 little bit, but if you could just kind of direct us exactly
2 to how your experience as Master in Equity has prepared you
3 for Circuit Court.

4 A. Well, I really have served as a Circuit Court
5 non-jury judge, both through the administrative order and
6 through all of the cases that I've heard, hundreds and
7 hundreds of them over the years, over the last twelve and a
8 half years. So I'm prepared because I am doing it now.
9 I'm handling everything but the jury trials.

10 And so I believe that my experience, I've got a
11 track record. I'm happy to hear that I had positive
12 reviews from the attorneys that appear before me. I'm
13 experienced in hearing the cases. I'm experienced in
14 dealing with the -- with groups of people with regard to
15 sales, with regard to my time on county council. I'm
16 experienced in dealing with the media through my time on
17 county council.

18 I try to use the Golden Rule. I try to treat
19 everyone in the courtroom, whether they're there to
20 observe, whether they're an attorney, whether they're a
21 litigant, the way I would want to be treated. And I always
22 try to keep in mind, that the process only works if people
23 believe in the process, if people understand that they're
24 going to get a fair shake, that they're going to get due
25 process. And so I work pretty hard on that. And I've done

1 it for a number of years.

2 And so, again, I've had twelve and a half years
3 of trying one case after another, of hearing motions of all
4 different subjects, and I believe that has prepared me to
5 go on and do a job that is not significantly different than
6 what I'm doing now.

7 **Q. Thank you, Judge. Are there any areas that you'd**
8 **want to review and kind of beef up on before becoming a**
9 **Circuit Court judge?**

10 A. Of course the -- thank you. The job of master,
11 of course, is primarily civil. Although, the special
12 Circuit Court order allows me to do certain things in
13 General Sessions court, I would certainly want to spend a
14 lot more time on criminal matters. But certainly, I
15 believe that is within my capability.

16 **Q. Thank you, Judge.**

17 MS. DEAN: I will note that the Low County
18 Citizens Committee has reported that Judge Dukes is
19 qualified in the evaluative criteria of constitutional
20 qualifications, physical health and mental stability. The
21 Citizens Committee found Judge Dukes well qualified in the
22 criteria of ethical fitness, professional and academic
23 ability, character, reputation, experience and judicial
24 temperament.

25 The Citizens Committee included the

1 comments, "Superb judge. Smart. Great judicial
2 temperament. Needs to be a Circuit Court judge. Lucky to
3 have him." Some housekeeping issues.

4 BY MS. DEAN:

5 Q. Judge Dukes, are you aware that -- are you aware
6 that as a judicial candidate you are bound by the Code of
7 Judicial Conduct as found in Rule 501 of the South Carolina
8 Appellate Court Rules?

9 A. I am.

10 Q. Since submitting your letter of intent have you
11 contacted any members of the Commission about your
12 candidacy?

13 A. Only an introductory letter that asked for
14 nothing, and not to this group.

15 Q. Not to the Commission itself. Since submitting
16 your letter of intent have you sought or received the
17 pledge of any legislator, either prior to this date or
18 pending the outcome of your screening?

19 A. I have not.

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

23 A. I am.

24 Q. Have you asked any third parties to contact
25 members of the General Assembly on your behalf, or are you

1 aware of anyone attempting the intervene in this process on
2 your behalf?

3 A. I am not.

4 Q. Have you reviewed and do you understand the
5 Commission's guidelines on pledging and South Carolina Code
6 Section 2-19-70(E)?

7 A. Yes, I do.

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

13 CHAIRMAN SMITH: All right. Thank you very
14 much. Representative Murphy.

15 REPRESENTATIVE MURPHY: Thank you, Mr.
16 Chairman.

17 EXAMINATION BY REPRESENTATIVE MURPHY:

18 Q. Judge Dukes, you had talked a little bit about
19 your appointment as a special Circuit Court judge, and how
20 primarily you handle civil matters as a special Circuit
21 Court judge. And if I missed it, I apologize, but what
22 type of responsibilities in the General Sessions arena have
23 you undertaken as a special Circuit Court judge?

24 A. Guilty pleas, primarily. I've done some
25 probation revocations and that sort of thing. And I've

1 signed warrants periodically.

2 Q. Okay. Thank you.

3 CHAIRMAN SMITH: All right. Any further
4 questions? Senator Rankin.

5 EXAMINATION BY SENATOR RANKIN:

6 Q. Judge, you have seen all of us, save two, at your
7 last screening. And the two to your far right, you know
8 both probably well. I don't know if you've met Hope
9 before. Pete Strom meets everybody all the time, every
10 day, everywhere. And that's a good thing. But I don't
11 know if you know those two.

12 I'm not going to go through every question that
13 we have done in the numerous screenings that you've had
14 before, but I do want to just highlight a couple of things.
15 The best graduating law school class ever was what year?

16 A. I believe it was 1987.

17 CHAIRMAN SMITH: Wrong answer. Wrong
18 answer.

19 Q. That is a great answer. And I am -- again, I
20 know you. I was in school with you. You have screened for
21 other positions and also for reelection to the masters
22 slot. And your appearance and your candidacy this time, in
23 terms of new and different, are anything that you've been
24 told you lacked before? Which I don't know that -- at
25 least from the Citizens Committee from the Bar. Is there

1 **anything different that you'd like to add --**

2 A. I've got a few more gray hairs. I've got a lot
3 more experience. I think the last time I was in front of
4 you was in 2017, two years ago. I think that's accurate.
5 And I've tried a number of more cases. I can't even tell
6 you how many. But in each case, I prepare for it and learn
7 a little something. So I'm a little bit more experienced
8 in every area that I deal with.

9 **Q. Why do you want to be a Circuit Court judge?**

10 A. Well, first, let me say I enjoy what I do right
11 now. Being a master is a great job. It really is. And I
12 enjoy it. But I've done it for twelve and a half years. I
13 think I've got something to offer the Circuit Court bench.
14 I think I would enjoy being on the Circuit Court bench.

15 I would love to get out and see the state and try
16 cases in other courthouses. And I think I'm good in front
17 of groups of people. I think I would enjoy a jury pool. I
18 would enjoy dealing with a jury pool and a jury, and doing
19 some different types of cases.

20 Anytime you've done something for twelve and a
21 half years, you might enjoy it. But it's always fun to
22 think about what might be, and I think I would be an
23 excellent Circuit Court judge. I wouldn't be standing here
24 if I didn't.

25 I think I am prepared to be a Circuit Court

1 judge. And any lack of preparation that I might have, I
2 can certainly catch up on, as I have done with many things
3 that I've tried before me over the twelve and a half years.
4 Basically, I think I would do a great job. And I think I
5 would enjoy it.

6 **Q. You have run for Circuit Court twice?**

7 A. That's correct.

8 **Q. This is your third run.**

9 A. I think that is correct.

10 **Q. All right. And you have drawn an incredibly**
11 **challenging slate of prior-to races.**

12 A. It's no fun if it's not a challenge.

13 **Q. And I would suggest that you've drawn yet another**
14 **very popular slate of candidates. In terms of how we do**
15 **this, and we've had this conversation on the record before,**
16 **is there a better way for us to vet you and the other**
17 **candidates in terms of, again, the ballot box, the Citizens**
18 **Committee, the Bar?**

19 A. I mean, a little of that is a political question
20 and answer that I'll shy away from. But I don't think so.
21 I think asking the attorneys that a judge or a potential
22 judge practices in front of and getting those answers is
23 very important.

24 The Citizens Committee, I think, is very
25 important just to generally get the word. Particularly in

1 a race like this, where you're going to get people from all
2 over the state. And so I can't really think of a whole lot
3 in the way of improvement.

4 Q. And then in terms of the election of the judges,
5 the House has got three votes to our one -- and we can't
6 talk about the unfairness of that. You certainly cannot.
7 But in terms of public versus our style in the form of
8 election of judges, do you agree? Support?

9 A. Well, and again that touches a little bit on the
10 political. But I will say that I'm always disturbed when I
11 drive through a state that has public election of judges,
12 and see a billboard where a judge is running for public
13 office. And I know that, that judge, in order to pay for
14 that billboard, had to go to a law firm and ask for money
15 for a campaign contribution.

16 And so that has always disturbed me a little bit.
17 So I prefer this -- I prefer this method of selecting
18 judges, personally, rather than public election, just
19 because it would be very difficult, I think, to raise --
20 and all of you raised money, and you know what it's like.

21 But if you are a judge and you are going to a law
22 firm to raise money, and that law firm has a motion that
23 afternoon that they've handed you a check, that at least
24 seems like the appearance of impropriety to me.

25 It's not, of course. Because it happens in, I

1 think, 45 states. But I prefer the method that we have, to
2 answer your question.

3 Q. I know you -- aside from law school, our
4 daughters both attended Governor's School in Greenville,
5 Arts and Humanity. And I don't want to ask you to get too
6 personal, but you -- beyond being to the eye a good parent
7 and a good father, you -- y'all had a little difficulty,
8 requiring a lot more your and your wife's time.

9 Again, not to be too personal, but in an attempt
10 to define a little better who you are, if that's the
11 context, I'd like to hear you on that, and the lengths that
12 you and your family pursued to reach the successful point
13 of graduation.

14 A. Right. Well, we did have those, as you know,
15 some health issues with my daughter. And so just to help
16 her through the school, we actually got a place in
17 Greenville for a few months. And I actually commuted a
18 little bit, back and forth to Beaufort from Greenville.
19 Which is -- puts a lot of miles on a car if you do it for a
20 while.

21 But anyway, we got through it and a successful
22 conclusion. And she's off at college now. A freshman, as
23 you know. So it all worked out. But, yeah, it was a
24 trying time, but we got through it.

25 SENATOR RANKIN: That's all I have. Thank

1 you.

2 CHAIRMAN SMITH: Any further questions? Mr.
3 Strom.

4 MR. STROM: Judge Dukes, I've followed your
5 career a little bit ahead of you. And you enjoy an
6 excellent reputation statewide.

7 JUDGE DUKES: Thank you very much.

8 MR. STROM: Thank you for all your public
9 service. And you've got private practice, different firms
10 from public office. You've served on the zoning board and
11 commissions and things that are not profitable. You've
12 served as a Master in Equity and special Circuit Court
13 judge. I don't know what else you could do to be more
14 prepared for this job. And you're offering yourself now
15 for the third time, I thank you for doing that. And I
16 think you'd make an excellent judge.

17 JUDGE DUKES: Thank you very much. I
18 appreciate that.

19 CHAIRMAN SMITH: Any further questions?

20 (Hearing none.)

21 CHAIRMAN SMITH: All right. You're now no
22 longer going to be between us and lunch, Judge Dukes. I
23 appreciate you being here today. And this concludes this
24 portion of your screening process. I want to take this
25 opportunity to remind you that pursuant to the Commission's

1 evaluative criteria, the Commission expects candidates to
2 follow the spirit as well as the letter of the ethics law.
3 And we will view violations or the appearance of
4 impropriety as serious and potentially deserving of heavy
5 weight in screening deliberations.

6 On that note, and as you know, the record
7 will remain open till the formal release of the report of
8 qualifications, and you may be called back at such time if
9 the need arises. I thank you for being with us today.

10 Thank you for your service to the State of South Carolina.

11 JUDGE DUKES: Thank you all.

12 (Candidate excused.)

13 CHAIRMAN SMITH: And at that point we'll --
14 Senator Sabb moves that we recede for lunch. So we'll be
15 in recess until 12:45.

16 (Off the record.)

17 CHAIRMAN SMITH: That's your wife, I
18 presume. So would you like to introduce her to the
19 Commission?

20 MR. MEETZE: I would. Thank you very much,
21 Mr. Chairman. This is my wife Anna.

22 CHAIRMAN SMITH: Hey, how are you doing?
23 Good to see you.

24 MS. MEETZE: Thank you.

25 CHAIRMAN SMITH: Welcome.

1 MS. MEETZE: Thank you.

2 CHAIRMAN SMITH: All right. Mr. Meetze,
3 raise your right hand, please, sir.

4 WHEREUPON,

5 WILLIAM VICKERY MEETZE, being duly sworn and
6 cautioned to speak the truth, the whole truth and nothing
7 but the truth.

8 CHAIRMAN SMITH: Mr. Meetze, before you, you
9 have your -- you have your personal data questionnaire and
10 your sworn statement. Are those documents you have
11 submitted to the Commission?

12 MR. MEETZE: They are.

13 CHAIRMAN SMITH: And are they correct?

14 MR. MEETZE: Yes, sir.

15 CHAIRMAN SMITH: And is there anything that
16 needs to be changed or updated with those documents?

17 MR. MEETZE: There is not.

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

21 MR. MEETZE: None whatsoever.

22 CHAIRMAN SMITH: All right. Without
23 objection we'll make those exhibits to your sworn
24 testimony.

25

1 CHAIRMAN SMITH:

2 (EXHIBIT NO. 14 - JUDICIAL MERIT SELECTION
3 COMMISSION PERSONAL DATA QUESTIONNAIRE OF WILLIAM
4 VICKERY MEETZE)

5 (EXHIBIT NO. 15 - JUDICIAL MERIT SELECTION
6 COMMISSION SWORN STATEMENT OF WILLIAM VICKERY
7 MEETZE)

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

17 We've received no affidavits filed in
18 opposition to your election, and no witnesses are present
19 to testify. Do you have -- wish to make a brief opening
20 statement to the Commission?

21 MR. MEETZE: I would. Thank you, Mr.
22 Chairman. I would just like to first say how much I
23 appreciate everybody here and the commitment that you all
24 have to this process. You're all certainly very important
25 people. And it's just very meaningful to all the

1 candidates for all the dedication that you have to this
2 process, and I'm just very humbled and honored to have this
3 opportunity to be before you.

4 CHAIRMAN SMITH: Thank you, Mr. Meetze.
5 Answer any questions that Counsel may have for you.

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

12 EXAMINATION BY MS. WILKINSON:

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

16 A. I think that my experience has been, outside of
17 one year as a judicial clerkship with Judge Brogdon, has
18 been as a trial lawyer. It has been -- I've been doing
19 that since August of 1999. So a little bit over 20 years
20 now. And again, the whole time as a trial lawyer.

21 I've worked as a solicitor and as a public
22 defender in that time. In that process you get to deal
23 with a lot of folks. I've had a lot of life experiences as
24 well, that I think make me very well qualified for this
25 position.

1 I was very fortunate to have what I believe would
2 be a wonderful upbringing. I met a lot of great friends
3 throughout my life, that have really influenced me very
4 well in how to deal with people, taught me how to deal with
5 people. I think that's a very important aspect of the job.

6 My actual work history again as a trial lawyer, I
7 think, has prepared me very well. I worked very hard. I
8 do my own research and study. The one area that I've not
9 had any practical experience in would be civil court,
10 outside of post-conviction relief hearings. But the actual
11 in Common Pleas court, I don't have any experience with
12 that.

13 However, I would just say that I -- as a trial
14 lawyer, I'm very familiar with the rules of evidence. And
15 I think they're very similar in application in both
16 branches. I think that would serve me well as being able
17 to effectively preside over trials in Common Pleas.

18 I think any deficiency would be easily and
19 quickly overcome with, like I said, my work ethic. I've
20 always done my own research. I'm very adapt at applying
21 the law to facts and situations, and feel like any catch-up
22 that would need to be done on the civil side would be very
23 quick and easy to overcome.

24 **Q. Thank you, Mr. Meetze. Mr. Meetze, the**
25 **Commission received 86 ballot box surveys regarding you,**

1 with 21 additional comments. The ballot box surveys were
2 overwhelmingly positive. For example, they contained some
3 of the following comments:

4 "Vick is a smart, capable lawyer who would be
5 fair to both sides of a case and have a good temperament on
6 the bench."

7 Another comment stated, "Vick's reputation as a
8 courtroom lawyer and in the community is sterling. He has
9 exemplary judgement and temperament, effectively using
10 humor to make the judicial process more tolerable, while
11 promoting the utmost respect for the process."

12 Two of the ballot box comments did express
13 concerns regarding your lack of civil experience. And I
14 know you've just talked about how you will respond to those
15 concerns. Do you have anything else to add, given that
16 those were the ballot box concerns that were presented --

17 A. Well --

18 Q. -- in your case?

19 A. I'm sorry. Yeah, I guess I would add, you know,
20 I have spoken with some judges in regards to that, and
21 whether or not they had any concerns over, for instance,
22 myself not having any practical civil court experience, and
23 whether that would be a concern to them, and with me being
24 able to effectively serve. And they've all, the ones that
25 I spoke to, have not had any reservations with regards to

1 that.

2 It's not unusual for a judge -- a circuit judge
3 to come to the bench with -- with experience on one side,
4 and none or very, very little on the other. And I've been
5 in front of judges in those situations and -- and most, if
6 not all of them, have done very well. I would even say
7 that Justice James -- when I clerked for Judge Brodgon, he
8 was the Chief Administrative Judge in that circuit, and I
9 believe that judge -- Justice James in his practice was --
10 only practiced in civil court.

11 And I can say from experience when he was on the
12 circuit bench, I practiced in front him and he was nothing
13 short of outstanding as a judge of the General Sessions
14 court. And I just think there's a number of those kinds of
15 examples. And I think I would fall right in line with
16 that.

17 So from a personal standpoint, I have no
18 reservations about my ability to preside over either branch
19 of Circuit Court. But I do understand people that may have
20 that concern, and I would just welcome the opportunity to
21 be able to quickly ease their minds.

22 MS. WILKINSON: Mr. Chairman, I would note
23 that the Pee Dee Citizens Committee reported that Mr.
24 Meetze is qualified in the evaluative criteria of
25 constitutional qualifications, physical health and mental

1 stability, and well qualified in the evaluative criteria of
2 ethical fitness, professional and academic ability,
3 character, reputation, experience and judicial temperament.

4 The Committee stated in summary, "Mr. Meetze
5 is well known to this committee. And we continue to like
6 this candidate. He has the reputation of being a top-notch
7 lawyer and has a good presence and would make an excellent
8 judge."

9 Mr. Chairman, I'm ready to go over
10 housekeeping issues.

11 BY MS. WILKINSON:

12 Q. Mr. Meetze, I have a few housekeeping questions
13 for you. Are you aware that as a judicial candidate you
14 are bound by the Code of Judicial Conduct as found in Rule
15 501 of the South Carolina Appellate Court Rules?

16 A. I am.

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

20 A. I have not.

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

24 A. I have not.

25 Q. Are you familiar with Section 2-19-70, including

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

3 A. I am familiar.

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

8 A. I have not asked, nor am I aware.

9 Q. Have you received and do you understand the
10 Commission's guidelines on pledging and South Carolina Code
11 Section 2-19-70(E)?

12 A. I am.

13 MS. WILKINSON: Mr. Chairman, I would note
14 for the record that any concerns raised during the
15 investigation by staff regarding this candidate, Mr.
16 Meetze, were incorporated into the questioning of him
17 today.

18 CHAIRMAN SMITH: Thank you very much. Any
19 questions for Mr. Meetze?

20 REPRESENTATIVE MURPHY: Just briefly.

21 CHAIRMAN SMITH: Representative Murphy.

22 EXAMINATION BY REPRESENTATIVE MURPHY:

23 Q. Do you have a brother?

24 A. I do.

25 Q. Is it Michael?

1 A. It is.

2 Q. He was a public defender in Orangeburg County for
3 a brief time, correct?

4 A. He was.

5 Q. Okay. I was an assistant solicitor when Michael
6 was there.

7 A. Okay.

8 Q. So tell him I said "hello."

9 A. I sure will. Thank you.

10 CHAIRMAN SMITH: Any further questions?

11 Senator Young.

12 SENATOR YOUNG: Thank you, Mr. Chairman.

13 EXAMINATION BY SENATOR YOUNG:

14 Q. Mr. Meetze, thank you for your interest in
15 serving the state -- continuing to serve the state as a
16 Circuit Court judge. I commend you on your experience,
17 especially in the area of criminal law. It appears that
18 you've done -- most of your career as a public defender; is
19 that right?

