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JUDICIAL MERIT SELECTION COMMISSION

PUBLIC HEARINGS

Tuesday, November 13, 2012

9:18 a.m.

1101 Pendleton Street  
Blatt Building, Room 110  
Columbia, South Carolina

REPORTED BY: RITA A. DEROUEN  
Registered Professional Reporter



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1 MEMBERS IN ATTENDANCE:

2 REPRESENTATIVE F.G. DELLENEY, JR., CHAIRMAN

3 SENATOR LARRY A. MARTIN, VICE-CHAIRMAN

4 AMY JOHNSON McLESTER

5 REPRESENTATIVE DAVID J. MACK, III

6 SENATOR GEORGE "CHIP" E. CAMPSEN

7 PROFESSOR JOHN P. FREEMAN

8 REPRESENTATIVE ALAN D. CLEMMONS

9 SENATOR FLOYD NICHOLSON

10 JOHN DAVIS HARRELL, ESQUIRE

11 H. DONALD SELLERS, ESQUIRE

12 COUNSEL:

13 JANE SHULER, CHIEF COUNSEL

14 PATRICK G. DENNIS

15 J.J. GENTRY

16 BONNIE ANZELMO

17 EMMA DEAN

18 JAMEY GOLDIN

19 ANDY FIFFICK

20 KATHERINE WELLS

21 BRAD WRIGHT

22 PAULA BENSON

23 LYN ODOM

24 STEVE DAVIDSON

25 (INDEX AT REAR OF TRANSCRIPT)

1           REPRESENTATIVE DELLENEY: We'll call the  
2 Judicial Merit Selection Commission to order. The  
3 Judicial Merit Selection Commission is called pursuant  
4 to Chapter 19 of Title 2 of South Carolina Code of  
5 Laws, requiring the review of candidates for judicial  
6 office.

7           The function of the Commission is not to  
8 choose between candidates but, rather, declare whether  
9 or not the candidates who offer for positions on the  
10 bench in our judgment are qualified to fill the  
11 positions they seek.

12           The inquiry we undertake is a thorough one.  
13 It is centered around the Commission's nine evaluative  
14 criteria and involves a complete personal and  
15 professional background check on each candidate. These  
16 public hearings are convened for the purpose of  
17 screening candidates.

18           Today we will screen three vacancies for the  
19 circuit court. And at this point in time, I'm advised  
20 by our counsel that we need to go in a short executive  
21 session.

22           Do we have a motion for executive session?

23           PROFESSOR FREEMAN: Yes.

24           SENATOR NICHOLSON: Second.

25           REPRESENTATIVE DELLENEY: So moved. We're

1 now in executive session.

2 (The Judicial Merit Selection Commission  
3 went into executive session from 9:19 a.m. to  
4 10:05 a.m.)

5 REPRESENTATIVE DELLENEY: We're back in  
6 public session.

7 At the start, we have five complaints that I  
8 -- really seven complaints that we need to deal with.  
9 The first one is against Judge Benjamin from  
10 Ms. Faltas.

11 It's a complaint which, after listening to  
12 staff and looking at some of the documents, I would  
13 move that we dismiss this complaint as being irrelevant  
14 to our process, there are no specific facts alleged in  
15 the complaint concerning character, competency, or  
16 ethics.

17 SENATOR MARTIN: Second.

18 REPRESENTATIVE DELLENEY: All in favor?

19 No opposed.

20 The complaint by Dr. Faltas against Judge  
21 Benjamin is dismissed.

22 Next we have a complaint against a candidate  
23 for circuit court, April Sampson. Ms. Faltas also  
24 filed a complaint against her.

25 Because this complaint is not timely under

1 South Carolina Code Section 2-19-30, and in my view, in  
2 my opinion, there is not sufficient cause to hear this  
3 complaint, I would also move that that complaint be  
4 dismissed against candidate April Sampson.

5 SENATOR MARTIN: Second.

6 REPRESENTATIVE DELLENEY: All in favor?

7 Any opposed? None.

8 Thirdly, we have a complaint -- Ms. Faltas  
9 also filed a complaint against Candidate Clifford  
10 Scott, which, from my view, has no specific facts as it  
11 relates to character, competency, or ethics and, in my  
12 view, is baseless.

13 And I would move that that complaint against  
14 Candidate Clifford Scott also be dismissed.

15 SENATOR MARTIN: Second.

16 REPRESENTATIVE DELLENEY: All in favor?

17 Any opposed?

18 The complaint against Clifford Scott is  
19 dismissed.

20 Next we have the complaint against Judge  
21 Hurley. That is also Ms. Faltas' complaint. I would  
22 move that that complaint is also baseless under our  
23 rules, there are no specific facts that allege any  
24 issues in regard to character, competency, or ethics,  
25 and I move that claim be dismissed.

1 SENATOR MARTIN: Second.

2 REPRESENTATIVE DELLENEY: All in favor?

3 Any opposed?

4 Next we have Judge Kinard, which is another  
5 complaint by Ms. Faltas, which, in my view, is also  
6 baseless as there are no specific facts as to  
7 character, competency, or ethics, and I would move that  
8 that complaint also be dismissed.

9 SENATOR MARTIN: Second.

10 REPRESENTATIVE DELLENEY: All in favor?

11 Any opposed?

12 And next we have a complaint against Shirley  
13 Robinson, which is a Wendell Norris complaint. And in  
14 my view, again, it has no specific facts as it relates  
15 to character, competence, or ethics, and I would move  
16 that that complaint be dismissed.

17 SENATOR MARTIN: Second.

18 REPRESENTATIVE DELLENEY: Any further  
19 discussion?

20 All in favor or dismissing the Shirley  
21 Robinson complaint?

22 Any opposed?

23 So we dismissed the complaints against Judge  
24 Benjamin by Ms. Faltas; we dismissed Ms. Faltas'  
25 complaint against Candidate April Sampson; against

1 Candidate Clifford Scott; against Judge Hurley; against  
2 Judge Kinard; and against Shirley Robinson.

3 And we're going to wait and we're going to  
4 hear about the complaint on Mr. Englehardt unless  
5 anybody has got a different opinion.

6 Now we take up the matter of waiver. The  
7 law allows us to waive candidates that are up for  
8 re-election and who have no complaints against them,  
9 and we have several candidates, and I would move that  
10 we waive those candidates.

11 We have for the court of appeals John D.  
12 Geathers, Paula H. Thomas; for the circuit court,  
13 Rivers Lawton McIntosh, and Judge Benjamin. For the  
14 family court, we have Anne Jones.

15 Counsel advises me that we shouldn't waive  
16 Judge Benjamin because she did have a complaint,  
17 although it was dismissed. So according to Section  
18 2-19-40, we cannot waive Judge Benjamin.

19 So, again, for the circuit court, I would  
20 move to waive Rivers Lawton McIntosh. For the family  
21 court, Anne Jones; Angela R. Taylor; A. Dale Moore  
22 Gable; Dana A. Morris; Brian M. Gibbons; Phillip  
23 Kendall Sinclair; James F. Fraley, Jr.; Joseph Wilson  
24 McGowan, III; Edgar Henderson Long; Tommy B. Edwards;  
25 A.G. Morehead, III; William Marsh Robertson; Gerald C.

1 Smoak.

2 For master in equity I'd move to waive  
3 Maurice Anderson Griffith; Jeffrey M. Tzerman; Steven  
4 Brian Doing. And the retired judges for appointment, I  
5 will move to waive Julius C. Nicholson, Jr.; Georgia V.  
6 Anderson; Robert S. Armstrong; Leslie K. Riddle; and  
7 Henry T. Woods.

8 And, again, these are candidates that have  
9 had no complaints filed against them.

10 SENATOR MARTIN: Second.

11 REPRESENTATIVE DELLENEY: All in favor?

12 No opposed.

13 All right. Those candidates whose names I  
14 just read will be waived.

15 Counsel informs me that there were some  
16 candidates that did not have any active complaints  
17 filed against them but did have serious ballot box  
18 allegations in the survey, and so we did not waive  
19 those candidates, we only waived candidates that had no  
20 known opposition and no complaints filed against them.

21 MS. SHULER: We have a few procedural  
22 housekeeping matters to take care of. I would like to  
23 offer and have made exhibits to the record the  
24 following documents: The Citizens Committee reports  
25 from the fall 2012 from the Lowcountry Citizens



1 Committee, Midlands Citizens Committee, Pee Dee  
2 Citizens Committee, Piedmont Citizens Committee, and  
3 Upstate Citizens Committee.

4 REPRESENTATIVE DELLENEY: Are there any  
5 objections?

6 Hearing none, I'd ask at this time that the  
7 Lowcountry Citizens Committee, the Midlands Citizens  
8 Committee, the Pee Dee Citizens Committee, the Piedmont  
9 Citizens Committee, and the Upstate Citizens Committee  
10 reports for the fall 2012 screening be marked as  
11 exhibits and entered into the public hearing record at  
12 this time.

13 (EXH. 1, Lowcountry Citizens Committee  
14 Reports, Midlands Citizens Committee Reports, Pee Dee  
15 Citizens Committee Reports, Piedmont Citizens Committee  
16 Reports, and Upstate Citizens Committee Reports, marked  
17 for identification.)

18 REPRESENTATIVE DELLENEY: As far as the  
19 candidates that have been waived, based on a list  
20 compiled by staff, the following fall 2012 candidates  
21 seeking re-election were candidates for waiver whose  
22 personal data questionnaire required technical  
23 amendments that do not affect the candidate's  
24 eligibility for waiver, and those candidates are, with  
25 amendments to the PDQ: Angela Jones; Gerald D. Pope,

1 Jr.; Julius B. "Buddy" Nicholson; and Angela R.  
2 Taylor.

3 I ask at this time that the personal data  
4 questionnaire and sworn statements for all waived  
5 candidates, as well as the amendments for the personal  
6 data questionnaires for the above candidates be entered  
7 as exhibits into the hearing record at this time unless  
8 there's any objection.

9 Hearing none, the personal data  
10 questionnaires and sworn statements for all waived  
11 candidates, as well as the amendments for the above  
12 candidates, will be entered into the record at this  
13 time.

14 (EXH. 2, Personal Data Questionnaires, Sworn  
15 Statements, and Amendments for All Waivered Candidates,  
16 marked for identification.)

17 REPRESENTATIVE DELLENEY: All right. That  
18 having been completed, we will now begin the  
19 screening.

20 Our first candidate Lucius Scott Harvin, who  
21 seeks the position of Circuit Court At-Large, Seat 14.

22 Good morning, sir.

23 MR. HARVIN: Good morning.

24 REPRESENTATIVE DELLENEY: Today we have  
25 before us Mr. Lucius Scott Harvin, who seeks a position

1 for the Circuit Court At-Large, Seat Number 14. If you  
2 would, Mr. Harvin, raise your right hand to be sworn.

3 (Lucius Scott Harvin was duly sworn, after  
4 which testimony commenced at 10:15 a.m.)

5 REPRESENTATIVE DELLENEY: Have you had an  
6 opportunity to review the personal data questionnaire?

7 MR. HARVIN: I have, Your Honor.

8 REPRESENTATIVE DELLENEY: Is it correct?

9 MR. HARVIN: It is.

10 REPRESENTATIVE DELLENEY: So nothing needs  
11 to be changed?

12 MR. HARVIN: Nothing needs to be changed.

13 REPRESENTATIVE DELLENEY: Do you object to  
14 our making this summary a part of your sworn testimony?

15 MR. HARVIN: Not in the least.

16 REPRESENTATIVE DELLENEY: It will be marked  
17 an included as part of the transcript.

18 (EXH. 3, Personal Data Questionnaire of  
19 Lucius Scott Harvin, Amendment to the Personal Data  
20 Questionnaire of Lucius Scott Harvin, and Sworn  
21 Statement of Lucius Scott Harvin, marked for  
22 identification.)

23 REPRESENTATIVE DELLENEY: The Judicial Merit  
24 Selection Commission has thoroughly investigated your  
25 qualifications for the bench. Our inquiry is focused

1 on the nine evaluative criteria. It has included a  
2 survey of the bench and bar, a thorough study of your  
3 application materials, verification of your compliance  
4 with state ethics laws, a search of newspaper articles  
5 in which your name appears, a study of previous  
6 screenings, and a check for economic conflicts of  
7 interest.

8 We have no affidavits filed in opposition to  
9 your election and there are no witnesses here to  
10 testify.

11 Do you have a brief opening statement you'd  
12 like to make?

13 MR. HARVIN: I do. I'd like to again  
14 introduce myself. I'm Scott Harvin, and I'm an  
15 attorney in Walterboro. I grew up here in Columbia and  
16 I've been practicing law for 21 years. I feel that I  
17 am ready to move on in my career and move from being a  
18 litigator and advocate of people to resolving disputes  
19 as a judge.

20 I've never been called to the ministry, but  
21 I believe that I've been called for a judgeship in much  
22 the same way as one is called to the ministry. I think  
23 I'm ready for this, and I think I'd be a very good  
24 candidate for the bench.

25 REPRESENTATIVE DELLENEY: Thank you, sir.

1           At this time, please answer any questions  
2 our able counsel, Ms. Dean, has for you.

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

4           Mr. Chairman and members of the Commission,  
5 I have a few procedural matters to take care of with  
6 this candidate first.

7           Mr. Harvin, you have before you the personal  
8 data questionnaire you submitted as part of your  
9 application and amendment.

10           Are there any amendments you would like to  
11 make at this time?

12           MR. HARVIN: None other than the three  
13 letters I previously submitted.

14           MS. DEAN: Mr. Chairman, I would like to ask  
15 that Mr. Harvin's personal data questionnaire and  
16 amendment be entered as an exhibit into the hearing  
17 record.

18           REPRESENTATIVE DELLENEY: Without objection  
19 it will be done so at this point in the transcript.

20           MS. DEAN: Mr. Harvin, you have before you  
21 the sworn statement you provided with detailed answers  
22 to over 30 questions regarding judicial conduct,  
23 statutory qualification, office administration, and  
24 temperament.

25           Are there any amendments you would like to

1 make at this time to your sworn statement?

2 MR. HARVIN: None.

3 MS. DEAN: At this time, Mr. Chairman, I  
4 would ask that Mr. Harvin's sworn statement be entered  
5 as an exhibit into the hearing record.

6 REPRESENTATIVE DELLENEY: Without objection,  
7 it will be done so at this point in the transcript.

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

9 One final procedural matter. I note for the  
10 record that based on the testimony contained in the  
11 candidate's PDQ, which had been included in the record  
12 with the candidate's consent, Mr. Harvin meets the  
13 statutory requirements for this position regarding age,  
14 residence, and years of practice.

15 Mr. Harvin, will you please state the city  
16 and circuit in which you reside.

17 MR. HARVIN: I live in Walterboro, it's in  
18 the 14th Judicial Circuit.

19 MS. DEAN: Mr. Harvin, why do you now want  
20 to serve as a circuit court judge?

21 MR. HARVIN: As I mentioned in my opening  
22 statement, I feel that I am very well-qualified for  
23 this position. I've practiced both civil and criminal  
24 law. I feel that it is something for me to move on, to  
25 be somewhat more of a peacemaker than an advocate.

1 I just believe that is my calling and that's  
2 where I stand in life and that's what I'm ready to do.

3 MS. DEAN: Mr. Harvin, are there any areas,  
4 including subjective areas, of law that you would need  
5 to additionally prepare for in order to serve as judge,  
6 and how would you handle the additional preparation?

7 MR. HARVIN: Well, certainly there would be  
8 some matters that would come before me that perhaps I'm  
9 not as familiar with; environmental litigation I have  
10 not done. And just like anything else, I would have to  
11 do research on those issues. However, procedurally, I  
12 think I'm well-qualified to appoint those duties.

13 MS. DEAN: Mr. Harvin, although you  
14 addressed this in your sworn statement, could you  
15 please explain to the members of the Commission what  
16 you think is the appropriate demeanor of a judge?

17 MR. HARVIN: I think just the basic always  
18 be polite. Just as your mother or your grandmother may  
19 have taught you, always be polite to the people that  
20 come before you, act professionally, and treat them the  
21 same way you would like to be treated if you were an  
22 attorney or litigator.

23 MS. DEAN: Is there any circuit court judge  
24 currently on the bench that you would like to model  
25 yourself after or particularly exemplifies the

1 characteristics that a circuit court judge should have?

2 MR. HARVIN: There are several. Obviously,  
3 I practice in the 14th Judicial Circuit and I come in  
4 front of Perry Buckner a lot. I've also been in front  
5 of Markley Dennis for years. And Markley Dennis was  
6 appointed to the bench when I was a young solicitor in  
7 Charleston.

8 He actually appointed me on my first case  
9 when I left the solicitor's office and went out into  
10 private practice. He is someone who has a strong work  
11 ethic, is intelligent, is polite, and cares about the  
12 people that come before him. So if I had to pick one  
13 statewide, it would be Markley Dennis.

14 MS. DEAN: And when you leave the bench,  
15 what would you like your legacy as the judge on circuit  
16 court to be?

17 MR. HARVIN: I would like it to be that I  
18 was somebody who worked hard, who made fair decisions,  
19 and treated everybody right. When the parties around  
20 the state, because this is an at-large position, would  
21 call and say or put in List Server, What do you think  
22 about Judge Harvin, how is Judge Harvin, some people  
23 may say they like me, others may not like me.

24 What I'd like to hear is, This is somebody  
25 who's going to be fair, he's not going to only hear



1 statements from this person, treat people unfairly, or  
2 have a temper or anything like that. I'd just like to  
3 be basically an old Southern gentleman.

4 MS. DEAN: What suggestions would you offer  
5 for improving the backlog of cases on the docket both  
6 for general sessions and common pleas in the circuit  
7 court?

8 MR. HARVIN: I'm fortunate to work in the  
9 14th Circuit, where we're actually in pretty good shape  
10 in that particular circuit. I think there's a big  
11 controversy at the moment.

12 I don't know what the Supreme Court is going  
13 to do about whether -- or the legislature may do  
14 something, at least on the criminal side, about whether  
15 the courts are going to control the docket or the  
16 solicitor's office is going to control the docket.

17 I think that's a major issue that's going to  
18 be decided on in the next five to ten years. If the  
19 judges end up controlling the docket, I think there are  
20 a lot of good issues there; however, that's going to  
21 put a strain on our already strained judiciary, even  
22 with the additional seats that the legislators funded.

23 So I think that's something that's going to  
24 be worked out by the courts on the judicial side.  
25 There's also rumors that the courts have worked very

1 diligently on new rules of criminal procedure, and I've  
2 reviewed those proposed rules and I think those will  
3 help.

4           The civil side, I was initially opposed to  
5 mandatory mediation; not every town has them, not every  
6 circuit has them. But it had been a world of  
7 difference in the way our dockets are moving in the  
8 14th Circuit in particular.

9           Colleton County used to have 90 or 110 cases  
10 on a roster for a Monday morning; now those rosters are  
11 six or seven deep, that's all they are. They've been  
12 moved by mandatory mediation with the courts pushing  
13 those and, if necessary, holding contempt hearings for  
14 the parties who would not do that mandatory mediation.

15           So from a civil side, I would push for  
16 mandatory mediation statewide, and as a judge, continue  
17 to make sure that the litigants follow those rules.

18           On the criminal side, it's a lot more flux  
19 and it's going to depend on what the Supreme Court and  
20 legislature does with those issues. If the solicitor's  
21 office keeps control of the docket, the judges are  
22 going to have to be very diligent, particularly with  
23 the folks that are incarcerated, with making sure that  
24 they get speedy trials.

25           MS. DEAN: Thank you, Mr. Harvin.

1           Mr. Harvin, do you currently carry  
2 malpractice insurance in your law practice and, if so,  
3 how long have you carried malpractice insurance?

4           MR. HARVIN: I've carried malpractice  
5 insurance since I left the solicitor's office. And I  
6 originally, in my own practice as a sole practitioner,  
7 had it. I purchased tail insurance during the period  
8 when I went from a solo practitioner to a larger firm,  
9 and we carry it now.

10          MS. DEAN: Thank you.

11                 In your personal data questionnaire, you  
12 stated that you had three very old arrests. Can you  
13 please briefly describe those, understanding they are  
14 very old?

15          MR. HARVIN: They are very old. And to be  
16 honest with you, I don't know that I was really  
17 actually ever charged on two of them because I never  
18 got any paperwork documents.

19                 But one, I was cited when I was a teenager.  
20 I went to prep school in Pennsylvania. And like a lot  
21 of teenagers, particularly in the early 1980s, we had a  
22 party. We had a keg of beer. And the local police  
23 showed up, and about 40 of us were cited for underage  
24 drinking. And I pled and I paid a fine for that.

25                 I had two other instances. One when I was a

1 freshman/sophomore in college with my sister. My  
2 sister is, unfortunately, a paranoid schizophrenic, and  
3 she has since been diagnosed incompetent. At one point  
4 she was rather violent and had tremendous issues.

5           And we had an issue at my parents' house.  
6 My parents were out of town on the way back from the  
7 beach, and the police arrived. And I was young,  
8 probably a little bit hot-headed, and wanted to explain  
9 to the officer what my sister's condition was.

10           And not knowing I mean, obviously they were  
11 coming into a messy situation and they were upset, but  
12 they didn't want to pull me aside and hear the  
13 situation. So one of the officers said, Well, you can  
14 tell us -- we can talk to her or we can -- if you want  
15 to talk to us by yourself, I'm going to take you down  
16 to the police station. And I said fine.

17           And they took me down there, and about an  
18 hour later some of the other officers -- my parents  
19 came back into town. My brother kind of explained it  
20 and a couple of the other officers who were more  
21 familiar with the situation -- because my sister had  
22 had other issues -- came and they let me out.

23           I was fingerprinted. I never received a  
24 citation, never received a summons. If I was charged,  
25 I assume it would be CDC. I don't know what happened

1 to that.

2 To be honest with you, I have not run a rap  
3 sheet, I don't know if anything is on there. I never  
4 sought it to be expunged, so I don't know exactly what  
5 the situation is with that one.

6 The other one, I was in law school,  
7 third-year law school, and I went to the ACC tournament  
8 with some friends. I'm a Duke fan. We happened to be  
9 watching North Carolina lose.

10 And one of my buddies was a little bit  
11 obnoxious to the North Carolina fans that were sitting  
12 in the same section, and he was arrested for drunk and  
13 disorderly conduct. As he was being marched out, one  
14 of the officers kind of dragged his head against the  
15 cement wall and his head exploded in blood.

16 Even the North Carolina fans who had been  
17 cheering when the cops arrested him got upset. I went  
18 with his girlfriend down to the police substation below  
19 to lodge a complaint; rather than the complaint being  
20 lodged, I was arrested, I spent the night in jail.

21 Their system is a little bit different; at  
22 the same time I basically had a probable cause hearing  
23 at the time I had a binary, and she threw the charges  
24 out. I never was served with any paperwork, I spent  
25 the night in jail. My friend's charges ended up being

1 dismissed as well.

2 MS. DEAN: Thank you for briefly going over  
3 those.

4 You also say in your personal data  
5 questionnaire that you're involved in three lawsuits  
6 tangentially.

7 Do you mind briefly describing those?

8 MR. HARVIN: The one currently pending, one  
9 of our clients, unfortunately, we missed the statute of  
10 limitations. I was not particularly handling that  
11 case, one of my partners was handling that case. It's  
12 now being handled by our insurance company.

13 I think there's a dispute as to the amount  
14 our former client is due. I'm sure the attorneys on  
15 the panel know that, at that point, the insurance  
16 company has control of the amount to be paid. I'd  
17 certainly like to see that client compensated as soon  
18 as possible.

19 The insurance company is resisting that for  
20 whatever reasons they have and have not paid that  
21 claim, which I think is due.

22 I had a second matter when I was selling my  
23 house in Charleston and moved to Walterboro, and we had  
24 a dispute as to the return of earnest money. And we  
25 ended up resolving that just by splitting the earnest

1 money 50/50.

2 The third one was an unusual situation, it  
3 was federal court, someone I represented on a criminal  
4 case, and they brought a 1983 action against just about  
5 everybody they could think of bringing, and I was one  
6 of the defendants in this action, which was dismissed.

7 MS. DEAN: Thank you.

8 Additionally, you say you have an out-of-  
9 town membership to Forest Lake Country Club. Could you  
10 please just address any concerns that anyone might have  
11 about their admission policy.

12 MR. HARVIN: Well, to be honest, I'm not  
13 sure exactly what the current admissions policy at  
14 Forest Lake Club is. There has certainly been a  
15 discriminatory policy in the past, I believe there  
16 probably still is. I don't know the exact nature of  
17 it.

18 At one point it was certainly, you know,  
19 written in stone, you know, within the bylaws, and I  
20 believe it may have actually been in the real estate  
21 covenants at one point. It's my understanding at least  
22 that the bylaws have been changed to remove any  
23 reference to gender, race, or ethnicity in those  
24 bylaws.

25 Unfortunately, I'm not aware of any member

1 of color at Forest Lake Club. It's something that I've  
2 struggled with. It's been something I've been -- it's  
3 been in the family for years. It's very important to  
4 my 86-year-old mother that I'm a member.

5 But I do realize there's a real perception  
6 there, and it's a concern to me. I hope that Forest  
7 Lake Club will very soon have members of color. I'm  
8 very thankful that Augusta National has gone through a  
9 similar situation, it has just admitted two women to  
10 Augusta National for the very first time. Certainly,  
11 there was public pressure placed on Augusta National.

12 But, ultimately, it was the people  
13 internally who submit names and accept members, and  
14 it's going to take people within an organization like  
15 that to change it. One of the things about  
16 unfortunately being an out-of-town member is I  
17 particularly am not allowed to submit names, you have  
18 to be a full-time resident member to submit somebody  
19 for membership in the club.

20 It is something that I've certainly  
21 struggled with, but I'd like to see it -- I'd like to  
22 be somebody -- when the first African-American member  
23 comes in the door, I'd like to be there and shake his  
24 hand.

25 MS. DEAN: Thank you, Mr. Harvin.



1           You also say that you were fined for the  
2 late filing of your statement of economic interest form  
3 as a member of the Colleton County Election Board. Can  
4 you just please address that real quick?

5           MR. HARVIN: When I was appointed to the  
6 Colleton County Board of Voter Registration and  
7 Election, I had to file, as I'm sure each of y'all do,  
8 file a statement of economic interest.

9           I printed one off and sent it in by mail,  
10 didn't realize it had to be an online filing; somewhat,  
11 I guess, opposite of the recent election situation  
12 where we had several candidates file online and not  
13 submit a paper ballot.

14           I submitted a paper filing. I was called  
15 and said, We need you to file something  
16 electronically. So I got on the electronic system,  
17 signed into it, entered the information, hit enter. It  
18 gave me an option to save it. I hit "save" thinking  
19 that I was filing it, meaning it was being saved in the  
20 system. It just simply saved it, I guess, for later  
21 access and filing.

22           I received a letter saying, you know, You're  
23 in violation. I called, spoke with them. They walked  
24 me through, told me what the problem was, and went  
25 ahead and filed electronically. It was \$100, and it

1 was easier to pay it than trying to appeal something  
2 for \$100.

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

4 I just have some housekeeping issues now.

5 Have you sought or received the pledge of  
6 any legislator prior to this date?

7 MR. HARVIN: No.

8 MS. DEAN: Have you sought or have you been  
9 offered a conditional pledge of support of any  
10 legislator pending the outcome of your screening?

11 MR. HARVIN: No.

12 MS. DEAN: Have you asked any third parties  
13 to contact members of the General Assembly on your  
14 behalf?

15 MR. HARVIN: No.

16 MS. DEAN: Are you aware of anyone  
17 attempting to intervene in any part of the process on  
18 your behalf?

19 MR. HARVIN: No.

20 MS. DEAN: Have you contacted any members of  
21 the Commission?

22 MR. HARVIN: No.

23 MS. DEAN: Do you understand that you are  
24 prohibited from seeking a pledge or commitment until 48  
25 hours after the formal release of the Commission's

1 report?

2 MR. HARVIN: Yes.

3 MS. DEAN: Have you reviewed the  
4 Commission's guidelines on pledging?

5 MR. HARVIN: Yes.

6 MS. DEAN: As a follow-up, are you aware of  
7 the penalties for violating the pledging rules; that  
8 is, it is a misdemeanor and, upon conviction, the  
9 violator must be fined not more than \$1,000 or in  
10 prison not more than 90 days?

11 MR. HARVIN: Yes.

12 MS. DEAN: I would note that the South  
13 Carolina Bar report found Mr. Harvin to be qualified  
14 under all categories. I would further note that the  
15 Lowcountry Citizens Committee found Mr. Harvin  
16 qualified for constitutional qualifications, physical  
17 health, and mental ability.

18 The Citizens Committee found Mr. Harvin to  
19 be well-qualified for ethical fitness, professional and  
20 academic ability, character, reputation, experience,  
21 and judicial temperament.

22 I would just note for the record that any  
23 concerns raised during this investigation regarding the  
24 candidate were incorporated into the questioning of the  
25 candidate today.

1                   REPRESENTATIVE DELLENEY: Does anyone have  
2 any questions for Mr. Harvin?

3                   SENATOR NICHOLSON: I have one.

4                   REPRESENTATIVE DELLENEY: Yes, sir.

5                   SENATOR NICHOLSON: I know you struggle with  
6 your membership at the country club. Have you ever  
7 thought about relinquishing your membership?

8                   MR. HARVIN: Many times.

9                   SENATOR NICHOLSON: But you didn't?

10                  MR. HARVIN: I have not. And that's because  
11 I -- it's a very difficult decision sometimes to try to  
12 do something I think that -- I certainly read the  
13 judicial canons when I made the application as to the  
14 situation. I think the judicial canons reflect, you  
15 know, when you're in a situation like that, you have to  
16 make a real choice whether -- and it's not necessarily  
17 about a call on the morality of the situation, it's how  
18 you best want to change that organization.