20 A. That's right. I did right -- not quite three
21 full years as an assistant solicitor up in the 16th
22 Circuit, and from then on it's been as a public defender.

23 Q. I want to go into a little bit more about how you
24 would prepare yourself to conduct non-jury civil matters.
25 Have you handled any non-jury civil matters?

1 A. I have not handled any non-jury civil matters as
2 a practicing attorney. The only real civil experience that
3 I have would have been as a judicial clerk for Judge
4 Brodgon, who did -- at that time he did handle several
5 complex litigation cases at that time, one involving Santee
6 Cooper and one involving a -- the Huffman La Rouch Plant,
7 Roche-Carolina, between Florence and Manning, that I worked
8 on those with him. But I don't have any practical
9 experience.

10 With regards to how I would prepare for non-jury
11 civil court, certainly I would immerse myself in the file
12 and the facts, and learn everything I could about a
13 particular case, from the facts of that case to the law
14 that's applicable to that case.

15 One strong suit of mine, I believe, is also the
16 ability to make decisions. I think that, that's a very
17 important aspect of effective judicial service is making
18 decisions. I think that, that's very important.
19 Particularly in civil cases where there's certainly much
20 more of a motions practice than there is in General
21 Sessions court. And I think being able to reach decisions
22 in those cases is of the utmost importance.

23 And so but as far as preparing, I would -- I
24 would learn everything I could about the case, do all the
25 research I needed to do to learn the law that applies to

1 the case, and be ready to hear and effectively make a
2 decision as far as any issue goes.

3 **Q. Is there any particular judges that you would try**
4 **to emulate certain characteristics?**

5 A. You know, I believe -- and I think to me,
6 personally -- and some people may be different, I feel like
7 the most important aspect of a judge is the temperament and
8 how they treat people, and that people are treated with
9 respect. So the judges that I enjoy practicing in front
10 of, and like and respect the most, are those that treat
11 everybody like anyone would want to be treated.

12 And it's a shame that not all do that. But the
13 ones that do are the ones that I particularly enjoy. I
14 will have to say that Judge Brian Gibbons from the 6th
15 Circuit is a long-time friend of mine. I've known him --
16 we've been very close friends for 30 years, so I would be
17 remiss if I didn't mention him, in answering that question,
18 as somebody that I very much admire.

19 In our own circuit, in the 12th Circuit, we have
20 one resident judge, Judge Nettles, who I think fits the
21 criteria and the -- that I just said. As well as Judge
22 Seals who's an At-Large judge from my hometown of Marion.

23 And I also say I had never practiced in front of
24 Judge Dickson from Orangeburg before, but he held court
25 recently in Florence, and I can't tell you how impressed I

1 was with his temperament, the way he handle everything. He
2 was just an absolute delight. And I really enjoyed the
3 opportunity to get to know him and work in front of him,
4 because I was just thoroughly impressed with Judge Dickson
5 as well.

6 Q. I appreciate your response. The comments that
7 were provided in the ballot box are very complimentary in
8 your temperament. And so you obviously have made a very
9 good impression on the lawyers that you have worked with
10 over the years during your career. And I want to applaud
11 you for that.

12 A. Well, I sure appreciate you saying that, Senator.

13 CHAIRMAN SMITH: All right. Any further
14 questions? Senator Rankin.

15 EXAMINATION BY SENATOR RANKIN:

16 Q. Mr. Meetze or Metz? How do you pronounce it?

17 A. It's Meetze.

18 Q. Your grandfather was George?

19 A. That's correct.

20 Q. And I was elected way back when he continued his
21 service as a chaplain of the Senate. And he has a way of
22 invoking the attention of everyone in the room and the
23 building that would broadcast his remarks. And so a great
24 iconic figure was your grandfather.

25 A. Well, that means a lot. Any time he's mentioned,

1 I can't help but smile. He's probably my favorite person
2 that I've ever known, so -- and there's a lot of people
3 that I've known and really loved a lot, but he's number one
4 in my books from that standpoint. And I really appreciate
5 your kind words.

6 Q. I'll say this and then move on from that point.
7 But did he invoke with you, conversations that begin with
8 the same word that he began as devotionals, which was
9 "beloved"?

10 A. He would from time to time.

11 Q. And you must have rated highly in his book. I
12 want to commend you. Again, you've got a wide range of
13 experience here on the -- at least the criminal side of
14 things. And it sounds like the civil you are growing.
15 You were assistant solicitor until -- is it 2000?

16 A. I was assistant solicitor from August of 1999
17 till June of 2002.

18 Q. 2002. And then you became a public defender?

19 A. Yes, sir. In the same circuit. I was in the
20 16th Circuit at that time, and I moved downstairs to the
21 public defender's office in that same circuit for -- at
22 that -- for four more years -- a little more than four
23 years.

24 Q. And, again, it is what it is. And I continue to
25 evoke to everyone, the Goldilocks analogy of just right.

1 And we're looking for somebody who has the just right mix
2 of experience in both civil and criminal. You in your PDQ
3 say zero percent civil, right? Ninety-nine percent is
4 criminal; less than one percent domestic. Is that fair?

5 A. That's fair. We do -- and from a domestic
6 standpoint there are times when I fill in for juvenile
7 defender in Family Court from time to time. But it's very
8 rare.

9 Q. But you're a full-time public defender.

10 A. I am a full-time public defender.

11 Q. It's not that you have the capacity or practice
12 or license or contract, whatever you want to call it,
13 ability to take on a civil case while maintaining your
14 public defender role.

15 A. That's correct. I do not have the ability to do
16 that with my current role.

17 Q. Thank you. And nice to have your wife with you
18 here today too.

19 A. Thank you so much.

20 CHAIRMAN SMITH: Mr. Safran.

21 EXAMINATION BY MR. SAFRAN:

22 Q. Mr. Meetze, good to see you back here.

23 A. Yes, sir.

24 Q. And I agree, I can't in any way question that you
25 put together a really good career on the side of the fence

1 that you've chosen.

2 A. Yes, sir.

3 Q. And it looks like you're obviously committed,
4 because people don't stay doing public defender work
5 forever unless they really have kind of a passion for it.
6 So I'm understanding that. And I guess my question is --
7 you've also shown that at least by coming here more than
8 once, that this is something that you also value as far as
9 the potential long-term commitment for yourself.

10 A. Yes, sir.

11 Q. Is there on the horizon any desire, if we more or
12 less identified having some civil background as being
13 important, to look into that area?

14 A. You know, I -- my brother at one time, for a
15 short period of time, opened an office in Marion, where he
16 was going to be doing a general practice. He did that for
17 a bit at that time. And that was a long time ago, more
18 than -- I would say more than 15 years ago.

19 So at that time, you know, I thought -- you know,
20 if he -- if that practice is able to flourish, maybe one
21 day we'll have a Meetze & Meetze practice or something like
22 that. That did not materialize. That practice didn't --
23 didn't go in that direction. And he ended up moving on to
24 bigger and better things, so to speak. So I -- you know,
25 it entered my mind to potentially go into private practice

1 with him at that point in time.

2 But to be honest with you, I really -- the part
3 of my job that I enjoy the most is being able to look after
4 folks' constitutional rights, and represent them in that
5 way. And as a public defender, you get to do that to a
6 larger number of people than -- than I would.

7 You know, when I started, I didn't necessarily
8 have the plan to stay in public service my entire career on
9 this side of things. But as it's worked out, you know, the
10 opportunities have been good. I've continued to be
11 promoted in the job that I have, which I'm certainly very
12 thankful for.

13 And I just have found that the joy of helping
14 folks is what I get the most out of in this job. And this
15 job gives me the best opportunity to do that. Right now I
16 only am doing that primarily with regards to my clients who
17 are charged with violating a criminal statute of South
18 Carolina.

19 And as a judge, I've always felt like judges were
20 the protectors of the Constitution. And as a judge, I
21 would have the same opportunities, continue in public
22 service, and protect those rights for all litigants and all
23 folks that come into court. And that's something that,
24 again, I think would be very, very important to me, and a
25 natural progression for the public service that I've

1 continued to do.

2 Q. Well, thank you very much.

3 A. Thank you.

4 CHAIRMAN SMITH: Senator Sabb.

5 SENATOR SABB: Thank you, Mr. Chairman.

6 EXAMINATION BY SENATOR SABB:

7 Q. And thank you, sir, for offering. Two points of
8 inquiry. One is the Vickery name.

9 A. Yes, sir.

10 Q. Two of my high school teachers -- my French
11 teacher was Eddie Vickery, and my speech and drama teacher
12 was Carol Bond Vickery. Are you by chance related to
13 either of them?

14 A. No, Senator, I am not. My mother is from way
15 down in South Georgia. If you're familiar with football,
16 there was a football player for the University of Georgia
17 named Champ Bailey, and he recently went into the NFL Hall
18 of Fame. He was from a small town in Georgia called
19 Folkston, Georgia. So about five minutes from the Florida
20 line. And my mother grew up there, and Vickery is a -- is
21 a South Georgia name.

22 Q. I got you. And I'm really not sure where --
23 where the Vickerys are from. I'm certainly going to
24 inquire about that, the next time I hit him up on Facebook.
25 But my other question related to your philosophy associated

1 with sentencing --

2 A. Yes, sir.

3 Q. -- and second chances. Would you speak to those
4 issues, please.

5 A. I think philosophy with regards to sentencing
6 would be -- you know, there's a lot that goes into
7 sentencing. There's a lot of background that somebody
8 would need to know before they could say how they would
9 sentence.

10 I certainly believe in second chances and second
11 opportunities. One of my responsibilities as a public
12 defender is I'm one of the public defender attorneys who
13 serve as part of the 12th Circuit Drug Treatment Court
14 team, and have gotten to see -- and we've had that now for
15 easily, I would say, seven or eight years. And I've been a
16 part of that team the entire time since that court's
17 inception.

18 And you talk about uplifting examples and
19 evidence of folks who truly are getting a second chance.
20 And they don't all make the most of it. We know that. But
21 many of them do. And there are folks that I've dealt with
22 for a long time, before we had a drug treatment court
23 option for them, and they just couldn't get out of their
24 own way because of their substance abuse issues. And so
25 that's an example of something that I feel very strongly

1 about, programs like that, to give folks second chances.

2 Obviously, there's certain offenders that are
3 violent offenders or repeat violent offenders and things
4 like that, and sentencing in those is going to have to be
5 more firm and more harsh. Because at some point in time,
6 the rehabilitative aspect of punishment has been proven not
7 to work in some cases. And in those cases you have to --
8 to, I guess, have a stronger hand.

9 But as far as -- as far as sentencing goes, I
10 feel like the way to do it is listening to everybody,
11 whatever everybody presents, taking into consideration
12 someone's criminal record, any recommendation that the
13 state makes.

14 As a judge, I feel like judges do things
15 differently. And I think one of the things that I
16 certainly would try to do, and feel like I would do, would
17 be to go along with recommendations and not -- and, you
18 know, and if for some reason I could not, not force the
19 person to go forward with the plea, I feel like they're up
20 there.

21 And even though defendants are told that a judge
22 doesn't have to go along with the recommendation, that's
23 really still the expectation. And I just don't know how
24 fair that is to sentence them to something they weren't
25 expecting without at least letting them know ahead of time

1 that, that's where you're leaning.

2 I just -- you know, I feel like that -- really in
3 the law, a lot of the law is based on fairness and really
4 treating people the right way. And they may be there
5 because they're criminals and they -- or have broken a
6 criminal law, but at the same time I don't think that means
7 that you just do away with the fairness aspect of
8 sentencing.

9 Q. And I totally agree with you on the last point.
10 I've been there. And I've always felt that judges should
11 give a heads-up when they're not going to go along with the
12 recommendations. I agree that, that's sort of an unspoken
13 to expectation. And I remember a lot of the judges did not
14 like us going in chambers and having that quite
15 conversation to make sure that, that's what the deal was.
16 But I appreciate your stance on that. I think that's
17 exactly the fair way to handle it.

18 And I'll say this, also, you are the second
19 person today that's spoken of alternative second chance-
20 type programs and the drug program was the -- or drug court
21 was the one that was mentioned before. And I'm just
22 delighted to hear that we're getting some positive results
23 out of that. Thank you.

24 A. Thank you, Senator.

25 CHAIRMAN SMITH: All right. Any further

1 questions?

2 (Hearing none.)

3 CHAIRMAN SMITH: I'm learning my lesson from
4 the last one, I'm not going to try to follow up with any
5 comments, except read my script from this point forward,
6 Mr. Meetze, so I don't stick my foot in my mouth again.

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

15 As you know, the record will remain open
16 until the formal release of the report of qualifications,
17 and you may be called back at such time if the need arises.
18 Thank you for offering for this position. I thank you for
19 your service to the State of South Carolina. And I wish
20 you all safe travels back to Marion.

21 MR. MEETZE: That's right.

22 CHAIRMAN SMITH: All right. Well, good to
23 see you, Vick.

24 MR. MEETZE: Thank you so much. I sure
25 appreciate everybody.

1 (Candidate excused.)

2 CHAIRMAN SMITH: Ms. Merrill, I appreciate
3 you being here today. Will you raise your right hand,
4 please, ma'am?

5 WHEREUPON,

6 JANE H. MERRILL, being duly sworn and
7 cautioned to speak the truth, the whole truth and nothing
8 but the truth.

9 CHAIRMAN SMITH: Well, I hate to do this to
10 you, 'cause I normally do it before I swear people, but I
11 see you have a guest today. So would you like to introduce
12 your guest with you?

13 MS. MERRILL: I do. Thank you for letting
14 me introduce. This is my husband, Albert Merrill.

15 CHAIRMAN SMITH: Hey, how are you doing?
16 Welcome. I appreciate you being here today.

17 MR. MERRILL: Thank you.

18 CHAIRMAN SMITH: All right. Ms. Merrill,
19 before you, you have your personal data questionnaire and
20 your sworn statement. Are these documents you have
21 submitted to the Commission?

22 MS. MERRILL: They are. There's also
23 Exhibit 18, which was one page of amendments.

24 CHAIRMAN SMITH: Okay. And so are both --
25 are all those documents you have before you correct?

1 MS. MERRILL: They are.

2 CHAIRMAN SMITH: Are there any -- other than
3 that amendment, are there any changes or updates that need
4 to be made?

5 MS. MERRILL: No.

6 CHAIRMAN SMITH: Do you have any objection
7 to us making those as exhibits to your sworn testimony here
8 today?

9 MS. MERRILL: No objection.

10 CHAIRMAN SMITH: All right. Without
11 objection we're going to make those exhibits to your sworn
12 testimony.

13 (EXHIBIT NO. 16 - JUDICIAL MERIT SELECTION
14 COMMISSION PERSONAL DATA QUESTIONNAIRE OF JANE H.
15 MERRILL)

16 (EXHIBIT NO. 17 - JUDICIAL MERIT SELECTION
17 COMMISSION SWORN STATEMENT OF JANE H. MERRILL)

18 (EXHIBIT NO. 18 - AMENDMENT TO PERSONAL DATA
19 QUESTIONNAIRE OF JANE H. MERRILL)

20 CHAIRMAN SMITH: Ms. Merrill, the Judicial
21 Merit Selection Commission has thoroughly investigated your
22 qualifications for the bench. Our inquiry has focused on
23 nine evaluative criteria and has included a ballot box
24 survey, a thorough study of your application materials,
25 verification of your compliance with state ethics laws, a

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

4 We have received no affidavits filed in
5 opposition to your election. There are no witnesses
6 present here today to testify. Do you wish to make a brief
7 opening statement to the Commission?

8 MS. MERRILL: I'll waive a full opening
9 statement, but would just like to thank you for letting me
10 be here today. And I understand Mr. Hinson is going to
11 fill in for Mr. Stimson, and I wanted to thank both of
12 them.

13 CHAIRMAN SMITH: Okay. Well, we got Mr.
14 Hinson and Stimson, they rhyme. So a good feeling. Answer
15 any questions Counsel may have.

16 MS. MERRILL: Thank you.

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

23 EXAMINATION BY MR. HINSON:

24 Q. Ms. Merrill, how do you feel your legal and
25 professional experience thus far renders you qualified and

1 **will assist you in being an effective Circuit Court judge?**

2 A. I think my experience -- professional experience
3 thus far would make me a very effective Circuit Court
4 judge. I believe I'm uniquely qualified because I've been
5 a litigator my entire career, and I've practiced in
6 criminal court on both sides of cases. I started my career
7 as a judicial law clerk, and that experience provided a
8 strong foundation for the rest of my career.

9 I clerked for the late Judge Wyatt Saunders. And
10 he was an excellent jurist to learn from. And then I
11 started off after that at the solicitor's office, and got a
12 lot of trial experience doing that. And then went to a
13 civil defense firm where I was an associate attorney and
14 worked in that area, including trying cases.

15 And now in my own firm, I continue working in the
16 courtroom representing criminal defendants and plaintiffs
17 in several cases. And I also am a certified court
18 mediator, and so I do some work there. And I believe the
19 combination of this experience makes me well suited for the
20 bench.

21 Q. Thank you for that. Ms. Merrill, the Commission
22 received 116 ballot box surveys regarding you, with 21
23 additional comments. The ballot box survey, for example,
24 contained the following positive comments:

25 "Jane is extremely intelligent and a very hard

1 worker. She values justice and fairness." As well as,
2 "Ms. Merrill is an amazing attorney and person. She's
3 extremely patient and thoughtful with her clients and
4 opposing counsel. She would make an incredible addition to
5 the bench."

6 Seven of the written comments expressed some
7 concern. Five of those suggested, perhaps, you don't have
8 the necessarily amount of experience for the Circuit Court
9 bench. How would you respond to that concern?

10 A. Well, I think more important than the years of
11 experience is what you've done during that time and the
12 quality of your experience. And I believe the quality of
13 my experience is very high. I just told you a little bit
14 about my background, so I won't repeat all of those things.

15 But I do think I've been in the courtroom, in
16 many different situations, motions, hearings, jury trials,
17 and have been exposed to almost everything one can be
18 exposed to in the courtroom, and worked on a variety of
19 different cases.

20 And as part of that, I've also worked with a
21 variety of different people: law enforcement officers,
22 victims, opposing counsel on numerous cases. And so I've
23 had the chance to foster relationships with all kinds of
24 people in the court system.

25 Q. Thank you. A second concern raised by -- two

1 **comments suggest you do not possess the appropriate**
2 **demeanor or temperament for the Circuit Court. How would**
3 **you respond?**

4 A. I think having the appropriate demeanor for a
5 judge includes being able to calmly hear criticism and
6 weigh that criticism objectively. I think a good judge is
7 patient, thoughtful, firm, fair and open-minded. And I
8 think those qualities are reflected in the positive
9 comments made on the surveys, and also in the work I've
10 done throughout my career and what I do in my community.

11 **Q. Thank you. Ms. Merrill, you indicated in your**
12 **PDQ that you were named as a respondent in a lawsuit filed**
13 **by an estate's personal representative in January of this**
14 **year. Would you explain the nature of that lawsuit?**

15 A. The Greenville County Probate Court appointed me
16 to be a guardian ad litem for an allegedly incapacitated
17 adult in 2017. And this was a lis pendens filed by the PR
18 of the estate regarding a piece of property that the PR
19 intends to sell.

20 **Q. Ms. Merrill, what do you anticipate being the**
21 **biggest challenge of serving as a Circuit Court judge**
22 **should you be elected?**

23 A. I think I won't have a steep learning curve as
24 far as what goes on in Circuit Court. It will be
25 interesting to be on the other side of objections. I'm

1 usually the one making them. And ruling on them would
2 certainly, I'm sure, present a challenge.

3 And I don't have experience, for example, in a
4 death penalty case. So were I ever faced with that, that
5 would certainly be a challenge. But I think my experience
6 means that I would not have a steep learning curve on the
7 bench.

8 MR. HINSON: Mr. Chairman, I would note that
9 the Piedmont Citizens Committee reported that Ms. Merrill
10 is qualified in the evaluative criteria of constitutional
11 qualifications, physical health and mental stability. The
12 Piedmont Citizens Committee reported Ms. Merrill was well
13 qualified in the evaluative criteria of ethical fitness,
14 professional and academic ability, character, reputation,
15 experience and judicial temperament.

16 The Piedmont Citizens Committee also
17 included the following comments:

18 "Though she has been a lawyer for only 12
19 years, Ms. Merrill brings an impressive range of experience
20 as a judicial law clerk, solicitor, criminal defense lawyer
21 and civil lawyer for both plaintiffs and defendants, to her
22 candidacy. She is deeply involved in her community and has
23 the strong work ethic, diligence and fairness needed for an
24 effective Circuit Court judge."

25 BY MR. HINSON:

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

5 A. I am.

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

9 A. I have not.

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

13 A. I have not.

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

17 A. I am.

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

22 A. I have not. I had one person who offered, and I
23 told them they weren't allowed to.

24 Q. Have you reviewed and do you understand the
25 Commission's guidelines on pledging and S.C. Code 2-19-

1 70(E)?

2 A. I do. And I understand them.

3 MR. HINSON: Mr. Chairman, I would note for
4 the record that any concerns raised during the
5 investigation by staff regarding Ms. Merrill, were
6 incorporated into the questioning today. And with that, I
7 have no further questions.

8 CHAIRMAN SMITH: All right. Thank you very
9 much. Any questions?

10 (Hearing none.)

11 EXAMINATION BY CHAIRMAN SMITH:

12 Q. Ms. Merrill, let me just start off and ask you a
13 couple of questions. I just want to first make some
14 remarks. Very impressive resume I see, or work history and
15 educational history. You were on the Law Review for two
16 years at USC Law School?

17 A. I was. Thank you.

18 Q. Well, I'm very impressed with it. And the one
19 negative I see in it, is that you worked at the -- at a law
20 firm with Lee Roper? Is that correct?

21 A. And I go to church with Lee Roper too.

22 Q. Oh, I'm so sorry about that. I went to three
23 years of college with him, so I'm sure that was a trying
24 time for you. And I have no -- I do not blame you for
25 quickly exiting that law firm with him. Tell Mr. Roper I

1 said "hello."

2 A. I certainly will.

3 Q. Just a little bit of a similarity, it looks like
4 you obviously -- you prosecuted cases for -- on and off for
5 three or four years, and then you went into your private
6 practice. How much of your private practice is in civil
7 litigation?

8 A. I would say about 35 percent including -- I guess
9 I include in that civil part, mediation. My own litigation
10 cases, I would say, probably about 25 percent. I do have a
11 little less trial experience, because so many things get
12 settled at mediation.

13 Q. Right.

14 A. But I have tried cases on the plaintiff's side
15 and cases on the defense side.

16 Q. What kind of work when you were working at
17 McDonald -- McDonald Patrick was it?

18 A. McDonald Patrick Burris McDonald.

19 Q. Yeah, all those. Did you -- did you -- what type
20 of defense work did you do there?

21 A. It was mostly like insurance defense cases. I
22 worked with Roy Hemphill and Steven Pruitt. And so it was
23 insurance companies, car wrecks, but also some -- we had
24 one really interesting defamation case that we did, and we
25 were representing some of the employees of an organization.

1 **Q. Didn't they do some med-mal? Didn't they do Self**
2 **Regional work?**

3 A. They did some of that. Mr. Baggett did more of
4 that. And he wasn't there by the time I started working
5 there. And Mr. Patrick does some work for them, still, but
6 less of the med-mal and more administrative-type things.

7 **Q. So when you're in your practice now, the civil**
8 **litigation that you're involved in, is it mostly car**
9 **wrecks? Or is it --**

10 A. Well, I'd say I have fairly -- a few interesting
11 cases. I have one car wreck case that I've had since 2012,
12 because it went up -- all the way to the Supreme Court on a
13 particular issue. So I'm still representing that client.
14 But then I do have --

15 **Q. It's tough to make money when you're representing**
16 **somebody for seven years on a car wreck case, isn't it?**

17 A. It's very hard, yes. But luckily, she's been a
18 very good client and very patient, so but it's that. I
19 have -- I actually, recently kind of inherited a medical
20 malpractice case.

21 Another attorney in town, Brandon Smith, has a
22 client that is becoming a bigger client. And he needed
23 someone to help him out, so he actually has given me that
24 case. So I'm working on that one as well. And then I've
25 got, you know, a few others.

1 Q. Obviously, you think if you became a judge -- you
2 know, you see from time to time -- and I guess you know it
3 in a solo practice, get called from court to court
4 sometimes and -- you know, and we have the priority of
5 courts with the Appellate Court rules it's six oh -- six-
6 something. I can't -- I never -- I always have to look it
7 up. I can't remember the number.

8 But regardless, General Sessions takes priority
9 over everything else, and you have an attorney who's got a
10 domestic case that's been set for months before the roster
11 got released, or in General Sessions you've got somebody
12 who's got to be in Common Pleas or a deposition that is
13 necessary for a case that they have coming up. How are you
14 going to handle those conflicts when the court takes
15 priority over that?

16 A. Being an attorney in a small town, I certainly
17 appreciate some of those concerns. And if there was any
18 way I could be flexible in that regard to the attorney, as
19 long as it doesn't prejudice the other side, I certainly
20 would be. So long as the request is reasonable. If
21 somebody wants to leave at two o'clock every day in the
22 middle of a week-long murder trial, that's probably not
23 going to be so easy to accommodate.

24 Q. And certainly you -- I presume you're familiar
25 with family obligations and concerns outside courtrooms and

1 -- how do you balance family with -- for the lawyers who
2 have cases before you, family obligations of -- you know, I
3 have a child school play or something during your trial?
4 How would you handle those situations?

5 A. In a similar way. If I can accommodate it, I
6 certainly would. And if I knew about it ahead of time in
7 the week, it might be that we start that morning, a little
8 bit earlier so that the other people involved in the case,
9 their case continues to be heard.

10 Q. Is there any areas of the law that you think you
11 would need training on? And if you were successful in
12 this, in order to be a Circuit Court judge, do you think
13 you're familiar enough with the procedure and the process
14 and the law, to handle that position?

15 A. I think I'm familiar enough, certainly, to handle
16 it. In most civil cases and criminal cases, I -- as I said
17 earlier, I've not handled a death penalty case and I
18 haven't done a lot of PCR work. So I think that's two
19 areas that I would, you know, possibly need to get up to
20 speed on.

21 But I also think one thing I love about
22 practicing law is that you're always learning. And I
23 think, you know, even if you're on the bench for thirty
24 years, you probably learn something new every day.

25 Q. You mentioned Brandon Smith. We used to have

1 cases together. He was down in Florence forever. Is he --
2 he's your mayor now?

3 A. He is our mayor.

4 Q. Tell him I said "hello."

5 A. I will. I will.

6 CHAIRMAN SMITH: Any other questions?
7 Representative Murphy.

8 EXAMINATION BY REPRESENTATIVE MURPHY:

9 Q. Ms. Merrill, I'm looking at your website. Now,
10 Hawthorne, is that your maiden name?

11 A. That's a maiden name, yes.

12 Q. Okay. I was trying the figure out who your --

13 A. And I grew up in Greenwood, which is why I -- I
14 just go by "Merrill" when I opened up my own firm. I used
15 my maiden name, 'cause I thought more people might
16 recognize it.

17 Q. That's good marketing. When you were at the
18 solicitor's office, was Charles Gross the public defender?

19 A. He was.

20 Q. Have you had occasion to try any cases against
21 Charles?

22 A. I did try cases with Charles -- against Charles.

23 Q. How would you describe that experience?

24 A. Charles is a zealous advocate.

25 Q. Yeah, I went up against Charles a number of times

1 as well. Thank you for your willingness to serve.

2 A. Certainly. Thank you.

3 CHAIRMAN SMITH: Senator Rankin.

4 EXAMINATION BY SENATOR RANKIN:

5 Q. Ms. Merrill.

6 A. Yes.

7 Q. I was looking on your PDQ, to read about the
8 tortuous time you've had since 2012 with Ms. Williams, and
9 the up and down -- the court chain that you've been. I'm
10 curious, who is the insurance company in that case?

11 A. There are several involved. One of them is -- I
12 don't want to tell you the name wrong. And I'm trying to -
13 - it was an insurance agency that sold policies for several
14 different companies. And I can't remember if it's -- I
15 just don't want to mis-speak and say the wrong one.

16 Q. We can find that --

17 A. I'll say give me a minute to think about it, and
18 I might can --

19 Q. But that's the one that involved --

20 A. The one I have in my head, I'm not sure is
21 correct. So I don't want to mis-speak.

22 Q. Ms. Williams -- you represented Ms. Williams in
23 the -- the bad collection --

24 A. That's a -- that's correct.

25 Q. -- in 2012.

1 A. That's correct.

2 Q. And that's the one you've been up and down,
3 federal court, state court, arbitration --

4 A. Right.

5 Q. -- Court of Appeals, Supreme Court and -- you're
6 now back at the hopeful resolution point with a --

7 A. Right.

8 Q. -- judge and a jury.

9 A. Yeah, we're coming back over. The one thing we
10 had not -- we had done most of the discovery in that case.
11 The one thing we hadn't done was mediation. So that's kind
12 of where we're at.

13 Q. And it's Williams versus --

14 A. -- Wilson.

15 Q. Wilson. Excuse me. I said Williams.

16 A. No, no, no, no. It's both. There's a Willis --
17 it's Wilson v. Willis. And Willis is the first named
18 defendant, and then my client is Williams. It's confusing.

19 Q. Okay.

20 A. A lot of --

21 Q. And that was a -- you've got two published
22 opinions, both Court of Appeals?

23 A. The Court of Appeals opinion and then the Supreme
24 Court opinion. And I was looking back on my PDQ this
25 weekend, and I realized I didn't put the citation. I put

1 the date that the Supreme Court made its ruling, but I
2 didn't put the citation beside the Supreme Court case.

3 Q. Whether this becomes -- whether you're successful
4 in this bid or not, you may have created a law school exam
5 or a Bar exam question, it sounds like.

6 A. Yeah, that file in my office is -- I mean, it
7 almost has kind of its own room, there are so many boxes of
8 documents.

9 Q. Your reference letters -- or letters of
10 reference, I should say, includes one -- well, two that are
11 worthy of note. One on a personal note, and that being
12 your partner, Anne Marie Hempy.

13 A. Yes. Well, she worked for another firm.

14 Q. Now she does.

15 A. Yes.

16 Q. Well, let's see -- yeah. Yeah. Did you -- are
17 you a South Carolina fan by chance?

18 A. I went to USC. I'm not a huge football fan,
19 so...

20 Q. Did you know that her husband was a pitcher --

21 A. I did.

22 Q. -- at South Carolina? Under Ray Tanner?

23 A. Yes, I did know that.

24 Q. Yeah, he did not play on the national
25 championship team. He is a law enforcement officer --

1 A. He is.

2 Q. -- correct?

3 A. For the Greenwood City.

4 Q. Yeah.

5 A. I think for a while, he played minor league
6 baseball for a couple years.

7 Q. A more worthy note is the letter that Rector
8 Beasley writes about you. And I love the -- his effective
9 encapsulation of you, "determined, hardworking and strong,"
10 based on his first meeting of you with young child and a
11 commute for you to finish law school. Perhaps would he
12 write a similarly glowing letter about your husband?

13 A. He probably would.

14 Q. Is he a Clemson fan?

15 A. No, he went to Vanderbilt.

16 Q. Hallelujah.

17 A. My husband made all these little -- he's a great
18 woodworker and he made all these little woodworking --
19 little figures that took him forever for the church. So
20 he'd at least get a glowing letter about that.

21 Q. Well, and you get other kudos from him about the
22 church work -- which I'm not going to ask about -- but that
23 you are -- continue to be in the smiling and church-going
24 world is a testament to you. There's no politics worse
25 than the church -- the politics of church.

1 A. That is very true. I just finished up on our
2 church committee. I'm well aware.

3 Q. The last thing is your -- and, again, Beasley
4 references your family practice. And I looked at the PDQ,
5 30 percent you say is family law. Correct?

6 A. That's correct.

7 Q. And so, therefore, in your split of jury and non-
8 jury trial and non -- that mix is representative of your
9 work in the family court, you're not going before a jury --

10 A. Correct.

11 Q. -- or a -- that family law business. And so not
12 that this doesn't count, but do you see yourself just as
13 easily becoming a family court judge in the future?

14 A. I don't know. I really enjoy jury trial work and
15 General Sessions and those kinds of issues you deal with
16 there. So I don't want to foreclose any potential future
17 opportunity, but -- so it's hard for me to say right now.

18 Q. And that's a fair answer. You're -- you do what
19 you are given. You work with the work that you're --

20 A. Right. And in a small town most of us do at
21 least some family court. I've got a staff to pay and an
22 office to manage, and so sometimes you do that kind of
23 work.

24 And I also do some -- kind of the other
25 percentage that would be more non-jury work, I do some work

1 at the Court of Appeals, for veteran's claims.

2 **Q. In fact, all five of your opinions that you list**
3 **of note include veteran's appeals, right?**

4 A. I think that was another question about just
5 civil appeals, those were the veteran's appeals. Yes.

6 **Q. And there are five of those that you list?**

7 A. I think -- if I recall correctly, I think it was
8 four. And then the -- well, the Williams-Willis case that
9 you just referenced, I think is also listed there.

10 **Q. Thank you very much.**

11 A. Thank you.

12 CHAIRMAN SMITH: All right. Any other
13 questions? Senator Sabb.

14 SENATOR SABB: Thank you, Mr. Chairman.

15 EXAMINATION BY SENATOR SABB:

16 **Q. And thank you, Ms. Merrill. I've enjoyed reading**
17 **the various documents that are associated. One thing drew**
18 **my attention, something about your professorship at Lander.**

19 A. I really enjoy it. I didn't expect to enjoy it
20 as much. But the dean had contacted me, several years ago,
21 and I said I just can't take anything on right now. And he
22 contacted me again. And so I go first thing on -- in the
23 morning on Tuesdays and Thursdays. In the fall, I've
24 taught judicial process. And in the spring I've taught
25 civil rights and civil liberties.

1 **Q. So what does judicial process entail?**

2 A. It's really just kind of like a deep-dive into
3 the judicial branch of government, so we kind of start with
4 some basics. But we've just finished up, like, two
5 different chapters on civil law and kind of how a trial
6 proceeds. And we've done the same thing with, you know,
7 criminal law. And then we're about to finish up the
8 Appellate Court chapters.

9 **Q. Okay. Let me shift gears to one of the negative**
10 **comments that were -- that was raised in the ballot --**
11 **ballot box survey. And I say it's negative, because that's**
12 **kind of like a -- it was a part of what I consider to be**
13 **something negative. But I'd like to solicit your comment**
14 **on it, that they said that you cry sometimes during cases.**
15 **Can you just elaborate on that a little bit for me?**

16 A. I'm trying to -- I'm trying to think. I know I
17 had a particular adoption hearing that was very difficult.
18 But I did not cry in court. Several weeks later, the judge
19 made a comment to me about having -- you know, apologizing
20 for ruling, but that he had to follow the law. And I do
21 remember that I was teary then, because it was a very
22 important client to me. But I also thought that the judge
23 followed the law, which is what he had to do.

24 I'm trying to remember another instance, and I
25 can't right now. That's the one that I remember. But that

1 wasn't during the hearing. It was, you know, several weeks
2 later when the judge said something about that case.

3 Q. Yeah. So and I'll just say this, when I read the
4 comment, I didn't view it as a negative. Because I'm
5 guilty. I have literally -- I shed tears before in -- in
6 proceedings. I don't know how we -- and I'm -- I mean, you
7 know, kudos to those who can separate their emotions. But
8 I can think of three specific incidents, and they just stay
9 with me, where I just could not separate the emotions from
10 what was happening. Because it impacts peoples' lives.

11 And so I -- I don't suggest that, that's what we
12 ought to do as a lawyers -- as lawyers, but I don't
13 particularly frown upon it. I think it's just part of our
14 human nature. And so the other part is -- you know, I've
15 seen jurors cry. And their emotions for me often ends up
16 in good verdicts. And so I'm delighted that they don't
17 separate themselves either.

18 A. Right.

19 CHAIRMAN SMITH: Any further questions?
20 Senator Young.

21 SENATOR YOUNG: Thank you, Mr. Chairman.
22 EXAMINATION BY SENATOR YOUNG:

23 Q. Ms. Merrill, thank you for your interest in
24 serving our state on the Circuit Court. I have just a
25 couple of comments and questions. One is you have a very

1 compelling story that you have written at the conclusion of
2 your PDQ.

3 A. Thank you.

4 Q. And I want to compliment you on that. It is very
5 compelling. And I think it speaks volumes about the type
6 of person you are, and your character.

7 A. Thank you. I appreciate that.

8 Q. And I think it also is consistent with many of
9 the comments that are reflected in the PDQ, as stated by
10 those that know you and responded in the -- our survey.

11 One thing I did notice, that I would like to ask
12 you to tell us more about, is it appears you wrote an
13 article for the South Carolina Law Review:
14 Multijurisdictional Practice of Law Under the Revised South
15 Carolina Rules of Professional Conduct.

16 A. Does it sound so exciting?

17 Q. What is that about?

18 A. The professional rules had changed right around
19 that time, slightly, and so it changed what you would do if
20 you were seeking to be admitted pro hac vice. And Nathan
21 Crystal was my advisor, and of course he's the guru on all
22 of that. So it was a rule that had changed recently. And
23 so it was the topic I chose to write on -- wrote on, and I
24 found it very interesting.

25 Q. Tell me -- I know that some others have asked you

1 about your civil practice. How much of your practice do
2 you think you've had to argue non-jury matters in Circuit
3 Court?

4 A. I've had three summary judgement hearings in the
5 last two months, perhaps. I have a case where -- that
6 involves an issue with that IRA, and I've had a -- excuse
7 me -- summary judgement motions in that. And I also had a
8 12(b)(6) -- I think that was more than a few months ago.
9 That one took a long time. So I've done those as well.

10 And I've argued several summary judgement
11 motions, both in state court and then by -- and then in
12 federal court. Argued and defended those.

13 Q. Thank you.

14 A. Thank you.

15 SENATOR SABB: Mr. Chairman, one more.

16 CHAIRMAN SMITH: Senator Sabb.

17 EXAMINATION BY SENATOR SABB:

18 Q. This may have been asked already. And if you
19 answered it, I apologize, but I'd ask you to indulge me and
20 answer it again. So how many cases in civil court have you
21 tried to verdict? Approximately.

22 A. Approximately four or five total to verdict.

23 Q. And that's within the last -- or that's within
24 your practice?

25 A. Since at least 2011 or '12.

1 Q. So within the last eight or nine years, four or
2 five cases to verdict?

3 A. Yes. For civil cases.

4 Q. Civil cases, yes. And then I was going to ask
5 about criminals -- criminal cases.

6 A. Criminal cases would at least be in the double-
7 digits as far as criminal defense. But I -- I can't of all
8 of them. But that -- that would be true since 2013. I
9 didn't do much criminal work when I was at McDonald
10 Patrick.