19                  And I understand that some people say, you  
20 know, it's an organization you should not be a part of  
21 at all; but I also understand people who say -- you  
22 want to try to be engaged in it. I've gone back and  
23 forth on that on several occasions.

24                  And particularly in this experience and  
25 getting feedback on perceptions from other individuals

1 because -- just in conflicts of interest in general and  
2 upon perceptions, you know, I'd like to be able to look  
3 at someone in the eye and have them, you know, judge me  
4 on my heart and the way I feel, but I also understand  
5 that sometimes people are judged on actions.

6 Well, I think that would just be perception  
7 on my part. I recognize that that perception may not  
8 be able to be dissuaded. And if that's the case, if my  
9 continuing struggles with that, it may be resolved the  
10 other way.

11 SENATOR NICHOLSON: Thank you.

12 REPRESENTATIVE DELLENEY: Any other  
13 questions for Mr. Harvin?

14 There being none, Mr. Harvin, we'd like to  
15 thank you for appearing before us today. This  
16 concludes this portion of the screening process.

17 As you know, the record will be left open  
18 until the report is published, and you could be called  
19 back at any time before the report is published if we  
20 so choose to call you back and explore other issues or  
21 any issues that were raised today; the likelihood of  
22 that is not very strong, but it is a possibility.

23 And I would remind you of the 48-hour rule  
24 and ask you to be mindful of that. After the 48-hour  
25 rule expires and the report, you know, becomes a final

1 report of the Commission, it can't be changed, you  
2 can't be called back.

3 After that point, you can seek, if you are  
4 one of the folks who are seeking commitment. But I  
5 would like to remind you of the 48-hour rule, and I  
6 would like to thank you for offering to serve and hope  
7 you have a safe trip home.

8 MR. HARVIN: Thank you.

9 REPRESENTATIVE DELLENEY: Next we have Jon  
10 Rene Josey.

11 MR. JOSEY: Good morning.

12 REPRESENTATIVE DELLENEY: We have before us  
13 today Jon Rene Josey. I believe you used to be the  
14 U.S. Attorney for South Carolina some years ago?

15 MR. JOSEY: Yes, sir.

16 REPRESENTATIVE DELLENEY: He seeks a  
17 position for the Circuit Court At-Large, Seat Number  
18 14.

19 If you would please, raise your right hand  
20 to be sworn.

21 (Jon Rene Josey was duly sworn, after which  
22 testimony commenced at 10:40 a.m.)

23 REPRESENTATIVE DELLENEY: Thank you, sir.

24 Have you had an opportunity to review the  
25 personal data questionnaire?

1 MR. JOSEY: I have.

2 REPRESENTATIVE DELLENEY: Is it correct?

3 MR. JOSEY: I found a mistake last night.

4 REPRESENTATIVE DELLENEY: What is that?

5 MR. JOSEY: It's not real significant, but  
6 on page 6 -- actually, it's in my sworn statement not  
7 in my PDQ. The PDQ is fine.

8 REPRESENTATIVE DELLENEY: So nothing on the  
9 PDQ needs to be changed?

10 MR. JOSEY: Right.

11 Do you want me to tell you what the mistake  
12 was in my sworn statement?

13 REPRESENTATIVE DELLENEY: That would be my  
14 next question, do you object to our making your sworn  
15 statement part of the report; and you say there is a  
16 mistake?

17 MR. JOSEY: No objection, but I would like  
18 to correct a mistake. On page 6, in answer to question  
19 16, I said I was presently the president of the  
20 Florence County Bar.

21 And what happened is, as you know, I've  
22 applied several times, and that is a sentence that's  
23 carried over from a previous application. I am not  
24 president of the Florence County Bar; I have been, but  
25 I'm not now.

1                   REPRESENTATIVE DELLENEY: Computers are a  
2 wonderful thing.

3                   MR. JOSEY: They are a wonderful thing,  
4 until they make a mistake.

5                   REPRESENTATIVE DELLENEY: Do you object to  
6 our making the summary part of your sworn testimony?

7                   MR. JOSEY: No, sir.

8                   REPRESENTATIVE DELLENEY: It will be done at  
9 this point in the transcript.

10                   (EXH. 4, Personal Data Questionnaire of Jon  
11 Rene Josey, Amendment to the Personal Data  
12 Questionnaire of Jon Rene Josey, and Sworn Statement of  
13 Jon Rene Josey, marked for identification.)

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

24                   We have not received any affidavits in  
25 opposition to your election and there are no witnesses



1 here to testify.

2 Do you have a brief opening statement you'd  
3 like to make?

4 MR. JOSEY: Very brief. As most of you  
5 probably know, I'm a repeat customer, and I'm a repeat  
6 customer because I still feel called to serve in a  
7 judicial capacity, not for my ego and not for that  
8 state paycheck, but because I want to use my skills and  
9 experience for the greater public good.

10 My experience, as you can see and as you may  
11 know already, includes over 25 years of practice in a  
12 very wide variety of settings, both as a prosecutor, as  
13 a defense lawyer in big firms, in small firms,  
14 government practice.

15 And my skills have been repeatedly  
16 recognized by my peers, not just regular Martindale  
17 Hubbell ratings, but I've been in the Best Lawyers of  
18 America for five or six years running and in the Super  
19 Lawyers publication several years running for a variety  
20 of different areas.

21 So I think I have a lot to offer, and I'm  
22 here to offer it again. That's all I have.

23 REPRESENTATIVE DELLENEY: Thank you, sir.

24 If you would at this point answer any  
25 questions our able counsel might have for you.

1 MR. JOSEY: Sure.

2 MR. GOLDIN: Mr. Chairman and members of the  
3 Commission, I have a few procedural matters to take  
4 care of with this candidate. First I'd like to ask, do  
5 you have any special guests with you here today?

6 MR. JOSEY: I do. I have my wife, Marti,  
7 with me. Some of y'all have met her before. She took  
8 the day off from the hospital to be my sidekick.

9 MR. GOLDIN: Thank you.

10 Mr. Josey, you have before you the personal  
11 data questionnaire you submitted as part of your  
12 application and amendment.

13 Are there any additional amendments that you  
14 would like to make at this time to your personal data  
15 questionnaire?

16 MR. JOSEY: No.

17 MR. GOLDIN: Mr. Chairman, I would like to  
18 ask that Mr. Josey's personal data questionnaire and  
19 amendments be entered as an exhibit into the hearing  
20 record.

21 REPRESENTATIVE DELLENEY: Without objection,  
22 it will be done at this point in the transcript.

23 MR. GOLDIN: Mr. Josey,  
24 you have before you the sworn statement you provided  
25 with detailed answers to over 30 questions regarding

1 judicial conduct, statutory qualification, office  
2 administration, and temperament.

3 Are there any additional amendments you  
4 would like to make at this time to your sworn  
5 statement?

6 MR. JOSEY: No additional amendments.

7 MR. GOLDIN: At this time, Mr. Chairman, I  
8 would like to ask that Jon Rene Josey's sworn statement  
9 be entered as an exhibit into the hearing record.

10 REPRESENTATIVE DELLENEY: Without objection,  
11 it will be made part of the transcript at this point.

12 MR. GOLDIN: One final procedural matter.  
13 I note for the record that based on the testimony  
14 contained in the candidate's PDQ, which had been  
15 included in the record with the candidate's consent,  
16 Mr. Harvin meets the statutory requirements for this  
17 position regarding age, residence, and years of  
18 practice.

19 Mr. Josey, will you please state the city  
20 and circuit in which you reside.

21 MR. JOSEY: I live in Florence, South  
22 Carolina, which is in the 12th Judicial Circuit.

23 MR. GOLDIN: Thank you.

24 Mr. Josey, why do you now want to serve as a  
25 circuit court judge?

1 MR. JOSEY: Well, as I kind of indicated in  
2 my opening statement, I feel called to do so, and  
3 that's maybe a strange word to use in this context.  
4 But I think I've developed skills and experience that  
5 would be of use to the position, I think I would enjoy  
6 the position, and it's really why I went into the  
7 practice of law to begin with, is to serve other  
8 people.

9 And I have served a lot of clients, but now  
10 I'd like to serve kind of the greater public good.

11 MR. GOLDIN: Mr. Josey, can you explain to  
12 the Commission how you feel that your legal and  
13 professional experience will be able to assist you to  
14 be an effective judge?

15 MR. JOSEY: I will. As I mentioned, I have  
16 practiced in a lot of different settings, so unlike  
17 somebody who maybe comes from a more narrow experience,  
18 I have a wide experience and there's not as many things  
19 that would surprise me as probably maybe another  
20 candidate.

21 I've practiced civil law; I've practiced  
22 criminal law; I've practiced in large firms; I've  
23 practiced in small firms; I've practiced by myself. So  
24 I kind of know what lawyers are up against sometimes,  
25 and I know how judges can make the system work better

1 or not work so well.

2 As a prosecutor, I know kind of what to  
3 expect from prosecutions; and as a defense lawyer, I  
4 know that sometimes good folks make mistakes and have  
5 good lawyers out there to defend them. And I think I  
6 can balance all the various interests based on my  
7 experience.

8 MR. GOLDIN: Mr. Josey, are there any areas,  
9 including subjective areas, of law that you would need  
10 to additionally prepare for in order to serve as judge,  
11 and how would you handle that additional preparation?

12 MR. JOSEY: Well, being a lawyer, and  
13 particularly being a judge, it means studying on a  
14 regular basis. And I consider myself studious, I was  
15 so in school, and I had to be in school in order to do  
16 well. And the law is constantly changing. So even if  
17 I know an area, I'd have to study it.

18 But there are some areas that I haven't had  
19 a lot of experience with. I haven't tried a death  
20 penalty case. So that's obviously an area I would have  
21 to spend a lot of time with, and I would. I'd do  
22 whatever it takes to make sure the thing is done right.

23 MR. GOLDIN: Mr. Josey, although you  
24 addressed this in your sworn statement, could you  
25 please explain to the members of the Commission what

1 you think is the appropriate demeanor of a judge?

2 MR. JOSEY: Sure. And I kind of had a catch  
3 phrase in any affidavit, I think. A judge needs to be  
4 decisive but not impulsive. A judge needs to be -- I  
5 can't remember exactly how I said it.

6 Decisive but not impulsive, they need to be  
7 patient but not tolerant of a waste of time. They need  
8 to be respectful to all the litigants, all the staff,  
9 court reporters, clerk staff, and all the players,  
10 witnesses.

11 Too often -- it's hard to juggle all that in  
12 the context of a trial setting, but a good judge tries  
13 to be respectful of everybody's time and attention, and  
14 too often somebody gets left out, whether court  
15 reporters go without a bathroom break or witnesses have  
16 to spend hours twiddling their thumbs.

17 I'm not saying I'd be perfect at it, but I  
18 know what things to look for and what things to try to  
19 guard against.

20 MR. GOLDIN: Is there any circuit court  
21 judge currently on the bench that you would like to  
22 model yourself after or particularly exemplifies the  
23 characteristics that a circuit court judge should have?

24 MR. JOSEY: There probably are. I always  
25 admired Jim Broaden; of course, he's no longer on the

1 bench, but he was in our circuit so I got to see him  
2 more often than I got to see some others. He was a  
3 good balance of decisiveness and patience.

4 Bill Traxler, who's on the 4th Circuit now,  
5 is a good friend of mine. He at one time was on the  
6 circuit bench and was an excellent trial judge. And  
7 I'm sure there are others. Mark Hayes. I haven't  
8 appeared in front of Mark Hayes, but I've gotten to  
9 know him well and I think he's probably a very good  
10 judge given his demeanor and personality.

11 MR. GOLDIN: When you leave the bench, what  
12 would you like your legacy as the judge on circuit  
13 court to be?

14 MR. JOSEY: Well, I'd like my legacy to be  
15 that folks who encountered the judicial system, which  
16 is usually not under good circumstances, it's because  
17 something has gone wrong either civilly or criminally,  
18 that I played a role in making sure that they got a  
19 fair result. It may be a result they want or not, but  
20 that they got a fair result in the system and that I  
21 played a role.

22 MR. GOLDIN: What suggestions would you  
23 offer for improving the backlog of cases on the docket  
24 both for general sessions and common pleas in the  
25 circuit court?

1           MR. JOSEY: Circuit court, I would like to  
2 see -- and I'm not sure how I would do it, but I would  
3 like to see judges handle the same case for a longer  
4 period of time, which is hard to do given that they  
5 rotate.

6           But too often it's easy for a judge to come  
7 into town in a given week and take the easy road and  
8 say "deny motions for summary judgment" or put off  
9 questions of evidence until the trial. And when those  
10 things get put off, it makes the trial that much more  
11 complicated or it might result in a trial that didn't  
12 need to happen to begin with.

13           And if the same judge keeps the case a  
14 little longer, I think they may be able to handle it  
15 more efficiently. That's true on the civil side, and  
16 that's probably true on the criminal side.

17           On the criminal side, of course we --  
18 several circuits, including my own circuit, have  
19 adopted these scheduling orders, if you will, where the  
20 solicitor's office is supposedly held to a standard  
21 where they have to have initial appearances within a  
22 certain period of time, the docket appearances within a  
23 certain period of time.

24           Ultimately, I don't know how much teeth that  
25 has because the solicitor is in a unique position to



1 control their docket, and they probably need to control  
2 their docket.

3 But just having a good judge who's attentive  
4 to what the solicitor is doing helps, not necessarily  
5 supervising them, but prompting them to stay on top of  
6 their staff and stay on top of their caseload.

7 MR. GOLDIN: Do you currently carry  
8 malpractice insurance in your law practice and, if so,  
9 how long have you carried malpractice insurance?

10 MR. JOSEY: I've always carried malpractice  
11 insurance in private practice. So I've had it, in my  
12 current firm, since I joined my firm in 2001. We may  
13 have changed carriers in that period, in fact, I think  
14 we have changed carriers, but we've maintained  
15 malpractice insurance all the time.

16 MR. GOLDIN: I just have some housekeeping  
17 issues now.

18 Have you sought or received the pledge of  
19 any legislator prior to this date?

20 MR. JOSEY: I have not.

21 MR. GOLDIN: Have you sought or have you  
22 been offered a conditional pledge of support of any  
23 legislator pending the outcome of your screening?

24 MR. JOSEY: I have not.

25 MR. GOLDIN: Have you asked any third

1 parties to contact members of the General Assembly on  
2 your behalf?

3 MR. JOSEY: Not yet.

4 MR. GOLDIN: Are you aware of anyone  
5 attempting to intervene in any part of the process on  
6 your behalf?

7 MR. JOSEY: I am not.

8 MR. GOLDIN: Have you contacted any members  
9 of the Commission?

10 MR. JOSEY: I have not.

11 MR. GOLDIN: Do you understand that you are  
12 prohibited from seeking a pledge or commitment until 48  
13 hours after the formal release of the Commission's  
14 report?

15 MR. JOSEY: I understand that.

16 MR. GOLDIN: Have you reviewed the  
17 Commission's guidelines on pledging?

18 MR. JOSEY: I have.

19 MR. GOLDIN: To follow up, are you aware of  
20 the penalties for violating the pledging rules; that  
21 is, it is a misdemeanor and, upon conviction, the  
22 violator must be fined not more than \$1,000 or in  
23 prison not more than 90 days?

24 MR. JOSEY: I reread that in the transcript  
25 last night.

1 MR. GOLDIN: Thank you.

2 I would note that the Pee Dee Citizens  
3 Committee found Mr. Josey qualified in the categories  
4 of constitutional qualifications, physical health, and  
5 mental stability and well-qualified in the areas of  
6 ethical fitness, professional and academic ability,  
7 character, reputation, experience, and judicial  
8 temperament.

9 In its summary, the committee reported that  
10 Mr. Josey has diverse legal background, which well  
11 qualifies him to serve as a circuit court judge.

12 I would further note that any concerns  
13 raised during this investigation regarding Mr. Josey  
14 were incorporated into the questioning of the candidate  
15 today.

16 Mr. Chairman, I have no further questions.

17 REPRESENTATIVE DELLENEY: Does any member of  
18 the Commission?

19 Mr. Clemmons.

20 MR. CLEMMONS: Mr. Josey, it's good to have  
21 you with us today. For the panel, I'd like to point  
22 out that Mr. Josey has an excellent reputation in the  
23 area he practices. A concern was raised on one of the  
24 bar surveys, and I think you should have an opportunity  
25 to respond to that. And those surveys, of course, are

1 anonymous.

2           One of them reported that you had exhibited  
3 some inappropriate response to gay litigants that you  
4 were involved with; in fact, refused to shake their  
5 hands or the hands of one of the attorneys who was  
6 purported -- was purported that you thought he was  
7 gay.

8           So just share with us your response to that  
9 situation and how you generally deal with alternative  
10 lifestyles in the courtroom.

11           MR. JOSEY: Well, first of all, I'll just  
12 say point-blank, I'm not biased. I'm racking my brain  
13 trying to remember what that might have resulted in; I  
14 honestly have no clue, because I don't recall any  
15 litigation that involved gay litigants to my  
16 knowledge.

17           It might sound trite, but I sit between two  
18 gay guys in the church choir and they're very good  
19 friends of mine. So I don't know where that stemmed  
20 from, but I assure you it's not true.

21           MR. CLEMMONS: Thank you. And as far as --

22           MR. JOSEY: There may have been times when I  
23 did not shake a litigant's hand because my temper  
24 wasn't quite down to where it needed to be, but it  
25 didn't have anything to do with gays.

1 MR. CLEMMONS: Again, I have to remind  
2 everybody that those are anonymous surveys.

3 MR. JOSEY: And I hope they're isolated.

4 MR. CLEMMONS: As far as your temperament in  
5 the courtroom would be concerned with regard to  
6 litigants appearing before you or attorneys appearing  
7 before you who practiced an alternative lifestyle, how  
8 will you treat those litigants compared to others?

9 MR. JOSEY: Just like anybody else.

10 MR. CLEMMONS: Thank you very much,  
11 Mr. Josey.

12 REPRESENTATIVE DELLENEY: Does anybody else  
13 have any questions?

14 All right. There being no other questions,  
15 Mr. Josey, we'd like to thank you very much for  
16 appearing before us today and for your willingness to  
17 serve and to run.

18 This concludes this portion of the screening  
19 process. As you know, the report will remain open  
20 until such time that it's published, and up until that  
21 time, we could call you back if we so choose to ask you  
22 questions about another matter or any other matter.

23 But after the report is published, it's  
24 final and it can't be changed. I'll remind you about  
25 the 48-hour rule, where you have to wait 48 hours

1 before you can seek -- of course, the 48-hour period  
2 will be written on the report so there will be no  
3 mistake about that.

4 Again, I'd like to thank you for offering to  
5 serve, and I hope you and your wife have a very safe  
6 trip back to Florence.

7 MR. JOSEY: Thank you. Thank you everybody.

8 REPRESENTATIVE DELLENEY: Next we've got  
9 Mr. Keith Kelly.

10 Today we have before us Mr. R. Keith Kelly,  
11 who used to serve on the House of Representatives, who  
12 now seeks a position on the Circuit Court At-Large,  
13 Seat Number 14.

14 If you would, Mr. Kelly, please raise your  
15 right hand to be sworn.

16 (R. Keith Kelly was duly sworn, after which  
17 testimony commenced at 10:58 a.m.)

18 REPRESENTATIVE DELLENEY: Thank you, sir.

19 Have you had an opportunity to review the  
20 personal data questionnaire?

21 MR. KELLY: I have.

22 REPRESENTATIVE DELLENEY: And is it correct?

23 MR. KELLY: It is.

24 REPRESENTATIVE DELLENEY: And so nothing  
25 needs to be changed?

1 MR. KELLY: Not to my knowledge,  
2 Mr. Chairman.

3 REPRESENTATIVE DELLENEY: Do you object to  
4 our making this summary a part of the record to your  
5 sworn testimony?

6 MR. KELLY: I do not.

7 REPRESENTATIVE DELLENEY: It will be done at  
8 this point in the transcript.

9 (EXH. 5, Personal Data Questionnaire of R.  
10 Keith Kelly and Sworn Statement of R. Keith Kelly,  
11 marked for identification.)

12 REPRESENTATIVE DELLENEY: The Judicial Merit  
13 Selection Commission has thoroughly investigated your  
14 qualifications for the bench. Our inquiry is focused  
15 on the nine evaluative criteria. It has included a  
16 survey of the bench and bar, a thorough study of your  
17 application materials, verification of your compliance  
18 with state ethics laws, a search of newspaper articles  
19 in which your name appears, a study of previous  
20 screenings, and a check for economic conflicts of  
21 interest.

22 We have received no affidavits filed in  
23 opposition to your election and there are no witnesses  
24 here present to testify.

25 Do you have a brief opening statement you'd

1 like to make?

2 MR. KELLY: Yes, Mr. Chairman. I just want  
3 to say thank you for the opportunity to appear before  
4 the Commission. You have all my information, I'd be  
5 happy to answer any questions that you or any member  
6 have.

7 REPRESENTATIVE DELLENEY: Thank you, sir.  
8 Please answer any questions that our able  
9 counsel may have for you.

10 MR. GENTRY: I have a few procedural matters  
11 to take care of with this candidate.

12 Mr. Kelly, you have before you the sworn  
13 statement you provided with detailed answers to over 30  
14 questions regarding judicial conduct, statutory  
15 qualification, office administration, and temperament.

16 Are there any amendments you would like to  
17 make at this time to your sworn statement?

18 MR. KELLY: There are no amendments.

19 MR. GENTRY: At this time, Mr. Chairman, I'd  
20 like to ask that Mr. Kelly's sworn statement be entered  
21 as exhibit into the hearing record.

22 REPRESENTATIVE DELLENEY: It will be done at  
23 this point in the transcript.

24 MR. GENTRY: One final procedural matter. I  
25 note for the record that based on the testimony



1 contained in the candidate's PDQ, which had been  
2 included in the record with the candidate's consent,  
3 Mr. Kelly meets the statutory requirements for this  
4 position regarding age, residence, and years of  
5 practice.

6 Mr. Kelly, why do you now want to serve as a  
7 circuit court judge?

8 MR. KELLY: Well, members of the Committee,  
9 I enjoyed my service in the House of Representatives,  
10 being in the General Assembly, and I truly view -- and  
11 I put this in what you have before you -- that service  
12 as a circuit court judge is also serving that State of  
13 South Carolina. I've served my country and my state,  
14 and I'd like an opportunity to do that again.

15 MR. GENTRY: Mr. Kelly, can you explain to  
16 the Commission how you feel your legal and professional  
17 experience thus far will assist you to be an effective  
18 judge?

19 MR. KELLY: Sure. I've practiced law now  
20 for about 25 years, both in the criminal court in this  
21 state all the way up to the magistrate court all the  
22 way up to the general sessions court.

23 I've been involved in four death penalty  
24 cases, also been involved in some federal litigation,  
25 also federal court. But back to the state court; I've

1 also practiced in the civil area in the common pleas  
2 courts and, of course, in injury cases there. So I  
3 think I would bring to the bench a wide range of  
4 experience, trial experience.

5 MR. GENTRY: Are there any areas, including  
6 subjective areas, of law that you would need to  
7 additionally prepare for in order to serve as judge,  
8 and how would you handle that additional preparation?

9 MR. KELLY: I don't think there are any  
10 other areas. Certainly, we all learn something every  
11 day in the law in whatever case it may be, some nuance,  
12 but I think I'm good.

13 MR. GENTRY: Although you addressed this in  
14 your sworn statement, could you please explain to the  
15 members of the Commission what you think is the  
16 appropriate demeanor of a judge?

17 MR. KELLY: Well, I think the appropriate  
18 demeanor for a judge is one of that's courteous; you  
19 can be firm without being overzealous, if you will. I  
20 think you need to be courteous to the litigants and I  
21 think you need to be courteous to the lawyers that are  
22 in the courtroom.

23 Anybody who's practiced law for a number of  
24 years has had the opportunity to stand before a judge,  
25 whether it be a circuit court judge or a family court

1 judge or whatever, and it not be a very pleasant  
2 experience. I don't think there's any place for that  
3 in the judicial system.

4 MR. GENTRY: Is there any circuit court  
5 judge currently on the bench that you would like to  
6 model yourself after or particularly exemplifies the  
7 characteristics that a circuit court judge should have?

8 MR. KELLY: I think that Judge Lee Alford  
9 from up in the Rock Hill area is a really good example  
10 of a circuit court judge. I practiced before him as a  
11 family court judge and I practiced before him as a  
12 circuit court judge.

13 He has an even temper, never gets upset,  
14 very firm, he's in control of the courtroom, and I  
15 think that's a good model.

16 MR. GENTRY: When you leave the bench, what  
17 would you like your legacy to be as a judge on the  
18 circuit court?

19 MR. KELLY: I would like for my legacy to be  
20 that he was fair, he was courteous to everyone in the  
21 courtroom, and treated everyone with respect, but he  
22 was also firm and in control of the courtroom.

23 MR. GENTRY: What suggestions, if any, would  
24 you offer for improving the backlog of cases on the  
25 docket, both for general sessions and common employees?

1 MR. KELLY: Well, I've never been there to  
2 have an opportunity to handle the administrative part  
3 of it, but I will tell you that in Spartanburg County,  
4 the chief justice issued an order that the admin  
5 circuit court judge up there is in control of the  
6 docket. And I would tell you that it's working, we are  
7 actually reducing cases.

8 MR. GENTRY: Do you currently carry  
9 malpractice insurance in your law practice and, if so,  
10 how long have you carried malpractice insurance?

11 MR. KELLY: I do carry it, and we have  
12 carried it every year I have been in practice, yes.

13 MR. GENTRY: Mr. Kelly, you were sued  
14 numerous times between 1991 and 2000 arising out of the  
15 same set of cases and representation of clients.

16 Could you please explain the nature and  
17 status of those lawsuits?

18 MR. KELLY: I can. There was a lawyer here  
19 in Columbia, his name you have before you, I can't  
20 remember it, but there was some statute that said if  
21 you had represented someone and you had like an  
22 interest in, I think -- sometimes we're awarded  
23 attorney's fees in family court and so forth, they can  
24 name you as their agent.

25 And so this lawyer kept filing lawsuits, not

1 against me personally, but he would name me as a  
2 defendant and also the agent for that individual. And  
3 if you look at those, there are two or three names that  
4 keep popping up, they're on every one of them.

5 I called the guy and said, Look, you've got  
6 to quit naming me, I'm not in this, I don't care what  
7 you do with that, I don't have a vested interest in  
8 these lawsuits. And so there's no judgment against me.

9 MR. GENTRY: Also in 2002 you were sued by a  
10 client, Mr. Bragg. Could you please explain the nature  
11 of this lawsuit?

12 MR. KELLY: I can. First of all, the case  
13 is settled. Mr. Bragg hired me, he paid me \$1,000 to  
14 represent him in a magistrate court level offense.  
15 That trial was going to be at 5:30, 6:00 p.m. in the  
16 evening in the magistrate court in Spartanburg.

17 As in most places, we run more than one  
18 courtroom. We have four courtrooms that we're running  
19 in Spartanburg. I went to the clerk there, told her  
20 that I was present. I also had another hearing down  
21 the hall in another courtroom. Mr. Bragg, as I recall,  
22 was in the courtroom. I said, I'll be back.

23 Lisa would say, If the judge calls your  
24 case, I'll be happy to tell him you'll be right back.  
25 I went down the hall. When I returned, Mr. Bragg was

1 gone. I had worked out that the case was going to be  
2 dismissed, and it was dismissed, and Mr. Bragg left.

3 A few days later Mr. Bragg contacted me  
4 demanding that he get his payment back because I had  
5 done nothing, quote, end quote, even though I had  
6 worked the case out. I told him I had represented him,  
7 provided legal services and refused to return his  
8 money.

9 He then filed a magistrate court lawsuit  
10 against me. I practice with Tony Lister and Larry  
11 Flynn. I told them it's not worth \$1,000 if we win,  
12 but then I'll end up before the grievance committee and  
13 I'll have to explain it again. So we wrote him a check  
14 back, settled the case, gave him his money back, and  
15 haven't seen him since.

16 MR. GENTRY: Mr. Kelly, the Commission  
17 received 174 ballot box survey responses regarding your  
18 candidacy with 18 written comments, four of which were  
19 negative.

20 One of the comments indicated concerns about  
21 your attitude and described you as lacking compassion  
22 and having an air of entitlement, having served with  
23 the South Carolina House of Representatives.

24 Another comment questioned whether you  
25 possessed the appropriate judicial temperament. And a

1 further comment indicated that you may lack research  
2 and reasoning skills.

3 What response would you offer to these  
4 concerns?

5 MR. KELLY: Well, as to research, I do my  
6 own research. I also help some of the other lawyers in  
7 the office do some research, so I think I'm good there.

8 As to judicial temperament, I don't know who  
9 said that, but I would venture to say that that would  
10 be the only person that's ever said that because I  
11 think I have a pretty even attitude, you know, attitude  
12 about myself.

13 As far as some entitlement, I deny that. I  
14 mean, I don't know what that would be.

15 MR. GENTRY: Thank you, Mr. Kelly.

16 Have you sought or received the pledge of  
17 any legislator prior to this date?

18 MR. KELLY: I have not.

19 MR. GENTRY: Have you sought or have you  
20 been offered a conditional pledge of support of any  
21 legislator pending the outcome of your screening?