11 Q. Thank you.

12 A. Thank you.

13 CHAIRMAN SMITH: All right. Any further
14 questions?

15 (Hearing none.)

16 CHAIRMAN SMITH: All right. Ms. Merrill,
17 thank you so much. This concludes this portion of our
18 screening process. And I want to take this opportunity to
19 remind you that pursuant to the Commission's evaluative
20 criteria, the Commission expects candidates to follow the
21 spirit as well as the letter of the ethics law. And we
22 will view violations or the appearance of impropriety as
23 serious and potentially deserving of heavy weight in
24 screening deliberations.

25 As you know, the record will remain open

1 until the form release of the report of qualifications, and
2 you may be called back at such time if the need arises. I
3 thank you for offering for this position. And I thank you
4 for your service to the State of South Carolina.

5 MS. MERRILL: Thank you. I thank all of
6 you. I appreciate it.

7 CHAIRMAN SMITH: All right. Tell Roper I
8 said "hello."

9 MS. MERRILL: I will do it. Thank you.

10 (Off-the-record discussion.)

11 CHAIRMAN SMITH: Mr. Safran moves that we go
12 into executive session. All in favor say "aye."

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

14 CHAIRMAN SMITH: All opposed?

15 (Hearing none.)

16 CHAIRMAN SMITH: The ayes have it. We're in
17 executive session.

18 (Off the record from 4:54 p.m. to 6:15 p.m.)

19 CHAIRMAN SMITH: We're back on the record.

20 And by the same -- Ms. McIver moves that we lift the veil
21 and come out of executive session. All in favor say "aye."

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

23 CHAIRMAN SMITH: All opposed?

24 (Hearing none.)

25 CHAIRMAN SMITH: The ayes have it. And

1 while we were in executive session there was no decision
2 made and no votes taken. With that being said, Senator
3 Rankin, who is dutily paying attention here is -- moves
4 that we adjourn so he can go to the basketball game. All
5 in favor say "aye."

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

7 CHAIRMAN SMITH: All opposed?

8 (Hearing none.)

9 CHAIRMAN SMITH: We stand adjourned.

10 Thank you, guys.

11 (OFF THE RECORD AT 6:17 P.M.)

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CERTIFICATE OF REPORTER

I, PATRICIA G. BACHAND, COURT REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT CONSISTING OF 126 PAGES IS A TRUE, ACCURATE, AND COMPLETE RECORD TO THE BEST OF MY SKILL AND ABILITY.

I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE PARTIES CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY INTERESTED IN SAID CAUSE.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS 25TH DAY OF NOVEMBER 2019.



PATRICIA G. BACHAND, COURT REPORTER
MY COMMISSION EXPIRES MARCH 8, 2027

Exhibits	4:20 101:16	57:17	2011	4:54
	191118PB.	1800s	123:25	125:18
	JMSC_	48:25	2012	
	Merrill Exh 18	1987	110:11 114:8,25	5
	4:23 100:23	62:12,14 72:16	2013	
	101:18	1996	124:8	5
	1	66:17	2014	60:23
	8:10	1999	67:14	501
	11	81:19 91:16	2017	17:9 50:16
	43:23		73:4 105:17	65:10 70:7
	116		21	85:15 107:3
	103:22	2	83:1 103:22	59
	12		23	45:16
	106:18 123:25	2	47:7	
	12(b)(6)	8:13	25	6
	123:8	2,000	10:8,18 13:5,13	61:1
	12-year-old	43:5	21:1,10 24:19	60-
	30:17	2-19-	32:10 36:4,12	19:24
	12:45	107:25	109:10	607
	78:15	2-19-70	25-year	34:12
	12th	17:20 51:2	13:6	608
	89:19 96:13	70:20 85:25		34:12
	14	107:14	3	6:15
	42:23 43:12	2-19-70(E)		125:18
	80:2	18:9 51:13 71:6	3	6:17
	15	86:11	41:12	126:11
	23:13 63:25	20	30	6th
	80:5 93:18	62:15 63:5	89:16 118:5	89:14
	15th	81:19	300	
	19:4	2000	64:2	7
	16	67:1 91:15	35	
	47:7,13 101:13	2001	109:8	
	16th	66:22		
	87:21 91:20	2002	4	
	17	91:17,18		
	11:16 101:16	2007	4	
	176	63:15,22,23	41:15	7-year-old
	11:15	64:9,13 67:9	4,000	47:14 50:2
	18	2009	45:20	70(E)
	100:23 101:18	63:23	45	108:1
	1800-age	2010	76:1	70,000
		64:2		19:24

<p>77 65:10</p> <p>7:30 6:5</p> <hr/> <p style="text-align: center;">8</p> <hr/> <p>86 82:25</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p>90s 31:4</p> <p>91 28:24</p> <p>99 43:23</p> <hr/> <p style="text-align: center;">A</p> <hr/> <p>ability 11:12,25 13:8 17:4 21:16,25 25:1,7 26:17 44:19 46:9,17 54:19 65:18 69:23 84:18 85:2 88:16 92:13,15 106:14</p> <p>absolute 90:2</p> <p>absolutely 37:7,10,19 38:11 56:14,17</p> <p>abuse 31:3 96:24</p> <p>academia 54:9</p> <p>academic 17:4 46:16 69:22 85:2</p>	<p>106:14</p> <p>accepted 20:13</p> <p>accommodate 111:23 112:5</p> <p>accordance 34:12</p> <p>accurate 36:14 66:25 73:4</p> <p>act 34:23 35:17 36:2</p> <p>action 12:11 15:3 16:5 45:23 54:13</p> <p>actions 67:21</p> <p>actions 67:19</p> <p>active 63:11</p> <p>actual 82:6,10</p> <p>ad 15:5 31:1 67:10 105:16</p> <p>adapt 82:20</p> <p>add 73:1 83:15,19</p> <p>addition 28:14 104:4</p> <p>additional 11:16 43:24 44:18 65:10 83:1 103:23</p> <p>additionally 63:5 64:8</p> <p>address 12:17 14:3 27:24 47:5</p>	<p>adjourn 126:4</p> <p>adjourned 126:9</p> <p>administrative 68:5 84:8</p> <p>administrative-type 110:6</p> <p>admirable 56:22 59:1</p> <p>admire 89:18</p> <p>admissibility 24:8</p> <p>admitted 122:20</p> <p>adoption 120:17</p> <p>ADR 65:22,24</p> <p>adult 30:6 105:17</p> <p>adversarial 12:18</p> <p>adverse 67:23</p> <p>adversity 48:4</p> <p>advised 40:3</p> <p>advisor 122:21</p> <p>advocate 113:24</p> <p>affidavits 8:25 42:2 61:13 80:17 102:4</p> <p>affinity 65:22</p>	<p>afternoon 75:23 81:6</p> <p>age 9:25 42:18 62:3 81:11 102:21</p> <p>agency 114:13</p> <p>aggressive 15:19</p> <p>agree 13:10 50:8 75:8 92:24 98:9,12</p> <p>ahead 77:5 97:25 112:6</p> <p>Alafair 14:23</p> <p>Albert 100:14</p> <p>Alice 14:24</p> <p>allegedly 105:16</p> <p>allowed 107:23</p> <p>alternative 65:25 98:19</p> <p>amazing 104:2</p> <p>amendment 101:3,18</p> <p>amendments 7:25 41:6 60:14 100:23</p> <p>American 15:24</p> <p>amount 36:18 104:8</p> <p>analogy 91:25</p> <p>and/or</p>	<p>33:22</p> <p>anesthesiologist 50:4</p> <p>Anna 78:21</p> <p>Anne 116:12</p> <p>announced 63:16</p> <p>annual 64:13</p> <p>annually 64:11</p> <p>answering 89:17</p> <p>answers 52:25 74:22</p> <p>anticipate 105:20</p> <p>anybody's 53:7</p> <p>Anytime 73:20</p> <p>apologize 6:3 71:21 123:19</p> <p>apologizing 120:19</p> <p>appeal 46:5</p> <p>appeals 46:1 115:5,22, 23 119:1,3,5</p> <p>appearance 39:16 59:11 72:22 75:24 78:3 99:12 124:22</p> <p>appearances 22:13 33:12,15</p> <p>appeared</p>
--	---	---	---	---

11:8 19:3	Approximately	Assembly	31:1 33:11 43:2	76:18 78:8
appears	123:21,22	17:22,25 18:3	44:9 47:8 62:8	90:20 92:22
7:3 8:22 41:24	arbitration	51:4,7 70:22,25	66:13 68:20	99:17,20 115:6,
52:17 61:10	115:3	86:2,5 107:16,	88:2 103:13	9,24 125:2,19
80:14 87:17	area	19	104:2 110:21	backer
102:1 122:12	13:18 32:17	assessment	111:9,16,18	26:16
Appellate	44:11 52:17	13:3	attorneys	background
17:10 34:13	73:8 82:8 87:17	assist	14:1,8 20:19	30:9 93:12 96:7
50:16 70:8	93:13 103:14	10:4 42:22 62:7	35:11,18 56:24	104:14
85:15 107:4	areas	81:15 103:1	62:9 63:17 66:7,	backgrounds
111:5 120:8	69:7 112:10,19	assistance	10 68:12 74:21	26:12
applaud	arena	46:3	96:12	bad
90:10	32:12 44:14,15	assistant	audibly	22:12 25:20
applicable	71:22	87:5,21 91:15,	6:9,18 125:13,	55:16 57:8
88:14	arguably	16	22 126:6	114:23
application	22:3	associate	August	Baggett
8:20 12:10	argue	103:13	81:19 91:16	110:3
20:14 41:22	123:2	association	automobile	Bailey
61:8 80:12	argued	32:20	37:3	95:17
82:15 101:24	10:13,16	assume	aware	Baker
applies	123:10,12	43:5 56:12	17:8 18:4 20:25	30:15
88:25	arises	at-	40:13 50:14	balance
apply	39:21 59:15	16:3	51:8 70:5 71:1	112:1
24:8	78:9 99:17	at-large	85:13 86:6,8	balancing
applying	125:2	9:10 16:6 89:22	107:2,20 118:2	34:23 35:17
82:20	article	attempt	aye	36:2
appointed	122:13	76:9	6:8,9,17,18	ballot
15:1,5 28:9	articles	attempting	125:12,13,21,22	8:19 11:15,17
63:21 64:10	8:22 41:24	18:4 51:8 71:1	126:5,6	38:24 41:21
105:15	61:10 80:14	86:6 107:20	eyes	43:23,24 53:11
appointment	102:1	attendance	6:12,21 125:16,	61:7 65:10,11
20:7 21:22	Arts	52:6,9	25	74:17 80:11
71:19	76:5	attendant	<hr/>	82:25 83:1,12,
appointments	aspect	52:8	B	16 90:7 101:23
62:22	31:10 34:6 82:5	attended	<hr/>	103:22,23
appreciated	88:17 89:7 97:6	29:14 76:4	back	120:10,11
58:18	98:7	attention	6:4,15 19:19	bar
appreciation	aspects	43:17 90:22	20:5 30:10,12,	13:23 22:11
58:23	13:9 63:14	119:18 126:3	24 35:15 36:15	43:3 45:10,15
approached	aspire	attorney	37:20 39:21	48:1,20 53:13
49:14	24:14 56:11	11:23 14:20	58:22 59:15,21	54:14 55:24
			64:13 67:18	62:14 72:25

74:18 116:5	behalf	75:9,16 76:18	boys	built
barometer	18:3,5 51:7,9	77:5 81:19	30:20	48:25
53:23	56:5 70:25 71:2	87:23 93:17	branch	Bull
baseball	86:5,7 107:19,	104:13 109:3	84:18 120:3	67:1
22:11 117:6	21	112:8 120:15	branches	bunch
based	believer	black	82:16	37:22
9:21 22:7,23	65:25	13:22	Brandon	burden
42:14 61:24	beloved	blame	110:21 112:25	24:7
81:7 98:3	91:9	108:24	breaking	Burris
102:18 117:10	Ben	bloodline	16:3	109:18
basically	28:22	51:25	Brian	bush
16:8 37:21	bench	board	89:14	58:21
64:19 65:7 74:4	8:18 11:14 14:6	16:1,4,9 30:7,8	briefly	business
basics	29:20 35:3	77:10	86:20	49:12 63:4,13
120:4	37:15 41:20	boards	bright	118:11
basis	45:8 55:4 56:16	63:6	12:4	busy
16:2 36:1 47:1	57:3 61:6 73:13,	Bond	bring	36:8 64:3
56:4 66:20	14 80:10 83:6	95:12	12:15 52:2	Butch
basketball	84:3,12 101:22	book	57:22	19:15,16
126:4	103:20 104:5,9	21:21 91:11	brings	button
bat	106:7 112:23	books	106:19	9:19
22:11 57:9	Bernard	11:13 91:4	broadcast	
Battalion	25:4	boon	90:23	C
29:8	bias	36:7	Brodgon	
Baxley	13:16,25	bound	84:7 88:4	call
15:10,22	bid	17:9 50:15 70:6	Brogdon	6:1 21:14 92:12
Beasley	116:4	85:14 107:2	81:17	called
117:8 118:3	big	box	broken	39:21 59:15
Beaufort	36:22	8:19 11:15,17	98:5	66:17 78:8
63:7,25 64:6	bigger	38:24 41:21	brother	95:18 99:17
67:1 76:18	26:15,16 54:10	43:23,24 53:11	86:23 93:14	111:3 125:2
beautiful	93:24 110:22	61:7 65:10,11	brown	calls
52:13	biggest	74:17 80:11	23:17	35:13
beef	45:5 52:5 55:23	82:25 83:1,12,	brush	calmly
69:8	105:21	16 90:7 101:23	25:19	105:5
began	billboard	103:22,23	brushing	campaign
91:8	75:12,14	120:11	24:13	75:15
begin	bit	boxes	build	candidacy
9:17 91:7	19:19 30:24	116:7	57:17	17:14 27:15
beginning	32:9 36:9,10	boy	building	34:15 50:20
20:8	62:20 64:22	14:2	90:23	70:12 72:22
	68:1 71:18 73:7			85:19 106:22

107:8	Carol	31:18 32:12,24	24 8:3,7,16	Champ
candidate	95:12	33:3,4,16 36:19,	9:13,16 15:25	95:17
13:24 17:8	Carolina	25 37:2,12,16,	16:9 18:11,16	championship
18:13,14 25:19	10:13 17:10	22,24,25 38:6	28:4,6 29:13	116:25
26:19 40:1	18:8 39:24	43:3 44:12,13	30:8 32:3,5,7	chance
43:21 50:14	45:10,17 48:21	45:20 57:8	38:21,23 39:8,	53:19 95:12
51:17,18 59:20	50:16 51:12	64:16,17 65:24	10 40:2,20,25	96:19 104:23
70:6 71:10,11	59:18 70:7 71:5	67:13,16 68:6,	41:2,5,9,18	116:17
78:12 81:8 85:6,	78:10 85:15	13 73:5,16,19	42:10,13 51:15,	chance-
13 86:15 100:1	86:10 94:18	88:5,19,22 97:7	20 58:2 59:3,5,	98:19
107:2	99:19 107:4	103:6,14,17	21,25 60:6,11,	chances
candidate's	116:17,22	104:19,22	13,16,20 61:4,	96:3,10 97:1
9:21,23 21:15	122:13,15 125:4	109:4,10,14,15,	19,23 63:6,7,8	change
42:15,16 46:21	carries	21 110:11	71:8,12,13,16	57:7
61:25 62:1	56:21	112:2,16 113:1,	72:3,17 77:2,19,	changed
102:18,20	carry	20,22 120:14	21 78:13,17,21,	24:7 27:8,9,11
candidates	21:5	123:20 124:2,3,	22,25 79:2,8,13,	37:20 41:3
25:18,21 26:7,	case	4,5,6	15,18,22 80:1,8,	62:17 64:22
10,22 30:1	10:13 14:13	casing	22 81:4,7 84:22	79:16 122:18,
39:14 53:15	15:4 19:20	37:2	85:9 86:13,18,	19,22
59:9 74:14,17	21:18,22 22:10	catch	21 87:10,12	chaplain
78:1 81:1 99:10	23:24 25:12	74:2	90:13 92:20	90:21
124:20	32:22 34:1,20	catch-up	95:4,5 98:25	chapters
Cannady	35:1,6,7,8,14	82:21	99:3,22 100:2,9,	120:5,8
66:17	36:20,23 45:23	caused	15,18,24 101:2,	character
capability	58:6 64:7 65:1,	45:21	6,10,20 102:13	17:4 46:17
69:15	6,21 69:3 73:6	cautioned	106:8 108:3,8,	69:23 85:3
capable	83:5,18 88:13,	7:14 40:18 60:4	11 113:6 114:3	106:14 122:6
83:4	14,24 89:1	79:6 100:7	119:12,14	characteristics
capacity	92:13 106:4	CDVS	121:19,21	89:4
31:8,15 44:5	109:24 110:11,	23:12	123:15,16	characterization
67:2,3,11,12,14	16,20,24	cell	124:13,16	14:9,17
92:11	111:10,13	48:12	125:7,11,14,16,	charged
car	112:8,9,17	certified	19,23,25 126:7,	94:17
76:19 109:23	114:10 115:10	103:17	9	charges
110:8,11,16	116:2 119:8	chain	challenge	11:9,11 22:21
career	121:2 123:5	24:8 114:9	52:5,8 74:12	Charles
13:6 34:2 57:6,7	case-by-case	chair	105:21 106:2,5	113:18,21,22,
77:5 87:18	36:1	16:2 52:1	challenging	24,25
90:10 92:25	cases	chairman	74:11	check
94:8 103:5,6,8	11:5 12:20,23	6:1,10,12,15,19,	chambers	75:23
105:10	15:13 19:18,22	21 7:5,10,16,21,	98:14	

checking 53:24	89:15,19 91:19, 20,21 96:13	Clements' 54:15,16	commend 87:16 91:12	77:25 86:10 99:9 107:25 124:19
checks 8:23 41:25 61:11 80:15 102:2	103:1,3 104:8 105:2,21,24 106:24 112:12 121:24 123:2	Clemson 117:14	comment 25:20 38:24 45:13,14 46:24 56:10 83:7 120:13,19 121:4	commissions 63:6,10 77:11
Chief 84:8	circumstance 43:8	clerk 88:3 103:7 106:20	commenters 66:5	commitment 6:3 80:23 93:9
child 112:3 117:10	Citadel 30:11 47:23,24	clerked 24:18,23 43:1 84:7 103:9	comments 11:16,18 12:2 13:8,15 14:16 43:24,25 44:3, 23 46:25 47:2,5 50:8,10 53:1,2 65:11,12,16 70:1 83:1,3,12 90:6 99:5 103:23,24 104:6 105:1,9 106:17 120:10 121:25 122:9	committed 93:3
childhood 62:11	citation 115:25 116:2	clerking 58:5	Commission 7:19 8:11,14,17 9:3,5 11:15 17:13 20:25 39:14 40:4,23 41:13,16,19 42:5 43:22 44:10 50:19 57:25 59:8 60:9, 24 61:2,5,16 63:8 65:9 70:11, 15 78:1,19 79:11 80:3,6,9, 20 82:25 85:18 99:10 100:21 101:14,17,21 102:7 103:21 107:7 124:20	committee 16:25 26:24 27:4,7,13 42:7 46:14,19 52:16, 18,21 53:2,6 54:3 69:18,21, 25 72:25 74:18, 24 84:23 85:4,5 106:9,12,16 118:2
children 31:4	citizens 16:25 26:24 45:9 46:14,19 52:16 69:18,21, 25 72:25 74:17, 24 84:23 106:9, 12,16	clerkship 81:17	client 43:13 110:13, 18,22 115:18 120:22	committees 63:11
chose 122:23	city 23:3 117:3	client 43:13 110:13, 18,22 115:18 120:22	clients 10:21 43:10 94:16 104:3	common 10:12,17 20:21 21:5,13 33:6 34:1 35:7 82:11, 17 111:12
chosen 93:1	civil 11:4,5 22:2 32:10,12 43:3 44:14 45:17 69:11 71:20 82:9,22 83:13, 22 84:10 87:24, 25 88:1,2,11,19 91:14 92:2,3,13 93:12 103:13 106:21 109:6,9 110:7 112:16 119:5,25 120:5 123:1,20 124:3, 4	close 89:16	close 89:16	communicate 57:24
church 108:21 117:19, 22,25 118:2	claims 119:1	close 89:16	Code 17:9 18:8 50:15 51:12 70:6 71:5 85:14 86:10 107:3,25	community 12:9 46:20 49:15,17 54:13 83:8 105:10 106:22
church-going 117:23	class 72:15	closely 52:11	COHL 42:13,19 46:13, 22 51:15	commute 117:11
Cindy 19:7	Clements 48:9	Code 17:9 18:8 50:15 51:12 70:6 71:5 85:14 86:10 107:3,25	cold 22:18,22 24:2,5	commuted 76:17
circuit 9:10 10:4 11:19, 21 19:5 20:9 21:6 24:15 28:10,17,20 29:20 31:8,16, 19,24 32:1 37:8 38:8,9 42:22 43:9,21 44:14 56:21 62:7 64:10,18 68:3,4 69:9,12 70:2 71:19,20,23 73:9,13,14,23, 25 74:6 77:12 81:15 84:2,8,12, 19 87:16,22		collection 114:23	collection 114:23	companies 109:23 114:14
		college 76:22 108:23	combination 50:7 103:19	company 29:3,10 114:10
			Commission's 18:8 39:13 51:12 59:8 71:5	

compared 56:11	conclude 39:11	46:15 62:2	contract 23:12 31:1	correctly 119:7
compassionate 57:1	concludes 59:6 77:23 99:7	69:19 81:10	62:20 92:12	Cothran 43:1 56:2,7,13, 14 58:5
compelling 52:10 122:1,5	124:17	102:20 106:10	contribution 75:15	council 49:15 63:7 67:3, 7 68:15,17
complaint 43:11,14	conclusion 47:1 50:9 64:18	constraints 27:22	control 16:18	counsel 9:14 12:12 14:12 22:10 25:8 42:11 46:3 61:20 81:5 102:15 104:4,22
complaints 14:7 39:4	65:8 76:22	construction 49:4	conversation 74:15 98:15	count 118:12
completed 16:7 53:14	122:1	contact 18:2 51:6 70:24	conversations 58:12 91:7	counties 34:17
complex 65:2 88:5	condemnation 67:19,20	86:4 107:18	converted 49:4	county 15:24 16:1 19:6, 23 21:1 28:21 31:6 48:20 49:15 58:9 63:7 67:2,3,7 68:15, 17 69:17 87:2 105:15
compliance 8:21 41:23 61:9	condition 11:12	contacted 17:13 50:19	Conway 36:11	countywide 16:2
80:13 101:25	conduct 17:9 50:15 70:7	70:11 85:18	Cooper 88:6	couple 32:6,23 47:21 72:14 108:13 117:6 121:25
complicated 63:4 65:5	85:14 87:24	contacting 17:21,25 51:3	coordinator 30:22	court 9:10 10:4,11,12, 13,22 11:2,19, 22 15:2 16:19 17:10 20:10,18 21:6 22:13,20 24:15,19 25:6, 11 28:10,17,21 31:9,19,24 32:1 33:13,20 34:13,
compliment 122:4	107:3 122:15	70:21 86:1	copies 64:20	
complimentary 90:7	configuration 62:17	107:15	correct 7:21 12:14,24 16:10 19:1 20:2, 3 21:12 28:11, 15 29:1 33:24 38:11 40:25 56:6,17 58:13 60:11 66:18,20 67:4,11,17,18 74:7,9 79:13 87:3 90:19 92:15 100:25 108:20 114:21, 24 115:1 117:2 118:5,6,10	
concentrate 57:23	conflict 19:18 35:20	contained 9:21 11:17	corrected 12:25	
concern 44:4,18,21	conflicts 8:24 11:5 19:22	43:25 61:24		
45:12 46:23	34:10,15,21	65:11 81:8 83:2		
65:17 66:2,6	42:1 61:12	102:18 103:24		
83:23 84:20	80:16 102:3	contest 26:14		
104:7,9,25	111:14	contested 49:19		
concerned 47:10,11	confusing 115:18	context 76:11		
concerns 12:2,3,17 13:16	consent 9:23 42:16 62:1	continue 31:12 43:13		
14:3 18:12 44:6	81:9 102:20	85:5 91:24		
45:11 46:20	considerate 56:18,23	94:21 103:15		
51:16 65:16,17	consideration 9:11 97:11	117:23		
66:7 71:9 83:13,	consistent 55:11,13 122:8	continued 28:2 35:8 90:20		
15,16,21 86:14	Constitution 94:20	94:10 95:1		
108:4 111:17,25	constitutional 9:24 17:3 42:17	continues 112:9		
		continuing 29:19 87:15		

16,17 35:12,24 37:8 38:8 42:22 43:9,15,21 44:14 46:1 50:16 56:25 62:7,20,22,23 63:19 64:10,12, 13,18,20 68:3,4 69:9,12,13 70:2, 8 71:19,21,23 73:9,13,14,23, 25 74:6 77:12 81:15 82:9,11 83:22 84:10,14, 19 85:15 87:16 88:11,21 89:24 92:7 94:23 96:13,22 98:20 103:1,3,6,17 104:8,24 105:2, 15,21,24 106:24 107:4 110:12 111:3,5,14 112:12 114:9 115:3,5,22,23, 24 116:1,2 118:9,13,21 119:1 120:8,18 121:24 123:3, 11,12,20	courts 10:17 38:10 44:13 111:5 cousin 40:4 covered 31:13 crash 19:20 36:7 crashed 37:21 crazy 36:11 created 116:4 creating 48:20 crime 24:11 criminal 10:22 21:17,20 22:1,3,25 32:10 33:7,8,11 43:2 44:15 62:23 69:14 87:17 91:13 92:2,4 94:17 97:12 98:6 103:6,16 106:20 112:16 120:7 124:5,6,7, 9 criminals 98:5 124:5 criteria 8:19 17:1,3 39:14 41:21 46:15 59:8 61:7 69:19,22 78:1 80:11 84:24 85:1 89:21 99:9 101:23 106:10, 13 124:20	criticism 105:5,6 Crosby 6:24 7:4,7,8,11, 13,16,20,23 8:2, 6,12,15,16 9:4, 15,19,23 10:2 11:23 14:23 16:11,25 17:8 18:17 28:3 29:19 32:5 39:10,25 Crosby's 12:8 39:4 cross- examination 38:3 cry 120:14,18 121:15 Crystal 122:21 Cub 30:15 Culbertson 28:22 curious 114:10 current 92:16 curve 105:23 106:6 custody 24:9 cut 52:23 <hr/> D <hr/> damages 31:25 37:2,6,8	data 7:17 8:11 40:21 41:13 60:7,24 79:9 80:3 100:19 101:14, 18 date 17:18 50:24 70:17 85:23 107:12 116:1 daughter 47:14,16 76:15 daughters 76:4 day 13:3 16:19 19:6 23:1 31:7 55:18 66:3 72:10 93:21 111:21 112:24 day-to-day 20:11 days 35:2 36:15 deal 11:2 22:15,16 23:22,23 25:7 34:10 73:8 81:22 82:4 98:15 118:15 dealing 15:10 20:21 22:10,15 30:19 62:10 68:14,16 73:18 dealt 25:5 66:22 96:21 dean 61:23 62:4 69:17 70:4 71:8 119:20	death 106:4 112:17 Deberry 40:2,17,20,24 41:1,4,8,14,16, 18 42:6,16,20 43:22 44:1 46:14 50:14 51:21,23 58:3,4, 7 59:2,5,19 decide 47:22 decided 6:23 24:11 46:4 47:23,24 49:2, 16 57:7,12 decision 38:17,18 65:18, 21 89:2 126:1 decisions 38:14,15 66:3 88:16,18,21 declaratory 45:22 dedication 81:1 Dee 16:25 46:13,19 52:16 84:23 deed 15:18 deep 58:23 deep-dive 120:2 deeply 106:22 defamation 109:24 default 37:6
---	---	--	---	---

defendant 115:18	deposition 34:25 35:11,19, 24 111:12	diligence 106:23	disposition 11:10	drama 95:11
defendants 56:24 97:21 103:16 106:21	depositions 34:20	direct 68:1	dispute 32:24 65:25	drawn 74:10,13
defended 123:12	depth 27:2	direction 93:23	disqualifying 11:3,12	drew 119:17
defender 81:22 87:2,18, 22 91:18 92:7,9, 10,14 93:4 94:5 96:12 113:18	describe 14:21 15:23 113:23	directly 53:1	dissuade 15:20	drive 75:11
defender's 91:21	deserve 16:16,18	disagree 13:3 14:9,16 65:20	distinction 38:12	drug 96:13,22 98:20
defending 22:21	deserves 16:13,16	disagreement 66:23	distracted 17:23	DSS 31:6
defense 43:2 103:13 106:20 109:15, 20,21 124:7	deserving 39:17 59:12 78:4 99:13 124:23	disagreements 12:19 13:9 14:12	district 15:24 16:6 39:1	dual 10:6
deficiency 82:18	desire 93:11	disappointing 55:4	disturbed 75:10,16	Dudley 15:14
define 76:10	detail 43:18	disappoints 45:3	disturbs 66:8	due 66:12 68:24
definition 40:10	determined 117:9	disbursements 66:18,19	diverse 43:7 44:9,15,16	DUI 10:16
deliberations 39:18 59:12 78:5 99:14 124:24	devotionals 91:8	disclosed 67:13	documents 7:18 40:22 41:6, 10 60:8,17 79:10,16 100:20,25 116:8 119:17	DUIS 22:20 23:12
delight 90:2	Dickson 89:24 90:4	discord 57:16	Doe 14:24	Dukes 59:21,23,25 60:3,6,10,12,15, 19,22,25 61:3,4, 17,22 62:1,5 65:13 66:15,22 67:24 69:18,21 70:5 71:18 77:4, 7,17,22 78:11
delighted 98:22 121:16	difference 20:9,11,12,13	discovery 11:10 115:10	domestic 32:11 92:4,5 111:10	duly 7:13 40:17 60:4 79:5 100:6
demand 22:3	differently 97:15	discussed 10:6,7	door 27:23 62:19	duties 28:14
demeanor 11:21 16:12 39:4 44:2 105:2, 4	difficult 12:4 47:9 48:5 75:19 120:17	discussing 28:23	double- 124:6	dutifully 126:3
Department 16:5	difficulty 76:7	discussion 27:17 52:20 125:10	doubt 12:7	
	digits 124:7	discussions 12:20 14:12	downstairs 91:20	
	dignity 16:22 39:5	dismissed 67:16	dozens 30:19,20	
		displays 56:15,18		

E	<p>effectively 52:14 82:17 83:9,24 89:1</p> <p>effort 12:23</p> <p>elaborate 31:21 120:15</p> <p>elected 16:2 55:4 90:20 105:22</p> <p>electing 26:10 55:22</p> <p>election 9:1 42:3 49:20 61:14 75:4,8,11, 18 80:18 102:5</p> <p>elementary 30:13</p> <p>Elise 7:8</p> <p>Elkay 14:24</p> <p>emergency 34:19</p> <p>emotions 121:7,9,15</p> <p>employees 64:6 109:25</p> <p>emulate 24:14,17 89:4</p> <p>encapsulation 117:9</p> <p>encouraged 48:18</p> <p>end 13:2 45:23</p> <p>ended 15:10 93:23</p> <p>endorse 25:21</p> <p>endorsed</p>	<p>27:12</p> <p>ends 121:15</p> <p>enforcement 104:21 116:25</p> <p>enjoy 73:10,12,14,17, 18,21 74:5 77:5 89:9,13 94:3 118:14 119:19</p> <p>enjoyed 12:1 90:2 119:16</p> <p>entail 120:1</p> <p>entered 62:14 93:25</p> <p>enthralled 54:9</p> <p>entire 62:10 94:8 96:16 103:5</p> <p>equity 9:8 10:8 14:6 19:6 20:16 21:5 28:14 30:24,25 31:15 34:10 36:6 37:16 63:16,22,24 64:3,8,25 67:15 68:2 77:12</p> <p>essentially 64:14</p> <p>estate 15:3 19:20 36:7 37:20 105:18</p> <p>estate's 105:13</p> <p>estimate 36:12</p> <p>ethic 46:21 49:24</p>	<p>82:19 106:23</p> <p>ethical 17:1 46:16 69:22 85:2 106:13</p> <p>ethics 8:21 39:15 41:23 59:10 61:9 78:2 80:13 99:11 101:25 124:21</p> <p>evaluative 8:19 17:2 39:13 41:21 46:15 59:8 61:7 69:19 78:1 80:11 84:24 85:1 99:9 101:23 106:10, 13 124:19</p> <p>event 35:11</p> <p>eventually 48:8 62:23,24</p> <p>everybody's 6:6 40:13</p> <p>evidence 82:14 96:19</p> <p>evidentiary 38:15</p> <p>evoke 91:25</p> <p>evolved 64:4</p> <p>exact 66:2</p> <p>exam 116:4,5</p> <p>EXAMINATIO N 10:1 18:18 28:7 29:17 32:7 42:19 51:22</p>	<p>62:4 71:17 72:5 81:12 86:22 87:13 90:15 92:21 95:6 102:23 108:11 113:8 114:4 119:15 121:22 123:17</p> <p>examined 26:12</p> <p>examples 84:15 96:18</p> <p>excellent 11:21,23 44:2 73:23 77:6,16 85:7 103:10</p> <p>exception 44:24 45:14 46:25 53:8</p> <p>exceptional 54:20</p> <p>excess 43:4 45:20</p> <p>exchange 26:24 27:13</p> <p>exciting 122:16</p> <p>exclusively 11:4</p> <p>excuse 115:15 123:6</p> <p>excused 40:1 59:20 78:12 100:1</p> <p>executive 6:8,13,17,22 125:12,17,21 126:1</p> <p>exemplary 83:9</p> <p>exhibit 8:8,10,13 41:11,</p>
----------	--	--	--	--

<p>12,15 60:17,21, 23 61:1 80:2,5 100:23 101:13, 16,18</p> <p>exhibits 79:19,23 101:7, 11</p> <p>exist 46:20</p> <p>exiting 108:25</p> <p>expect 45:2 119:19</p> <p>expectation 97:23 98:13</p> <p>expecting 97:25</p> <p>expects 39:14 59:9 78:1 99:10 124:20</p> <p>expensive 36:22</p> <p>experience 10:3,22 11:8,13, 20 12:9 13:13 17:2 20:15 21:3, 16 22:7,23 25:16 42:21,24, 25 43:7,17 44:4, 8,10 45:4 46:18 49:18 52:19 62:6 67:25 68:2, 10 69:23 73:3 81:14,16 82:9, 11 83:13,22 84:3,11 85:3 87:16 88:2,9 91:13 92:2 102:25 103:2,7, 12,19 104:8,11, 12,13 106:3,5, 15,19 109:11</p>	<p>113:23</p> <p>experienced 10:10 68:13,16 73:7</p> <p>experiences 10:15 29:24 30:3,5 44:16 55:25 58:24 81:23</p> <p>expertise 11:20</p> <p>explain 15:14 105:14</p> <p>exposed 104:17,18</p> <p>express 58:18 83:12</p> <p>expressed 12:2 13:15 44:3 65:16 104:6</p> <p>extent 15:6 20:25</p> <p>extremely 56:22 58:16 103:25 104:3</p> <p>eye 76:6</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>fabulous 11:20</p> <p>face 52:14</p> <p>Facebook 95:24</p> <p>faced 106:4</p> <p>fact 37:18 38:2 58:24 64:16 119:2</p>	<p>fact- 38:17</p> <p>fact-finding 37:1</p> <p>facts 82:21 88:12,13</p> <p>fair 9:11 11:25 19:10 36:18 45:1 54:10 56:18,22 65:14 66:11,13 68:24 83:5 92:4,5 97:24 98:17 105:7 118:18</p> <p>fairly 26:23 27:16 31:20 45:9 63:3, 25 64:4,7 110:10</p> <p>fairness 43:18 98:3,7 104:1 106:23</p> <p>fall 33:1 84:15 119:23</p> <p>Fame 95:18</p> <p>familiar 17:20,24 33:18 34:4 51:2,5 70:20 82:14 85:25 86:3 95:15 107:14 111:24 112:13, 15</p> <p>family 10:11 24:19 25:6 34:17 40:10,11 52:4 57:5,6,14 62:9, 20,22 63:19</p>	<p>76:12 92:7 111:25 112:1,2 118:4,5,9,11,13, 21</p> <p>fan 116:17,18 117:14</p> <p>fantastic 56:3</p> <p>father 47:8 62:8 76:7</p> <p>father's 47:15</p> <p>favor 6:8,17 66:13 125:12,21 126:5</p> <p>favorite 91:1</p> <p>federal 15:13 115:3 123:12</p> <p>feel 10:2,22 16:11 27:14,23 42:20 46:7,8 52:20 62:5 81:13 82:21 89:6 96:25 97:10,14, 16,19 98:2 102:24</p> <p>feeling 102:14</p> <p>fell 63:24</p> <p>felt 52:22 94:19 98:10</p> <p>fence 92:25</p> <p>fewer 22:2</p>	<p>field 54:20</p> <p>figure 46:10 90:24 113:12</p> <p>figures 117:19</p> <p>file 12:11 88:11 116:6</p> <p>filed 8:25 16:5 42:2 43:11 66:16,22 67:1 80:17 102:4 105:12,17</p> <p>files 43:5</p> <p>filing 36:21</p> <p>filings 12:24</p> <p>fill 92:6 102:11</p> <p>final 50:3</p> <p>Finally 25:18</p> <p>financial 49:7</p> <p>find 65:14 114:16</p> <p>finding 37:1 38:18</p> <p>findings 37:17 38:2</p> <p>fine 12:9</p> <p>fingers 30:16</p> <p>finish 117:11 120:7</p>
---	--	--	--	--