22 MR. KELLY: No, I have not.

23 MR. GENTRY: Have you asked any third  
24 parties to contact members of the General Assembly on  
25 your behalf?

1 MR. KELLY: No, I have not.

2 MR. GENTRY: Are you aware of anyone  
3 attempting to intervene in any part of the process on  
4 your behalf?

5 MR. KELLY: I'm not aware.

6 MR. GENTRY: Have you contacted any members  
7 of the Commission?

8 MR. KELLY: I have not.

9 MR. GENTRY: Do you understand that you are  
10 prohibited from seeking a pledge or commitment until 48  
11 hours after the formal release of the Commission's  
12 report?

13 MR. KELLY: Yes, sir, I understand that.

14 MR. GENTRY: Have you reviewed the  
15 Commission's guidelines on pledging?

16 MR. KELLY: I have.

17 MR. GENTRY: Are you aware of the penalties  
18 for violating the pledging rules; that is, it is a  
19 misdemeanor and, upon conviction, the violator must be  
20 fined not more than \$1,000 or in prison not more than  
21 90 days?

22 MR. KELLY: I'm familiar.

23 MR. GENTRY: I would note that the Upstate  
24 Citizens Committee found Mr. Kelly well-qualified in  
25 evaluative criteria, ethical fitness, professional and



1 academic abilities, character, reputation, experience,  
2 and judicial temperament.

3 The committee found Mr. Kelly qualified in  
4 evaluative criteria, constitutional qualifications,  
5 physical health, and mental stability.

6 I would just note for the record that any  
7 concerns raised during this investigation regarding the  
8 candidate were incorporated into the questioning of the  
9 candidate today.

10 Mr. Chairman, I have no further questions.

11 REPRESENTATIVE DELLENEY: Does any member of  
12 the Commission have any questions for Mr. Kelly?

13 There being none, thank you, Mr. Kelly, so  
14 much for your willingness to serve.

15 This concludes this portion of the screening  
16 process. As you know, this portion of the record will  
17 remain open until this report is published. At any  
18 time before we file the report, the Commission can call  
19 you back and ask for questions of you, although it's  
20 unlikely, it could happen.

21 And I'd like to remind you about the 48-hour  
22 rule, that after the draft report becomes the report of  
23 the Commission, you cannot seek commitments for 48  
24 hours. I'm sure you're acquainted with that rule.

25 With that, I'd like to wish you well and

1 hope you have a safe trip back to Spartanburg.

2 MR. KELLY: Thank you, Mr. Chairman.

3 REPRESENTATIVE DELLENEY: Thank you.

4 Next we have David Warren Miller.

5 MR. MILLER: Good morning.

6 REPRESENTATIVE DELLENEY: Good morning,

7 sir. We have before us this morning Mr. David Warren

8 Miller, who seeks a position on the Circuit Court

9 At-Large, Seat Number 14.

10 If you would at this time, Mr. Miller,  
11 please raise your right hand to be sworn.

12 (David Warren Miller was duly sworn, after  
13 which testimony commenced at 11:10 a.m.)

14 REPRESENTATIVE DELLENEY: Thank you, sir.

15 Have you had an opportunity to review your  
16 personal data questionnaire?

17 MR. MILLER: Yes, sir.

18 REPRESENTATIVE DELLENEY: Is it correct?

19 MR. MILLER: Yes, sir.

20 REPRESENTATIVE DELLENEY: So nothing needs  
21 to be changed?

22 MR. MILLER: With the exception of the  
23 amendment that was filed on September 25, 2012.

24 REPRESENTATIVE DELLENEY: I believe we have  
25 that.

1 Do you object to our making this summary  
2 part of the record of your sworn testimony?

3 MR. MILLER: Not at all.

4 REPRESENTATIVE DELLENEY: It will be done at  
5 this point in the transcript.

6 (EXH. 6, Personal Data Questionnaire of  
7 David Warren Miller, Amendment to the Personal Data  
8 Questionnaire of David Warren Miller, and Sworn  
9 Statement of David Warren Miller, marked for  
10 identification.)

11 REPRESENTATIVE DELLENEY: The Judicial Merit  
12 Selection Commission has thoroughly investigated your  
13 qualifications for the bench. Our inquiry is focused  
14 on the nine evaluative criteria.

15 It has included a survey of the bench and  
16 bar, a thorough study of your application materials,  
17 verification of your compliance with state ethics laws,  
18 a search of newspaper articles in which your name  
19 appears, a study of previous screenings, and a check  
20 for economic conflicts of interest.

21 We have no affidavits filed in opposition to  
22 your election and there are no witnesses here to  
23 testify.

24 Do you have a brief opening statement you'd  
25 like to make?

1 MR. MILLER: No, sir.

2 REPRESENTATIVE DELLENEY: Thank you, sir.

3 At this time, if you would answer any  
4 questions our able counsel may have for you.

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

6 Mr. Chairman and members of the Commission,  
7 I have a few procedural matters to take care of with  
8 this candidate first.

9 Mr. Miller, you have before you your sworn  
10 statement where you provided detailed answers to over  
11 30 questions regarding judicial conduct, statutory  
12 qualifications, office administration, and temperament.

13 Are there any additional amendments you  
14 would like to make at this time to your sworn  
15 statement?

16 MR. MILLER: No, sir.

17 MR. FIFFICK: At this time, Mr. Chairman, I  
18 would like to put the exhibits into the hearing record.

19 REPRESENTATIVE DELLENEY: Without objection,  
20 it will be done so at this point in the transcript.

21 MR. FIFFICK: Mr. Miller, please state the  
22 city and circuit in which you reside.

23 MR. MILLER: I live in Aiken, South  
24 Carolina, which is in the second judicial circuit.

25 MR. FIFFICK: Thank you. Why do you now

1 want to serve as a circuit court judge?

2 MR. MILLER: I've been a trial lawyer for  
3 the majority of my legal career; the only time I was  
4 not a trial lawyer was when I was a law clerk for the  
5 Honorable Rodney Peoples, who was our resident judge in  
6 the second circuit.

7 I believe that I possess the skills and the  
8 abilities to contribute to the bench and bar as a trial  
9 court judge. It is my belief that one of the most  
10 important qualifications for a circuit court judge is  
11 that judge be someone who is a trial lawyer, and that  
12 is what I am and that is why I am looking to proceed to  
13 the bench.

14 I don't have any higher aspirations for a  
15 different court. I'm not an appellate court lawyer. I  
16 don't want to be on the Supreme Court or the court of  
17 appeals. I want to be a circuit court judge because I  
18 am a trial lawyer who knows what circuit court judges  
19 are supposed to be.

20 MR. FIFFICK: Thank you, sir. Are there any  
21 areas, including subjective areas, of law that you  
22 would need to additionally prepare for in order to  
23 serve as judge, and how would you handle that  
24 additional preparation?

25 MR. MILLER: There are some areas that I

1 would need to prepare for additionally. Specifically,  
2 in the civil realm, my career path has been a little  
3 bit unusual, in that most people go from a law school  
4 at an entry-level position into solicitor's offices.

5 I actually went from law school to clerking  
6 for Judge Peoples and into private practice, and now I  
7 am an assistant solicitor in the second circuit for  
8 Strom Thurmond, Jr. And for that reason, the last four  
9 years I have focused exclusively on criminal matters;  
10 that's what I have been handling.

11 Now, having said that, for the years prior  
12 to that, I had a very diverse practice that included  
13 civil litigation, no family court at all, but civil,  
14 plaintiffs and defendants, work. I was actually on the  
15 board of governors for the South Carolina Trial Lawyers  
16 Association before that changed over to the South  
17 Carolina Association For Justice.

18 But understanding the complexities and the  
19 changes in the law that are made both in case law and  
20 in statutory law, certainly I would want to improve or  
21 update myself on the civil aspects of the trial, but I  
22 feel confident that I could do that.

23 I would rely on other circuit court judges.  
24 I would rely on my own getting additional CLEs that  
25 focused on civil matters as opposed to criminal

1 matters. And, quite frankly, I think, as any judge has  
2 to, I would rely some on the attorneys that appear  
3 before me.

4 MR. FIFFICK: Thank you, sir. Although you  
5 addressed this in your sworn statement, could you  
6 please explain to the members of the Commission what  
7 you think is the appropriate demeanor of a judge?

8 MR. MILLER: Absolutely. It is my belief  
9 that a judge has to be in control of the courtroom and  
10 knowledgeable but, at the same time, has to have the  
11 ability to make the participants in the proceeding  
12 comfortable that what the judge is doing is the right  
13 thing.

14 There is no need for a judge to allow  
15 himself to be run over, preside over a courtroom where  
16 an attorney is running over the proceeding. But the  
17 field has to be level, and the judge has to be the  
18 arbitrator of that. And it is very important for the  
19 judge to utilize his skills or her skills to  
20 appropriately make sure that decorum is maintained.

21 And to that end, I think that my statement  
22 that I made either in my personal data questionnaire or  
23 my sworn statement was that I want to be a lawyer's  
24 judge. I want lawyers to know that if they come before  
25 me, they are going to get the very best decision I can

1 make in a fair and unbiased manner; and when they are  
2 done with whatever that decision is, when they walk out  
3 of that courtroom, they might feel like I'm wrong, but  
4 they're going to know that I'm honestly wrong.

5 MR. FIFFICK: Is there any circuit court  
6 judge currently on the bench that you would like to  
7 model yourself after or particularly exemplifies the  
8 characteristics that a circuit court judge should have?

9 MR. MILLER: I've tried my best to take a  
10 little bit from a lot of different judges, but if it  
11 was one judge that I'd have to pick it would be Thomas  
12 W. Cooper from Manning. He is consistently one of the  
13 judges that is very highly ranked by all of the bar  
14 surveys that go out.

15 But, at the same time, we've had the fortune  
16 to have him in second circuit several times during the  
17 last year or so presiding over criminal court, and I  
18 can honestly say that he has never not been in control  
19 of the courtroom. He has shown a great deal of respect  
20 because he's earned a great deal of respect, and his  
21 temperament is impeccable.

22 MR. FIFFICK: When you leave the bench, what  
23 would you like your legacy as the judge on circuit  
24 court to be?

25 MR. MILLER: Going back to what I said



1 before, I think I want to be known as a lawyer's  
2 judge. I would like for everybody who appeared in  
3 front of me to say, I may not have agreed with him, but  
4 I know that the disagreement was because either I  
5 didn't understand what the issue was or they didn't  
6 understand what the issue was.

7           And I think that at the end of the day if  
8 you don't make any decisions based upon bias or  
9 prejudice or preconceived notions, if you try your best  
10 to make decisions based on the law and try to be right,  
11 then nobody can take that away from you and everybody  
12 is going to appreciate it.

13           Because, at the end of the day, what's going  
14 to happen is those litigants are going to know that  
15 they got the best ruling from you that they could get.

16           MR. FIFFICK: Do you have suggestions to  
17 offer for improving the backlog of cases on the docket  
18 both for general sessions and common pleas in the  
19 circuit court?

20           MR. MILLER: That's a very interesting  
21 question. The common pleas court, we see specifically  
22 now as -- being in the courthouse in the solicitor's  
23 office, very often during common pleas week, we'll go  
24 up on Tuesday and court's broken down and there's  
25 nothing going on in the common pleas court.

1           But a part of that is the efficiency with  
2 which Judge Early controls the docket. And Judge Early  
3 is able to control that docket efficiently. I think  
4 that the best thing that Judge Early does is works  
5 towards getting cases resolved with the parties without  
6 unfairly pushing people into settlement of their  
7 cases.

8           On the general sessions side of the docket,  
9 there is, simply put, too much work to do. There are  
10 arrests that are being made, and those arrests generate  
11 criminal cases and those criminal cases need to be  
12 resolved. And we can't ever let wanting cases to get  
13 resolved get in the way of somebody's due process  
14 rights.

15           One of the things that I counsel the young  
16 solicitors in my office on, and we have several of them  
17 now, is to make sure they're doing the right thing for  
18 the right reason, and moving your docket ahead and  
19 pushing your caseload is not the right reason to  
20 dismiss a case or to take a plea in a case that is less  
21 than should be done in that particular matter.

22           MR. FIFFICK: Do you currently carry  
23 malpractice insurance in your law practice and, if so,  
24 how long have you carried malpractice insurance?

25           MR. MILLER: I do.

1 MR. FIFFICK: A few more housekeeping issues  
2 to take care of with you, Mr. Miller.

3 Have you sought or received the pledge of  
4 any legislator prior to this date?

5 MR. MILLER: I have not.

6 MR. FIFFICK: Have you sought or have you  
7 been offered a conditional pledge of support of any  
8 legislator pending the outcome of your screening?

9 MR. MILLER: No, sir.

10 MR. FIFFICK: Have you asked any third  
11 parties to contact members of the General Assembly on  
12 your behalf?

13 MR. MILLER: No, sir.

14 MR. FIFFICK: Are you aware of anyone  
15 attempting to intervene in any part of the process on  
16 your behalf?

17 MR. MILLER: No, sir.

18 MR. FIFFICK: Have you contacted any members  
19 of the Commission?

20 MR. MILLER: No, sir.

21 MR. FIFFICK: Do you understand that you are  
22 prohibited from seeking a pledge or commitment until 48  
23 hours after the formal release of the Commission's  
24 report?

25 MR. MILLER: I do.

1 MR. FIFFICK: Have you reviewed the  
2 Commission's guidelines on pledging?

3 MR. MILLER: Yes.

4 MR. FIFFICK: As a follow-up, are you aware  
5 of the penalties for violating the pledging rules; that  
6 is, it is a misdemeanor and, upon conviction, the  
7 violator must be fined not more than \$1,000 or in  
8 prison not more than 90 days?

9 MR. MILLER: I am.

10 MR. FIFFICK: I would note that the Midlands  
11 Citizens Committee reported that Mr. Miller was  
12 well-qualified in the evaluative criteria of ethical  
13 fitness, professional and academic ability, character,  
14 reputation, and the judicial temperament.

15 The committee found him qualified in the  
16 areas of constitutional qualifications, physical  
17 health, mental stability, and experience. In summary,  
18 the Committee noted, and I quote, They enjoyed meeting  
19 Mr. Miller. He is an energetic and sincere attorney  
20 who is committed to public service and being in a  
21 courtroom.

22 He is a trial attorney with common sense  
23 beyond his years, and he has a commitment and maturity  
24 to be an outstanding judge. We believe that he is  
25 well-qualified to serve in circuit court and believe he

1 would serve in an outstanding manner.

2 I would just note for the record that any  
3 concerns raised during this investigation regarding the  
4 candidate were incorporated into the questioning of the  
5 candidate today.

6 Mr. Chairman, I have no further questions.

7 REPRESENTATIVE DELLENEY: Does any member of  
8 the Commission have any questions for Mr. Miller?

9 Mr. Mack?

10 REPRESENTATIVE MACK: Thank you,  
11 Mr. Chairman.

12 Mr. Miller, there were a few responses, and  
13 I saw how you responded in writing, but I wanted you to  
14 respond verbally as relates to your temperament.

15 How would you respond to that?

16 MR. MILLER: Sir, my temperament, I'm  
17 passionate about what I do. And my job over the last  
18 -- specifically over the last four years has been  
19 involved in the prosecution of criminal cases. And for  
20 that reason -- that is probably one of the more  
21 contentious areas of the law, you're talking about  
22 people's freedom.

23 And one of the only places I can think of  
24 that it gets worse would be in family court. To the  
25 extent that there are some people who have been

1 frustrated by me and frustrated by my positions, all I  
2 can say is that we have to look at the total record.

3 Frankly, when I was told initially that  
4 there were questions about my temperament, that was --  
5 I won't say offensive -- it was concerning, simply from  
6 the standpoint of, I consider all of the attorneys that  
7 I practice with, on one level or another, to be friends  
8 and to be people that I can call and speak to honestly  
9 and openly, and I expect them to do the same with me.

10 They might not be personal friends, but they  
11 are professional colleagues. And my temperament, to  
12 the extent that it has been questioned, I believe is a  
13 result of my passion in the pursuit of what I believe  
14 to be the right result; and in criminal cases, that can  
15 lead to some ruffled feathers.

16 REPRESENTATIVE DELLENEY: Any other members  
17 of the Commission have any questions for Mr. Miller?

18 PROFESSOR FREEMAN: I thought you made a  
19 very good presentation and a good answer to the  
20 previous question, but I just want to let you know that  
21 the Commission, should you be fortunate enough to be  
22 appointed to the bench, temperament on the part of a  
23 judge is the number-one issue that will get you in  
24 trouble.

25 And I just want you to be aware of that and

1 be aware, if you should be so fortunate as to be  
2 selected, that you've got to keep that under control.

3 MR. MILLER: Yes, sir. And I would, in  
4 response to that, I love Judge Peoples, he was one of  
5 my favorite people in the world. Judge Peoples was a  
6 great -- I felt like a great judge. He was very easy  
7 to work around if you worked for him.

8 But sometimes when you worked around him and  
9 you didn't work for him, it could be difficult. I  
10 learned a lot from that experience, watching him,  
11 watching maybe sometimes what not to do, when not to  
12 get frustrated.

13 And, you know, one of the people that I  
14 respect and admire a lot is Judge Manning. And Judge  
15 Manning did something one day when I was a law clerk  
16 for the attorney general's office.

17 Someone pled guilty in Oconee County on a  
18 Friday afternoon, it was an insurance fraud case, and  
19 it was alleged that he had burned down some of his  
20 family's property that had been in the family for a  
21 long, long time in an attempt to defraud an insurance  
22 company.

23 And it was a very emotionally charged and  
24 very contentious hearing with family members speaking  
25 out against other sides of the family. And Judge

1 Manning did something that I had never seen before, and  
2 I thought it was remarkable.

3 He made a decision on his own that he was  
4 not going to sentence that person until he had had a  
5 complete presentencing report done and he was back in  
6 Columbia and he could digest everything that was going  
7 on and he could let the emotion of that moment simmer  
8 down, because it was getting to everybody in the  
9 courtroom, himself included.

10 And I thought that was an excellent lesson  
11 for me in not being frustrated, not being upset, and  
12 understanding, if it gets there, because eventually  
13 everybody does, how to back away from it and with cool  
14 reflection to make a decision.

15 And, ultimately, that's exactly what  
16 happened. We reconvened whenever we could get back  
17 together, we all got back together and sentencing was  
18 done, and the judge had taken in all the information  
19 that he needed.

20 Judge Easley has done the same thing. When  
21 he's gotten elevated emotionally, be it from somebody's  
22 fault, the attorneys or from a litigant, he'll take a  
23 break. And I think the judges need to do that every  
24 once in a while just to help them maintain their  
25 composure and help them keep things under control.



1           Because it is important to me. I said  
2 earlier that I was not offended by it, but I was a  
3 little upset whenever I heard that there were people  
4 who questioned my temperament; not upset as in angry,  
5 but just upset because that's something that I've  
6 worked a long time to try to be fair with, try to be  
7 fair with everyone.

8           And I'm told I can be physically imposing at  
9 times, but I don't see that. But that's something that  
10 I'm conscious of. Thank you.

11           REPRESENTATIVE DELLENEY: Any other  
12 questions of Mr. Miller?

13           There being none, Mr. Miller, I'd like to  
14 thank you very much for appearing before us today, for  
15 being willing to run for the circuit court. This  
16 concludes this portion of the screening process.

17           As you know, this portion of the record will  
18 remain open until this report is published. At any  
19 time before we file the report, the Commission can call  
20 you back and ask for questions of you, although it's  
21 unlikely, it could happen.

22           And I'd like to remind you about the 48-hour  
23 rule, that after the draft report becomes the report of  
24 the Commission, you cannot seek commitments for 48  
25 hours. I'm sure you're acquainted with that rule.

1 Thank you again for offering to serve, and I  
2 hope you have a safe trip back to Aiken.

3 MR. MILLER: Thank you very much.

4 REPRESENTATIVE DELLENEY: Thank you, sir.

5 Next we have Jared Sullivan Newman.

6 MR. NEWMAN: Thank you, sir.

7 REPRESENTATIVE DELLENEY: We have today  
8 before us Mr. Jared Sullivan Newman, who seeks a  
9 position on the Circuit Court At-Large, Seat Number  
10 14. If you would at this time please raise your right  
11 hand to be sworn.

12 (Jared Sullivan Newman was duly sworn, after  
13 which testimony commenced at 11:28 a.m.)

14 REPRESENTATIVE DELLENEY: Have you had an  
15 opportunity to review your personal data questionnaire?

16 MR. NEWMAN: I have.

17 REPRESENTATIVE DELLENEY: And is it  
18 correct?

19 MR. NEWMAN: I believe it is, yes.

20 REPRESENTATIVE DELLENEY: And nothing needs  
21 to be changed?

22 MR. NEWMAN: I don't believe so, no, sir.

23 REPRESENTATIVE DELLENEY: Do you object to  
24 our making this summary a part of the record of your  
25 sworn testimony?

1 MR. NEWMAN: No, sir.

2 MR. FIFFICK: It will be done at this point  
3 in the transcript.

4 (EXH. 7, Personal Data Questionnaire of  
5 Jared Sullivan Newman and Sworn Statement of Jared  
6 Sullivan Newman, marked for identification.)

7 REPRESENTATIVE DELLENEY: The Judicial Merit  
8 Selection Commission has thoroughly investigated your  
9 qualifications for the bench. Our inquiry is focused  
10 on the nine evaluative criteria.

11 It has included a survey of the bench and  
12 bar, a thorough study of your application materials,  
13 verification of your compliance with state ethics laws,  
14 a search of newspaper articles in which your name  
15 appears, a study of previous screenings, and a check  
16 for economic conflicts of interest.

17 We have not received any affidavits in  
18 opposition to your election, nor are there any  
19 witnesses here to testify.

20 Do you have a brief opening statement you'd  
21 like to make?

22 MR. NEWMAN: I don't believe so, no, sir.

23 REPRESENTATIVE DELLENEY: Thank you, sir.

24 Please answer any questions our able counsel may have  
25 for you.

1 MR. NEWMAN: Thank you.

2 MS. ANZELMO: Mr. Chairman and members of  
3 the Commission, I have a few procedural matters to take  
4 care of with this candidate.

5 Mr. Newman, you have before you the sworn  
6 statement you provided with detailed answers to over 30  
7 questions regarding judicial conduct, statutory  
8 qualification, office administration, and temperament.

9 Are there any amendments you would like to  
10 make at this time to your sworn statement?

11 MR. NEWMAN: No, ma'am.

12 MS. ANZELMO: At this time, Mr. Chairman, I  
13 would like to ask that Mr. Newman's sworn statement be  
14 entered as an exhibit into the hearing record.

15 REPRESENTATIVE DELLENEY: It will be done at  
16 this point in the transcript without objection.

17 MS. ANZELMO: I note for the record that  
18 based on the testimony contained in Mr. Newman's PDQ  
19 that has been included in the record with his consent,  
20 Mr. Jared Newman meets the statutory requirements for  
21 this position regarding age, residence, and years of  
22 practice.

23 Mr. Newman, can you please state the city  
24 and circuit in which you reside?

25 MR. NEWMAN: I reside within the 14th

1 Judicial Circuit. I reside in Beaufort County, South  
2 Carolina, on Ladys Island, which is an unincorporated  
3 part of Beaufort County.

4 MS. ANZELMO: Thank you. Mr. Newman, why do  
5 you want to serve as a circuit court judge?

6 MR. NEWMAN: I've been involved with the law  
7 kind of all of my adult life. As you may know from my  
8 record, I was a police officer and deputy sheriff for a  
9 number of years, had the good fortune to have a very  
10 strong-willed sheriff in Beaufort County that  
11 encouraged me to -- I don't want to say encouraged me  
12 to leave the sheriff's department, but encouraged me to  
13 go to law school.

14 I was fortunate enough to do that. I spent  
15 a number of years learning trial work under the very  
16 able Buster Murdaugh, his son Randall Murdaugh, in the  
17 14th Circuit on how to try criminal cases and the  
18 like.

19 After three or four years, I went into  
20 private practice and had a general practice. I've had  
21 one law partner that we subsequently and very amicably  
22 split based on different philosophies. My children  
23 were grown; he was younger than me and wanted to start  
24 a bigger law firm. I was on the downhead side of it  
25 because the kids were grown, college was paid for. So

1 we left on that.

2 I would like to be a circuit judge because I  
3 do believe that I can bring some qualities to the bench  
4 and bar in the state, having practiced for  
5 approximately 19 years as a civil plaintiff's attorney,  
6 as a criminal defense attorney, I've also been a  
7 prosecutor.

8 I've seen a lot of the ways the court works,  
9 and I think that if we put people that can effectively  
10 communicate, that have patience, that have stability  
11 and a command of the working process of the law, that I  
12 think I could bring something to the bench of South  
13 Carolina with those qualities.

14 MS. ANZELMO: Are there any areas, including  
15 subjective areas, of law that you would need to  
16 additionally prepare for in order to serve as judge,  
17 and how would you handle that additional preparation?

18 MR. NEWMAN: I kept thinking about that. I  
19 would probably have to go back and relearn a little bit  
20 of workers' comp law. I have not done workers' comp in  
21 a number of years, and I do know circuit court judges  
22 here work with workers' comp appeals. I would say that  
23 might be one area that I would have to bone up on and  
24 refamiliarize myself with some of the law on that area.

25 MS. ANZELMO: Although you address this in

1 your sworn affidavit, could you please explain to the  
2 members of the Commission what you think is the  
3 appropriate demeanor for a judge?

4 MR. NEWMAN: Compassion, patience,  
5 stability. Again, I think the problems that we have in  
6 the courtroom when we have them is when people get  
7 frustrated with each other. And I tend to think that  
8 when people get frustrated with each other it's because  
9 they're not communicating with each other effectively.

10 So I think the number one I would take out  
11 of a judge as a practicing lawyer is patience and  
12 stability and an understanding of the law. And that  
13 way I think we communicate effectively, we don't get  
14 into, you know, heated debates about things.

15 MS. ANZELMO: Is there any circuit court  
16 judge currently on the bench that you would like to  
17 model yourself after?

18 MR. NEWMAN: I mean, there are several that  
19 I can think of. Cordell Maddox; Judge Michael Baxley;  
20 our resident judge, Carmen Mullin, in certain respects,  
21 we all have to be our individual people.

22 Former judges, Jackson Gregory, Gerald  
23 Smoak, who are circuit court judges, I thought were  
24 excellent judges because they had the qualities that I  
25 would strive to, and that's stability and

1 communication.

2 MS. ANZELMO: Is there any particular  
3 circuit court judge currently on the bench that you  
4 feel particularly exemplifies the characteristics you  
5 believe a judge should have?

6 MR. NEWMAN: Gosh. Again, that's hard for  
7 me to answer. I like a lot of them. Markley Dennis  
8 has got some great qualities, Roger Young from  
9 Charleston. As for administrative purposes when I've  
10 had a case or two up in the Horry County area, Judge  
11 John was an excellent administrator on moving -- you  
12 know, controlling his docket.

13 MS. ANZELMO: When you leave the bench, what  
14 would you like your legacy to be as a judge on the  
15 circuit court?

16 MR. NEWMAN: That he did the right thing for  
17 plaintiffs, for defendants, for the state, and for  
18 criminal defendants, for -- in other words, tried to  
19 get it absolutely right for the litigants.

20 Because, you know, judges -- it's kind of  
21 like the referee in a prize fight, you're supposed to  
22 remember who the prize fighters were, not the referee.

23 MS. ANZELMO: What suggestions would you  
24 offer for improving the backlog of cases on the docket  
25 both for general sessions and common pleas in the



1 circuit court?

2 MR. NEWMAN: In circuit court, one of the  
3 things that I think we ought to have and would like to  
4 have is what I call a volunteer docket. I've been to  
5 so many roster meetings where we call it by age of case  
6 only, and number one says, We're not ready, we've still  
7 got depositions to take.

8 We go to number two, I've got a witness out  
9 of town. And a lot of times I'm number 63 going, We're  
10 ready. And I think, prior to criminal court, if the  
11 judge can get together, find out who really wants to  
12 try their cases, and have a volunteer docket and say,  
13 You're one, two, three, four, I don't care where you  
14 sit on the roster age wise, if the case is getting old,  
15 maybe there are some reasons for it.

16 Now, at some point a judge does have to say,  
17 Look, we have to get this over with, this case has been  
18 dragging too long. But I would think in civil court  
19 that I would like to see a volunteer docket, because I  
20 think you'd see people sign up and that would get  
21 better cases.

22 Criminal court is a little more troubling  
23 because the solicitors have the power themselves and  
24 not the power of the judiciary to control the docket.  
25 I think the only thing that a judge can do, because he

1 does not control the docket in a criminal case, is to  
2 particularly pay attention and make sure it is a very  
3 valid reason, and if a defendant needs a continuance  
4 from that case, I think it should be granted.

5 MS. ANZELMO: Mr. Newman, do you currently  
6 carry malpractice insurance in your law practice and,  
7 if so, how long?

8 MR. NEWMAN: I do. I've had it for  
9 probably -- since '99, 2000, somewhere in that range,  
10 when I went into partnership with another lawyer. I  
11 carry malpractice insurance now. I believe I have \$1  
12 million in coverage with a \$5,000 deductible, I  
13 believe.

14 MS. ANZELMO: Thank you. Mr. Newman, the  
15 Commission received 130 ballot box surveys regarding  
16 you with 14 additional comments; two of those surveys  
17 indicated concerns.

18 The first concern raised was that you would  
19 be biased towards plaintiffs. What response would you  
20 offer to this concern?

21 MR. NEWMAN: Well, the only reason I think  
22 somebody could have a concern on that is because I do,  
23 and I have for so many years, represented primarily  
24 plaintiffs. I have represented the rare defendant in a  
25 civil case, usually that's somebody that doesn't have

1 any insurance or is looking for help.

2 I've talked with a lot of my friends in the  
3 defense bar, and we've talked about the same thing. If  
4 you put me on this side of the case as a plaintiff,  
5 I'll try it and I'll do the best for my client. I can  
6 take any case I have on this side and say, Hand me the  
7 defense and I can defend it.