<p>finished 118:1 120:4</p> <p>firm 7:9 11:4 22:9,10 62:16,17 63:3 66:23 75:14,22 97:5 103:13,15 105:7 108:20,25 113:14 116:13</p> <p>firms 62:24 77:9</p> <p>fitness 17:1 46:16 69:22 85:2 106:13</p> <p>fits 89:20</p> <p>flexible 111:18</p> <p>flies 20:6</p> <p>Florence 47:9 48:1,3 88:7 89:25 113:1</p> <p>Florence-darlington 49:13</p> <p>Florida 95:19</p> <p>flourish 93:20</p> <p>focused 8:18 11:4 41:20 55:17 61:6 80:10 101:22</p> <p>folks 52:14 53:24 81:23 94:14,23 96:19,21 97:1</p> <p>folks' 94:4</p>	<p>Folkston 95:19</p> <p>follow 39:14 59:9 78:2 99:4,10 120:20 124:20</p> <p>food 52:2,4</p> <p>foot 99:6</p> <p>football 95:15,16 116:18</p> <p>force 97:18</p> <p>foreclose 118:16</p> <p>foreclosure 15:3,9,17,20 67:15</p> <p>foreclosures 36:18 37:22 64:1 65:4</p> <p>forever 23:16 93:5 113:1 117:19</p> <p>forgive 23:2 28:8</p> <p>form 75:7 125:1</p> <p>formal 27:19 39:20 59:14 78:7 99:16</p> <p>fortunate 82:1</p> <p>Fortunately 29:13</p> <p>forum 6:5</p> <p>forward 14:14 20:16</p>	<p>22:14 37:15 57:4 97:19 99:5</p> <p>foster 104:23</p> <p>found 17:9 46:2,14 49:19 50:15 69:21 70:7 85:14 94:13 107:3 122:24</p> <p>foundation 22:25 103:8</p> <p>frame 31:23</p> <p>frank 27:17</p> <p>French 95:10</p> <p>freshman 76:22</p> <p>friend 30:15 56:4 89:15</p> <p>friends 55:3 62:9 82:2 89:16</p> <p>front 10:16,17 11:8 33:4 73:3,16 74:22 84:5,12 89:9,23 90:3</p> <p>frown 121:13</p> <p>full 52:20 87:21 102:8</p> <p>full-time 92:9,10</p> <p>fully 27:15</p> <p>fun 73:21 74:12</p>	<p>funny 35:3</p> <p>future 118:13,16</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>gain 11:14</p> <p>game 126:4</p> <p>gathering 52:4</p> <p>gave 52:25 58:17,19</p> <p>gears 120:9</p> <p>general 10:12,21 11:9 17:21,25 18:3 20:23 22:21 28:17 31:17 33:8,10,17,20 34:16 35:8,23 51:3,7 64:19 69:13 70:21,25 71:22 84:13 86:1,5 88:20 93:16 107:15,19 111:8,11 118:15</p> <p>generally 32:13 33:8 74:25</p> <p>George 90:18</p> <p>Georgetown 9:8 10:9 15:24, 25 19:23 21:1 23:3 28:21 30:20 36:5 39:1</p> <p>Georgia 95:15,16,18,19,</p>	<p>21</p> <p>get along 13:19</p> <p>Gibbons 89:14</p> <p>gift 54:20</p> <p>give 15:18 55:16 56:12 66:13 97:1 98:11 114:17</p> <p>glad 18:21</p> <p>glowing 117:12,20</p> <p>God 49:10 57:9</p> <p>Golden 68:18</p> <p>Goldilocks 21:14 91:25</p> <p>good 7:10 14:2 18:19, 20 22:6 24:25 25:15,20,23 26:13 27:3 32:18 40:2 42:13 49:7 52:2, 22 55:11 58:8 61:19 72:10 73:16 76:6,7 78:23 81:6 83:5 85:7 90:9 92:22, 25 94:10 99:22 102:14 105:6 110:18 113:17 121:16</p> <p>government 63:12 120:3</p> <p>Governor's 76:4</p>
--	--	---	---	--

<p>grace 49:10 57:9</p> <p>grad 28:24</p> <p>grade 30:14</p> <p>graduated 47:23,25 62:12</p> <p>graduating 72:15</p> <p>graduation 76:13</p> <p>Graham 14:24 19:7</p> <p>grandfather 90:18,24</p> <p>granted 22:9,23</p> <p>gray 73:2</p> <p>great 11:2 48:20,23 49:18 52:23,25 56:3,15 65:24 70:1 72:19 73:11 74:4 82:2 90:23 117:17</p> <p>greatest 55:20</p> <p>Greenville 76:4,17,18 105:15</p> <p>Greenwood 113:13 117:3</p> <p>grew 95:20 113:13</p> <p>Gross 113:18</p> <p>group 14:22 30:15 70:14</p>	<p>groups 68:14 73:17</p> <p>growing 91:14</p> <p>guardian 15:5 31:1 67:10, 18,19 105:16</p> <p>guess 7:1 13:2,12 38:11 64:9 83:19 93:6 97:8 109:8 111:2</p> <p>guest 7:2,6,8 100:11, 12</p> <p>guidelines 18:8 51:12 71:5 86:10 107:25</p> <p>guilty 33:22 71:24 121:5</p> <p>guru 122:21</p> <p>guy 12:4</p> <p>guys 30:22 48:22 126:10</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>hac 122:20</p> <p>hair 23:17</p> <p>hairs 73:2</p> <p>half 64:9,24 68:8 69:2 73:12,21 74:3</p>	<p>Hall 95:17</p> <p>Hallelujah 117:16</p> <p>hamstring 35:10</p> <p>hand 7:11 40:14 41:10 60:1 79:3 97:8 100:3</p> <p>handed 75:23</p> <p>handicap 11:3</p> <p>handle 10:24 32:13 33:22 34:14,21 65:1,3,8 71:20 88:4 90:1 98:17 111:14 112:4, 14,15</p> <p>handled 11:9,10 43:3,4,6 45:19 64:25 87:25 88:1 112:17</p> <p>handling 68:9</p> <p>happen 20:23,24 35:1 55:2</p> <p>happened 15:21</p> <p>happening 121:10</p> <p>happy 13:5 57:20 68:11</p> <p>hard 38:17 47:5,9 49:20 68:25 82:7 103:25</p>	<p>110:17 118:17</p> <p>hardworking 65:15 117:9</p> <p>harsh 97:5</p> <p>hat 10:6</p> <p>hate 100:9</p> <p>hats 21:3</p> <p>Hawthorne 113:10</p> <p>he'll 12:11</p> <p>head 114:20</p> <p>heads-up 98:11</p> <p>health 17:4 46:17 69:20 76:15 84:25 106:11</p> <p>healthy 26:25 27:1,12 52:21 53:23 57:20</p> <p>hear 65:21 68:11 76:11 89:1 98:22 105:5</p> <p>heard 13:7 16:17 19:18 34:18 36:5 37:14 39:3 68:6 112:9</p> <p>hearing 6:11,20 31:25 32:4 34:19 35:12 36:17,18, 24,25 37:2,6,9, 11,23 39:9 59:4</p>	<p>68:13 69:3 77:20 99:2 108:10 120:17 121:1 124:15 125:15,24 126:8</p> <p>hearings 20:22 46:2 82:10 104:16 123:4</p> <p>heart 54:19</p> <p>heartfelt 58:16</p> <p>heaviness 54:24</p> <p>heavy 39:17 59:12 78:4 99:13 124:23</p> <p>held 39:6 89:24</p> <p>helped 19:22</p> <p>helping 30:22 94:13</p> <p>Hembree 23:11</p> <p>Hemphill 109:22</p> <p>Hempy 116:12</p> <p>Hey 35:18 78:22 100:15</p> <p>hierarchy 35:9</p> <p>high 39:7 43:19 54:22 57:4 64:1 95:10 104:13</p> <p>highlight 72:14</p>
--	---	---	---	---

highly 49:8 91:11	Horry 19:6,14,25 31:5	93:12	in- 27:1	incredible 104:4
Highway 48:21	hours 19:5,15	identity 44:20	in-depth 58:17	incredibly 74:10
Hinson 102:10,14,17,23 106:8,25 108:3	house 48:25 49:7 57:17 75:5	III 60:3,25 61:3	inability 13:19	individual 15:11 31:18 56:3 58:25
hired 48:9	housekeeping 17:7 50:13 70:3 85:10,12 107:1	ill 53:7	incapacitated 105:16	individually 15:8
history 56:9 82:6 108:14,15	Howe 19:7 36:11	immerse 88:11	inception 96:17	individuals 15:20
hit 95:24	Huffman 88:6	impacts 121:10	incident 47:22	indulge 123:19
HOAS 32:14,22	huge 116:18	impartial 11:25 44:19 45:1 54:11	incidents 121:8	indulgence 6:6 7:2 39:23 59:17
hold 28:16 43:18	human 121:14	impartiality 43:18 45:4	inclined 13:25	Industries 14:25
home 6:4 56:20 58:22	Humanity 76:5	impartially 26:23 45:9	include 109:9 119:3	ineffective 46:3
homeowner 32:19	humbled 81:2	importance 88:22	included 8:19 9:22 41:21 42:15 61:7,25 69:25 80:11 81:9 101:23 102:19 106:17	infamous 7:1
hometown 89:22	humor 83:10	important 13:18 16:19 54:5 55:5,10 74:23,25 80:24 82:5 88:17,18 89:7 93:13 94:24 104:10 120:22	includes 20:17 105:5 116:10	infamously 7:1
honest 47:18 55:1 94:2	hundred 38:4	impressed 89:25 90:4 108:18	including 12:3 17:20 46:15 51:2 70:20 85:25 103:14 107:14 109:8	Infinger 66:21
Honorable 7:13 8:12,14 9:23 60:3,25 61:2	hundreds 68:6,7	impression 90:9	incompetent 46:3	influence 29:24 30:3 55:23
honored 81:2	husband 100:14 116:20 117:12,17	impressive 106:19 108:14	incorporate 54:12	influenced 56:1 82:3
hope 9:11 25:9,14,16 26:17,22 72:8	Hyman 32:23	impropriety 39:16 59:11 75:24 78:4 99:12 124:22	incorporated 18:14 51:18 54:2 71:11 86:16 108:6	inherited 110:19
hopeful 115:6	I	improvement 75:3		injuries 37:3
hopes 12:14	iconic 90:24			injury 32:25 37:3
horizon 93:11	idea 48:15			inquire 95:24
	identified			inquiry 8:18 41:20 61:6

80:10 95:8 101:22 instance 83:21 120:24 insurance 109:21,23 114:10,13 integrity 43:18 45:7 57:3 intelligent 65:14 103:25 intends 105:19 intent 17:12,16 50:18, 22 70:10,16 85:17,21 107:6, 10 interact 54:19 interest 8:24 29:19 42:1 61:12 80:16 87:14 102:3 121:23 interested 48:16 64:21 interesting 105:25 109:24 110:10 122:24 internal 66:23 intervene 18:4 51:8 71:1 86:6 107:20 interview 9:7 45:15 introduce 7:5 78:18 100:11,14 introductory 70:13	investigated 8:17 41:19 61:5 80:9 101:21 investigation 18:13 51:17 71:10 86:15 108:5 invoke 91:7 invoking 90:22 involve 32:25 involved 15:17 22:11 26:20 30:8 33:17 36:20 45:25 66:17 106:22 110:8 112:8 114:11,19 involvement 15:6 30:19 involves 123:6 involving 15:13,16 32:23 88:5,6 IRA 123:6 issue 10:23 11:6 24:9 26:10 37:14 45:21,24 67:23 89:2 110:13 123:6 issued 64:11 issues 6:4 11:10 12:25 23:22 24:3,9 38:8 50:13 54:10 66:18	70:3 76:15 85:10 96:4,24 118:15 IV 40:17 41:14,17 <hr/> J <hr/> jail 15:22 James 84:7,9 Jane 100:6 101:14, 17,19 103:25 January 40:5 105:13 Jessica 57:23 JMSC 25:20 52:1 job 21:22 25:15,23 57:13 58:8 63:24,25 69:5, 10 73:11 74:4 77:14 82:5 94:3, 11,14,15 jobs 48:6 49:12,20 Joe 7:13 8:12,14 9:23 11:23 12:4 13:17 14:23 John 14:24 joy 94:13 judge 6:24 7:4,7,11, 16,20,23 8:2,6, 16 9:4,15,19	10:2,4,20 11:15, 19,22 13:17 14:18 15:10,22 16:12,21,25 17:7 18:17 20:10 23:3 24:16,19,20 25:4,5 28:3,8, 10,18,20,21,22 29:18,25 30:4 31:9,16,19,24 32:1,5,23 36:10 39:4,10,25 42:22 43:1 45:2 54:23 56:2,7,12, 13,14,20 58:5 59:21,23,25 60:6,10,12,15, 19,22 61:4,17, 20,22 62:1,5,7 64:10 65:9,13 66:5,15 67:8,24 68:5 69:7,9,16, 18,21 70:1,2,5 71:18,19,21,23 72:6 73:9,23 74:1,21,22 75:12,13,21 77:4,7,13,16,17, 22 78:11 81:15, 17 84:2,7,8,9,13 85:8 87:16 88:3 89:7,14,20,21, 22,24 90:4 94:19,20 97:14, 21 103:1,4,9 105:5,6,21 106:24 111:1 112:12 115:8 118:13 120:18, 22 121:2 judge's 22:4	judged 26:17 judgement 45:23 83:9 123:4,7,10 judges 11:8 24:14 25:3, 4 44:13 54:5,8 55:15,22 56:1 75:4,8,11,18 83:20 84:5 89:3, 9 94:19 97:14 98:10,13 judicial 8:10,13,16 11:21 14:7 17:5, 8,9 19:4 25:13 26:10 41:12,15, 18 44:5 46:18 50:14,15 60:23 61:1,4 65:23 69:23 70:1,6,7 80:2,5,8 81:17 83:10 85:3,13, 14 88:3,17 101:13,16,20 103:7 106:15,20 107:2,3 119:24 120:1,3 judiciary 25:17 26:13,21 June 91:17 junior 29:9 30:10 juries 10:16 23:22 44:12 jurisdiction 11:5 jurist 39:7 65:13
--	---	---	--	--

103:10	knowledgeable	14 59:10 62:10,	learn	12,20 124:21
jurors	11:24	12,18 63:3,13,	73:6 88:12,24,	letters
121:15	kudos	14 65:23 66:23	25 103:10	116:9
jury	117:21 121:7	72:15 75:14,21,	112:24	letting
33:4,22 34:1		22 76:3 78:2	learned	100:13 102:9
37:1,12 38:12,	L	82:21 87:17	63:12,14	level
17 44:25 45:2		88:13,25 98:3,6	learning	23:13
64:15 65:6 68:9	La	99:11 103:7	99:3 105:23	liberties
73:17,18 104:16	88:6	104:21 106:20	106:6 112:22	119:25
115:8 118:7,8,9,	lack	108:15,16,19,25	leave	license
14	46:21 52:9 74:1	112:10,14,22	35:20 57:12	92:12
justice	83:13	116:4,25 117:11	111:21	life
16:4 55:19 84:7,	lacked	118:5,11 120:5,	Lee	29:24 30:3,5
9 104:1	72:24	7,20,23 122:13,	108:20,21	48:11 81:23
justices	lacking	14 124:21	left	82:3
25:11 64:13	13:18 46:7,8	laws	23:19	lifelong
juvenile	ladies	8:21 41:23 61:9	legal	56:16
92:6	48:22	80:13 101:25	10:2 12:9 13:6	lifetime
	Lajeau	lawsuit	19:1 42:20 54:4	30:6
K	14:23	66:16 67:1,4,20	62:5,9 81:13	lift
	Lander	105:12,14	102:24	6:16 125:20
kind	119:18	lawsuits	legislator	likewise
13:21 21:14	large	14:19,22 67:9	17:17 50:23	33:25 37:11
36:8 39:3 54:7	11:4 16:4 19:24	lawyer	70:17 85:22	limitations
65:1 68:1 69:8	26:10 64:5,7	44:1 54:22	107:11	17:21 51:3
91:5 93:5	larger	81:18,20 82:6,	Legislature	70:21 86:1
109:16 110:19	94:6	14 83:4,8 85:7	24:11	107:15
115:11 116:7	Larin	106:18,20,21	lend	limited
118:22,24	14:24	lawyers	43:19,20	10:22
120:2,3,5,12	late	12:19 13:19	lengths	lines
kinds	6:3 7:1 19:15	39:2 56:1 90:9	76:11	48:7
84:14 104:23	22:11 31:4	112:1 121:12	lesson	lis
118:15	103:9	lead	99:3	105:17
knew	law	22:10	letter	list
24:22 48:16	11:24 12:4,5,10,	leader	17:12,16 39:15	14:20 119:2,6
112:6	11 17:24 18:24	30:14	48:11 50:18,22	listed
knowing	24:20,21,23	leading	54:15,16,18	119:9
23:2 58:12 66:1	37:17 38:2	56:10	56:5 59:10	listen
knowledge	39:15 42:24	league	70:10,13,16	58:9
12:3,10 25:7,16	44:11 45:12	117:5	78:2 85:17,21	listened
45:11,25 46:7	47:25 48:2	leaning	97:25 99:11	52:10
49:25	49:12,25 57:5,6,	98:1	107:6,10 117:7,	

<p>listening 21:23 97:10</p> <p>litem 15:5 31:1 67:10 105:16</p> <p>literally 121:5</p> <p>litigant 68:21</p> <p>litigants 14:1 20:19 25:8 39:5 44:20 45:8 56:24 66:10 94:22</p> <p>litigated 45:22</p> <p>litigation 65:2 88:5 109:7, 9 110:8</p> <p>litigator 103:5</p> <p>lives 121:10</p> <p>LLC 62:23</p> <p>LLCS 62:25</p> <p>load 19:20 64:7</p> <p>loaded 24:18 25:25</p> <p>loan 49:4</p> <p>local 25:4 27:4 66:6</p> <p>long 15:8 20:4 21:19 23:16 24:1 27:19,20 31:5, 11 47:4 48:8 57:15 62:13 93:17 96:22</p>	<p>111:19,20 123:9</p> <p>long-planned 35:11</p> <p>long-term 93:9</p> <p>long-time 89:15</p> <p>longer 77:22</p> <p>looked 47:18 118:4</p> <p>lose 54:23</p> <p>lost 47:8</p> <p>lot 32:10,19 37:3 38:9 63:12,13, 14 69:14 73:2 75:2 76:8,19 81:23 82:2 90:25 91:2,3 96:6,7 98:3,13 103:12 112:18 115:20</p> <p>loud 62:13</p> <p>love 24:20 52:6 55:19 73:15 112:21 117:8</p> <p>loved 91:3</p> <p>loves 19:14</p> <p>low 36:12 62:21 64:1 69:17</p> <p>lower 35:12</p> <p>luckily 110:17</p>	<p>Lucky 70:2</p> <p>lucrative 32:17</p> <p>Luke 51:23</p> <p>lunch 61:18 77:22 78:14</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>mad 45:14</p> <p>made 10:17 28:19 47:2 48:23 49:5 50:10 57:10 66:3 90:8 101:4 105:9 116:1 117:17,18 120:19 126:2</p> <p>magistrate 23:12 33:8</p> <p>magistrates 10:11 11:2 21:22 22:20 33:13 44:13</p> <p>maiden 113:10,11,15</p> <p>maintained 57:3</p> <p>maintaining 45:7 92:13</p> <p>majority 14:15</p> <p>make 7:25 9:2,17 11:19,21 12:23 13:1,10 14:13 15:18 22:13 37:17 38:2</p>	<p>41:11 42:4 45:8 46:10 57:3,14 60:13 61:15 65:18,21 66:2,3, 9 77:16 79:23 80:19 81:24 83:10 85:7 88:16 89:1 96:20 98:15 101:11 102:6 103:3 104:4 108:13 110:15</p> <p>makes 97:13 103:19</p> <p>makeup 27:7</p> <p>making 8:4 22:13 38:14 43:20 79:19 88:17 101:7 106:1</p> <p>MALDONADO 9:16,20 10:1 16:24 17:6 18:11</p> <p>malpractice 110:20</p> <p>maltreatment 14:8</p> <p>man 25:5 62:21</p> <p>manage 118:22</p> <p>manning 19:16 88:7</p> <p>Marie 116:12</p> <p>Maring 24:19,20</p> <p>Marion 89:22 93:15 99:20</p>	<p>marital 57:16</p> <p>mark 8:8 15:13 60:21</p> <p>market 37:20</p> <p>marketing 113:17</p> <p>marriage 57:20</p> <p>married 48:24 49:3</p> <p>MARVIN 60:3,25 61:3</p> <p>master 9:8 10:8 14:6 19:6 20:10,15 21:2,4,7,8 24:15 28:14 30:23,25 31:15 32:12 34:9 36:6 37:13, 16 63:15,22,24 64:3,8,25 65:1 67:14 68:2 69:10 73:11 77:12</p> <p>masterful 58:23</p> <p>masters 20:1 36:17 72:21</p> <p>materialize 93:22</p> <p>materials 8:20 41:22 61:8 80:12 101:24</p> <p>matter 22:22 24:2,3 35:5 38:8</p> <p>matters 6:23 20:20 31:21 69:14</p>
---	--	---	---	--

71:20 87:24,25 88:1 123:2 maturity 46:21 49:24 mayor 113:2,3 Mcdonald 109:17,18 124:9 Mciver 125:20 meaningful 80:25 means 30:18 90:25 98:6 106:6 med-mal 110:1,6 media 68:16 mediation 22:2 109:9,12 115:11 mediator 103:18 medical 110:19 meet 40:10 51:23 meeting 6:2 52:23 117:10 meets 9:23 42:16 62:1 72:9 81:9 102:20 Meetze 78:20,24 79:1,2, 5,8,12,14,17,21 80:4,7,8,21 81:4,9,13 82:24 84:24 85:4,12 86:16,19 87:14	90:16,17 92:22 93:21 99:6,21, 24 Meetze's 81:8 member 16:1 40:10,11 63:9 67:3 members 6:9,18 17:13,21, 25 18:3 40:3 49:14 50:19 51:3,7 54:3 70:11,21,25 85:18 86:1,5 107:7,15,19 125:13,22 126:6 mental 17:4 46:17 69:20 84:25 106:11 mention 89:17 mentioned 21:13 28:9 54:15 90:25 98:21 112:25 Merit 8:10,13,17 41:12,15,19 60:23 61:1,5 80:2,5,9 101:13, 16,21 merits 26:17 Merrill 100:2,6,13,14, 17,18,22 101:1, 5,9,15,17,19,20 102:8,16,20,24 103:21 104:2 105:11,20	106:9,12,19 108:5,12 113:9, 14 114:5 119:16 121:23 124:16 125:5,9 message 48:12 met 48:4 72:8 82:2 method 75:17 76:1 metric 53:23 Metz 90:16 Michael 86:25 87:5 microphone 9:17 middle 111:22 miles 76:19 mind 20:11 21:4,14 68:22 93:25 minds 84:21 mine 30:16 55:3 56:4 88:15 89:15 mingle 54:6 minor 31:25 117:5 minute 114:17 minutes 95:19 mis-speak 114:15,21	missed 6:6 45:15 71:21 mix 92:1 118:8 modestly 55:1 money 75:14,20,22 110:15 month 64:1 65:6 months 35:25 76:17 111:10 123:5,8 morning 6:5 7:10 18:19, 20 40:2 42:14 112:7 119:23 mortgage 49:5 mother 47:12,19 95:14, 20 motion 75:22 motions 10:17 20:22 65:5,6 69:3 88:20 104:16 123:7,11 motivators 45:6 mouth 99:6 move 91:6 moved 91:20 moves 6:7,16 78:14 125:11,20 126:3	moving 16:15 57:4 93:23 Multijurisdictional 122:14 municipal 23:3 murder 111:22 Murphy 6:7 28:4,5,7 29:11,14 71:14, 15,17 86:20,21, 22 113:7,8 MUSC 50:4 <hr/> N <hr/> named 15:2 66:21 67:2, 9,22 95:17 105:12 115:17 naming 67:14 Nathan 122:20 national 116:24 natural 94:25 nature 105:14 121:14 necessarily 94:7 104:8 needed 31:18 57:24 88:25 106:23 110:22 negative 108:19 120:9,
---	--	--	--	--

11,13 121:4	notice 35:14 122:11	obvious 20:10	47:18 63:17	Orangeburg 87:2 89:24
neglect 31:3	noticed 28:8	occasion 28:12,16 113:20	open 39:19 49:2	order 6:2 16:3 64:18, 21,22 68:5
Nettles 56:20 89:20	notified 48:17	occasionally 21:22 54:17	52:20 59:13	69:12 75:13
newspaper 8:22 41:24	notifying 48:13	occurrence 12:15 38:6	78:7 99:15	112:12
61:10 80:14	notwithstanding 51:25	occurs 35:4	124:25	orders 20:22 64:11,14
102:1	November 29:10	off-the-record 125:10	open-minded 105:7	organization 109:25
NFL 95:17	number 23:15 63:6,9,16	offenders 97:2,3	opened 62:23 93:15	other's 12:22
nice 51:23 92:17	69:1 73:5 84:14	offense 44:22	113:14	outcome 17:18 50:24
night 22:12 49:12	91:3 94:6 111:7	offer 44:6,21 45:12	opening 9:2 42:4 61:15, 18 80:19 102:7, 8	70:18 85:23
nights 49:1	113:25	46:23 58:25	opinion 44:24 53:7	107:12
Ninety-nine 92:3	numbers 26:8	73:13	55:15 56:23	outlier-type 54:17
non- 37:11 118:7	numerous 72:13 104:22	offered 107:22	115:23,24	outstanding 84:13
non-jury 36:19,24 37:24		offering 48:6 77:14 95:7	opinions 115:22 119:2	overcome 82:19,23
63:20 64:16,17	O	99:18 125:3	opportunities 94:10,21 96:11	overloaded 19:14
65:6 68:5 87:24, 25 88:1,10	oath 26:3 40:8	office 23:11 57:13	opportunity 9:6 16:17 26:20	overturned 45:24 46:1,4
118:25 123:2	object 41:5	64:4,5 75:13	27:15 31:12	overwhelmingly 83:2
nonetheless 37:15 52:12	objection 8:4,8 41:10	77:10 91:21	39:2,12 42:8	Owens 14:23
Norton 25:5	60:17,21 79:23	93:15 103:11	59:7 77:25 81:3	
note 9:20 16:24	101:6,9,11	113:18 116:6	84:20 90:3	P
18:11 42:14	objections 79:18 105:25	118:22	94:15 99:8	
46:13 51:15	objectively 105:6	officer 116:25	118:17 124:18	
61:23 69:17	obligations 111:25 112:2	officers 22:15,16 104:21	opposed 6:10,19 24:4	
71:8 78:6 81:7	observe 68:20	official 67:2,3,11,12,14	125:14,23 126:7	
84:22 86:13	observers 66:10	oftentimes 54:23	opposing 12:11 13:19	p.m. 125:18 126:11
102:17 106:8		older	104:4,22	paid 49:7
108:3 116:11			opposition 9:1 42:3 61:13	parent 76:6
117:7 119:3			80:18 102:5	part 8:4 10:10 22:6
			option 96:23	

41:6 46:2 62:24 66:1 94:2 96:13, 16 104:20 109:9 120:12 121:13, 14	pattern 12:16 13:4	91:2 93:4 94:6 98:4 100:10 104:21,24 112:8 113:15	perspective 35:3 47:14 55:6	Plant 88:6
part- 32:11	pay 75:13 118:21	peoples' 121:10	pet 33:2	plate 47:17
part-time 21:7	paying 126:3	perceived 66:6	Pete 72:9	play 22:17 112:3 116:24
partiality 13:25 66:6	payment 49:5	percent 21:1,10 32:10 36:4 92:3,4 109:8,10 118:5	philosophy 95:25 96:5	played 117:5
participate 53:19,24	payments 15:19	percentage 118:25	phone 48:12	player 95:16
participated 53:12	PCR 46:1,4 112:18	perfect 13:4	physical 17:4 46:17 69:20 84:25 106:11	plea 97:19
participating 59:16	PDQ 9:22 10:20 29:21 32:9 42:15 61:25 66:16 67:13 81:8 92:2 102:19 105:12 114:7 115:24 118:4 122:2,9	period 31:5 93:15	pick 23:21	pleas 10:12,17 20:21 21:5 33:6,22 34:1 35:7 71:24 82:11,17 111:12
parties 18:2 25:8 51:6 70:24 86:4 107:18	Pee 16:24 46:13,19 52:16 84:23	periodically 72:1	piece 105:18	pleasant 11:24
partner 7:8 18:22 116:12	Peek 58:17	permanent 49:4	Piedmont 106:9,12,16	pledge 17:17 50:23 70:17 85:22 107:11
party 14:19 15:2 16:15 67:10	penalty 106:4 112:17	perseverance 52:14	pitch 27:15	pledging 18:8 51:12 71:5 86:10 107:25
passed 48:1	pendens 105:17	person 56:19 91:1 97:19 98:19 104:2 107:22 122:6	pitcher 116:20	pocket 35:15
passion 93:5	pending 17:18 32:25 50:24 70:18 85:23 107:12	personal 7:17 8:11 15:1 32:25 37:3 40:21 41:13 58:15 60:7,24 76:6,9 79:9 80:3 84:17 100:19 101:14,18 105:13 116:11	place 40:3,12 55:3 76:16	point 7:22 26:9 36:13 44:8 47:25 52:19 54:18 63:19 76:12 78:13 91:6 94:1 97:5 98:9 99:5 115:6
past 9:9 24:3 28:13 33:16	people 16:14 26:20 32:19 39:2 53:3 54:6,19 58:9 62:17 68:14,22, 23 73:17 75:1 80:25 82:4,5 84:19 89:6,8	personally 53:5 75:18 89:6	plaintiff's 109:14	Pointe 67:1
patient 104:3 105:7 110:18		personnel 20:18	plaintiffs 56:25 103:16 106:21	pointing 30:16
Patrick 109:17,18 110:5 124:10			plaintiffs- oriented 62:18	
Patrol 48:21			plan 94:8	
			Planning 63:7	

points 10:5 12:12 56:9 95:7	possibly 112:19	practitioners 12:6	38:9 82:17 84:18	probation 71:25
pole 62:21	post-conviction 82:10	prayed 49:16	presidents 32:20	problem 45:21 49:24 53:7
policies 114:13	potential 74:21 93:9 118:16	predecessor 63:15	presiding 37:17 38:1	procedural 13:9 23:22 38:14 45:12,16, 21 46:7
political 6:4 74:19 75:10	potentially 39:17 59:11 78:4 93:25 99:13 124:23	preempt 36:21	presume 36:8 78:18 111:24	procedurally 12:13,24
politics 117:24,25	PR 105:17,18	prefer 52:9 75:17 76:1	pretty 23:21 36:22 56:16 62:10 64:3,5 68:25	procedure 33:18 45:17 112:13
pool 73:17,18	practical 82:9 83:22 88:8	prejudice 111:19	previous 8:23 41:25 61:11 80:15 102:2	proceeding 15:9
popular 74:14	practically 64:25	premium 54:22,23	previously 64:6	proceedings 121:6
popularity 26:14	practice 9:25 10:8,19 11:1 13:5,14 21:17,19 22:1 32:17 36:5 42:18,25 43:1,4 48:22 49:3,8,14 52:17 62:3,15 63:3,13 77:9 81:11 84:9 88:20 92:11 93:16,20,21,22, 25 102:22 109:6 110:7 111:3 118:4 122:14 123:1,24	preparation 74:1	primarily 62:18 69:11 71:20,24 94:16	proceeds 120:6
population 19:24	practiced 43:7 48:2 62:15 63:1 84:10,12 89:23 103:5	prepare 73:6 87:24 88:10	prior 17:17 50:24 70:17 85:22 107:11	process 18:4 39:12 51:8 52:21 53:10,22 54:1 59:6 66:12 68:22,23,25 71:1 77:24 80:24 81:2,22 83:10,11 86:6 99:8 107:20 112:13 119:24 120:1 124:18
portion 39:11 59:6 77:24 99:7 124:17	practices 74:22	prepared 53:14 68:2,8 69:4 73:25 77:14 82:7	prior-to 74:11	profession 25:13 54:4 55:16
position 9:10,24 12:21, 22 16:2 20:2 21:1 26:8 42:18 44:17 58:25 62:2 63:18,21 81:11,25 99:18 102:21 112:14 125:3	practicing 42:24 47:8 88:2 89:9 112:22	preparing 88:23	priority 111:4,8,15	professional 10:3 17:3 42:21 46:16 62:6 69:22 81:14 85:2 102:25 103:2 106:14 122:15,18
positions 72:21		presence 85:7	priors 23:23	
positive 11:18 43:25 65:12 68:11 83:2 98:22 103:24 105:8		present 9:1 42:4 61:14 80:18 102:6 106:2	private 10:7 13:13 38:13 42:25 43:1,4 49:2,14 77:9 93:25 109:5,6	
possess 44:4 105:1		presented 83:16	pro 122:20	
		presently 21:20 23:3 24:14 53:13	Probate 15:2 105:15	
		presents 97:11		
		preserve 55:21		
		preside		

professor 49:13	provided 45:10 90:7 103:7	<hr/> Q <hr/>	questionnaire 7:17 8:11 40:21 41:13 60:7,24 79:9 80:3 100:19 101:14, 19	75:20 86:14 104:25 108:4 120:10
professorship 119:18	proving 43:23	qualifications 8:18 17:3 39:20 41:20 46:16 59:14 61:6 69:20 78:8 80:10 84:25 99:16 101:22 106:11 125:1	questions 9:14 17:7 18:15, 17 27:25 29:16, 21 31:14 32:3,6 34:9 38:21 39:8 51:19,21 52:24 58:2 59:3 61:20 71:12 72:4 77:2, 19 81:5 85:12 86:19 87:10 90:14 99:1 102:15 107:1 108:7,9,13 113:6 119:13 121:19,25 124:14	ran 16:1 24:21,24 30:7 63:21
profitable 77:11	Pruitt 109:22	qualified 10:3 17:1,2 42:21 46:14 62:6 69:19,21 81:14,24 84:24 85:1 102:25 103:4 106:10,13	quick 22:1,5,7 82:23	range 10:15 33:3 91:12 106:19
program 31:2 98:20	public 30:6 31:9 75:7, 11,12,18 77:8, 10 81:21 87:2, 18,22 91:18,21 92:9,10,14 93:4 94:5,8,21,25 96:11,12 113:18	quality 104:12	quickly 43:12 82:19 84:21 108:25	Rankin 18:17,18 28:1 31:14 32:8 51:21,22,23 58:20,21 72:4,5 76:25 90:14,15 114:3,4 126:3
programs 97:1 98:20	published 115:21	qualities 13:17 44:5 55:12,13 56:18 57:2 105:8	quality 12:10 19:10 24:18 25:25 29:18,20,22,23 37:1 38:24 42:11 45:16 47:5 52:12 72:12 74:19 76:2 89:17 92:24 93:6 95:25 116:5 119:4	rare 12:15 92:8
progression 94:25	publishment 97:6	question 18:14 51:18 71:11 86:16 108:6	race 75:1	rated 91:11
promise 45:18 49:25	purpose 67:21	questioning 18:14 51:18 71:11 86:16 108:6	raises 74:11	Ray 116:22
promoted 94:11	pursuant 39:13 59:7 77:25 99:9 124:19	quality 104:12	raise 7:11 40:14 59:25 75:19,22 79:3 100:3	reach 76:12 88:21
promoting 83:11	pursued 76:12	questioning 18:14 51:18 71:11 86:16 108:6	raised 18:12 44:18 45:11 51:16 62:9 66:5 71:9	read 38:24 99:5 114:7 121:3
pronounce 90:16	pursuing 9:9 15:20	questioning 18:14 51:18 71:11 86:16 108:6	R	reading 21:21,25 119:16
proof 24:7	push 9:19	questioning 18:14 51:18 71:11 86:16 108:6	race 75:1	ready 21:16 34:20 85:9 89:1
property 32:24 105:18	put 15:22 43:16 49:17 92:25 115:25 116:2	questioning 18:14 51:18 71:11 86:16 108:6	races 74:11	real 19:20 36:6 37:20 58:8 88:2
prosecute 23:12	puts 76:19	questioning 18:14 51:18 71:11 86:16 108:6	raise 7:11 40:14 59:25 75:19,22 79:3 100:3	realistically 19:20
prosecuted 109:4		questioning 18:14 51:18 71:11 86:16 108:6	raises 74:11	realize 57:15
prosecuting 22:20 23:9,10		questioning 18:14 51:18 71:11 86:16 108:6	raised 18:12 44:18 45:11 51:16 62:9 66:5 71:9	realized 115:25
prosecutions 10:16		questioning 18:14 51:18 71:11 86:16 108:6		
prosecutor 42:25 43:6 56:16 58:6		questioning 18:14 51:18 71:11 86:16 108:6		
protect 94:22		questioning 18:14 51:18 71:11 86:16 108:6		
protectors 94:20		questioning 18:14 51:18 71:11 86:16 108:6		
proven 97:6		questioning 18:14 51:18 71:11 86:16 108:6		

reason 12:20 13:20 50:9 97:18	40:3,12 41:7 42:14,16 51:16 59:13 61:24,25 68:11 71:9 74:15 78:6,16 81:7,9 86:14 97:12 99:15 102:17,19 108:4 124:25 125:18, 19 126:11	refresher 24:4	remanded 23:24	representative 6:7 15:1 25:22 28:4,5,7 29:11, 14 71:14,15,17 86:20,21,22 105:13 113:7,8 118:8
reasonable 111:20		regard 39:7 68:14,15 111:18	remarkable 35:20	
reasons 46:6 50:8		Regional 110:2	remarks 90:23 108:14	
recall 63:23 119:7		regular 38:5 56:4	remember 34:13 58:4 98:13 111:7 114:14 120:21, 24,25	represented 10:21 11:1 48:21 114:22
recede 78:14	Rector 117:7	regularly 13:21	remembered 25:1	representing 15:3 103:16 109:25 110:13, 15
received 8:25 11:15 17:17 42:2 43:22 50:23 61:13 64:12 65:9 70:16 80:17 82:25 85:22 86:9 102:4 103:22 107:11	recuse 40:11	rehabilitative 97:6	remind 26:3 39:13 59:7 77:25 99:8 124:19	reputation 17:2 25:2 39:7 46:17 69:23 77:6 83:7 85:3,6 106:14
recent 67:15	reduced 23:25	relate 54:6,7	remiss 89:17	request 111:20
recently 22:24 89:25 95:17 110:19 122:22	reelection 72:21	related 29:24 65:17 67:15 95:12,25	remodeled 48:25	required 16:5 20:13,16
recess 78:15	refer 65:24	relates 39:4	renders 10:3 42:21 62:6 81:14 102:25	requirements 9:24 36:21 42:17 62:2 81:10 102:21
recognize 113:16	referee 31:23 37:13	relation 51:25	renovate 57:17	requires 21:10
recommendatio n 48:11 97:12,22	reference 116:9,10	relationship 47:15,16 48:9	repeat 43:10 97:3 104:14	requiring 76:8
recommendatio ns 97:17 98:12	referenced 119:9	relationships 48:10,20,23 104:23	report 14:18 39:20 59:14 66:25 67:8 78:7 99:16 125:1	research 46:9 82:8,20 88:25
record 6:14,15,22 8:4 9:20,22 14:20 16:23 18:12 31:11 39:19	references 118:4	release 39:20 59:14 78:7 99:16 125:1	reported 16:25 67:15 69:18 84:23 106:9,12	reservations 83:25 84:18
	referred 37:5 64:17 65:2, 8	released 111:11	represent 32:14,21 43:13, 14 94:4	residence 9:25 42:18 62:3 81:11 102:22
	referring 37:8 65:22	relief 82:10		residency 50:3
	reflect 6:22 14:16 30:5	rely 11:13		
	reflected 105:8 122:9	remain 39:19 44:19 59:13 78:7 99:15 124:25		
	reflection 13:14 36:15			
	refrain 21:14			