8 So I don't come into any bias. Rules of  
9 evidence are rules of evidence. I do understand there  
10 are a number of discretionary rulings judges make in  
11 this state, but I would have to say, I wish y'all would  
12 disabuse that notion that I may be biased for a  
13 criminal defendant because I've been a criminal defense  
14 attorney or biased for the state because I've been a  
15 former solicitor and law enforcement officer.

16 MS. ANZELMO: Thank you. The second concern  
17 noted that you lack the temperament that a judge  
18 needs. What response would you offer to this concern?

19 MR. NEWMAN: Can I take my shield off and  
20 start beating it on the podium? It kind of surprises  
21 me, because with my brethren, you know, when you're  
22 defending a case or prosecuting a case or involved with  
23 another lawyer, one of the things in my personal life  
24 is civility.

25 I may not agree with your political

1 philosophy and you may not agree with mine, but it  
2 doesn't mean we can't have a civil discord with that.  
3 I don't see where -- and I've had it happen to me  
4 personally -- where a judge has any need for anger on  
5 the bench. If you object to something and I overrule  
6 you, you might not like it, that's the way it is.

7           So I'm sorry that comment was made, but I  
8 feel that one of the hallmarks that I would want to  
9 bring is open-mindedness and civility to all positions.

10           MS. ANZELMO: Thank you. As you are aware,  
11 your SLED report listed several cases that concerned  
12 the construction of your home and also showed that you  
13 have two outstanding mechanic's liens resulting from  
14 those cases.

15           Staff received a letter from the attorney  
16 who represented you in those lawsuits, but could you  
17 please briefly explain to the Commission how those  
18 lawsuits were resolved and the status of the mechanic's  
19 liens?

20           MR. NEWMAN: I sure can. First of all, do  
21 not ever build your own home, not a good plan. I had a  
22 young builder that my wife wanted to go to, first house  
23 he'd built. He was a cracker-jack carpenter, had just  
24 got his construction license, and very soon things went  
25 south.

1           Grayco, who was the building supplier, sued  
2 my builder and, of course, they had to sue me too  
3 because I was the property owner. The two mechanic's  
4 liens were filed -- I actually filed counter-claims on  
5 behalf of my attorney who represented me. Ending up  
6 that the mechanic's liens died by operation of law when  
7 the suits were filed, because you look to the judgment,  
8 and then those judgments -- those judgments have been  
9 satisfied.

10           And I think if you look at the judgments,  
11 the bank ended up paying me money back for defalcations  
12 -- I don't want to say defalcations, but my young  
13 contractor didn't know how to do certain things. But  
14 that litigation has been resolved years and years ago.  
15 I've refinanced that home twice, once to add an  
16 addition and once for refi on mortgage rates.

17           So those are -- they just don't go away;  
18 they're there, but they're not a lien, they're  
19 satisfied.

20           MS. ANZELMO: Thank you. And just for the  
21 Commission's knowledge, I believe that letter from  
22 Mr. Bohn is in your notebooks within Mr. Newman's  
23 information.

24           MR. NEWMAN: I believe he did e-mail it to  
25 you.

1 MS. ANZELMO: Correct.

2 Your SLED report also indicates that you  
3 currently have an unsatisfied federal tax lien. Can  
4 you briefly explain the circumstances that gave rise to  
5 the lien and the status of the lien?

6 MR. NEWMAN: Can I explain that I have four  
7 children and I'm a sole practitioner? Those were for  
8 -- the tax lien that I have has approximately \$5,000  
9 left on it. There are actually no liens for taxes  
10 owed, they are for federal interest and penalties that  
11 are owed.

12 I'm on a monthly payment program that I hope  
13 to, by the end of this year, will have that tax lien  
14 extinguished. But all I can tell can you is I had  
15 three kids in college at one time. And that might not  
16 be a very good excuse, but that's what that's from.  
17 And they've all graduated by the way.

18 MS. ANZELMO: Thank you, Mr. Newman. Just a  
19 a few housekeeping questions now.

20 Have you sought or received the pledge of  
21 any legislator prior to this date?

22 MR. NEWMAN: I have not.

23 MS. ANZELMO: Have you sought or have you  
24 been offered a conditional pledge of support of any  
25 legislator pending the outcome of your screening?

1 MR. NEWMAN: I have not.

2 MS. ANZELMO: Have you asked any third  
3 parties to contact members of the General Assembly on  
4 your behalf?

5 MR. NEWMAN: I have not.

6 MS. ANZELMO: Are you aware of anyone  
7 attempting to intervene in any part of the process on  
8 your behalf?

9 MR. NEWMAN: I am not aware of any.

10 MS. ANZELMO: Have you contacted any members  
11 of the Commission?

12 MR. NEWMAN: I have not.

13 MS. ANZELMO: Do you understand that you are  
14 prohibited from seeking a pledge or commitment until 48  
15 hours after the formal release of the Commission's  
16 report?

17 MR. NEWMAN: I am, indeed.

18 MS. ANZELMO: Have you reviewed the  
19 Commission's guidelines on pledging?

20 MR. NEWMAN: I have.

21 MS. ANZELMO: As a follow-up, are you aware  
22 of the penalties for violating the pledging rules; that  
23 is, it is a misdemeanor and, upon conviction, the  
24 violator must be fined not more than \$1,000 or in  
25 prison not more than 90 days?

1 MR. NEWMAN: I'm certainly aware of that  
2 now.

3 MS. ANZELMO: I would note that the Low  
4 Country Citizens Committee found Mr. Newman qualified  
5 in the areas of constitutional qualifications, physical  
6 health, and mental stability.

7 The Committee found Mr. Newman  
8 well-qualified in the areas of ethical fitness,  
9 professional and academic ability, character,  
10 reputation, experience, and judicial temperament.

11 I would also note for the record that any  
12 concerns raised during the investigation regarding  
13 Mr. Newman were incorporated in the questioning of him  
14 today.

15 Mr. Chairman, I have no further questions.

16 REPRESENTATIVE DELLENEY: Thank you, ma'am.

17 Does anybody with the Commission have  
18 questions for Mr. Newman?

19 There being none, thank you, Mr. Newman, for  
20 your willingness to serve and to go through the process  
21 to seek election.

22 This concludes this portion of the screening  
23 process. As you know, this portion of the record will  
24 remain open until this report is published. At any  
25 time before we file the report, the Commission can call



1 you back and ask for questions of you, although it's  
2 unlikely, it could happen.

3 And I'd like to remind you about the 48-hour  
4 rule, that after the draft report becomes the report of  
5 the Commission, you cannot seek commitments for 48  
6 hours. I'm sure you're acquainted with that rule.

7 Again, thank you for offering. I hope you  
8 have a safe trip back home.

9 MR. NEWMAN: Thank y'all very much. It was  
10 a pleasure. Have a good afternoon.

11 REPRESENTATIVE DELLENEY: Good morning.

12 MS. SAMPSON: Good morning.

13 REPRESENTATIVE DELLENEY: We have before us  
14 today Ms. April Woodard Sampson, who seeks a position  
15 on the Circuit Court At-Large, Seat Number 14.

16 If you would at this time please raise your  
17 right hand to be sworn.

18 (April Woodard Sampson was duly sworn, after  
19 which testimony commenced at 11:45 a.m.)

20 REPRESENTATIVE DELLENEY: The Judicial Merit  
21 Selection Commission has thoroughly investigated your  
22 qualifications for the bench. Our inquiry is focused  
23 on the nine evaluative criteria.

24 It has included a survey of the bench and  
25 bar, a thorough study of your application materials,

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

5 We had one complaint filed against you by  
6 Ms. Faltas, and the Commission has dismissed that  
7 complaint, so there are no witnesses here present to  
8 testify against you.

9 Do you have a brief opening statement you'd  
10 like to make?

11 MS. SAMPSON: I'd just like to thank  
12 everybody for their time and for allowing me to be here  
13 today.

14 REPRESENTATIVE DELLENEY: Thank you, ma'am.  
15 Please answer any questions our able counsel has for  
16 you.

17 MS. WELLS: Ms. Sampson, you have before you  
18 the sworn statement you provided with detailed answers  
19 to over 30 questions regarding judicial conduct,  
20 statutory qualification, office administration, and  
21 temperament.

22 Are there any amendments you would like to  
23 make today to your sworn statement?

24 MS. SAMPSON: I believe I provided  
25 amendments to the board already; other than those,

1 nothing.

2 MS. WELLS: At this time, I'd like to ask  
3 that the amendments to her PDQ and Ms. Sampson's sworn  
4 statement be entered as an exhibit into the hearing  
5 record.

6 REPRESENTATIVE DELLENEY: It will be done at  
7 this point in the transcript without objection.

8 (EXH. 8, Personal Data Questionnaire of  
9 April Woodard Sampson, Amendment to the Personal Data  
10 Questionnaire of April Woodard Sampson, and Sworn  
11 Statement of April Woodard Sampson, marked for  
12 identification.)

13 MS. WELLS: And as a final procedural  
14 matter, I note for the record that based on the  
15 testimony contained in the candidate's PDQ and sworn  
16 statement, Ms. Sampson meets the statutory requirements  
17 for this position regarding age, residence, and years  
18 of practice.

19 Ms. Sampson, could you tell the Commission  
20 why you want to be a circuit court judge?

21 MS. SAMPSON: I love the law, that's the  
22 easiest thing for me to say. I love the courtroom and  
23 everything that goes into it. I've been doing this for  
24 roughly 13 years now, and most of my time had been in  
25 the courtroom. I love the experience of it, I love

1 every part of it.

2 At the beginning of my career, I thought  
3 that lawyers kind of made the law, that's what you see  
4 on TV and you hear on the news and whatnot. But as  
5 I've done this more, I see that judges actually have  
6 more to do with the making of the law and the lawyers  
7 have more to do with getting it there.

8 I would like to be involved more in the  
9 process of making the law, of deciding what should  
10 happen. And I also think that the judge is the face of  
11 our courtroom, and that is what people see and it's  
12 what they hear. And I think it would be part of my  
13 duty to make sure that they think it's been fair,  
14 whether they win or not.

15 MS. WELLS: Ms. Sampson, can you explain to  
16 the Commission how you feel your legal and professional  
17 experience thus far will assist you to be an effective  
18 judge?

19 MS. SAMPSON: Yes. I began my career  
20 mainly -- I've done some advocacy for people with  
21 disabilities, but my main focus when I started was I  
22 was a public defender. Having done that, you learn  
23 both the good and the bad of the law, and you also  
24 learn how to deal with people, how to tell them things  
25 they don't want to hear.

1           I've also done civil on both sides, both  
2 litigants and defendants. And I think there's a lot  
3 that goes into having talked to people to get them to  
4 understand that what they think the law is isn't  
5 necessarily what the law is, but figuring out a way to  
6 do that in a way that they feel they've been heard.

7           And I think that is necessary as a judge,  
8 because you are the last arbitrator to making them feel  
9 like they've been heard, whether they win, lose, or  
10 otherwise. And I feel that both my legal experience as  
11 well as just life experience, having been a mother, a  
12 wife, and having been a teacher, you take all that when  
13 you get on the bench; and I think I can use all of that  
14 in my abilities to speak as well as my abilities to try  
15 to navigate and convince someone to do what's right,  
16 not necessarily what it is they want to do, and show  
17 them that's what needs to be done.

18           MS. WELLS: Thank you. Are there any areas,  
19 including subjective areas, of law that you would need  
20 to additionally prepare for in order to serve as judge,  
21 and how would you handle that additional preparation?

22           MS. SAMPSON: I think there may have been  
23 some questions about how much civil experience I've  
24 had. Most of my career had been in criminal law. I do  
25 feel like though -- I've taught evidence, I've taught

1 it for several years, so the rules of evidence are  
2 ingrained in me at this point.

3 I think that in civil law the difference is  
4 you get everything up front. You've had hearings with  
5 people, you've got briefs, you've got memos. So if you  
6 don't know what the law is, you can go and figure it  
7 out for yourself, whether it's with your clerk or  
8 figuring it out by yourself.

9 And my biggest thing is you have to know  
10 when you don't know. And I do understand that my civil  
11 experience is less than my criminal, but I do  
12 understand how to find an answer. And so I don't feel  
13 that that's necessarily a negative as long as I'm aware  
14 of that factor.

15 MS. WELLS: Although you address this in  
16 your sworn affidavit, Ms. Sampson, would you explain to  
17 the members of the Commission what you think is the  
18 appropriate demeanor of a circuit court judge?

19 MS. SAMPSON: I think a judge has to be  
20 fair, he has to give all parties the ability -- he or  
21 she -- to be heard. I think their role is to do what  
22 the judge feels is right, not necessarily what either  
23 side feels is right. And I think the judge has to make  
24 the hard decisions.

25 I think that's why it's good that a judge is

1 not done by popular election, because you do have to  
2 make hard decisions that affect people's futures and  
3 their lives, and it may not be what everybody agrees  
4 with or what they think is right, but you have to be  
5 able to do what is right.

6           And so I think to have fair demeanor but to  
7 also let everyone speak and be heard and also to try to  
8 stay calm, because these things bring out the best and  
9 the worst in people. When you're sending someone to  
10 prison or they can't get paid what they think they  
11 should be paid for, emotions get high. And so I think  
12 the judge's role is to keep everyone calm and to allow  
13 them to be heard in a manner that when they walk out,  
14 win or lose, they feel like they've been heard.

15           MS. WELLS: Thank you. Is there a circuit  
16 court judge currently on the bench that you would model  
17 yourself after or that you believe particularly  
18 exemplifies the characteristics that a circuit court  
19 judge should have?

20           MS. SAMPSON: I think -- that I've been in  
21 front of, I believe Judge Barber is very fair, but he's  
22 also very timely, which I very much appreciate. You  
23 often have a time period that you're supposed to start  
24 court and judges, for whatever reason, aren't there;  
25 he's not one of those.

1           And so I would like to emulate that. If I  
2 say start at 9:30, you start at 9:30. I also -- Judge  
3 Childs has moved on to federal, but she was one that I  
4 very much admired, because even though she did not know  
5 a lot about criminal law, when she took the bench you  
6 didn't know that, she made sure that she had researched  
7 it and she knew the area. And I would hope that I  
8 would come out being that way as well.

9           MS. WELLS: Thank you. Ms. Sampson, if you  
10 were elected to the bench, what would you like your  
11 legacy to be as a judge on the circuit court?

12           MS. SAMPSON: That's a hard one. I've been  
13 focused more on getting here than a legacy. I would  
14 hope that they would -- a legacy that I could leave is  
15 that, first, that I was a judge; but, secondly, that I  
16 was fair, and that when you left the room you felt like  
17 -- as you can tell, I'm big on making sure people are  
18 heard.

19           I've heard so many times from people when  
20 they left that they felt like nobody listened or they  
21 were not allowed to speak, and so I take that to  
22 heart. And I would hope that's what my legacy would  
23 be.

24           MS. WELLS: Do you have any suggestions that  
25 you would offer for improving the backlog of cases on



1 the docket both for general sessions and common pleas  
2 in the circuit court?

3 MS. SAMPSON: With common pleas, I do think  
4 that a lot of it seems to be at a good pace as far as  
5 doing the docket weekly, I think that's a good way to  
6 do it; however, it seems like there's always a backlog  
7 in getting your motions heard.

8 So perhaps if we could begin assigning cases  
9 to a particular judge, especially if they're complex,  
10 that might be a way to deal with any kind of backlog  
11 for civil.

12 For criminal, because the prosecutor's  
13 office -- solicitor's office controls the docket, it's  
14 a very touchy subject. Working in the solicitor's  
15 office now, you watch that, whether it's your boss  
16 fighting with -- Dan Johnson, my boss, fighting with  
17 the judges as to who has control.

18 And it does help when a judge comes in,  
19 wants to listen to both -- I think it's good to have a  
20 meeting with both the head solicitor and the head  
21 public defender, since they have most of the cases, to  
22 try to figure out a way to try to make the docket make  
23 sense.

24 Because a lot of times you will have several  
25 solicitors on the docket and several PDs, and you know

1 that not all of those cases can go, it's just a time  
2 crunch, it can't be possible. So to make it more  
3 realistic, when a case appears for the week, that it's  
4 actually going to be called. I think that that would  
5 be more effective than setting a date that we do at  
6 these appearances and then the dates don't mean  
7 anything.

8 MS. WELLS: Thank you. Ms. Sampson, when  
9 you were in private practice, did you carry malpractice  
10 insurance for your law practice, and, if so, how long  
11 did you carry it?

12 MS. SAMPSON: We had malpractice insurance.  
13 Every time I was with private practice I was with a  
14 firm, so the managing partner took care of getting the  
15 malpractice insurance together, but we always had mal  
16 practice insurance.

17 MS. WELLS: And I'm assuming since you now  
18 work for the solicitor's office your malpractice  
19 insurance is covered by the county's malpractice  
20 insurance policies?

21 MS. SAMPSON: Correct, yes.

22 MS. WELLS: Ms. Sampson, the Commission  
23 received 138 ballot box surveys on you with four of  
24 those indicating concerns, mostly related to your  
25 experience in civil litigation and also alleging that

1 you do not return phone calls.

2 How do you respond to these concerns?

3 MS. SAMPSON: As to my civil experience, I  
4 think that there are people who don't know that I have  
5 any civil experience. I was in the public defender's  
6 office for six years, I was in private practice for  
7 five years, and then I came back to do criminal on the  
8 prosecution side.

9 But during that five years I was in private  
10 practice, I did both civil and criminal. So I don't  
11 think that most people know I did the civil, they did  
12 not see me physically necessarily doing depositions,  
13 going to summary judgment hearings. So I don't think  
14 some people know that I have any civil experience; I  
15 do, I've done both sides of that.

16 And so what I don't -- what I lack in  
17 experience, I will make up with knowledge. And as I  
18 stated, if I feel like I don't know something, which  
19 happens, then you make sure you find it out.

20 As for not returning phone calls, I'm not  
21 sure where that one comes from, if that's in the past  
22 or currently. As a prosecutor, as you know, I'm in  
23 court a lot, so sometimes I'm not returning phone calls  
24 until 6 or 7 o'clock in the evening or really early in  
25 the morning.

1           As a judge, I think that's a little bit  
2 different, you can manage your docket a little bit  
3 easier, so I don't think that's a problem necessarily.

4           MS. WELLS: Ms. Sampson, two of the comments  
5 that were negative indicated that they thought you had  
6 recently misrepresented your position with the  
7 solicitor's office in order to attend a training for  
8 criminal defense attorneys conducted by the National  
9 Criminal Defense College.

10           What is your explanation on that?

11           MS. SAMPSON: I believe that I submitted  
12 something about that. But they came to me. I have  
13 been teaching at seminars since, I believe, I want to  
14 say, 2008, may have been 2009, sponsored by the  
15 Criminal Defense Law Association in Georgia.

16           And based on my teaching at those, they  
17 asked me to come teach at the National Criminal Defense  
18 College in Macon. They ask you; you can't just show up  
19 and teach there or attend it. They sent it to my  
20 e-mail at work. At the bottom of my e-mail it says  
21 solicitor.

22           There's no question about where I work or  
23 who I am or any of that. When I got there, there  
24 apparently was some confusion as to where I worked; I  
25 don't know how that happened, as I sent them a resume

1 and, as I said, all of the e-mails came from my  
2 solicitor e-mail.

3           When I first got there, they were  
4 questioning where I worked. I explained to them that's  
5 where I worked. They sent this to me I believe in  
6 April 2012 is when the communication began, and I  
7 worked at the solicitor's office beginning in January  
8 2011. So I still don't know to this day where the  
9 confusion came from.

10           They asked me to stay initially. We met on  
11 a Sunday to discuss what we were going to do on Monday.  
12 On Monday, I sat through two sessions, started  
13 teaching, and apparently there was some issue as to  
14 people being concerned that there was a prosecutor  
15 teaching criminal defense lawyers and they asked me to  
16 leave. I left.

17           I did not know it was a problem, and I  
18 thought that because of my experience having been on  
19 both sides, that was actually going to be helpful for  
20 teaching them what they needed to know. So it never  
21 dawned on me that it was an issue until I got there;  
22 but once they said it was, I left. I did not sneak in  
23 anywhere.

24           MS. WELLS: Thank you for clarifying that.

25           In your personal data questionnaire,

1 Ms. Sampson, you acknowledge that you and your husband  
2 had financial difficulties in the past, including a  
3 foreclosure of your home and the filing and completion  
4 of a Chapter 13 bankruptcy in 2005.

5 In one of the reports there was also a  
6 foreclosure action that was filed against you and your  
7 husband in August 2012, which was not listed in your  
8 personal data questionnaire.

9 Would you please explain the circumstances  
10 and the resolution on this to the Commission?

11 MS. SAMPSON: When I first filed in  
12 foreclosure and we completed it, I was a public  
13 defender in 2005. Having two kids and working at  
14 \$50,000 a year wasn't quite covering all of the bills.  
15 We allowed the house to go through foreclosure and we  
16 paid off the bankruptcy and it got completed and  
17 everything was fine with that.

18 My husband and I have a very strange  
19 relationship, not to be bringing y'all into my  
20 business, but you asked the question. I am the bread  
21 winner, he is more of a stay-at-home dad. He does  
22 construction and renovations of houses, so his income  
23 fluctuates.

24 Trying to be mindful and helpful of that  
25 situation with him, I allow him -- I shouldn't say

1 "allow." He does the money and I make the money. As  
2 an agreement with that, he was supposed to be -- I  
3 shouldn't say "supposed to be."

4 We have a rental property. On August, I  
5 believe it was the 29th, after I had filed by PDQ, they  
6 filed a foreclosure action on one of our rental  
7 properties. I had no idea about it, and when it was  
8 brought to my attention, I asked him and he did not  
9 want to tell me because he didn't want me to be  
10 stressed because I was doing this and involved in other  
11 things.

12 We have settled with the mortgage company.  
13 We have to make payments. We've made the October,  
14 November, and December payments. It's at this point  
15 stayed. So as long as we make all those payments, it  
16 will be dismissed in January. And I have the  
17 paperwork, I brought it with me if you need to see  
18 that.

19 MS. WELLS: Thank you. I just have a few  
20 housekeeping issues now.

21 Have you sought or received the pledge of  
22 any legislator prior to this date?

23 MS. SAMPSON: No.

24 MS. WELLS: Have you sought or have you been  
25 offered a conditional pledge of support of any

1 legislator pending the outcome of your screening?

2 MS. SAMPSON: No.

3 MS. WELLS: Have you ever asked any third  
4 parties to contact members of the General Assembly on  
5 your behalf?

6 MS. SAMPSON: No.

7 MS. WELLS: Are you aware of anyone  
8 attempting to intervene in any part of the process on  
9 your behalf?

10 MS. SAMPSON: No.

11 MS. WELLS: Have you contacted any members  
12 of the Commission?

13 MS. SAMPSON: I need to say that I sent out  
14 a letter of introduction, and Senator Campsen may have  
15 gotten it because it was before he was on the  
16 Committee. But other than that, no.

17 MS. WELLS: Do you understand that you are  
18 prohibited from seeking a pledge or commitment until 48  
19 hours after the formal release of the Commission's  
20 report?

21 MS. SAMPSON: Yes.

22 MS. WELLS: Have you reviewed the  
23 Commission's guidelines on pledging?

24 MS. SAMPSON: Yes.

25 MS. WELLS: And are you aware of the



1 penalties for violating the pledging rules; that is, it  
2 is a misdemeanor and, upon conviction, the violator  
3 must be fined not more than \$1,000 or in prison not  
4 more than 90 days?

5 MS. SAMPSON: Yes.

6 MS. WELLS: I would note for the record that  
7 the Midlands Citizens Committee reported that  
8 Ms. Sampson was qualified in the evaluative criteria of  
9 constitutional qualifications, physical health and  
10 mental stability, and found her well-qualified in the  
11 evaluative criteria of ethical fitness, professional  
12 and academic ability, character, reputation,  
13 experience, and judicial temperament.

14 I would also note for the record that any  
15 concerns raised during this investigation regarding the  
16 candidate were incorporated into the questioning of the  
17 candidate today.

18 Mr. Chairman, I have no further questions.

19 SENATOR MARTIN: Thank you very much.

20 Any other questions from members of the  
21 Commission?

22 Hearing none, thank you, Ms. Sampson.

23 This concludes the screening process. As  
24 you know, the record will remain open until the report  
25 is published, and you may be called back at such time

1 if the need arises. I'll remind you of the 48-hour  
2 rule and ask that you be mindful of that.

3 Anyone that inquires with you about whether  
4 or not they may advocate for you in the event you're  
5 screened out, remind them, please, of the 48-hour  
6 rule. We thank you for offering and I thank you for  
7 your service to South Carolina.

8 MS. SAMPSON: Thank you so much.

9 SENATOR MARTIN: Welcome, Mr. Scott. You're  
10 here to seek Circuit Court At-Large, Seat 14?

11 MS. SAMPSON: Yes, sir, that's correct.

12 SENATOR MARTIN: Would you raise your right  
13 hand and repeat after me.

14 (Clifford Scott was duly sworn, after which  
15 testimony commenced at 12:04 p.m.)

16 SENATOR MARTIN: The Judicial Merit  
17 Selection Commission has thoroughly investigated your  
18 qualifications for the bench. Our inquiry is focused  
19 on the nine evaluative criteria.

20 It has included a survey of the bench and  
21 bar, a thorough study of your application materials,  
22 verification of your compliance with state ethics laws,  
23 a search of newspaper articles in which your name  
24 appears, a study of previous screenings, and a check  
25 for economic conflicts of interest.

1           We've received one affidavit filed in  
2           opposition to your election. Dr. Faltas filed a  
3           complaint against Mr. Scott, which Commission has  
4           dismissed, as it does not relate to the candidate's  
5           character, competency, or ethics.

6           Do you have a brief opening statement you'd  
7           like to make?

8           MR. SCOTT: Well, Mr. Chair and other  
9           members of the Commission, thank you for the  
10          opportunity to appear before you again.

11          I'm trying to remember what I said last year  
12          when I was given a chance for a brief opening  
13          statement. I don't want to repeat myself, but then  
14          again, I don't want to botch the opportunity either.

15          The reason I applied this year again for  
16          review for a position on the bench is that, to be quite  
17          honest with you, any first run at this was kind of a  
18          dry run because I really didn't know what I was doing.

19          I wanted to become a judge, but I  
20          realized -- please don't take me the wrong way -- I  
21          realized the odds were stacked against me because two  
22          other candidates had run before and I was kind of the  
23          odd man out.

24          I feel like the opportunity to apply this  
25          time, I won't necessarily say it will give me a leg up,

1 but I felt like I knew what to expect and I felt that I  
2 would be a better candidate this time.

3 Now, I recognize that it's entirely within  
4 the power of this committee to determine whether I'm a  
5 better candidate or not, but I applied this time  
6 because I felt that having gone through the process  
7 before that, at least in my mind, I was a better  
8 candidate this time. I've gained a little bit more  
9 experience.

10 Obviously, it was just a year ago that I  
11 appeared before you, so in terms of experience in  
12 practicing law, that's just 365 days worth of just  
13 being a lawyer. But for lack of a better description,  
14 I just felt that this time would give me, to be quite  
15 honest with you, a better shot at it, whereas my  
16 initial application, I wasn't sure whether that was  
17 really going to pan out or not.

18 And this one may not pan out, but I feel  
19 like I had a more meaningful and realistic opportunity  
20 this time.

21 SENATOR MARTIN: Thank you. Will you please  
22 answer our counsel's questions.

23 MR. SCOTT: Yes.

24 MR. WRIGHT: Good afternoon, Mr. Scott.

25 Mr. Scott, you have before you the sworn statement you

1 provided with detailed answers to over 30 questions  
2 regarding judicial conduct, statutory qualification,  
3 office administration, and temperament.

4 Are there any amendments you would like to  
5 make at this time to your sworn statement?

6 MR. SCOTT: No. I believe everything that I  
7 submitted in the sworn statement and in the personal  
8 data questionnaire are still accurate, nothing has  
9 changed.

10 MR. WRIGHT: At this time, Mr. Chairman, I  
11 would like to ask that Mr. Scott's sworn statement be  
12 entered as an exhibit into the hearing record.

13 SENATOR MARTIN: Without objection, so  
14 ordered.

15 (EXH. 9, Personal Data Questionnaire of  
16 Clifford Scott and Sworn Statement of Clifford Scott,  
17 marked for identification.)

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

24 Mr. Scott, will you please state the city  
25 and circuit in which you reside.

1 MR. SCOTT: I live in Columbia, South  
2 Carolina, which is in the Fifth Circuit.

3 MR. WRIGHT: Mr. Scott, why do you now want  
4 to serve as a circuit court judge?

5 MR. SCOTT: Hopefully I'll give a better  
6 answer to this question than I did in my opening  
7 statement.

8 I've been practicing law for quite a while,  
9 ever since 19 -- well, I graduated law school in 1981.  
10 And shortly after I graduated from law school, I went  
11 to the JAG Corps. Stayed in the Army JAG for about  
12 five and a half, six years, including my reserve time.  
13 Came back out, was in private practice, then went to  
14 work for the state and went to work for -- then came  
15 back into private practice.

16 This is going to sound the self-  
17 congratulatory or like I'm tooting my own horn, but I  
18 think that I have the breadth of experience that would  
19 enable me to be the kind of judge that I would hope the  
20 people want to appear in front of. I've dealt with  
21 people of all races and backgrounds, economic status.  
22 I've done a little of everything.

23 I'm not going to stand here before you and  
24 say that I'm an expert in any particular field of the  
25 law, but I've done a little of everything, so I think I

1 have a pretty good broad knowledge of the law and I  
2 have a good grasp of what it means to be a lawyer.