resident 28:20,22 89:20	retiring 63:16	88:6		Scout 30:15,21
resign 49:2	returned 48:3	roughly 19:23	<hr/> S <hr/>	scouting 30:18
resolution 65:25 115:6	review 69:8 108:15	row 59:22,23	S.C. 107:25	Scouts 30:8,9,17
resolved 15:4 35:21	122:13	Roy 109:22	Sabb 38:22,23 58:3,4,	screened 20:1 72:20
43:12	reviewed 18:7 26:12	rule 11:13 17:9	7,8,11 78:14	screening 17:18,22 26:7
respect 16:13,16,22	51:11 71:4	21:21 34:13	95:4,5,6 119:13,	39:12,18 50:25
19:1 39:5 52:2	107:24	45:16,18 50:15	14,15 123:15,	51:4 59:6,12
83:11 89:9,10	reviews 68:12	68:18 70:7	16,17	70:18,22 72:7
respected 13:8	Revised 122:14	85:14 107:3	safe 99:20	77:24 78:5
respectfully 65:20	revocations 71:25	122:22	Safran 92:20,21 125:11	85:23 86:2 99:7,
respond 29:23 30:2	rhyme 102:14	ruled 15:8	sales 68:15	13 107:12,16
65:19 66:7	rights 94:4,22 119:25	rules 17:10 45:17	Santee 88:5	124:18,24
83:14 104:9	road 47:21	50:16 65:23	Saunders 103:9	screenings 8:23 41:25
105:3	robe 13:22 54:24,25	70:8 82:14	save 72:6	61:11 72:13
responded 30:1 122:10	Roche-carolina 88:7	85:15 107:4	saved 48:12	80:15 102:2
respondent 105:12	role 14:21 15:23	111:5 122:15,18	scale 38:7	script 99:5
response 44:6,20 46:23	16:8 45:7 92:14,	ruling 20:22 106:1	scheduled 34:18 35:6,25	Seals 89:22
58:22 90:6	16	116:1 120:20	scheme 15:17	search 8:22 41:24
responsibilities 71:22 96:11	Romeo 29:4,5,9	rulings 37:17 38:2	school 15:24 16:1,4	61:10 80:14
responsive 52:12	room 90:22 116:7	46:10	20:22 27:22	102:1
rest 103:8	Roper 108:20,21,25	run 7:1 14:11 16:18	seating 20:22 27:22	seat 9:10 46:21
result 14:20	125:7	20:18 48:18	seeks 48:13,17	48:13,17
results 26:22 98:22	roster 111:10	49:15 63:17	Section 17:20 18:9 51:2,	9:10 46:21
resume 108:14	Rouch	74:6,8	13 70:20 71:6	48:13,17
		rung 34:12	85:25 86:11	48:13,17
		running 59:17 63:3	107:14	seeking 122:20
		75:12	seeking 122:20	seeks 65:13
		RUTHERFORD 25:22	72:15,20 76:3,4,	
			16 95:10 108:16	
			112:3 116:4	
			117:11	

selecting 75:17	series 62:25	setting 37:9	91:13 92:25	situation 15:16 48:5 54:8 55:4
Selection 8:10,13,17 41:12,15,19 60:23 61:1,5 80:2,5,9 101:13, 16,21	servant's 54:18	settled 109:12	94:9 105:25 109:14,15 111:19	situations 82:21 84:5 104:16 112:4
sell 105:19	serve 43:21 44:5 82:16 83:24 87:15 96:13 114:1	settlement 16:7	sides 10:18 32:15 34:24 83:5 103:6	six- 111:5
Senate 90:21	served 31:16 67:6 68:4 77:10,12	settlements 31:25	sidewalk 33:2	slate 74:11,14
Senator 18:17,18 23:11 28:1 29:16,17 31:14 32:8 38:22,23 51:21, 22 58:3,4,8,11, 20,21 72:4,5 76:25 78:14 87:11,12,13 90:12,14,15 95:4,5,6,14 98:24 114:3,4 119:13,14,15 121:20,21,22 123:15,16,17 126:2	service 28:2 29:20 30:6 31:9 39:23 49:17 59:18 77:9 78:10 88:17 90:21 94:8,22,25 99:19 125:4	settles 35:2	signed 72:1	SLED 14:18 66:25 67:8
senatorial 39:1	servicing 20:9 31:8 42:7 67:10 87:15 105:21 121:24	shake 66:11 68:24	significantly 69:5	slightly 122:19
send 37:12	session 6:8,13,17,22 125:12,17,21 126:1	shame 89:12	similar 14:23 82:15 112:5	slot 72:22
sentence 24:10 96:9 97:24	sessions 10:12,21 11:9 20:23 22:21 28:17 31:17 33:9,10,17,20 34:16 35:8,23 64:19 69:13 71:22 84:13 88:21 111:8,11 118:15	share 47:7	similarity 109:3	small 10:25 19:23 62:15,18 63:3,4, 13,25 64:4 95:18 111:16 118:20
sentences 23:23	set 20:11 21:4,14 35:19 44:16 111:10	shared 58:16	similarly 117:12	smart 70:1 83:4
sentencing 96:1,5,7 97:4,9 98:8		shed 121:5	simply 13:22 35:6	smile 91:1
separate 121:7,9,17		shift 120:9	single 14:9	smiling 117:23
		short 27:14 31:20 52:23 84:13 93:15	sir 7:11 9:15 18:19 32:6 33:21 38:19 40:15 41:1,4,8 42:12 51:14 59:24 60:1,15 61:21 79:3,14 91:19 92:23 93:2,10 95:7,9 96:2	Smith 6:1,10,12,15,19, 21 7:5,10,16,21, 24 8:3,7,16 9:13 18:16 28:4 29:13 32:3,5,7 38:21 39:8,10 40:2,20,25 41:2, 5,9,18 42:10 51:20 58:2 59:3, 5,21,25 60:6,11, 13,16,20 61:4, 19 71:13 72:3,

17 77:2,19,21 78:13,17,22,25 79:2,8,13,15,18, 22 80:1,8 81:4 86:18,21 87:10 90:13 92:20 95:4 98:25 99:3, 22 100:2,9,15, 18,24 101:2,6, 10,20 102:13 108:8,11 110:21 112:25 113:6 114:3 119:12 121:19 123:16 124:13,16 125:7,11,14,16, 19,23,25 126:7, 9	sophomore 29:10 sort 10:6 27:18 35:15 54:13 62:19 63:9 71:25 98:12 sought 13:17 17:17 50:23 53:2 70:16 85:22 107:11 sound 122:16 sounds 62:13 91:14 116:5 South 10:13 17:10 18:8 39:24 45:10,17 48:21 50:16 51:12 59:18 70:7 71:5 78:10 85:15 86:10 94:17 95:15,21 99:19 107:4 116:17,22 122:13,14 125:4 speak 7:14 35:12 40:18 54:3 55:9 56:4 60:4 79:6 93:24 96:3 100:7 speaks 122:5 special 28:9,17 31:16, 19,23,24 32:1 37:13 64:10,18 69:11 71:19,20, 23 77:12	specific 121:8 speech 95:11 speed 112:20 spend 69:13 spirit 39:15 59:9 78:2 99:10 124:21 split 118:7 spoke 83:25 spoken 83:20 98:19 spring 119:24 stability 17:5 46:18 69:20 85:1 106:11 staff 18:13 29:8 40:9 51:17 56:25 71:10 86:15 108:5 118:21 stance 98:16 stand 49:6,10,23 126:9 standard 43:19 57:4 standards 24:6 standing 21:18 57:9 73:23 standout	54:17 standpoint 39:6 84:17 91:4 92:6 stands 44:9 61:17 start 108:12 112:7 120:3 started 6:2 30:25 62:16 94:7 103:6,11 110:4 starts 55:22 state 8:21 39:23 41:23 42:8 59:18 61:9 65:23 73:15 75:2,11 78:10 80:13 87:15 97:13 99:19 101:25 115:3 121:24 123:11 125:4 stated 46:19 83:7 85:4 122:9 statement 7:18 8:14 9:2,5 40:22 41:16 42:5 60:8 61:2, 15 79:10 80:6, 20 100:20 101:17 102:7,9 states 15:24 76:1 statewide 77:6 statute 94:17	statutory 9:24 42:17 62:2 81:10 102:21 stay 93:4 94:8 121:8 stayed 63:11 steep 105:23 106:6 step 30:24 47:17 stepped 19:19 steps 52:18 sterling 83:8 Steven 40:17 41:14,16 42:16 109:22 stick 99:6 Stimson 102:11,14 stole 54:16 stood 44:25 stories 29:15 58:15 story 52:10,13 122:1 straightforward 31:24 Strobin 19:15,16 Strom 6:16 72:9 77:3, 4,8 strong 24:21 88:15
--	---	--	---	--

<p>103:8 106:23 117:9 stronger 97:8 strongly 96:25 study 8:20,23 22:1,6,7 41:22,25 61:8, 11 80:12,15 82:8 101:24 102:2 style 75:7 subcommittees 63:9 subject 38:7 subjects 69:4 submitted 7:18 40:23 60:9 79:11 100:21 submitting 17:12,16 50:18, 22 70:10,15 85:17,21 107:6, 10 substance 96:24 substantially 64:23 substantively 12:13 success 65:24 successful 34:15 43:9 49:8, 22 54:24 57:10 76:12,21 112:11 116:3</p>	<p>sucker 58:15 sudden 35:13 suddenly 35:1 sued 15:7 suggest 74:13 105:1 121:11 suggested 104:7 suit 15:13 88:15 suited 63:18 103:19 summary 46:20 85:4 123:4,7,10 summer 20:5 summers 20:6 Super 19:3 Superb 70:1 support 25:20 75:8 Supreme 10:13 25:11 64:10,12 110:12 115:5,23 116:1, 2 sure-firest 57:16 survey 8:20 41:22 45:11 61:8 80:12 101:24</p>	<p>103:23 120:11 122:10 surveys 11:16,17 38:25 43:23,24 53:11, 14 65:10,11 82:25 83:1 103:22 105:9 survived 57:20 swayed 44:20 swear 100:10 sworn 7:14,18 8:5,9,14 40:17,22 41:7, 11,16 60:4,8,18, 21 61:2 79:5,10, 19,23 80:6 100:6,20 101:7, 11,17 system 12:18 14:2 16:4, 6,20 22:18 26:11 43:15 55:19 104:24</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>table 30:13 takes 38:17 111:8,14 taking 9:7 36:13 97:11 talk 29:15 47:6 52:1 75:6 96:18 talked 40:9 49:16 67:25 71:18</p>	<p>83:14 Tango 29:3 Tanner 116:22 taught 82:4 119:24 teacher 95:11 teacher's 6:5 teachers 95:10 team 96:14,16 116:25 tears 121:5 teary 120:21 Tech 49:13 temperament 11:25 12:8 13:16,21 14:7 17:5 25:1,7,15 43:17 44:2 46:18 55:11 56:15 69:24 70:2 83:5,9 85:3 89:7 90:1,8 105:2 106:15 ten 9:9 10:9 14:5 28:13 49:7 62:16 ten-year 16:23 terms 21:15 53:11 72:23 74:14,17 75:4,7</p>	<p>testament 117:24 testify 9:2 42:4 61:15 80:19 102:6 testimony 8:5,9 9:21 37:9 38:3 41:7,11 42:14 60:18,22 61:24 79:19,24 81:7 101:7,12 102:18 thankful 94:12 Thanksgiving 52:2 thing 22:6 26:13 53:25 54:1 63:10 71:25 72:10 112:21 115:9,11 118:3 119:17,22 120:6 122:11 things 24:12 33:23 43:16 49:9 50:7 69:12 72:14 74:2 77:11 91:14 93:24 94:9 97:3,14,15 104:14 109:11 110:6 thinks 12:21 thirty 112:23 thought 47:4 49:23 52:23,25 54:1 58:19 63:18 93:19 113:15</p>
---	--	--	---	---

120:22	22 126:6	torn 57:22	treatment 27:14 96:13,22	twenty 30:18
thoughtful 65:13,15 104:3 105:7	times 27:3,6 30:23 46:11 56:15 92:6 113:25	tortuous 114:8	treats 39:5	type 11:6 29:25 30:4 32:12 71:22 98:20 109:19 122:5
thousands 66:4	today 6:25 7:2,9 8:5, 25 18:14 21:23 39:22 41:7,11 42:9 44:10 45:6 47:14 48:12 49:6,11,23 50:1, 4 51:18 57:23 59:16 60:18 64:5 71:11 77:23 78:9 79:20 86:17 92:18 98:19 100:3,11,16 101:8 102:6,10 108:6	total 123:22	tremendous 44:1	types 24:11 31:21 54:6 73:19
thunder 54:16		totally 98:9	trial 12:20 35:15 37:14,15 45:1 66:13 81:18,20 82:6,13 103:12 109:11 111:22 112:3 118:8,14 120:5	<hr/> U <hr/>
Thursdays 119:23		totem 62:21	trials 22:2 23:21 31:6 33:23 38:1 64:15,20 68:9 82:17 104:16	Uh-huh 29:6
tight 24:21		touches 75:9	troop 30:21	ultimately 15:4,10,21 26:13 58:22
till 78:7 91:17		tough 65:18 66:2 110:15	true 12:6 19:2 118:1 124:8	understand 18:7 35:9 44:23 45:13 51:11 53:8 68:23 71:4 84:19 86:9 102:10 107:24 108:2
time 6:9,18 8:1 9:7 15:7,8 20:6 21:19 22:4 23:11,17 24:1 27:11 29:14 31:5,23 32:12 34:10,11 36:13 39:21,25 41:3 44:25 47:9,13, 22 48:24 52:24 55:18 59:15 60:14 62:13 68:15,16 69:14 72:9,22 73:3 76:8,24 77:15 78:8 81:20,22 87:3 88:4,5 90:25 91:10,20 92:7 93:14,15, 17,19 94:1 95:24 96:16,22 97:5,25 98:6 99:17 104:11 108:24 110:4 111:2 112:6 114:8 122:19 123:9 125:2,13,	Todd 25:24	town 10:25 19:23 62:15,18 95:18 110:21 111:16 118:20	trust 13:20	understanding 14:10 57:1 93:6
	token 35:10 40:7	track 31:11 68:11	truth 7:14,15 40:18, 19 60:4,5 79:6,7 100:7,8	undertaken 71:23
	told 57:12 61:17 72:24 97:21 104:13 107:23	tradition 25:17	Tuesdays 119:23	unfairness 45:5 75:6
	Tolerable 83:10	traditional 26:7	turned 62:25	unfortunate 47:4
	ton 19:16	training 112:11	TV 26:19	uniquely 103:4
	Toole 66:17	transcript 21:25	twelve 23:20 62:16 64:9,23,24 68:7 69:2 73:12,20 74:3	United 15:23
	top 24:16 34:11	travels 99:20		University 95:16
	top-notch 85:6	treat 16:21,22 20:18, 19 68:18 89:8, 10		
	topic 122:23	treated 24:21 45:9 68:21 89:8,11		
		treating 20:17 98:4		

unknowns 15:5	verdicts 121:16	violent 97:3	32:23 34:21 120:18 121:1	114:1
unloading 14:5	verification 8:21 41:23 61:9 80:13 101:25	volumes 122:5	weigh 105:6	Willis 115:16,17
unspoken 98:12	versus 20:10 75:7 115:13	voluntary 29:22	weighed 26:23	Wilson 14:24 115:14, 15,17
unusual 84:2	vet 25:18 74:16	votes 6:23 75:5 126:2	weight 39:17 59:12 78:5 99:13 124:23	win 26:14,15
upbringing 82:2	veteran's 119:1,3,5	<hr/> W <hr/>	well-qualified 43:20	wispiest 23:15
updated 41:3 79:16	vett 26:23	waive 61:18 102:8	whatsoever 45:22 79:21	withdrawn 66:22
updates 7:25 60:14 101:3	vetting 25:21 26:6	waned 36:8,10	who've 55:3	witnesses 9:1 42:3 61:14 80:18 102:5
uphold 25:14,17	vice 63:6 122:20	wanted 40:12 57:23,25 58:18 102:11	wide 10:15 33:3 91:12	won 45:23
uplifting 96:18	Vick 83:4 99:23	warrants 72:1	wife 7:8 18:23,24 19:9 48:24 49:3 52:3 57:22 78:17,21 92:17	wonderful 11:19 25:5 52:13 82:2
USC 108:16 116:18	Vick's 83:7	Waterway 63:8	wife's 76:8	woodworker 117:18
ushered 27:23	Vickery 79:5 80:4,6 95:8,11,12,20	ways 57:16	wildcards 55:14	woodworking 117:18
utmost 83:11 88:22	Vickerys 95:23	wearing 10:5 21:2 54:25	WILKINSON 81:6,12 84:22 85:11 86:13	word 74:25 91:8
<hr/> V <hr/>	victims 22:16 104:22	wears 13:21	WILLIAM 79:5 80:3,6	words 29:22 91:5
values 104:1	view 39:16 59:10 78:3 99:11 121:4 124:22	website 113:9	Williams 114:8,22 115:13,15,18	work 12:5 13:20 19:4, 5,16 20:12 21:11,17 25:16 28:17 33:7,8 38:14 46:21 49:1,12,24 56:9 62:20 68:25 82:6,19 90:3 93:4 97:7 103:18 105:9 106:23 108:14 109:16,20 110:2,5 112:18
Vanderbilt 117:15	viewed 24:24	week 21:11 23:21 38:5 45:22 65:5 112:7	Williamsburg 58:9	
variety 104:18,21	violating 94:17	week-long 111:22	willingness	
vast 14:15	violations 39:16 59:10 78:3 99:12 124:22	weekend 115:25		
veil 6:16 125:20		weekends 49:1		
verdict 22:3 123:21,22 124:2		weeks		

117:22 118:9, 14,19,23,25 124:9 worked 10:16 49:20 56:2 76:23 81:21 82:7 88:7 90:9 94:9 103:14 104:18, 20 108:19 109:22 116:13 worker 104:1 working 12:1 20:23 48:19 103:15 109:16 110:4,24 works 68:22 world 55:20 117:24 worried 47:19 worry 13:20 worse 117:24 worthy 116:11 117:7 wreck 110:11,16 wrecks 109:23 110:9 write 56:8 117:12 122:23 writes 117:8 writing 12:2 written 44:3 65:16	104:6 122:1 wrong 12:12 13:10 72:17 114:12,15 wrote 48:11 56:5 122:12,23 Wyatt 103:9 <hr/> Y <hr/> y'all 32:15 58:11 76:7 year 20:8 24:23 38:1 40:5 50:3 59:22, 23 62:14 72:15 81:17 105:14 years 9:9,25 10:8,9,18 12:8,16 13:5,13 14:6 23:20 24:19 28:13 30:18 33:5,16 42:18,23 43:12 47:7,12,21 49:8 62:3,15,18 63:2, 5 64:9,23,24 65:7 68:7,8 69:1,2 73:4,12, 21 74:3 81:11, 19 87:21 89:16 90:10 91:22,23 93:18 96:15 102:22 104:10 106:19 108:16, 23 109:5 110:16 112:24 117:6 119:20 124:1 young	29:16,17 87:11, 12,13 117:10 121:20,21,22 younger 47:16 <hr/> Z <hr/> zealous 113:24 zoning 77:10	
---	--	---	--