3           Additionally, I come from a pretty humble  
4 background. My granddaddy was a dirt poor farmer. And  
5 I'm laughing because when my kids were growing up, I  
6 told my daughter, I think my daughter was probably -- I  
7 think she was in the ninth or tenth grade and I think  
8 my son was in the fifth or sixth grade, they're four  
9 years apart, and I was talking to them -- my son had  
10 the knack of saying that he lived in the ghetto.

11           Now, we didn't live in the ghetto, we lived  
12 in a very nice beginner home when I left the Army JAG.  
13 It was a 1,700 square feet home in a middle class  
14 neighborhood. But my son always said we lived in the  
15 ghetto. So I took it upon myself during one of those  
16 occasions to sit them down and explain to them the kind  
17 of life that their daddy lived and how, when my -- my  
18 grandfather died in 1964; I was nine when he died.

19           But before he died, he had me and my other  
20 cousins out there in the field, I kid you not, planting  
21 tobacco, cropping tobacco, picking cotton, planting  
22 tobacco beds; you name it, we did it. I actually  
23 plowed with a mule, as strange as that may be for some  
24 of you who are much younger than me to believe. Now,  
25 some of you, I'm sure, can identify with that.

1           But so I come from a humble background, and  
2 I can identify with everybody. But anyhow, where I'm  
3 going with this is that -- so as I'm sitting there  
4 talking to my kids, my daughter looked up at me and she  
5 put her hands on her hips and she said, Daddy, I'm so  
6 sorry there are no cotton fields for me to pick cotton  
7 in.

8           And I said, It's not a matter of me wanting  
9 you to pick cotton, it's a matter of me wanting you to  
10 know how very fortunate you are and how you don't have  
11 to experience what I've experienced.

12           So I say all that to say that I judge people  
13 as individuals, I don't judge them based on their  
14 economic status or the fact that they may have an MD or  
15 JD behind their name. I think, as a judge, I would  
16 bring to the bench a recognition that everybody has a  
17 story to tell.

18           Unfortunately, some of the people who appear  
19 before judges did some pretty awful things, but I  
20 believe that every human being has a certain amount of  
21 human dignity, and I think I'd be able to impart that  
22 as a judge.

23           I don't know if that's the answer to the  
24 question that you're looking for or not.

25           MR. WRIGHT: Yes, sir, thank you.



1           Mr. Scott, are there any areas, including  
2 subjective areas, of law that you would need to  
3 additionally prepare for in order to serve as judge,  
4 and how would you handle that additional preparation?

5           MR. SCOTT: Well, when I left the -- left  
6 law school, went to the Army JAG, I was what we would  
7 consider to be a public defender for the first two and  
8 a half years of my Army JAG experience. I did nothing  
9 but criminal law, had over 100 court martials, some of  
10 which were contested.

11           Just like in the Army -- I should say just  
12 like in the civilian world, most criminal cases are  
13 disposed of through guilty pleas. So most of these  
14 were disposed of through guilty pleas, but I had a fair  
15 number of trials as well.

16           After getting out, I worked with Johnson  
17 Toal & Battiste down in the Orangeburg office and did a  
18 fair number of criminal cases down there. And then my  
19 criminal work kind of -- it kind of -- I won't say it  
20 dwindled away, but I guess I made a conscious choice  
21 after going back into private practice not to  
22 concentrate on that quite as much until I became a  
23 public defender in around 2000, 2004, and had quite a  
24 bit of public defender criminal experience.

25           And most recently, as of March of this year,

1 I've been prosecuting cases part-time over in Lee  
2 County to the Third Judicial Circuit, solicitor, whose  
3 headquarters, of course, is in Sumter.

4 So I guess if any area would be lacking it  
5 would be -- I won't say lacking, but in recent years  
6 I've done less criminal law than I've done in my  
7 earlier years. As I said, in March of this year I've  
8 been working part-time as an assistant solicitor in the  
9 county. So I've pretty much picked up the baton and  
10 run with it without any difficulty.

11 I don't consider myself to be an idiot.  
12 Some of you may disagree with that, but I'm a pretty  
13 quick study, so it's not really hard for me to pick up  
14 on any areas of the law. Like I said, in recent years,  
15 criminal law may have been the one that I didn't have a  
16 lot of recent experience in, but when I started doing  
17 the work as assistant solicitor again in March, it all  
18 came back to me.

19 So that would be the one area I would say I  
20 needed some additional refreshing on, but I think I've  
21 pretty much gotten over the hurdle on that.

22 MR. WRIGHT: Although you addressed this in  
23 your sworn statement, could you please explain to the  
24 members of the Commission what you think is the  
25 appropriate demeanor of a judge?

1 MR. SCOTT: Well, a judge should be someone  
2 who is of even temperament, who although -- and I can  
3 probably attest to the fact that I've been in the  
4 courtroom on a number of occasions and I've seen  
5 lawyers do things that a judge would have every right  
6 to be upset and perhaps express dissatisfaction with.

7 But as a judge, you have to maintain --  
8 well, CC and C, cool, calm, and collective. You have  
9 to remain cool, calm, and collective. As a judge, you  
10 have to do that; otherwise, it will the cause the  
11 parties and the attorneys who appear before you to  
12 believe that perhaps you are not capable of giving them  
13 a fair hearing.

14 And above all else, a judge has to convey  
15 the impression that this is somebody who's going to be  
16 fair to me, may not agree with me, may not rule for me,  
17 but this is someone who I believe will give me a fair  
18 hearing.

19 So the proper demeanor of a judge is one  
20 that, at all times, would convey that the judge is in  
21 complete control of one's emotions, one's faculties.  
22 And I would call it the duck approach. Things should  
23 roll off a judge's robe like water off a duck's  
24 feathers.

25 So I think that's the appropriate demeanor

1 for a judge, and I would hope that that would be the  
2 demeanor I would be able to maintain if I were given  
3 the opportunity.

4 MR. WRIGHT: Is there any circuit court  
5 judge currently on the bench that you would like to  
6 model yourself after or particularly exemplifies the  
7 characteristics that a circuit court judge should have?

8 MR. SCOTT: Well, one of my -- this is the  
9 same answer I gave last time. One of the judges I  
10 really got to know well when I was doing public  
11 defender work up in Newberry was Judge James Johnson.  
12 And Judge Johnson died a couple of years ago.

13 But Judge Johnson exemplified what I  
14 considered to be the ideal traits of a judge. He was  
15 always courteous, he was a very intelligent judge, and  
16 he always, at least based on my experiences with Judge  
17 Johnson, always extended the respect and courtesy to  
18 everyone who appeared before him.

19 Now, that's not to say that Judge Johnson  
20 didn't sometimes hammer some of my clients, because he  
21 did, but he was always a gracious and courteous  
22 person. He was certainly a man who knew the law. And  
23 to this day I still say that Judge Johnson is one of my  
24 favorite judges.

25 MR. WRIGHT: When you leave the bench, what

1 would you like your legacy as the judge on circuit  
2 court to be?

3 MR. SCOTT: I can sum that up very briefly.  
4 I would like people to say that Cliff Scott was a fair  
5 judge, he treated everybody equally, and when you left  
6 his courtroom, whether you agreed with him or not, you  
7 knew that you had a fair hearing.

8 MR. WRIGHT: Mr. Scott, what suggestions  
9 would you offer for improving the backlog of cases on  
10 the docket both for general sessions and common pleas  
11 in the circuit court?

12 MR. SCOTT: Elect more judges. And, you  
13 know, having -- I mean that, we do need more judges.  
14 And I thank the legislature for approving the three  
15 additional judges, one of which I'm trying to become.

16 There's been a lot of debate in recent years  
17 about whether the judges should control the criminal  
18 docket. That might not necessarily be a bad idea. And  
19 this is coming from somebody who's now serving as part-  
20 time assistant solicitor. The difficulty we have  
21 sometimes as assistant solicitors is that the attorneys  
22 on the other side know, even though we control the  
23 docket, we don't wear the black robe.

24 And so by giving the judge more authority  
25 and control of the criminal docket, I think we would

1 probably see some improvement in the number of cases  
2 that are disposed of in criminal court.

3 That's the one thing I can think of. And  
4 I'm not just saying this because I have aspirations of  
5 being a judge, but I really do think that would make a  
6 difference.

7 MR. WRIGHT: Mr. Scott, do you currently  
8 carry malpractice insurance in your law practice and,  
9 if so, how long have you carried malpractice insurance?

10 MR. SCOTT: I've had malpractice insurance  
11 ever since I entered the practice of law in 1994 with  
12 the exception of -- I think there was a couple of  
13 months, and I think this was back in either 2000 -- I  
14 think it was 2010, the insurer that I had my insurance  
15 with stopped writing insurance in South Carolina, so it  
16 took me a couple of months to find a substitute  
17 insurer.

18 But that was the only lapse. And I've had  
19 it ever since, as I said, 1994. I went into private  
20 practice on January 1, 1994, and I've been in private  
21 practice ever since.

22 MR. WRIGHT: Mr. Chairman, I think we need  
23 to go into executive session.

24 SENATOR MARTIN: Any questions from the  
25 Commission?

1           Hearing none, Mr. Scott, thank you very  
2 much. I'm sorry, we need to go to executive session  
3 for Mr. Scott.

4           Any objection to executive session?

5           Hearing none, we'll go into executive  
6 session.

7           (The Judicial Merit Selection Commission  
8 went into executive session from 12:21 p.m. to  
9 12:25 p.m.)

10           SENATOR MARTIN: Mr. Wright?

11           MR. WRIGHT: Mr. Chairman, I have a few  
12 housekeeping issues.

13           Mr. Scott, have you sought or received the  
14 pledge of any legislator prior to this date?

15           MR. SCOTT: No, sir, I have not.

16           MR. WRIGHT: Have you sought or have you  
17 been offered a conditional pledge of support of any  
18 legislator pending the outcome of your screening?

19           MR. SCOTT: No, sir.

20           MR. WRIGHT: Have you asked any third  
21 parties to contact members of the General Assembly on  
22 your behalf?

23           MR. SCOTT: No, sir.

24           MR. WRIGHT: Are you aware of anyone  
25 attempting to intervene in any part of the process on

1 your behalf?

2 MR. SCOTT: To my knowledge, no.

3 MR. WRIGHT: Have you contacted any members  
4 of the Commission?

5 MR. SCOTT: I have not.

6 MR. WRIGHT: Do you understand that you are  
7 prohibited from seeking a pledge or commitment until 48  
8 hours after the formal release of the Commission's  
9 report?

10 MR. SCOTT: Yes, sir.

11 MR. WRIGHT: Have you reviewed the  
12 Commission's guidelines on pledging?

13 MR. SCOTT: Yes, sir, I have.

14 MR. WRIGHT: As a follow-up, are you aware  
15 of the penalties for violating the pledging rules; that  
16 is, it is a misdemeanor and, upon conviction, the  
17 violator must be fined not more than \$1,000 or in  
18 prison not more than 90 days?

19 MR. SCOTT: Yes, sir.

20 MR. WRIGHT: Mr. Chairman, I would note that  
21 the Midlands Citizens Committee found Mr. Scott to be  
22 well-qualified for the evaluative criteria of ethical  
23 fitness, professional and academic ability, character,  
24 reputation, experience, and judicial temperament.

25 The committee found him to be qualified for



1 constitutional qualifications, physical health, and  
2 mental stability.

3           Additionally, the committee reports that  
4 Mr. Scott was one of the most well-rounded candidates  
5 interviewed and that he has the experience,  
6 temperament, and maturity to be a most outstanding  
7 judge. The committee feels he is most imminently  
8 qualified to serve on the circuit court, and they  
9 believe he would serve in an exemplary manner.

10           I would just note for the record that any  
11 concerns raised during this investigation regarding the  
12 candidate were incorporated into the questioning of the  
13 candidate today.

14           Mr. Chairman, I have no further questions.

15           SENATOR MARTIN: Thank you very much.

16           Any questions from members of the  
17 Commission?

18           Hearing none, Mr. Scott, thank you so much.

19           MR. SCOTT: Thank you.

20           SENATOR MARTIN: This concludes the  
21 screening process. As you know, the record will remain  
22 open until the report is published, and you may be  
23 called back at such time if the need arises. I'll  
24 remind you of the 48-hour rule and ask that you be  
25 mindful of that.

1           Anyone that inquires with you about whether  
2 or not they may advocate for you in the event you're  
3 screened out, remind them, please, of the 48-hour rule.  
4 We thank you for offering and I thank you for your  
5 service to South Carolina.

6           MR. SCOTT: Thank you.

7           SENATOR MARTIN: We're breaking for lunch.  
8 We'll stand in recess for lunch.

9           (Lunch recess was taken from 12:28 p.m. to  
10 1:12 p.m.)

11          SENATOR MARTIN: We are back on the record.  
12 The Commission will reconvene. Welcome.

13          MR. ASKINS: Thank you.

14          SENATOR MARTIN: Mr. Jerome P. Askins, III.

15          MR. ASKINS: Yes, sir.

16          SENATOR MARTIN: Glad to have you. If you  
17 would, raise your right hand and repeat after me.

18          (Jerome P. Askins, III, was duly sworn,  
19 after which testimony commenced at 1:13 p.m.)

20          SENATOR MARTIN: You had the opportunity to  
21 review your personal data questionnaire?

22          MR. ASKINS: Yes, sir.

23          MR. WRIGHT: Are there any changes you'd  
24 like to make at this time?

25          MR. ASKINS: I believe I made one change

1 earlier, and no changes to make at this time.

2 SENATOR MARTIN: Do you object to our making  
3 this summary part of the record of your sworn  
4 testimony?

5 MR. ASKINS: No, sir.

6 MR. WRIGHT: So that will be done at this  
7 point in the transcript.

8 (EXH. 10, Personal Data Questionnaire of  
9 Jerome P. Askins, III; Sworn Statement of Jerome P.  
10 Askins, III; and Amendment to the Sworn Statement of  
11 Jerome P. Askins, III, marked for identification.)

12 SENATOR MARTIN: The Judicial Merit  
13 Selection Commission has thoroughly investigated your  
14 qualifications for the bench. Our inquiry is focused  
15 on the nine evaluative criteria.

16 It has included a survey of the bench and  
17 bar, a thorough study of your application materials,  
18 verification of your compliance with state ethics laws,  
19 a search of newspaper articles in which your name  
20 appears, a study of previous screenings, and a check  
21 for economic conflicts of interest.

22 We've received no affidavits in opposition  
23 to your election, no witnesses are present to testify.

24 Do you have a brief opening statement to  
25 make to the Commission at this time?

1 MR. ASKINS: Very briefly. I'm Jerome  
2 Askins, and I'm from Johnsonville, which is in lower  
3 Florence County. My law office is in Hemingway, which  
4 is in Williamsburg County, about four miles away.

5 I'm here today accompanied by Donna, my wife  
6 of 38 years. And in the interest of time, I'll  
7 dispense of any further opening.

8 SENATOR MARTIN: Brevity is always clear.  
9 Would you please answer counsel's questions  
10 at this time.

11 MS. SHULER: Good afternoon, Mr. Askins.

12 MR. ASKINS: Good afternoon.

13 MS. SHULER: You have before you the sworn  
14 statement you provided with detailed answers to over 30  
15 questions regarding judicial conduct, statutory  
16 qualification, office administration, and temperament.

17 Are there any amendments you would like to  
18 make at this time to your sworn statement?

19 MR. ASKINS: No, ma'am, not at this time.

20 MS. SHULER: At this time, Mr. Chairman, I  
21 would ask that Mr. Askins' sworn statement be entered  
22 as an exhibit into the hearing record.

23 SENATOR MARTIN: Is there any objection?

24 Hearing none, so ordered.

25 MS. SHULER: Mr. Askins, why do you want to

1 now serve as a circuit court judge?

2 MR. ASKINS: When I began practicing law, I  
3 went back to a small town and began practicing with my  
4 father in a general practice. Back then, we went to  
5 almost every court, from the municipal and magistrate's  
6 courts to the county court; we had at that time, family  
7 court, common pleas, general sessions, appeared in the  
8 court of appeals and the State Supreme Court.

9 I had cases in the U.S. District Court. I  
10 went to the bankruptcy court quite a bit representing  
11 creditors. So I encountered judges of all types at all  
12 levels. And somewhere along the way I thought, you  
13 know, I can do that, maybe I would like to do that  
14 someday.

15 I've talked with several judges, some  
16 sitting and some retired, and decided at some point I'd  
17 like to do that. I felt like my background would have  
18 enabled me to do that, to do the job and to do it  
19 well. I have experience in civil and criminal court.

20 In Williamsburg County, a lot of our  
21 criminal work is court appointed. Some of our  
22 criminals are not very successful financially, so we  
23 have a lot of indigents. And I was assistant public  
24 defender in Williamsburg County for parts of three  
25 years in addition to doing the court appointed work.

1           And we had a quite a bit. It wasn't unusual  
2 to have five criminal appointments in a year. And, of  
3 course, I did the civil work in all of the courts. And  
4 I feel that's a tremendous advantage not to have come  
5 from one particular area.

6           Also, my clientele is very diverse. I've  
7 had corporate clients ranging from corporations who are  
8 traded publicly down to a one-man business trying to  
9 survive. I have individuals ranging from some who have  
10 more money than I can count to people who couldn't put  
11 their hands on \$50 if they had to. I've seen the world  
12 from a lot of different viewpoints, and I think that's  
13 an advantage also.

14           MS. SHULER: Thank you. Are there any  
15 areas, including subjective areas, of law that you  
16 would need to additionally prepare for in order to  
17 serve as judge, and how would you handle that  
18 additional preparation?

19           MR. ASKINS: I believe that, of course, in  
20 addition to the administrative part of it that I'm not  
21 totally familiar with, I would have to be up to speed  
22 on that, I don't think that would be difficult.

23           Also, I think in the area of criminal  
24 practice. I have not been in criminal court that much  
25 recently, and I think that I would probably need to get

1 reacquainted with the sentencing, what sentences are  
2 appropriate for what offenses.

3           At one time, I could tell you pretty well  
4 what the sentence would be for a given offense. And I  
5 don't think that would be a long learning curve, but I  
6 think that's one thing I would need to be brought up to  
7 speed on.

8           MS. SHULER: Thank you, Mr. Askins.  
9 Although you address this in your sworn affidavit,  
10 could you please explain to the members of the  
11 Commission what you believe to be the appropriate  
12 demeanor for a judge?

13           MR. ASKINS: Well, I think that a judge  
14 needs to maintain order and decorum. The judge needs  
15 to be in charge, and that doesn't need to be in doubt.  
16 At the same time, the judge needs to be courteous,  
17 respectful to attorneys, to the clients, to the jurors,  
18 to the courtroom staff, treat everybody with dignity  
19 and respect.

20           One of the judges that I looked up to from  
21 the time I first started practicing had what I  
22 considered to be the ideal demeanor. There was never  
23 doubt as to who was in charge of the courtroom, but he  
24 was never heavy-handed, never jerked anybody around,  
25 but he had the respect of everybody. And he was

1 deliberative, never made snap judgments. And I thought  
2 that was the ideal situation.

3 MS. SHULER: Is there any particular circuit  
4 court judge, and it can be the judge you just explained  
5 about that, that you believe exemplifies the  
6 attributes?

7 MR. ASKINS: Well, the judge that I was  
8 referring to was Judge David Harwell, who went on to  
9 become Chief Justice David Harwell. And I just -- I  
10 looked up to him when I started practicing, I had a  
11 great deal of respect for him, still do.

12 MS. SHULER: When you leave the bench, what  
13 would you like your legacy as the judge on circuit  
14 court to be if you are elected?

15 MR. ASKINS: I really haven't thought that  
16 much about that. I would like for somebody to say the  
17 same thing about me that I just said about Judge  
18 Harwell.

19 MS. SHULER: Thank you. What suggestions  
20 would you offer for improving the backlog of cases on  
21 the docket, both in general sessions or in common  
22 pleas?

23 MR. ASKINS: I don't know whether I'm in a  
24 position to say right now because I'm not that familiar  
25 with the administrative end of it with court



1 administration. I think that the alternative dispute  
2 resolution is going to help with the civil docket. I  
3 think that's going to have a greater impact in the  
4 future in resolving cases.

5 MS. SHULER: And you are a practicing  
6 attorney so, Mr. Askins, do you currently carry  
7 malpractice insurance in your law practice, and how  
8 long have you had insurance?

9 MR. ASKINS: We've had insurance since the  
10 beginning, since I first started practicing.

11 MS. SHULER: Mr. Askins, you have been  
12 involved in two lawsuits, the first in 1995 and was  
13 filed as a result of an automobile accident in which  
14 multiple parties were involved.

15 Please explain the nature and disposition of  
16 this lawsuit.

17 MR. ASKINS: I was coming -- going on from  
18 King Street, which is in Williamsburg County, and it  
19 was a little after 5 o'clock, I suppose. I was at a  
20 place called Bartell's Crossroads. I had a friend say,  
21 How in the world can you be in a traffic accident at  
22 Bartell's Crossroads, and I explained to him it was the  
23 rush hour.

24 I pulled up to the stop sign and I looked  
25 both ways and I pulled out right in front of somebody.

1 I realized later, and this is not an excuse, but I  
2 realized later I was driving a car that had a rather  
3 wide roof support coming down, it had a blind spot  
4 there. And I truly did not see the car coming.

5 I was almost across the intersection when I  
6 got tattooed in the rear on the right side. I spun  
7 around 180 degrees, and I was facing the car that had  
8 hit me. And I looked up and I thought heads would  
9 never quit popping up. It turns out I was hit by a  
10 group of girls going to a Girl Scout meeting.

11 And, you know, the ambulance came, nobody  
12 was hurt, nobody needed to go to the doctor. It was  
13 almost three years later when I found out that somebody  
14 was filing the suit against me. Interestingly enough,  
15 there were about six or eight people in the car, only  
16 two filed suit. And they were -- the siblings of --  
17 their parent, you know, saw the need to do that. The  
18 case was resolved in arbitration.

19 MS. SHULER: Thank you. Mr. Askins, the  
20 second lawsuit that was filed against you was in 1999  
21 as a third-party defendant by Thomas E. Ruffin.

22 Please explain the nature and disposition of  
23 that lawsuit.

24 MR. ASKINS: That is something that turned  
25 out to be a very unpleasant experience. The plaintiffs

1 in that case were two doctors, one of whom is probably  
2 as close a friend as I have. They had gotten tangled  
3 up with Mr. Ruffin, he was an attorney practicing at  
4 the beach.

5 And they had come up with some sort of plan  
6 whereby they would all invest in building a building,  
7 which Mr. Ruffin would occupy as his law office. The  
8 doctors put up all the money, the two plaintiffs in  
9 this case. They began to run short.

10 Mr. Ruffin was going to handle all the  
11 business planning, he was going to deal with  
12 architects, contractors, everybody. He had contracts  
13 that were supposedly going to enable him to get things  
14 done at lower cost.

15 They got about halfway through construction  
16 and Mr. Ruffin said, We need more money. And they got  
17 another -- a second construction loan, and that was  
18 about July, I think. About September, Mr. Ruffin came  
19 to the doctors and said, We've had a problem with our  
20 contractor, he's not paid his bills and these  
21 subcontractors are going to file mechanic's liens and  
22 suppliers -- file mechanic's liens against us, we've  
23 got to pay these off.

24 Dr. Decomp, my friend, asked me about it.  
25 And he -- I remember he worded it in this way: I don't

1 think any jury in the land will make us pay it twice.  
2 He said that he's paid the contractor, I don't think a  
3 jury will make us pay it twice.

4 Well, of course, that's almost an accurate  
5 statement, you don't have to pay it twice; if you paid  
6 the contractor, you don't have to pay the subs again.  
7 They asked Mr. Ruffin for an accounting. They said,  
8 We've run way over, what's going on here, we need to  
9 see some facts.

10 Mr. Ruffin promised to deliver to them  
11 documentation of everything. And one time he said, I  
12 came by the office, you weren't there. Another time he  
13 said, I mailed it, it didn't have enough postage and it  
14 came back. He gave several different excuses, but he  
15 never got the material to them.

16 I think it dragged on until about December.  
17 They went to the bank and got copies of the bank  
18 statements. And they found that Mr. Ruffin, over the  
19 course of several months, had written checks to  
20 himself, to his wife, and to his law firm totaling  
21 around \$160,000.

22 My friend, Danny Decomp, asked me to help  
23 him. It was awkward because Mr. Ruffin was originally  
24 from Hemingway, the same town that I was from, and we  
25 had gone to school together through the sixth grade.

1 And I remember calling him and saying, You know, I feel  
2 a little awkward getting involved in this, but  
3 Dr. Decomp is as dear a friend as I have in the world.

4 Mr. Ruffin said, I'm glad you're involved  
5 because we can get this thing straight. He said, I can  
6 account for every penny and I'm glad to see you're  
7 involved. We set up a meeting. Mr. Ruffin's office  
8 called and canceled the meeting. He had a deposition  
9 in Texas somewhere supposedly.

10 We set up another meeting, he canceled that  
11 one. We finally had a meeting with his attorney; his  
12 attorney notified me that he'd been retained. To get  
13 on to the meat of the story, we ended up filing suit  
14 against Mr. Ruffin on behalf of the two doctors and the  
15 LLC that they had set up.

16 We had some negotiation about settlement.  
17 We came close a couple of times. The doctors didn't  
18 want -- they were like my dad use to say, We don't want  
19 any cheese, we just want out of the trap at this  
20 point. They weren't trying to make any profit.

21 They made him some proposals they thought  
22 were extremely reasonable, he rejected them. At some  
23 point, a process server walked in and served me with a  
24 third-party complaint that Mr. Ruffin had filed, and it  
25 alleged RICO violations on my part.

1           RICO is a federal statute where you conspire  
2 to violate somebody's rights. So at that point I had  
3 to resign as attorney for Mr. Ruffin -- Dr. Decomp and  
4 Dr. Mimms and the LLC and get an attorney of my own.

5           We scheduled some depositions down -- the  
6 case was filed in Georgetown County. I went down for  
7 the depositions at Mr. Dore's office. Mr. Dore was my  
8 attorney. And we were supposed to take the deposition  
9 of Mr. Ruffin. Before submitting to a deposition, his  
10 attorney engaged in some settlement discussions and  
11 ultimately the case was settled.

12           As part of the settlement, Mr. Ruffin paid  
13 me \$10,000, actually to my firm, and that's how that  
14 case was resolved. I remember Mr. Dore came back and  
15 said, they said \$10,000 is too much, they offer 5. And  
16 I said, I told him 10, I said 10. And he came back and  
17 they agreed to pay 10.

18           Oddly enough, they made the settlement  
19 agreement that day. They stayed in litigation over the  
20 settlement agreement. They went back two or three  
21 times in court to reinforce the settlement agreement.  
22 It was a nightmare.

23           It resulted in Mr. Ruffin being suspended  
24 from the practice of law, and his attorney, Mr. Young,  
25 was also reprimanded.

1 MS. SHULER: Mr. Askins, you were charged  
2 with a hunting violation in the 1970s.

3 Can you explain the disposition of that  
4 violation?

5 MR. ASKINS: You know, I was hunting with my  
6 brother and another friend of ours, we were hunting on  
7 the land of a man who had invited us to go, he wasn't  
8 with us but he invited us to go. We were duck hunting  
9 early in the morning, and there weren't many ducks  
10 there. I think I got one duck, as I recall, and the  
11 others didn't even shoot at a duck.

12 The game wardens came in and they were  
13 determined to charge us with something. And they were  
14 looking around -- turns out that the owner of the farm  
15 had cleaned out his grain bin, he had soybeans in his  
16 grain bin, and he had had cows out there at one time.

17 He dumped the soybeans down around the  
18 proximity of the pond, and the game wardens found it.  
19 It had been there for several months. I mean, it  
20 wouldn't have attracted a duck in 100 years. A  
21 starving duck wouldn't have gone to that.

22 But they charged us with shooting over  
23 bait. At that time, we went to the magistrate's  
24 office. It was apparent we were going to get charged  
25 unless we had a jury trial. Back then, the fine was 50

1 or \$60. And we took the most expedient way out, we  
2 just paid the fine rather than go through the trouble  
3 of having a jury trial.

4 You might say it was an offered plea. We  
5 were not guilty. That's my story, and I'm sticking to  
6 it.

7 SENATOR MARTIN: Fair enough. Let the  
8 record reflect...

9 MS. SHULER: The Commission received 77  
10 ballot box surveys regarding you with seven written  
11 comments, two of which expressed concerns.

12 One said that they couldn't imagine you on  
13 the bench, and the other said, Could not imagine you  
14 being fair on the bench.

15 What response would you offer to those two  
16 concerns?

17 MR. ASKINS: You know, it's disappointing to  
18 hear a comment like that, even though it might be from  
19 one or two people. I don't know circumstances or an  
20 event that would have evoked that kind of response.

21 Obviously, I've rubbed somebody the wrong  
22 way along the line. But not knowing the source or the  
23 context of the remarks, it's very difficult to respond  
24 any further.

25 MS. SHULER: What about the concern that you



1 would not be fair on the bench?

2 MR. ASKINS: You know, I don't see that as a  
3 problem at all. I alluded earlier to my clientele  
4 coming from all walks of life. I learned from my  
5 father at a very early age that everybody's entitled to  
6 fair access to the court, everybody's entitled to  
7 respect, everybody is entitled to your best efforts as  
8 an attorney.

9 And that makes no difference whether you're  
10 dealing with, in his case it may have been the widow of  
11 a sharecropper who had almost nothing to a very wealthy  
12 businessman, they got his full attention and his full  
13 effort, and they did mine too when I went back to  
14 practice.

15 I think that everybody -- over the years,  
16 I've represented clients, as I said, from all walks.  
17 When I was assistant public defender, I thought it  
18 would be fun to have a job where you could try cases  
19 without a lot of pressure, you could go into court and,  
20 if you lost, it wouldn't really matter that much.

21 What I found was that was not so. When you  
22 walked in there with your client, regardless of who it  
23 was, if they had a record a mile long, you still wanted  
24 to do the best you could for them.

25 I remember being appointed on a case one

1 time for a young man in high school who was charged  
2 with murder. It was a classic case of being in the  
3 wrong place at the wrong time. He was a senior in high  
4 school, and he ended up looking at the death penalty.  
5 And he was with three other people and somebody was  
6 killed.

7 He was involved, he was there, he was  
8 participating, but he was not really one of the really  
9 bad guys. And I really went out of my way to try to  
10 distinguish him from the trigger man; and, as a result,  
11 the judge was going to give him a pretty stiff  
12 sentence, he ended up getting a much lesser sentence.

13 And for years I would encounter his mother  
14 on the street and she would come up to me and hug me.  
15 She wrote me a couple of letters, she'd keep me  
16 informed about her son and how he was doing. And she  
17 told me, I pray for you every day.

18 This is a guy -- I was court appointed, I  
19 didn't have to do that. That guy was entitled to his  
20 day, he was entitled to fair representation. And as a  
21 judge, I would have the same attitude.

22 MS. SHULER: Thank you, Mr. Askins.

23 Have you sought or received the pledge of  
24 any legislator prior to this date?

25 MR. ASKINS: I have not.

1 MS. SHULER: Have you sought or have you  
2 been offered a conditional pledge of support of any  
3 legislator pending the outcome of your screening?

4 MR. ASKINS: I have not.

5 MS. SHULER: Have you asked any third  
6 parties to contact members of the General Assembly on  
7 your behalf?

8 MR. ASKINS: I have talked to some people  
9 about contacting, but, in any case, I have explained,  
10 we're going through the screening process, it's  
11 improper to ask for any commitment or to approach any  
12 member of the Commission or to pressure anyone to make  
13 any comment that would be interpreted as a solicitation  
14 of a commitment.

15 MS. SHULER: But you understand that in  
16 January, when the 48-hour rule expires, then you may  
17 obtain support or have third parties help you obtain  
18 support?

19 MR. ASKINS: That's right.

20 MS. SHULER: Are you aware of anyone  
21 attempting to intervene in any part of the process on  
22 your behalf?

23 MR. ASKINS: I am not.

24 MS. SHULER: Have you contacted any members  
25 of the Commission?

1 MR. ASKINS: I have not.

2 MS. SHULER: I think you just said that you  
3 understand that you're prohibited from seeking a pledge  
4 or commitment until 48 hours after the formal release  
5 of the Commission's report?

6 MR. ASKINS: That's correct.

7 MS. SHULER: Have you reviewed the  
8 Commission's guidelines on pledging?

9 MR. ASKINS: I'm sorry?

10 MS. SHULER: Have you reviewed the  
11 Commission's guidelines on pledging?

12 MR. ASKINS: I have.

13 MS. SHULER: And you're aware of the  
14 penalties for violating the pledging rules; that is, it  
15 is a misdemeanor and, upon conviction, the violator  
16 must be fined not more than \$1,000 or in prison not  
17 more than 90 days?

18 MR. ASKINS: Yes, ma'am.

19 MS. SHULER: I would state that the Pee Dee  
20 Citizens Committee found Mr. Askins qualified in the  
21 evaluative criteria of constitutional qualifications,  
22 physical health, and mental stability.

23 The committee found him well-qualified in  
24 the evaluative criteria of ethical fitness,  
25 professional and academic ability, character,

1 reputation, experience, and judicial temperament.

2           The committee stated in summary, Mr. Askins  
3 is a compassionate and dedicated person who sincerely  
4 wants to serve his fellow man. He has extensive legal  
5 background. And we believe he would be excellent in  
6 dealing with all types of individuals who might appear  
7 before him.

8           I would just note for the record that any  
9 concerns raised during the investigation regarding this  
10 candidate have been incorporated in the questioning of  
11 my candidate today.

12           Mr. Chairman, I have no further questions.

13           SENATOR MARTIN: Thank you very much.

14           Any questions from the Committee?

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

17           Thank you very much, Mr. Askins, for being  
18 with us today and offering us your service. I note  
19 that your practice is primarily a civil practice, and  
20 you responded that your criminal practice constitutes  
21 less than 1 percent of your area of practice.

22           Acknowledging that the circuit court deals  
23 with a varied palette of matters, do you feel that you  
24 are prepared to handle criminal matters as well as the  
25 civil matters that would come before you?

1 MR. ASKINS: Yes. My criminal practice at  
2 this point would constitute less than 1 percent. In  
3 the past it has been a much higher percentage.

4 I was, at some point, removed from the list  
5 of appointees for general sessions and placed on the  
6 civil appointment list. In Williamsburg County,  
7 there's a great need -- we have so many cases in family  
8 court involving DSS, child abuse cases, for example,  
9 that may need a court-appointed attorney for a mother,  
10 a father, a boyfriend, a guardian for the children, and  
11 so there's a great need for appointed attorneys there.

12 And at some point I was taken off the  
13 criminal appointed list and put on the civil list and,  
14 consequently, didn't have as many criminal cases. I  
15 still handle an occasional criminal case, but not that  
16 many and not that many recently. But I don't have any  
17 concern about my ability to have that.

18 I've been there, I've done that. I've been  
19 appointed on murder cases and I've -- I think the last  
20 criminal case I tried was an armed robbery where I  
21 consented to be appointed. It was a second armed  
22 robbery for the defendant, who was in his 20s, and he  
23 was looking at life in prison if he were convicted of  
24 that offense. We ended up with a plea.

25 I made some motions that there were some

1 constitution issues, and as a result of all that, some  
2 evidence was suppressed and he ended up being able to  
3 plea for something less than armed robbery; he went to  
4 prison, but not for the rest of his life.

5 But I have no doubt that I'll be able to  
6 handle that.

7 REPRESENTATIVE CLEMMONS: Thank you,  
8 Mr. Askins,

9 SENATOR MARTIN: Any other questions?

10 Hearing none, thank you, Mr. Askins, for  
11 being here today, for your candor in front of the  
12 Commission.

13 This concludes the screening process. As  
14 you know, the record will remain open until the report  
15 is published, and you may be called back at such time  
16 if the need arises. I'll remind you of the 48-hour  
17 rule and ask that you be mindful of that.

18 Anyone that inquires with you about whether  
19 or not they may advocate for you in the event you're  
20 screened out, remind them, please, of the 48-hour rule.

21 We thank you for offering, and I thank you  
22 for your service to South Carolina.

23 MR. ASKINS: When you said I could be called  
24 back, am I excused for the day?

25 SENATOR MARTIN: Yes. If there were any

1 questions and we have another --

2 MS. SHULER: Another hearing.

3 MR. ASKINS: Thank you.

4 SENATOR MARTIN: Thank you.

5 MR. DUKES: How are y'all?

6 SENATOR MARTIN: Fine. Welcome. Mr. Dukes,  
7 glad to have you. Please raise your right hand and  
8 repeat after me.

9 (Marvin H. Dukes was duly sworn, after which  
10 testimony commenced at 1:40 p.m.)

11 SENATOR MARTIN: Have you had an opportunity  
12 to review your personal data questionnaire that was  
13 submitted?

14 MR. DUKES: Yes, sir, I have.

15 SENATOR MARTIN: Is it correct? Does  
16 anything need to be changed?

17 MR. DUKES: I sent in this amendment last  
18 week; if it's in there, then nothing needs to be  
19 changed.

20 SENATOR MARTIN: Do you object to making  
21 this summary part of your sworn testimony?

22 MR. DUKES: I do not object.

23 SENATOR MARTIN: So that will be done at  
24 this point in the transcript.

25 (EXH. 11, Personal Data Questionnaire of



1 Marvin H. Dukes, Sworn Statement of Marvin H. Dukes,  
2 and Amendment to the Previous Submissions of Marvin H.  
3 Dukes, marked for identification.)

4 SENATOR MARTIN: The Judicial Merit  
5 Selection Commission has thoroughly investigated your  
6 qualifications for the bench. Our inquiry is focused  
7 on the nine evaluative criteria.

8 It has included a survey of the bench and  
9 bar, a thorough study of your application materials,  
10 verification of your compliance with state ethics laws,  
11 a search of newspaper articles in which your name  
12 appears, a study of previous screenings, and a check  
13 for economic conflicts of interest.

14 We have received no affidavits in opposition  
15 to your election, no witnesses are present to testify.

16 Do you have a brief opening statement to  
17 make at this time?

18 MR. DUKES: Nothing more than to thank the  
19 members of the Judicial Merit Screening Commission and  
20 all of you for your hard work. I know this has been a  
21 record number of screenings this year.

22 SENATOR MARTIN: Thank you. Please answer  
23 counsel's questions.

24 MR. DUKES: I'm happy to do so.

25 MS. DEAN: Judge Dukes, you have before you

1 the sworn statement you provided with detailed answers  
2 to over 30 questions regarding judicial conduct,  
3 statutory qualification, office administration, and  
4 temperament.

5 Are there any amendments you would like to  
6 make at this time to your sworn statement?

7 MR. DUKES: There are not.

8 MS. DEAN: At this time, Mr. Chairman, I  
9 would like to ask that Judge Duke's sworn statement be  
10 entered as an exhibit into the hearing record.

11 SENATOR MARTIN: Any objection?

12 Hearing none, so ordered.

13 MS. DEAN: One final procedural matter. I  
14 note for the record that based on the testimony  
15 contained in the candidate's PDQ, which had been  
16 included in the record with the candidate's consent,  
17 Judge Dukes meets the statutory requirements for this  
18 position regarding age, residence, and years of  
19 practice.

20 Judge Dukes, will you please state the city  
21 and circuit in which you reside.

22 MR. DUKES: City of Beaufort, 14th Judicial  
23 Circuit.

24 MS. DEAN: Thank you. And, Judge Dukes, why  
25 do you now want to serve as a circuit court judge?

1 MR. DUKES: Well, I practiced law for 20  
2 years, and then for the past five and a half I've  
3 served as master in equity in Beaufort, and I believe  
4 it's a natural transition.

5 I've got experience, I've got a track record  
6 as a judge doing nonjury work as a master in equity in  
7 Beaufort. I think I would be good at being a circuit  
8 court judge, and I think I would enjoy being a circuit  
9 court judge. So I believe it's a natural transition, I  
10 believe I'm prepared and ready, and I would like to do  
11 it.

12 MS. DEAN: Judge Dukes, are there any areas,  
13 including subjective areas, of law that you would need  
14 to additionally prepare for in order to serve as judge,  
15 and how would you handle that additional preparation?

16 MR. DUKES: Well, like most people in my  
17 position now, I read the advance sheets as they come  
18 out. I would continue to read that, to try to keep  
19 myself apprised of the current law and follow any  
20 changes. Other than that, I don't think there would be  
21 a whole lot that I would need to prepare for.

22 MS. DEAN: Judge Dukes, although you  
23 addressed this in your sworn statement, could you  
24 please explain to the members of the Commission what  
25 you think is the appropriate demeanor of a judge?

1 MR. DUKES: Patient, fair, calm I think is  
2 important. I mean, the fact is the entire system rests  
3 on the public confidence in the judicial department and  
4 the judges that work for the judicial department. And  
5 I think it's important that the public perception be of  
6 people who are going to fairly, calmly, and  
7 intelligently rule on their decisions. So I think that  
8 would summarize it.

9 MS. DEAN: Is there any circuit court judge  
10 currently on the bench that you would like to model  
11 yourself after or particularly exemplifies the  
12 characteristics that a circuit court judge should have?

13 MR. DUKES: Well, the one I know the best,  
14 our local judge, is Carmen Mullen. She works hard. I  
15 know that she studies each issue carefully. I have the  
16 opportunity to speak with her about various cases in  
17 which I'll hear motions and she'll hear the case.

18 So if I had to choose one, I would choose  
19 our resident judge, Carmen Mullen.

20 MS. DEAN: When you leave the bench, what  
21 would you like your legacy to be as a circuit court  
22 judge?

23 MR. DUKES: I hope I would be remembered as  
24 being someone fair, someone who studied each issue, and  
25 someone who afforded every litigant due process.

1 MS. DEAN: What suggestions would you offer  
2 for improving the backlog of cases on the docket both  
3 for general sessions and common pleas in the circuit  
4 court?

5 MR. DUKES: Well, that's probably a little  
6 bit of a county-by-county answer. But in Beaufort  
7 County, we have one resident circuit court judge and we  
8 have a number of cases, and that number is growing.  
9 It's simply a matter of having enough judges to handle  
10 the backlog of cases right now.

11 There are probably some things that could be  
12 done in general sessions court with regard to  
13 scheduling, but for the most part, it's simply a matter  
14 of having judges ready to go and ready to try cases  
15 when the cases are ready and making sure, from an  
16 administrative standpoint, that those cases are ready  
17 in a timely fashion for those cases to be tried.

18 MS. DEAN: Thank you, Judge Dukes.

19 Judge Dukes, the Citizens Committee report  
20 found you qualified in experience but notes concerns of  
21 your overall experience with criminal matters and  
22 criminal jury trials.

23 Could you please respond to that?

24 MR. DUKES: And this was the Citizens  
25 Committee?

1 MS. DEAN: Yes.

2 MR. DUKES: And I think that went back to  
3 the fact that I had practiced or had acted as a master  
4 in equity for five years prior to that interview, and  
5 then before that I had not practiced extensively in the  
6 criminal court.

7 Nevertheless, a criminal trial is not a  
8 whole lot different than any other trials. Obviously,  
9 the burden of proof is different and there are some  
10 other rules that are different; but I think I could  
11 easily handle criminal court just as I have a track  
12 record for handling nonjury court for five and a half  
13 years.

14 MS. DEAN: Judge Dukes, as part of this  
15 process, we received 360 responses to the ballot box  
16 survey regarding you. And of those 360 responses, we  
17 received 36 written comments, and of those 36 written  
18 comments, we received six comments that expressed some  
19 concerns about the transition between serving as master  
20 in equity, as you do now, and a circuit court judge,  
21 saying that the decisions would be possibly more  
22 difficult for circuit court judges and just having  
23 concern about how you would handle that.

24 Could you please respond to those concerns?

25 MR. DUKES: Well, I guess my first response

1 is, I'm glad to hear that out of 360 only six had  
2 reservations. Without reading the comments  
3 specifically and just taking it as an overall broad  
4 topic, the decisions would be more difficult, I would  
5 have to respectfully disagree.

6           The law is the same. The evidentiary  
7 standards from nonjury to jury are often very similar  
8 depending on the case, and I just don't think the  
9 decisions are any more difficult. The added burden of  
10 nonjury that I handle now is that I find facts as well  
11 as the law.

12           Of course, in a jury case, the jury is the  
13 finder of fact, and so there's actually a little bit  
14 less of a burden than as a judge trying a jury trial  
15 than a nonjury trial.

16           But as far as the subject matter itself,  
17 again, I'm glad that it's just six out of 360, but I'd  
18 have to respectfully disagree.

19           MS. DEAN: Thank you. My final question in  
20 this area deals with two comments out of the 360, so,  
21 again, a very small number. It was a question over  
22 whether you would show favoritism for local attorneys.

23           Could you please respond to any concerns  
24 about that?

25           MR. DUKES: Other than just saying I

1 wouldn't and I haven't, that's just not something that  
2 I would do.

3 MS. DEAN: Thank you, Judge Dukes.

4 Now I just have some housekeeping issues.

5 Have you sought or received the pledge of  
6 any legislator prior to this date?

7 MR. DUKES: I have not.

8 MS. DEAN: Have you sought or have you been  
9 offered a conditional pledge of support of any  
10 legislator pending the outcome of your screening?

11 MR. DUKES: I have not.

12 MS. DEAN: Have you asked any third parties  
13 to contact members of the General Assembly on your  
14 behalf?

15 MR. DUKES: I have not.

16 MS. DEAN: Are you aware of anyone  
17 attempting to intervene in any part of the process on  
18 your behalf?

19 MR. DUKES: No.

20 MS. DEAN: Have you contacted any members of  
21 the Commission?

22 MR. DUKES: No -- well, I sent a letter to  
23 Senator Campsen before he became a member of the  
24 Commission.

25 MS. DEAN: Do you understand that you are



1 prohibited from seeking a pledge or commitment until 48  
2 hours after the formal release of the Commission's  
3 report?

4 MR. DUKES: I understand.

5 MS. DEAN: Have you reviewed the  
6 Commission's guidelines on pledging?

7 MR. DUKES: Yes.

8 MS. DEAN: As a follow-up, are you aware of  
9 the penalties for violating the pledging rules; that  
10 is, it is a misdemeanor and, upon conviction, the  
11 violator must be fined not more than \$1,000 or in  
12 prison not more than 90 days?

13 MR. DUKES: Yes, I understand.

14 MS. DEAN: I would also note that the  
15 Lowcountry Citizens Committee found Judge Dukes to be  
16 qualified for constitutional qualifications, mental  
17 stability, physical ability, and experience, with the  
18 note already discussed.

19 The Citizens Committee found Judge Dukes to  
20 be well-qualified for ethical fitness, professional and  
21 academic ability, character, reputation, and judicial  
22 temperament.

23 I would just note for the record that any  
24 concerns raised during this investigation regarding the  
25 candidate were incorporated into the questioning of the

1 candidate today.

2 Mr. Chairman, I have no further questions.

3 SENATOR MARTIN: Thank you. Any questions  
4 from members of the Commission?

5 Judge Dukes, thank you very much. This  
6 concludes the screening process. As you know, the  
7 record will remain open until the report is published,  
8 and you may be called back at such time if the need  
9 arises. I'll remind you of the 48-hour rule and ask  
10 that you be mindful of that.

11 Anyone that inquires with you about whether  
12 or not they may advocate for you in the event you're  
13 screened out, remind them, please, of the 48-hour rule.  
14 We thank you for offering and I thank you for your  
15 service to South Carolina.

16 MR. DUKES: Thank you very much. Have a  
17 good day.

18 SENATOR MARTIN: Ms. Murphy, welcome, glad  
19 to have you. If you'd raise your right hand and repeat  
20 after me.

21 (Maite Murphy was duly sworn, after which  
22 testimony commenced at 1:53 p.m.)

23 SENATOR MARTIN: Have you had the  
24 opportunity to review your personal data questionnaire?

25 MS. MURPHY: Yes, sir, I have.

1           SENATOR MARTIN: Is it correct? Do any  
2 changes need to be made?

3           MS. MURPHY: It's correct without any  
4 changes.

5           SENATOR MARTIN: And do you object to making  
6 this summary a part of the record of your sworn  
7 testimony?

8           MS. MURPHY: No, sir, that would be fine.

9           SENATOR MARTIN: So it will be done.

10           (EXH. 12, Personal Data Questionnaire of  
11 Maite Murphy and Sworn Statement of Maite Murphy,  
12 marked for identification.)

13           SENATOR MARTIN: The Judicial Merit  
14 Selection Commission has thoroughly investigated your  
15 qualifications for the bench. Our inquiry is focused  
16 on the nine evaluative criteria.

17           It has included a survey of the bench and  
18 bar, a thorough study of your application materials,  
19 verification of your compliance with state ethics laws,  
20 a search of newspaper articles in which your name  
21 appears, a study of previous screenings, and a check  
22 for economic conflicts of interest.

23           There no are affidavits filed in opposition  
24 to your election, there are no witnesses here to  
25 testify against you.

1 Do you have a brief opening statement you'd  
2 like to make to the Commission?

3 MS. MURPHY: Well, Senator Martin, certainly  
4 I understand and I'm cognizant of the number of  
5 applicants you have to screen, so I would really just  
6 be happy to answer any questions that you may have.

7 SENATOR MARTIN: Brevity is always clarity.  
8 So will you please answer the counsel's questions.

9 MS. MURPHY: Yes, sir.

10 MS. BENSON: Judge Murphy, you have before  
11 you the sworn statement you provided with detailed  
12 answers to over 30 questions regarding judicial  
13 conduct, statutory qualification, office  
14 administration, and temperament.

15 Are there any amendments you would like to  
16 make at this time to your sworn statement?

17 MS. MURPHY: No, ma'am.

18 MS. BENSON: Thank you.

19 Mr. Chairman, I would ask that Judge  
20 Murphy's sworn statement be entered into the record at  
21 this time.

22 SENATOR MARTIN: No objection.

23 MS. BENSON: Mr. Chairman, I would also note  
24 for the record that based on the testimony contained in  
25 the candidate's PDQ, which had been included in the

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

4 Judge Murphy, why do you want to serve as a  
5 circuit court judge?

6 MS. MURPHY: I believe that I can have a  
7 positive impact on the judiciary by serving in that  
8 capacity. I've been very fortunate throughout my  
9 career to gain experience in lots of different fields,  
10 whether it's on the prosecution side, the defense side,  
11 or the civil side.

12 And, also, with my past service on the  
13 bench, I think I have the necessary criteria to be a  
14 positive influence on the judiciary.

15 MS. BENSON: Judge Murphy, can you explain a  
16 little bit more in detail how your legal and  
17 professional experience has enabled you to seek this  
18 position?

19 MS. MURPHY: Certainly. Certainly my legal  
20 experience has been much varied. I've been in private  
21 practice before I went to the solicitor's office. And  
22 I was at the solicitor's office for approximately eight  
23 years, and I worked my way up to be chief deputy  
24 solicitor, where I was in charge of three different  
25 counties.

1 I was in charge of prosecuting all violent  
2 crimes against women and children, so anything from  
3 murder all the way down to domestic violence. So I  
4 gained a lot of trial experience in my time at the  
5 solicitor's office.

6 On the same token, I was in private practice  
7 the same amount of time handling defense workings of  
8 litigation. So I feel my experience has been very  
9 balanced as far as for either side of the courtroom, I  
10 guess you could say, and being prepared to serve as a  
11 circuit court judge.

12 I've also served as a magistrate court judge  
13 and now as a master in equity court judge and as a  
14 special circuit court judge, so I've gained valuable  
15 experience in that regard to hopefully prepare me to  
16 stand in front of you today.

17 MS. BENSON: Thank you. Judge Murphy, you  
18 addressed this in your sworn statement, but could you  
19 please explain to the members of the Commission what  
20 you think is the appropriate demeanor of a judge?

21 MS. MURPHY: Certainly. I think the  
22 appropriate demeanor is to always be kind and courteous  
23 to people, to ensure that they feel they've had their  
24 day in court and that they have been treated fairly.

25 MS. BENSON: What kind of legacy would you

1 like to leave as a judge in this state?

2 MS. MURPHY: I would hope to be remembered  
3 as somebody that was fair, that took the time to listen  
4 to people's concerns, and that applied the law  
5 correctly. And even if folks may not always be happy  
6 with the outcome, you would hope that once they leave  
7 the courtroom, they felt they were treated fairly.

8 MS. BENSON: What suggestions would you have  
9 in improving the backlog of cases that we have in the  
10 circuits in this state?

11 MS. MURPHY: It's really, I think, a matter  
12 of communication and hard work. I think a judge has to  
13 really have a -- a circuit court has to have good  
14 communication with the solicitors and public defenders  
15 to work together, to bring the cases to trial, to get  
16 them ready to go so that you don't have a lot of  
17 downtime, which sometimes happens when you don't have  
18 that communication.

19 I recall my experience when I was with the  
20 solicitor's office, we would meet with the public  
21 defenders and then get with the judge that was  
22 scheduled to be present the next week. And we'd have a  
23 long list of cases for trial and pleas and whatnot. So  
24 we would make sure we were busy all the time. So I  
25 think that experience would enable me to hopefully

1 manage the docket very effectively.

2           And I think, as far as on the civil side of  
3 things, working with the circuit court closely is a  
4 very important aspect, to get together and go see  
5 what's out there that needs to be heard and schedule it  
6 to be heard, and do it in an expeditious fashion.

7           MS. BENSON: Thank you, Judge Murphy, I  
8 wonder if I could ask you some questions about some  
9 concerns that were raised in your ballot box survey.  
10 The Commission received 158 ballot box surveys  
11 regarding you, 22 had additional comments, five of  
12 these 22 indicated a concern, and the concerns were in  
13 two areas.

14           The first was an ability to be unbiased, and  
15 the second was concerning your mindset in seeking a  
16 judgeship. And I wonder if you would offer your  
17 response to those concerns to the Commission?

18           MS. MURPHY: Yes, ma'am, I'm happy to. The  
19 first one, as far as unbiased, I think certainly people  
20 sometimes personify you in where they see you most.  
21 And having worked at the solicitor's office for an  
22 extensive period of time, I think people look at me and  
23 see, she's a solicitor.

24           I think the fact that's overlooked is the  
25 fact that I was in private practice just as long. I



1 think it's just a matter of the solicitor's practice is  
2 such a more visible position, where people tend to  
3 remember you in that role.

4 But certainly I can tell you that since I've  
5 served as a magistrate court judge presiding over  
6 criminal matters and now the special circuit court  
7 judge presiding over special sessions matters, that I  
8 have not had one person complain that I have been  
9 unfair or not impartial.

10 And in anticipation of that potential  
11 perception, when the bar asked for names of attorneys  
12 that have appeared before me as a judge, I specifically  
13 gave them the name of the public defender in my circuit  
14 and the solicitor, and I'm certain that both gentlemen  
15 would tell you that I can sit very impartially.

16 MS. BENSON: Thank you, Judge Murphy.

17 And is there anything you would add about  
18 the mindset in seeking a judgeship?

19 MS. MURPHY: Yes, ma'am. To move to that  
20 question, I'll share with you that the first time I  
21 came before this Commission, and that was to seek the  
22 circuit court position, I was fortunate enough to have  
23 the opportunity to meet with our chief justice, and she  
24 gave me some words of advice and words of  
25 encouragement; but she also shared with me that, quite

1 frankly, you don't always get it your first time and  
2 that you have to be persistent and you have to come  
3 back.

4           So certainly that's where I find myself.  
5 Circuit court has always been the goal for me, and if  
6 opportunities have arisen during the time in between, I  
7 have taken opportunities to gain more judicial  
8 experience, such as the magistrate's court and the  
9 master in equity court, in the hopes that when I come  
10 back here before you today I have the necessary  
11 experience.

12           Believe me, I'm not the glutton for  
13 punishment, I wish I had been successful the very first  
14 time. But that's why I'm back here today.

15           MS. BENSON: Thank you, Judge Murphy. A few  
16 housekeeping issues.

17           I would note for the record that you are  
18 married to Representative Chris Murphy; is that  
19 correct?

20           MS. MURPHY: Yes, ma'am.

21           MS. BENSON: Have you sought or received the  
22 pledge of any legislator prior to this date?

23           MS. MURPHY: No.

24           MS. BENSON: Have you sought or have you  
25 been offered a conditional pledge of support of any

1 legislator pending the outcome of your screening?

2 MS. MURPHY: No, ma'am.

3 MS. BENSON: Have you asked any third  
4 parties to contact members of the General Assembly on  
5 your behalf?

6 MS. MURPHY: No, ma'am.

7 MS. BENSON: Are you aware of anyone  
8 attempting to intervene in any part of the process on  
9 your behalf?

10 MS. MURPHY: No, ma'am.

11 MS. BENSON: Have you contacted any members  
12 of the Commission?

13 MS. MURPHY: No, ma'am.

14 MS. BENSON: Do you understand that you are  
15 prohibited from seeking a pledge or commitment until 48  
16 hours after the release?

17 MS. MURPHY: Yes, ma'am.

18 MS. BENSON: Have you reviewed the  
19 Commission's guidelines on pledging?

20 MS. MURPHY: I have.

21 MS. BENSON: As a follow-up, are you aware  
22 of the penalties for violating the pledging rules; that  
23 is, it is a misdemeanor and, upon conviction, the  
24 violator must be fined not more than \$1,000 or in  
25 prison not more than 90 days?

1 MS. MURPHY: Yes, ma'am.

2 MS. BENSON: I would note for the record  
3 that the Midlands Citizens Committee found Judge Murphy  
4 well-qualified in the evaluative criteria, and the  
5 committee found her -- I'm sorry, found her  
6 well-qualified in the following evaluative criteria:  
7 Ethical fitness, experience, professionalism, and  
8 academic ability, character, reputation, and judicial  
9 temperament.

10 They found Judge Murphy qualified in the  
11 evaluative criteria of constitutional qualifications,  
12 physical health, and mental stability. And they did  
13 not provide any summary paragraph about Judge Murphy.

14 I would note for the record that any  
15 concerns raised during the investigation regarding  
16 Judge Murphy were incorporated into the questioning of  
17 here today or they have been incorporated into  
18 questions during previous screenings.

19 Mr. Chairman, I have no other questions.

20 SENATOR MARTIN: Any questions from other  
21 members of the Commission?

22 Hearing none, thank you, Judge Murphy, for  
23 being here today.

24 MS. MURPHY: Thank you, sir.

25 SENATOR MARTIN: This concludes the

1 screening process. As you know, the record will remain  
2 open until the report is published, and you may be  
3 called back at such time if the need arises. I'll  
4 remind you of the 48-hour rule and ask that you be  
5 mindful of that.

6           Anyone that inquires with you about whether  
7 or not they may advocate for you in the event you're  
8 screened out, remind them, please, of the 48-hour rule.  
9 We thank you for offering and I thank you for your  
10 service to South Carolina. Thank you very much.

11           MS. MURPHY: Thank you.

12           SENATOR MARTIN: Welcome.

13           MR. PAULING: Thank you.

14           SENATOR MARTIN: Mr. Pauling, good to have  
15 you here. Will you raise your right hand and repeat  
16 after me.

17           (Curtis Anthony Pauling, III, was duly  
18 sworn, after which testimony commenced at 2:05 p.m.)

19           SENATOR MARTIN: Have you had the  
20 opportunity to review your personal data questionnaire?

21           MR. PAULING: Yes, sir, I have.

22           SENATOR MARTIN: As far as you know, is it  
23 correct? Does anything need to be changed?

24           MR. PAULING: The only thing that I noticed  
25 on -- as to, I believe it's question 14, was where it

1 was written in June 2004 I was employed as assistant  
2 solicitor at the attorney general's office; obviously,  
3 that's assistant attorney generals. That's the only  
4 thing I noticed.

5 SENATOR MARTIN: We'll have the record  
6 reflect that change.

7 Do you object to our making this summary a  
8 part of your sworn testimony today?

9 MR. PAULING: I do not object.

10 SENATOR MARTIN: It will be done at this  
11 point in the transcript.

12 (EXH. 13, Personal Data Questionnaire of  
13 Curtis Anthony Pauling, III; Amendment to the Personal  
14 Data Questionnaire of Curtis Anthony Pauling, III; and  
15 Sworn Statement of Curtis Anthony Pauling, III, marked  
16 for identification.)

17 SENATOR MARTIN: The Judicial Merit  
18 Selection Commission has thoroughly investigated your  
19 qualifications for the bench. Our inquiry is focused  
20 on the nine evaluative criteria.

21 It has included a survey of the bench and  
22 bar, a thorough study of your application materials,  
23 verification of your compliance with state ethics laws,  
24 a search of newspaper articles in which your name  
25 appears, a study of previous screenings, and a check

1 for economic conflicts of interest.

2 We've received no affidavits filed in  
3 opposition to your election, no witnesses are present  
4 to testify. Do you have a brief opening statement  
5 you'd like to share with the Commission?

6 MR. PAULING: Just briefly, Your Honor. I'm  
7 Curtis Anthony Pauling, III. I'm originally from  
8 Beaufort, South Carolina; but I've resided in Richland  
9 County for the past 15 years. I currently live in  
10 Irmo. I have a lovely wife, Noelle; three children,  
11 three boys, 16, 14, and 6. It's a pleasure being here  
12 today.

13 SENATOR MARTIN: Welcome. Please respond to  
14 the questions of counsel.

15 MR. FIFFICK: Mr. Pauling, you have before  
16 you the sworn statement you provided with detailed  
17 answers to over 30 questions regarding judicial  
18 conduct, statutory qualification, office  
19 administration, and temperament.

20 Are there any amendments you would like to  
21 make at this time to your sworn statement?

22 MR. PAULING: There are no additional notes,  
23 no, sir.

24 MR. FIFFICK: Thank you.

25 At this time, Mr. Chairman, I would like to

1 ask that Mr. Pauling's sworn statement be offered into  
2 the record.

3 SENATOR MARTIN: Is there any objection?

4 Hearing none, so ordered.

5 MR. FIFFICK: One final procedural matter.

6 I note for the record that based on the testimony  
7 contained in the candidate's PDQ, which had been  
8 included in the record with the candidate's consent,  
9 Mr. Pauling meets the statutory requirements for this  
10 position regarding age, residence, and years of  
11 practice.

12 Mr. Pauling, why do you now want to serve as  
13 a circuit court judge?

14 MR. PAULING: Well, the main reason I want  
15 to serve as a circuit court judge is public service.  
16 Since I left law school, what I have done has been a  
17 public servant. I've done it in the capacity as a  
18 prosecutor for several years.

19 When this opportunity came about, I thought  
20 about it long and hard. And while I've been a  
21 prosecutor, I've been able to participate in the  
22 judicial system from an adversarial standpoint.

23 But I do believe this opportunity would  
24 afford me the opportunity to continue to serve the  
25 public, serve the State of South Carolina, just from a



1 different perspective.

2           And I enjoy what I do at this time, but I  
3 believe this opportunity to continue to serve my state  
4 is a good one.

5           MR. FIFFICK: Thank you. Can you explain to  
6 the Commission how you feel your legal and professional  
7 experience thus far will assist you to be an effective  
8 judge?

9           MR. PAULING: Well, I believe that the time  
10 I have spent as a prosecutor, I've been in the  
11 courtroom extensively. When I first got out of law  
12 school, I knew that's where I wanted to be, I wanted to  
13 be in the courtroom, I wanted to be an advocate.

14           Being in the courtroom as a prosecutor, I've  
15 been able to do that. While I've only seen it from one  
16 perspective, one side, I've been able to evaluate legal  
17 issues from both sides. I've been able to represent  
18 clients -- and when I say clients, of course, I  
19 represent the state -- but I've been able to represent  
20 victims in numerous cases.

21           And I believe that my experience in the  
22 courtroom, from a procedural standpoint, from the times  
23 that I've been in trial, lends me -- or lends to my  
24 ability to effectively be a member of the bench.

25           MR. FIFFICK: Thank you, sir. Are there any

1 areas, including subjective areas, of law that you  
2 would need to additionally prepare for in order to  
3 serve as judge, and how would you handle that  
4 additional preparation?

5 MR. PAULING: As I stated, I've been a  
6 prosecutor my entire career, so my focus has been in  
7 criminal law. However, when I joined the attorney  
8 general's office, I did have several civil commitment  
9 cases that would have been under the sexual violent  
10 predator act.

11 I also handled asset forfeitures as well, as  
12 it pertained to criminal cases that we had. I know, as  
13 far as the area of civil law is concerned, there are  
14 areas of substantive law I would need to brush up on.

15 During this process though, I've spoken to  
16 several individuals, but there was actually a former  
17 member of the bench who indicated to me that it's about  
18 how much work and effort you put into it. I know that  
19 I would need to brush up on some matters of civil law,  
20 not so much the procedural law but the substantive  
21 law. I know I need to do that.

22 But I believe I'm well able, well equipped,  
23 to do just that. And as far as any work ethic is  
24 concerned, there's no question I would be up to the  
25 task to do that.

1 MR. FIFFICK: Thank you, sir. Although you  
2 addressed this in your sworn affidavit, what do you  
3 think the appropriate demeanor is for a judge?

4 MR. PAULING: I think a judge, because of  
5 his or her role, because of their perspective, that  
6 they have to be impartial, they have to be even  
7 tempered. There are matters that come before the court  
8 that the judge may have even some personal feelings  
9 about; of course, the judge has to put those aside, has  
10 to be fair no matter what party is before him.

11 But I believe the judge has to be even  
12 tempered in order to make sure that everyone's rights  
13 are protected, to make sure that their positions are  
14 presented to the court in a fair manner, to make sure  
15 that the judge is able to make a fair determination  
16 based on the facts, based on the evidence, based on the  
17 law.

18 A judge also has to have a -- while these  
19 are serious matters, has to have a certain level of  
20 humor. And by doing those things, I believe that the  
21 judge would be able to fairly, properly, bring about  
22 justice in the courtroom.

23 MR. FIFFICK: Is there any circuit court  
24 judge currently on the bench that you would like to  
25 model yourself after particularly or someone that

1 exemplifies the characteristics of a circuit court  
2 judge?

3 MR. PAULING: There are several. But as it  
4 goes to your last question, as far as temperament is  
5 concerned, I'd like to model Judge Thomas W. Cooper out  
6 of Manning. I've only been before him on a couple of  
7 occasions, once was not too long ago.

8 I had a general sessions trial before him in  
9 Lexington County. And his demeanor throughout the  
10 entire trial was consistent, from the way he addressed  
11 the jury during qualification, during jury selection,  
12 to the way he addressed the members of the courtroom  
13 staff, the way he addressed the witnesses, the  
14 attorneys, he was always even tempered.

15 There were times when we weren't quite sure  
16 whether he was ruling for you or against you because  
17 his temperament was even the whole time. And it's that  
18 type of consistency that I admire.

19 And throughout that whole process, it  
20 doesn't matter which side of the aisle you're on, at  
21 the end of the day, you felt like you were able to  
22 advocate your position, you were able to present your  
23 case, and go away from it knowing that you did not only  
24 all you could, but also knowing that justice was  
25 served.

1 MR. FIFFICK: When you leave the bench, what  
2 would you like your legacy as a judge to be?

3 MR. PAULING: I would like it to be that I  
4 was honest, fair, ruled with integrity; that no matter  
5 the situation, I was fair to everyone; no matter the  
6 situation, that when someone left my courtroom, whether  
7 they were victorious or not, they knew that they got a  
8 fair shake; they knew that whatever the ruling was that  
9 I made, that I considered their deposition, I  
10 considered the law, and made the ruling based on what  
11 was before me.

12 MR. FIFFICK: What suggestions would you  
13 offer for improving the backlog of cases on the docket  
14 both for general sessions and common pleas in the  
15 circuit court?

16 MR. PAULING: As far as general sessions is  
17 concerned, I know that when I was at the Fifth Circuit  
18 solicitor's office several years ago, a new case  
19 management system happened to come in place, and I  
20 believe it was Judge Henry Floyd; it was a pilot  
21 program that the chief justice had put in place, but  
22 Judge Henry Floyd was over that; wherein we would have  
23 the first appearance and particular cases were  
24 scheduled, whether it was a 90-day or 180-day or  
25 270-day time frame to dispose of the case.

1           We had second appearances, and then third  
2 appearance was either guilty plea or trial. I believe  
3 that management system was effective. I believe it was  
4 effective in part because Judge Floyd made sure that it  
5 was running the way it should run.

6           I think those docket systems are good,  
7 they're helpful, as long as they're implemented.  
8 There's always things that come up with various cases.  
9 But I do believe that that type of docket system does  
10 and can work.

11           As far as the civil docket is concerned, I'm  
12 not sure if a case management system or docking style  
13 would work as effectively with the civil docket, but I  
14 think it's worth looking into as far as a docking  
15 system is concerned.

16           MR. FIFFICK: Thank you. You've been named  
17 as a defendant along with the South Carolina Department  
18 of Corrections and the State of South Carolina in a  
19 lawsuit filed by an inmate serving a seven-year  
20 sentence for trafficking cocaine.

21           Would you please very briefly share the  
22 nature of that lawsuit as it relates to you?

23           MR. PAULING: That particular case, the  
24 defendant's name is Joseph Ambrosia, it was a  
25 trafficking cocaine case. Actually, it was a State

1 grand jury investigation, I inherited the case.

2 This individual -- well, there was an arrest  
3 warrant for trafficking cocaine, I believe that was  
4 signed off on back in 2003 or 2004. Mr. Ambrosia fled  
5 the U.S., ended up in Amsterdam. Federal agents were  
6 also trying to apprehend him as well.

7 At some point he was detained in Amsterdam,  
8 he was given a bond, was released, and then arrested  
9 again. It was my understanding that the federal  
10 government had passport changes on him as well.  
11 Eventually he makes it back to the United States, I  
12 believe that was early 2008.

13 He was charged with trafficking over 100  
14 grams, so he was looking at a mandatory 25 years. We  
15 gave a plea offer of trafficking cocaine 20 to 100  
16 grams, which carries a mandatory minimum sentence of 7  
17 to 25 years. The guilty plea was in August of 2009  
18 before Judge John.

19 At that guilty plea, his attorney,  
20 Mr. Sutherland, actually at that time had asked that he  
21 have credit for the time he served while in Amsterdam.  
22 I had indicated to the court that our South Carolina  
23 authorities were not able to apprehend him, were not  
24 able to serve a warrant on him, were not able to do so  
25 until he had gotten back to the United States, which I

1 believe would have been in December of 2008.

2           And so as far as him getting credit for that  
3 time -- but again, he was asking for the time that he  
4 was in Amsterdam. And I believe the transcript was  
5 even part of the materials that were submitted. But I  
6 had explained to the judge why I didn't think he should  
7 get credit for it, left it to the discretion of the  
8 court.

9           Judge John gave him credit for the time that  
10 he was incarcerated while in the United States, here in  
11 South Carolina. It wasn't until two years later that a  
12 letter had been sent to Judge John and a proposed  
13 consent order was sent to our office from Mr. Ambrosia,  
14 asking that he get credit for the time that he was in  
15 Amsterdam.

16           I responded to that request, responded to  
17 Judge John. I checked with Austin Badger with the U.S.  
18 attorney's office. Because I asked him, Did he even  
19 get credit for the time that he was in as far as the  
20 U.S. passport charges were concerned? He indicated no,  
21 he didn't get credit for any of that time.

22           But as far as where the litigation stands  
23 now, our office filed a motion to dismiss. Last month,  
24 Kristen Simons and Adam Whitsett in our office were  
25 handling that particular matter.



1           The motion to dismiss was actually scheduled  
2 last Tuesday, was actually placed on the docket before  
3 Judge Manning. That has been continued. So that's  
4 where it stands right now.

5           MR. FIFFICK: Thank you, sir. While you  
6 have extensive experience as a prosecutor, how do you  
7 respond to concerns about your lack of experience in  
8 the civil realm?

9           MR. PAULING: I have extensive experience in  
10 the courtroom as a trial attorney. And so as far as  
11 procedure is concerned, I believe my experience in the  
12 courtroom, my practice in the courtroom, lends well to  
13 that.

14           As I had stated before, I know there are  
15 areas that I will need to brush up on as far as civil  
16 law is concerned, but my experience as a trial attorney  
17 lends to me doing well or preparing well as a member of  
18 the bench.

19           MR. FIFFICK: Thank you. A final question  
20 here in this line, one of the 136 ballot box survey  
21 responses indicate that you participate in ex parte  
22 communications and would be prone to allowing ex parte  
23 communications if elected to the bench.

24           I'll emphasize that this is an isolated and  
25 single allegation. But would you like to take the

1 opportunity to confirm your position on ex parte  
2 communications at this time?

3 MR. PAULING: Yes. As I stated in the  
4 questionnaire, as far as ex parte communications are  
5 concerned, a judge should not allow ex parte  
6 communications, should not participate in them.

7 There are certain instances where an ex  
8 parte communication may be necessary if it's, say,  
9 prior to arrest, prior to indictment; if, say, law  
10 enforcement is trying to get a particular type of order  
11 that lends towards an investigation.

12 I do not participate in ex parte  
13 communications. I know there have been cases -- or  
14 there's been one time when I got a protective order for  
15 State grand jury material before status conference.  
16 Typically at a status conference when you turn over the  
17 discovery, that status conference will present a  
18 protective order to the judge, and after the protective  
19 order is signed off on, then we'll distribute the  
20 discovery; this is pursuant to the secrecy provisions  
21 of the State grand jury statute.

22 There was one part instance where I had  
23 actually gotten the protective order prior to the  
24 status conference so that I could have the discovery  
25 out by the time we had the status conference.

1           Actually, I sent the discovery to the  
2 defense attorney before we even had the status  
3 conference so that attorney would have it there. It  
4 was just more so for scheduling purposes down the line,  
5 it wouldn't be an issue of, well, do they have the  
6 discovery yet. But that's the only instance I can  
7 think of.

8           MR. FIFFICK: Thank you. A few housekeeping  
9 issues for you now.

10           Have you sought or received a pledge from  
11 any legislator prior to this date?

12           MR. PAULING: No, I have not.

13           MR. FIFFICK: Have you sought or have you  
14 been offered a conditional pledge of support of any  
15 legislator pending the outcome of your screening?

16           MR. PAULING: No, sir, I have not.

17           MR. FIFFICK: Have you asked any third  
18 parties to contact members of the General Assembly on  
19 your behalf?

20           MR. PAULING: No, sir, I have not.

21           MR. FIFFICK: Are you aware of anyone  
22 attempting to intervene in any part of the process on  
23 your behalf?

24           MR. PAULING: No, sir, I am not.

25           MR. FIFFICK: Have you contacted any members

1 of the Commission?

2 MR. PAULING: No, I have not.

3 MR. FIFFICK: Do you understand that you are  
4 prohibited from seeking a pledge or commitment until 48  
5 hours after the formal release of the Commission's  
6 report?

7 MR. PAULING: I do understand it.

8 MR. FIFFICK: Have you reviewed the  
9 Commission's guidelines on pledging?

10 MR. PAULING: Yes, I have.

11 MR. FIFFICK: As a follow-up, are you aware  
12 of the penalties for violating the pledging rules; that  
13 is, it is a misdemeanor and, upon conviction, the  
14 violator must be fined not more than \$1,000 or in  
15 prison not more than 90 days?

16 MR. PAULING: Yes, sir, I am.

17 MR. FIFFICK: Thank you. I would note that  
18 the Midlands Citizens Committee found Mr. Pauling well-  
19 qualified with respect to the evaluative criteria of  
20 ethical fitness, professional and academic ability,  
21 character, and reputation.

22 The committee found him qualified with  
23 respect to constitutional qualifications, physical  
24 health, mental stability, and experience.

25 In summary, the committee states, and I

1 quote, We were very impressed with Mr. Pauling. We  
2 found him to be a sincere, serious candidate who is  
3 truly committed to public service. We are certain that  
4 he is very well-qualified to serve our State in the  
5 circuit court, and we are certain he would serve in an  
6 outstanding manner.

7 I would just note for the record that any  
8 concerns raised during this investigation regarding the  
9 candidate were incorporated into the questioning of the  
10 candidate today.

11 Mr. Chairman, I have no further questions.

12 SENATOR MARTIN: Thank you very much. Any  
13 questions from members of the Commission?

14 Hearing none, Mr. Pauling, we thank you for  
15 being with us and answering our questions.

16 This concludes the screening process. As  
17 you know, the record will remain open until the report  
18 is published, and you may be called back at such time  
19 if the need arises. I'll remind you of the 48-hour  
20 rule and ask that you be mindful of that.

21 Anyone that inquires with you about whether  
22 or not they may advocate for you in the event you're  
23 screened out, remind them, please, of the 48-hour rule.  
24 We thank you for offering and I thank you for your  
25 service to South Carolina.

1 MR. PAULING: Thank you, sir, I appreciate  
2 it. Thank you.

3 SENATOR MARTIN: Mr. Price, welcome.

4 MR. PRICE: Thank you very much for having  
5 me.

6 SENATOR MARTIN: Please raise your right  
7 hand and be sworn in.

8 (Bentley Douglas Price was duly sworn, after  
9 which testimony commenced at 2:28 p.m.)

10 SENATOR MARTIN: Have you had the  
11 opportunity to review your personal data questionnaire?

12 MR. PRICE: I have.

13 SENATOR MARTIN: Is it correct? Does any  
14 change need to be made?

15 MR. PRICE: Not at this time.

16 SENATOR MARTIN: Do you object to our making  
17 the summary of the questionnaire part of the record of  
18 your sworn testimony?

19 MR. PRICE: No objection.

20 SENATOR MARTIN: It will be done at this  
21 point.

22 (EXH. 14, Personal Data Questionnaire of  
23 Bentley Douglas Price; Amendment to the Personal Data  
24 Questionnaire, Sworn Statement, and Financial Affidavit  
25 of Bentley Douglas Price; and Sworn Statement of

1 Bentley Douglas Price, marked for identification.)

2 SENATOR MARTIN: The Judicial Merit  
3 Selection Commission has thoroughly investigated your  
4 qualifications for the bench. Our inquiry is focused  
5 on the nine evaluative criteria.

6 It has included a survey of the bench and  
7 bar, a thorough study of your application materials,  
8 verification of your compliance with state ethics laws,  
9 a search of newspaper articles in which your name  
10 appears, a study of previous screenings, and a check  
11 for economic conflicts of interest.

12 We have no affidavits filed in opposition to  
13 your election and no witnesses are here to testify.

14 Do you have a brief opening statement you'd  
15 like to make?

16 MR. PRICE: Just briefly. Again, I want to  
17 thank everybody for allowing me to be here and continue  
18 with this process. I do want to recognize my wife,  
19 who's nine and a half months pregnant.

20 We went to a special doctor's appointment  
21 yesterday just so she could be here in support of  
22 me. So I'm very appreciative of that, her continued  
23 support. My law partner, Grady Query; and my colleague  
24 and good friend, Tommy Brittain.

25 SENATOR MARTIN: Best wishes to you guys on

1 your child. Would you answer counsel's questions at  
2 this time.

3 MR. ODOM: Good afternoon, Judge.

4 MR. PRICE: Good afternoon.

5 MR. ODOM: Judge Price, you have before you  
6 the sworn statement you provided with detailed answers  
7 to over 30 questions regarding judicial conduct,  
8 statutory qualification, office administration, and  
9 temperament.

10 Are there any amendments you would like to  
11 make at this time to your sworn statement?

12 MR. PRICE: Not at this time.

13 MR. ODOM: At this time, Mr. Chairman, I  
14 would like to ask that Judge Price's sworn statement  
15 and its amendments be entered as an exhibit into the  
16 hearing record.

17 SENATOR MARTIN: Any objection?

18 Hearing none, it is so ordered.

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

25 Judge Price, why do you now want to serve as



1 a circuit court judge?

2 MR. PRICE: Mr. Odom, I began my practice as  
3 a solicitor and prosecuted in Charleston County for  
4 about two years. And during that time, I just really  
5 loved being in the courtroom on a daily basis, I really  
6 loved the opportunity to be in there on a consistent  
7 basis; and since then, in my private practice, I've  
8 continued to enjoy running a practice, a successful  
9 practice.

10 And I think at this point in time in my  
11 career, I'd like to give back to my community, my state  
12 and the area of practice that I love and get back in  
13 the courtroom on a daily basis by serving as a circuit  
14 court judge.

15 MR. ODOM: Are there any areas of the law,  
16 including subjective areas of law, that you would need  
17 to additionally prepare for in order to serve as judge,  
18 and how would you handle that additional preparation?

19 MR. PRICE: At this point in time, I've been  
20 very fortunate. I have been a prosecutor, I have been  
21 a criminal defense attorney, I have been a civil on a  
22 plaintiff's side, and I have been a civil on a defense  
23 side.

24 I'm also currently a municipal court judge  
25 for the City of Folly Beach, so I have been able to

1 have the experience of being in a general practice firm  
2 where we do just about everything, and I have that  
3 experience. I do lack a little experience, probably  
4 some would say, in some complex civil issues that I  
5 would spend a little bit of time continuing my  
6 education in that.

7 And if elected to the bench, I obviously  
8 know I don't know anything, but we have a wonderful  
9 judiciary that I would lean to and continue to learn  
10 from, and I understand that they are a great source of  
11 information, and I would definitely tap into that and  
12 not hesitate in the slightest to continue my learning  
13 of that process with those judges.

14 MR. ODOM: Judge Price, although you  
15 addressed this in your sworn statement, could you  
16 please explain to the members of the Commission what  
17 you think is the appropriate demeanor of a judge?

18 MR. PRICE: That's always a tricky question,  
19 but it's fairly easy. In my opinion, you need to be  
20 firm but respectful, that's pretty much blatantly  
21 stated. And there's a difference in those two. You  
22 can be very firm with things that you like and things  
23 that you dislike, but you need to be respectful to  
24 everyone involved.

25 You need to be respectful to the litigant,

1 you need to be respectful to the attorneys, you need to  
2 be respectful to everyone that's involved in that  
3 process. Not only that, you need to be respectful to  
4 the staff and also those in the community.

5 You are a little bit more recognizable than  
6 others as a circuit court judge. And I think you need  
7 to take that demeanor outside of the courthouse and  
8 outside of the courtroom and carry that wherever you --  
9 including anywhere that you are in your community as  
10 well.

11 MR. ODOM: Judge Price, What suggestions  
12 would you offer for improving the backlog of cases on  
13 the docket both for general sessions and common pleas  
14 in the circuit court?

15 MR. PRICE: There has actually been an idea  
16 that's been going on for a while, and it's actually  
17 been testified here in front of the Commission a couple  
18 of times. I think it's a great idea. We don't do it  
19 in Charleston County and some of the other counties  
20 that I would obviously be traveling to, if elected.

21 But I think that the civil cases and the  
22 civil docket are obviously going to have breakdowns,  
23 the cases are going to settle. I think we should have  
24 some type of separate alternative docket, motions  
25 docket or hearing docket, that we can set up for the

1 court of common pleas, that if the trials do break down  
2 when visiting judges are there, instead of them  
3 traveling all the way back to their home county and  
4 then have them come back to preside at a trial, they  
5 can actually alleviate some of the burden.

6 I think that's what some of these positions  
7 are being created to do, is alleviate some of that  
8 backlog in some of the counties. And I think that is  
9 something I would definitely want to implement, not  
10 only in the county of which -- you know, I'm from  
11 Charleston, which I certainly think could utilize it,  
12 but also assist other judges in other counties to see  
13 if we could also do that; instead of having the judges  
14 sometimes travel back and forth, utilize that court  
15 time to alleviate a lot of those backlogs for them.

16 On the criminal side, I think unfortunately  
17 a little bit of the same. You can set up either a  
18 criminal docket hearing or you can do a civil docket  
19 hearing the same and be able to eliminate some of that  
20 backlog.

21 Also, I think the legislature should  
22 recognize more judges. The more judges we have, the  
23 smaller the docket is going to become in general  
24 sessions court in my opinion.

25 MR. ODOM: Judge Price, do you currently

1 carry malpractice insurance in your law practice and,  
2 if so, how long have you carried malpractice insurance?

3 MR. PRICE: We do, and since the day I  
4 became a partner there and I've worked at the same  
5 firm.

6 MR. ODOM: Judge Price, your response to a  
7 question on the PDQ and your sworn statement indicated  
8 that you were a member of the James Island Yacht Club,  
9 and you noted it has an all-male membership.

10 As you're aware, candidacy prohibits judges  
11 from holding membership to any organization that  
12 practices discrimination on the basis of race, sex,  
13 religion, or national origin.

14 It is my understanding that you have since  
15 resigned your membership from this organization; is  
16 that correct?

17 MR. PRICE: That is correct. As soon as  
18 that came to my attention, I resigned immediately.

19 MR. ODOM: Do you have a letter or anything  
20 that you could provide us with to substantiate that?

21 MR. PRICE: Not currently. I do have  
22 e-mails between me and the club manager. I actually  
23 went to a board hearing. I think after you and I  
24 discussed it, I wanted them to show me in the bylaws,  
25 because I wanted to have the correct information.

1           It was stated as such, and they have since  
2 let me resign immediately. I only have e-mails between  
3 he and I, and I'm happy to provide those to you.

4           MR. ODOM: Okay.

5           MR. PRICE: But I do not have it with me  
6 today.

7           MR. ODOM: Judge Price, your SLED check  
8 revealed an undisclosed hunting violation for which you  
9 paid a \$125 fine back in 1997.

10           What explanation can you offer the  
11 Commission in respect to this matter, and why was it  
12 not disclosed on your original application?

13           MR. PRICE: As to the undisclosed, I didn't  
14 know anything about it. In all the many background  
15 checks that I have been through, this is the first time  
16 it's been brought to my attention; actually, you  
17 brought it to my attention.

18           I went back and did some further  
19 investigation. What ultimately transpired -- and,  
20 again, just based on my memory -- was I was in a boat  
21 with a fellow hunter and he shot a duck two minutes  
22 after the prescribed sunset time.

23           We were both issued citations. I  
24 subsequently realized that I was at fault because I was  
25 in the boat with him. I paid my fine and I went back

1 to school. I was in college at the time.

2 MR. ODOM: Judge Price, the SLED check also  
3 revealed a 2012 judgment in the amount of \$24,380.74  
4 that you filed against a Ms. Ellen Sexton in  
5 Charleston, Colleton County, as a result of a legal  
6 issue.

7 What explanation can you offer the  
8 Commission about this matter?

9 MR. PRICE: Sure. That actually was a fee  
10 dispute that was filed against us by a client that we  
11 were able to get a very good outcome for her case. She  
12 filed a fee dispute without even contacting us. We  
13 weren't even sure that she did not want to pay the fee.

14 We had not even had any discussions with  
15 her, and she subsequently filed that against us. The  
16 bar sent someone to investigate the claim, they did  
17 investigate it, and they ultimately awarded us that  
18 judgment. It's actually a certificate of  
19 noncompliance, is what they call it.

20 And that ultimately is also deemed as a  
21 judgment, which was subsequently filed. The reason my  
22 name was on it was I was the first attorney of record,  
23 and that's how they issue the judgment in Charleston,  
24 Colleton County.

25 Just to shore up anything that would maybe

1 be of concern, I went ahead and assigned the judgment  
2 over to the law practice, where it belonged, and that's  
3 why it was personally in my name.

4 MR. ODOM: Judge Price, a newspaper search  
5 revealed that your name appears in a 2008 article in  
6 the State newspaper pertaining to former student  
7 council candidates Belinda Gergel and Brian Boyer.

8 Specifically, the article questioned whether  
9 Ms. Gergel was opposed from qualifying, whether doing  
10 legal work the city posed a conflict for Ms. Gergel,  
11 and it notes how much legal fees had been paid by the  
12 city to the law firm of Gergel, Nickels & Solomon.

13 Now, to just briefly summarize this article  
14 as it relates to you, Ms. Gergel suggests in that  
15 article that Mr. Boyer is engaging in a smear  
16 campaign. And the article notes that the source of the  
17 information were documents that you and your law firm  
18 received from the City of Columbia pursuant to a FOIA  
19 request and then turned them over to certain political  
20 blogs.

21 Now, the portion of the article that  
22 mentioned your name states, and I quote, The documents  
23 in the Charleston law firm's public records request  
24 started popping up on political blogs like SC Hotline  
25 and The Pulse of Columbia in the past few weeks. Both



1 blogs have claimed Belinda Gergel lied on her ethics  
2 filing.

3 Belinda Gergel said Friday she is a victim  
4 of a smear campaign by Boyer's supporters. I think  
5 it's very disappointing, Belinda Gergel said. They are  
6 trying to smear my campaign.

7 Bentley B. Price, an attorney with the Query  
8 Price law firm in Charleston made the original request  
9 for the information that has surfaced on the Internet.  
10 Attempts to reach Price were unsuccessful. Boyer said,  
11 while he has heard of Price, he doesn't know him, end  
12 quote.

13 Now, Judge Price, as I understand, and I  
14 note for the record, that you questioned why you were  
15 being asked about this particular matter and why it was  
16 relevant to the judicial screening, and you also allege  
17 that you are limited to the attorney-client privilege.

18 As you are aware, the canons prohibits  
19 judicial candidates from engaging in inappropriate  
20 political activity. And some might question whether  
21 your role in this matter rises to the level of  
22 inappropriate political activity.

23 Now, although this activity occurred and  
24 this article appeared back in 2008, at that time, I  
25 understand from your PDQ, that you were a municipal

1 court judge for the Town of Folly Beach and had been  
2 since 2007.

3 So at that time, those judicial canons would  
4 have also applied to your role as a municipal court  
5 judge. So without getting to what may be covered by  
6 attorney-client privilege, what explanation can you  
7 offer the Commission about your involvement in that  
8 matter to clarify whether you were engaged in any  
9 political activity while serving as a municipal judge?

10 MR. PRICE: My involvement in that was the  
11 -- our client, who had retained our firm, who actually  
12 contacted not only myself and our firm but others that  
13 he was related to in our firm and knew very well,  
14 actually basically did exactly that; he asked us to  
15 FOIA some information and turn it over to him.

16 At that point in time, others in my office,  
17 including -- well, I signed some as well myself --  
18 asked for the information, received the information,  
19 and then turned it over to our client. That was the  
20 extent of our involvement. No blogs were ever issued.

21 Obviously, this is privileged information;  
22 we didn't give it to anyone but our client. Now, what  
23 our clients decided to do with that information,  
24 obviously, we had no bearing or control over. But  
25 that's the extent of our relationship, and that was the

1 extent of what we actually were hired and retained to  
2 do.

3 MR. ODOM: Do you personally know Belinda  
4 Gergel or Brian F. Boyer?

5 MR. PRICE: I do know Boyer. I have no idea  
6 who Belinda Gergel is.

7 MR. ODOM: Judge Price, the Commission  
8 received 147 ballot box surveys regarding you, with 26  
9 additional comments, four of which were negative.

10 One comment contended that you are a partier  
11 and suggested that your lifestyle would interfere with  
12 your ability to timely report to work and preside over  
13 the courtroom.

14 What explanation can you offer the  
15 commission with respect to this concern?

16 MR. PRICE: I think you and I discussed  
17 this. Nothing. It's just, without being able to speak  
18 to the person, it's just mind blowing. We have  
19 actually laughed and giggled in my practice even on the  
20 way up here concerning that same concern that someone  
21 may have. I am obviously not a partier whatsoever.

22 My nine-and-a-half-month pregnant wife and  
23 about-to-soon-be baby is going to quash any social life  
24 I even once had. I even pride myself to being  
25 extremely on time. I would welcome anyone to speak to

1 the clerk on file and anybody on Folly Beach. I have  
2 never been a day late on Folly Beach. I have never  
3 been a day late at any hearing, anything.

4 I actually wanted them to leave at 9:00 this  
5 morning, they talked me out of that to 11:00 to make  
6 sure we were here on time today. So, again, without  
7 being able to speak to that person personally, I find  
8 it very preposterous.

9 MR. ODOM: Judge Price, another comment  
10 questioned your ability to be impartial and fair to the  
11 parties before the court without consideration for who  
12 their attorney is and how your ruling would impact your  
13 personal status and aspirations.

14 What explanation can you offer the  
15 Commission in response to that comment?

16 MR. PRICE: I don't take any of my political  
17 aspirations into any of the rulings that I make. I'm  
18 assuming they're talking about whenever I'm on the  
19 bench presiding over cases on Folly Beach. It's very  
20 limited that we have attorneys out there, but I don't  
21 treat anyone differently, nor do I plan on, if elected,  
22 to treat anyone any differently.

23 A lawyer has a position -- whether a  
24 litigant has a lawyer or a pro se position, I don't  
25 treat them any differently at all and I never have.

1 MR. ODOM: Judge Price, at least two of the  
2 comments also questioned your experience and knowledge  
3 generally, and one specifically questioned your  
4 experience in commercial litigation matters.

5 What explanation can you offer the  
6 Commission in response to these comments?

7 MR. PRICE: I would agree. I don't have any  
8 huge extensive commercial litigation experience, that's  
9 not what our practice does. We're a general based  
10 practice. We do plaintiffs' work, we do do civil  
11 work. But, again, I don't have any huge complex  
12 commercial experience.

13 However, I believe, like I stated  
14 previously, again, I don't know everything, and the  
15 legislature and this Commission has done a great job of  
16 getting very qualified judges out there that I would  
17 look to, lean to, and definitely seek their guidance on  
18 anything that may come my way that I don't feel like  
19 I'm 100 percent able to handle, and I don't have a  
20 problem whatsoever asking questions and seeking their  
21 guidance.

22 MR. ODOM: Thank you, Judge Price.

23 Mr. Chairman, I would like to request that  
24 we go into executive session to take up a matter.

25 SENATOR MARTIN: Any objection?

1                   Hearing none, we're going into executive  
2 session.

3                   (The Judicial Merit Selection Commission  
4 went into executive session from 2:44 p.m. to  
5 2:55 p.m.)

6                   SENATOR MARTIN: Mr. Odom, go ahead and  
7 complete your questions.

8                   MR. ODOM: Thank you.

9                   Judge Price, finally, just a few remaining  
10 procedural questions here.

11                   Have you sought or received the pledge of  
12 any legislator prior to this date?

13                   MR. PRICE: No, sir.

14                   MR. ODOM: Have you sought or have you been  
15 offered a conditional pledge of support of any  
16 legislator pending the outcome of your screening?

17                   MR. PRICE: No, sir.

18                   MR. ODOM: Have you asked any third parties  
19 to contact members of the General Assembly on your  
20 behalf?

21                   MR. PRICE: No, sir.

22                   MR. ODOM: Are you aware of anyone  
23 attempting to intervene in any part of the process on  
24 your behalf?

25                   MR. PRICE: No, sir.

1 MR. ODOM: Have you contacted any members of  
2 the Commission?

3 MR. PRICE: I have not.

4 MR. ODOM: Do you understand that you are  
5 prohibited from seeking a pledge or commitment until 48  
6 hours after the formal release of the Commission's  
7 report?

8 MR. PRICE: Yes, sir.

9 MR. ODOM: And have you reviewed the  
10 Commission's guidelines on pledging?

11 MR. PRICE: Yes, sir.

12 MR. ODOM: As a follow-up, are you aware of  
13 the penalties for violating the pledging rules; that  
14 is, it is a misdemeanor and, upon conviction, the  
15 violator must be fined not more than \$1,000 or in  
16 prison not more than 90 days?

17 MR. PRICE: Yes, sir.

18 MR. ODOM: Mr. Chairman, I would note that  
19 the Lowcountry Citizens Committee reported Judge Price  
20 to be well-qualified in the evaluative criteria of  
21 ethical fitness, professional and academic ability,  
22 character, reputation, experience, and judicial  
23 temperament.

24 The committee found him to be qualified for  
25 constitutional qualifications, physical health, and

1 mental stability.

2 I would just note for the record that any  
3 concerns raised during this investigation regarding the  
4 candidate were incorporated into the questioning of the  
5 candidate today.

6 Mr. Chairman, I have no more questions.

7 SENATOR MARTIN: All right. Any questions  
8 from members of the Commission?

9 Judge Price, thank you very much. This  
10 concludes the screening process. As you know, the  
11 record will remain open until the report is published,  
12 and you may be called back at such time if the need  
13 arises. I'll remind you of the 48-hour rule and ask  
14 that you be mindful of that.

15 Anyone that inquires with you about whether  
16 or not they may advocate for you in the event you're  
17 screened out, remind them, please, of the 48-hour rule.  
18 We thank you for offering and I thank you for your  
19 service to South Carolina.

20 MR. PRICE: Thank y'all. Thank y'all  
21 again.

22 SENATOR MARTIN: Best wishes to you guys.

23 MR. PRICE: Thank you very much.

24 SENATOR MARTIN: Let's take a five-minute  
25 break.



1 (A break was taken from 2:57 p.m. to  
2 3:14 p.m.)

3 SENATOR MARTIN: Welcome, Ms. Barbier.

4 MS. BARBIER: Good afternoon.

5 SENATOR MARTIN: Please raise your right  
6 hand to be sworn.

7 (Deborah B. Barbier was duly sworn, after  
8 which testimony commenced at 3:14 p.m.)

9 SENATOR MARTIN: Have you had the  
10 opportunity to review your personal data questionnaire?

11 MS. BARBIER: I have.

12 SENATOR MARTIN: Is it correct? Does  
13 anything need to be changed?

14 MS. BARBIER: It is. I submitted on  
15 September 17th a letter supplementing my answer to  
16 question number 42, indicating the expenses I've  
17 incurred in the campaign, basically for postage and  
18 envelopes and such, and I've indicated it in that  
19 report, but in no other respect.

20 SENATOR MARTIN: Do you object to us making  
21 this part of the record?

22 MS. BARBIER: No, I don't.

23 MR. ODOM: So that will be done.

24 (EXH. 15, Personal Data Questionnaire of  
25 Deborah B. Barbier, Sworn Statement of Deborah B.

1 Barbier, and Supplement to Application of Deborah B.  
2 Barbier, marked for identification.)

3 SENATOR MARTIN: The Judicial Merit  
4 Selection Commission has thoroughly investigated your  
5 qualifications for the bench. Our inquiry is focused  
6 on the nine evaluative criteria.

7 It has included a survey of the bench and  
8 bar, a thorough study of your application materials,  
9 verification of your compliance with state ethics laws,  
10 a search of newspaper articles in which your name  
11 appears, a study of previous screenings, and a check  
12 for economic conflicts of interest.

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

16 Do you have a brief opening statement at  
17 this time?

18 MS. BARBIER: I know that you all are  
19 speaking to a lot of candidates today, so in the  
20 interest of brevity, I'll be very short. I just want  
21 to say I appreciate the opportunity to be here today.

22 I thank Ms. Shuler and her staff for the  
23 gracious and courteous manner in which they've treated  
24 me during this process, and Mr. Dennis as well.  
25 Everybody's been extremely helpful, and I do appreciate

1 it.

2 SENATOR MARTIN: If you would answer  
3 Counselor Dennis' questions.

4 MR. DENNIS: Ms. Barbier, you have, or had  
5 had recently before you, a personal data questionnaire  
6 and, of course, the amendment that you discussed  
7 earlier. There are no additional amendments that you'd  
8 like to make to that at this time?

9 MS. BARBIER: No, sir.

10 MR. DENNIS: Mr. Chairman, I'd ask that  
11 Ms. Barbier's PDQ and amendment be entered as an  
12 exhibit into the hearing record at this time.

13 SENATOR MARTIN: Is there any objection?  
14 Hearing none, so ordered.

15 MR. DENNIS: Ms. Barbier, you have before  
16 you the sworn statement you provided with detailed  
17 answers to over 30 questions regarding judicial  
18 conduct, statutory qualification, office  
19 administration, and temperament.

20 Are there any amendments you would like to  
21 make at this time to your sworn statement?

22 MS. BARBIER: No, sir.

23 MR. DENNIS: At this time, Mr. Chairman, I  
24 would ask that Ms. Barbier's sworn statement be entered  
25 as an exhibit into the hearing record.

1 SENATOR MARTIN: Without objection.

2 MR. DENNIS: One final procedural matter. I  
3 note for the record that based on the testimony  
4 contained in the candidate's PDQ, which had been  
5 included in the record with the candidate's consent,  
6 Ms. Barbier meets the statutory requirements for this  
7 position regarding age, residence, and years of  
8 practice.

9 Ms. Barbier, will you please state the city  
10 and circuit in which you reside.

11 MS. BARBIER: Yes. I reside in Columbia,  
12 South Carolina, the Fifth Judicial Circuit.

13 MR. DENNIS: Thank you, ma'am. Ms. Barbier,  
14 why do you want to serve as a circuit court judge?

15 MS. BARBIER: Well, I have been out of law  
16 school now for about 18 years. And my very first job  
17 out of law school was clerking for a circuit court  
18 judge. I was extremely fortunate to have two  
19 clerkships for two very exceptional, highly respected  
20 judges.

21 So I learned during those clerkships first-  
22 hand what an incredible opportunity being a judge is to  
23 serve the public and to administer the fair  
24 administration of justice and to positively impact  
25 people's lives.

1 I also learned on a daily basis that being  
2 that judge requires a lot of courage and is a very  
3 difficult and challenging job. So the decision of mine  
4 to apply for this circuit court seat was not taken  
5 lightly, and I thought about it a lot, I prayed about  
6 it a lot.

7 I have enjoyed being an advocate for the  
8 last 18 years. No matter what side of the courtroom  
9 I've sat on, it's been a privilege for me to represent  
10 my clients in the courtroom. And so I have felt --  
11 I've always felt that that was that privilege.

12 But after being in the courtroom for 18  
13 years and being an advocate, I've decided that being a  
14 judge would be a great way to help maintain the  
15 quality, the integrity, the prestige, and the  
16 independence of the judiciary.

17 I want to be a part of ensuring the public's  
18 confidence in our judicial system. I want to help make  
19 improvements in our judicial system so it can be the  
20 best that it can possibly be.

21 And if I were fortunate enough to be chosen  
22 to serve the state as a member of the judiciary, I  
23 would see it as an opportunity to uphold the laws of  
24 the state, to protect individual liberties, to ensure  
25 the fair administration of justice, and, in short, it

1 would be an honor and privilege to serve.

2 MR. DENNIS: Ms. Barbier, can you explain to  
3 the Commission how you feel your legal and professional  
4 experience thus far will assist you to be an effective  
5 judge?

6 MS. BARBIER: I have been extremely  
7 fortunate over the last 18 years to have some wonderful  
8 mentors, wonderful colleagues, and some wonderful  
9 teachers. And I've been given a wide range of  
10 opportunities in the practice of law, both in the civil  
11 and criminal arenas; I've been on both sides of the  
12 courtroom.

13 I have prosecuted criminal cases, I have  
14 defended people charged with criminal allegations, I  
15 have brought civil cases, and I have defended civil  
16 cases. I think having had the opportunity to  
17 experience each of these perspectives is a critical  
18 factor in determining whether someone has the requisite  
19 experience to be a judge.

20 I would submit to you that my experiences  
21 have been particularly unique. As the chief of the  
22 civil enforcement division of the U.S. Attorney's  
23 Office and as the former chief of the white collar  
24 crime division at the U.S. Attorney's Office, I was  
25 given the opportunity to lead very large-scale

1 investigations of cases which were highly sensitive in  
2 nature, that required me to exercise a lot of  
3 discretion and a lot of judgment.

4 I had the opportunity to try cases, some of  
5 which I was the lead lawyer, some that lasted several  
6 weeks at a time. I also stepped in and helped try  
7 cases with people who were on my team or maybe another  
8 division that needed help trying cases.

9 My criminal cases have involved murder,  
10 arson, drug trafficking, counterfeit checks, firearms,  
11 really have run the gamut for all public corruption,  
12 racketeering. I've also tried cases in the civil  
13 arena, both nonjury and jury.

14 I've had a lot of significant  
15 responsibilities in all the positions that I've held.  
16 I think that those experiences have prepared me well to  
17 become a judge.

18 I know that after being in the courtroom for  
19 18 years and having worked for two judges, I know that  
20 being a judge is an awesome responsibility; it requires  
21 good judgment, it requires an open mind, it requires  
22 the ability to be fair.

23 It requires an understanding that many of  
24 the people who come into the courtroom do not have an  
25 understanding or basic understanding of the legal

1 process. Some of the people that you deal with are in  
2 the most vulnerable states of their life, and I think I  
3 have a good understanding of all that based on my  
4 experiences.

5 I think the wide range of experiences I've  
6 had has prepared me very well and has been an excellent  
7 training ground for the bench.

8 MR. DENNIS: Thank you, ma'am. And if  
9 you'll please excuse the sort of compound and rambling  
10 nature of this next question, but I want to make sure  
11 that I set this up accurately and fairly for you to  
12 respond to the Commission.

13 And since we're on the subject of your legal  
14 experience, the Commission received an albeit small  
15 number of anonymous ballot box surveys that questioned  
16 whether your extensive experience in the federal court  
17 system can and would translate into the state court  
18 system.

19 Essentially, these comments were suggesting  
20 that you lack adequate experience in the state court to  
21 serve as a circuit court judge.

22 Would you please respond to these  
23 criticisms, understanding that no specifics beyond  
24 those that I just offered were contained in any of the  
25 survey responses.



1 MS. BARBIER: Certainly. Much of my  
2 litigation experience has been in federal court.  
3 Essentially, my practice is about 50 percent state  
4 court, 50 percent federal court. I do think that  
5 because the South Carolina Supreme Court has adopted  
6 the Federal Rules of Evidence and the Federal Rules of  
7 Civil Procedure, that, with a few minor differences, I  
8 don't believe I would be at a disadvantage from an  
9 experience standpoint.

10 The fact of the matter is that I have been  
11 in the courtroom for almost every week for the last 18  
12 years. I've worked with a number of state agencies;  
13 I've worked with state law enforcement, I've worked  
14 with state attorneys throughout the state.

15 So I believe that the totality of my  
16 experience, both as a judicial law clerk in state  
17 court, an attorney in the federal division of the  
18 United States Attorney's Office, prosecutor and manager  
19 of lawyers, and a sole petitioner has prepared me well  
20 for the role of being a judge.

21 I also hope that my test score reflects a  
22 good command of state law and the state procedures. I  
23 know from having practiced law for the past 18 years  
24 and also having worked for two judges that nobody knows  
25 everything and that everybody has to at some point

1 conduct research on issues they have to become familiar  
2 with and also consult colleagues on the bench and  
3 otherwise.

4 So I would anticipate doing the same in  
5 terms of anything that I lack experience in.

6 MR. DENNIS: Thank you. Are there any  
7 areas, including subjective areas of the law, that you  
8 feel you would need additional preparation for, and how  
9 would you go about gathering this additional  
10 preparation?

11 MS. BARBIER: Well, I think the matter that  
12 you just touched on probably, if there were any areas,  
13 that would be one. The way I would go about preparing  
14 for those is just as anybody would in training to  
15 become a judge, going to the judge's school, keeping  
16 abreast of the advance sheets, making sure I was  
17 familiar with all of the, you know, different  
18 variations from federal and state rules, and, you know,  
19 just in general staying abreast of state law and state  
20 rules of procedure.

21 MR. DENNIS: Although you addressed this in  
22 your sworn statement, could you please explain to the  
23 members of the Commission what you think is the  
24 appropriate demeanor of a judge?

25 MS. BARBIER: The canons of judicial ethics

1 talk about -- canon three talks about the fact that a  
2 judge should be dignified and courteous and patient.  
3 And I think these are helpful terms in generic sense,  
4 but when I think of judicial demeanor, I think of what  
5 it means in the real world of courtroom experience and  
6 interaction that a judge has in the everyday world.

7           When I think of what a good judicial  
8 demeanor means, I think of that. All lawyers like  
9 being in front of judges with good personalities and a  
10 good sense of humor, I think those are great attributes  
11 to have. But when I think of a good judicial demeanor,  
12 I also think of what that means in terms of what's  
13 fundamental to our system of justice.

14           I think the system depends upon citizens  
15 having confidence in our judicial system and confidence  
16 that judges will decide disputes free of bias and free  
17 of prejudice. Judges are afforded a great deal of  
18 respect in our system, as they should be; but, in turn,  
19 I think that judges need to respect everybody they come  
20 in contact with, with litigants, with lawyers, with  
21 court personnel and the court reporters, you know,  
22 everybody that comes before them on a daily basis.

23           I think courtrooms are a public forum and  
24 they should be a welcoming place. In a very real,  
25 practical sense, judges demonstrate respect in a lot of

1 different ways. I think judges demonstrate respect by  
2 coming into the courtroom on time, coming into the  
3 courtroom prepared, treating everybody with dignity,  
4 being courteous and polite, listening to the testimony  
5 presented by the lawyers and the arguments of counsel.

6 I think they demonstrate respect by being  
7 patient and understanding that litigation can sometimes  
8 be an emotional process, it sometimes is engaged in by  
9 people who don't understand the legal process as well  
10 as some of us.

11 I think judges show respect when they convey  
12 an attitude that they care about the cases in front of  
13 them and that they're going to do everything they can  
14 to be objective and to decide cases free of bias and  
15 free of prejudice and that they're going to consider  
16 the facts presented and the applicable law.

17 To me, having a good judicial demeanor means  
18 that a judge is committed to the embodiment of justice.

19 MR. DENNIS: Ma'am, is there a circuit court  
20 judge currently on the bench that you would like to  
21 model yourself after?

22 MS. BARBIER: I think it's hard to pick a  
23 favorite, I will say that. There are many judges that  
24 I think do a wonderful job. I think Judge Barber here  
25 in Richland County is a great example of that; he's one

1 that people have a great deal of respect for, that  
2 people enjoy being in front of, and I think he  
3 exemplifies the qualities I just talked about of having  
4 a good demeanor.

5 So I would say, obviously, if I had to pick  
6 a favorite, I would pick a judge that I worked for,  
7 Judge Anderson, who no longer is a judge, he's actually  
8 in ministry now.

9 But he was, on a daily basis, a great  
10 example of somebody who embodied justice and somebody  
11 who treated everybody with respect and courteousness  
12 and kindness and who took his job seriously and carried  
13 the awesome responsibilities of being a judge on a  
14 daily basis and took them to heart and took them very  
15 seriously. And I have a lot of deep respect for him,  
16 still do.

17 MR. DENNIS: What suggestions would you  
18 offer for improving the backlog of cases on the docket  
19 both for general sessions and common pleas in the  
20 circuit court?

21 MS. BARBIER: Well, I think that's a great  
22 question, because backlogs and crowded dockets are  
23 definitely a problem. And I think that if there's  
24 anything that I think could be improved, it would be to  
25 eliminate that problem.

1           I know that Justice Toal has created a  
2 document management task force, and that's a big  
3 concern of hers. I'll preface my comments by saying  
4 that I think our judiciary -- I think our state  
5 judiciary faces many budgetary concerns, just like all  
6 the other agencies out there, and so what has to be  
7 done, there has been to be efficiency in using the  
8 existing resources that we have.

9           I'm a big fan of consolidated case  
10 management systems, I think that they're very  
11 efficient, and I think they allow for cases that can be  
12 disposed of quickly and properly to be disposed of in  
13 that way. I don't think that -- I know that all  
14 counties don't operate under that; some have tried it  
15 and it's been quite successful, as I understand.

16           I think that, you know, all of our judges  
17 are being asked to do more with less resources, and so  
18 I think developing consistent standards for all 46  
19 counties in which court is conducted and all levels of  
20 the court is a great idea.

21           I also think that, you know, the achievement  
22 of greater efficiency and the use of our existing  
23 resources is a goal that I would want to help  
24 implement.

25           MR. DENNIS: Thank you. Final question,

1 Mr. Barbier, as a practicing attorney, do you currently  
2 carry malpractice insurance and, if so, how long have  
3 you carried that insurance?

4 MS. BARBIER: I have carried malpractice  
5 insurance I believe since 1998 or '99, and I do  
6 currently carry it.

7 MR. DENNIS: Thank you. Just some  
8 housekeeping matters to run through, Mr. Chairman.

9 Have you sought or received the pledge of  
10 any legislator prior to this date?

11 MS. BARBIER: No.

12 MR. DENNIS: Have you sought or have you  
13 been offered a conditional pledge of support of any  
14 legislator pending the outcome of your screening?

15 MS. BARBIER: No.

16 MR. DENNIS: Have you asked any third  
17 parties to contact members of the General Assembly on  
18 your behalf?

19 MS. BARBIER: No.

20 MR. DENNIS: Are you aware of anyone  
21 attempting to intervene in any part of this process on  
22 your behalf?

23 MS. BARBIER: No.

24 MR. DENNIS: Have you contacted any members  
25 of this Commission?

1 MS. BARBIER: No.

2 MR. DENNIS: Do you understand that you are  
3 prohibited from seeking a pledge or commitment until 48  
4 hours after the formal release of the Commission's  
5 report?

6 MS. BARBIER: Yes.

7 MR. DENNIS: Have you reviewed the  
8 Commission's guidelines on pledging?

9 MS. BARBIER: Yes.

10 MR. DENNIS: And just to be specific, are  
11 you aware of the penalties for violating the pledging  
12 rules; that is, it is a misdemeanor and, upon  
13 conviction, the violator must be fined not more than  
14 \$1,000 or in prison not more than 90 days?

15 MS. BARBIER: Yes.

16 MR. DENNIS: Thank you, ma'am.

17 I would note that the Midlands Citizens  
18 Committee found Ms. Barbier well-qualified as to each  
19 of the evaluative criteria for which that designation  
20 was available and qualified for the remaining three,  
21 for which qualified was the highest possible  
22 evaluation.

23 They also concluded that she was, quote, One  
24 of the most highly qualified candidates we  
25 interviewed.



1 I would also note for the record that any  
2 concerns raised during this investigation regarding the  
3 candidate were incorporated into the questioning of the  
4 candidate today.

5 One last matter, Mr. Chairman. Ms. Barbier  
6 achieved the highest average score of any circuit court  
7 candidate, be it for an open seat or an incumbent of  
8 anybody tested by the Commission at this time.

9 And, Mr. Chairman, I don't have anything  
10 further.

11 SENATOR MARTIN: Thank you very much. Well  
12 done.

13 Any questions by members of the Commission?  
14 Hearing none, thank you so much for your  
15 candor and for answering our questions today.

16 This concludes the screening process. As  
17 you know, the record will remain open until the report  
18 is published, and you may be called back at such time  
19 if the need arises. I'll remind you of the 48-hour  
20 rule and ask that you be mindful of that.

21 Anyone that inquires with you about whether  
22 or not they may advocate for you in the event you're  
23 screened out, remind them, please, of the 48-hour rule.  
24 We thank you for offering and I thank you for your  
25 service to South Carolina.

1 MS. BARBIER: Thank you for having me, and I  
2 really appreciate the opportunity to be here today. I  
3 know you have an awesome responsibility, and I  
4 appreciate your consideration.

5 SENATOR MARTIN: Welcome, Judge Carroll.

6 MS. CARROLL: Thank you. Good afternoon.

7 SENATOR MARTIN: Good to have you here.

8 MS. CARROLL: It's a pleasure to be here.

9 SENATOR MARTIN: Would you raise your right  
10 hand and repeat after me.

11 (Tracey Lynn Carroll was duly sworn, after  
12 which testimony commenced at 3:34 p.m.)

13 SENATOR MARTIN: Have you had the  
14 opportunity to review your personal data questionnaire?

15 MS. CARROLL: Yes, sir.

16 SENATOR MARTIN: Is it correct? Does  
17 anything need to be changed?

18 MS. CARROLL: No, sir.

19 SENATOR MARTIN: Do you object to our making  
20 this summary a part of the record of your sworn  
21 testimony?

22 MS. CARROLL: I do not.

23 SENATOR MARTIN: Well, that will be done at  
24 this point in the transcript.

25 (EXH. 16, Personal Data Questionnaire of

1 Tracey Lynn Carroll, Amendment to the Personal Data  
2 Questionnaire of Tracey Lynn Carroll, and Sworn  
3 Statement of Tracey Lynn Carroll, marked for  
4 identification.)

5 SENATOR MARTIN: The Judicial Merit  
6 Selection Commission has thoroughly investigated your  
7 qualifications for the bench. Our inquiry is focused  
8 on the nine evaluative criteria.

9 It has included a survey of the bench and  
10 bar, a thorough study of your application materials,  
11 verification of your compliance with state ethics laws,  
12 a search of newspaper articles in which your name  
13 appears, a study of previous screenings, and a check  
14 for economic conflicts of interest.

15 We have no affidavits filed in opposition to  
16 your election, and there are no witnesses present to  
17 testify.

18 Do you have a brief opening statement you'd  
19 like to make?

20 MS. CARROLL: Well, I'd just like to  
21 introduce myself. Once again, my name is Tracey  
22 Carroll, and I'm currently serving as a summary court  
23 judge for the County of Aiken. In that capacity, I  
24 cover Aiken Municipal Court, Aiken Federal Court, and  
25 I'm also a circuit court judge for the Second Circuit

1 drug court.

2 SENATOR MARTIN: Could you please answer  
3 counsel's questions.

4 MS. BENSON: Thank you, Mr. Chairman.

5 Ms. Carroll, could I ask one additional  
6 thing about your personal data questionnaire, please,  
7 ma'am?

8 MS. CARROLL: Yes.

9 MS. BENSON: You had an amendment to your  
10 question number 34, in which a lawsuit had been filed  
11 against you, and you sent us notification about that  
12 the other day.

13 As I understand, this lawsuit was filed  
14 against you in your professional capacity as an  
15 assistant solicitor.

16 Is there anything else that you have  
17 discovered since the time that you notified us about  
18 that lawsuit that needs to be included or any further  
19 information that you have received?

20 MS. CARROLL: I have not received any  
21 further information. I have not actually been served  
22 with a lawsuit. I was made aware of it because  
23 Solicitor Donald Myers was served, and I felt it was  
24 prudent to amend it to my answer. But at this point, I  
25 have not been made party by service of this lawsuit.

1 MS. BENSON: Thank you.

2 Mr. Chairman, I would ask that Ms. Carroll's  
3 PDQ and her amended answer also be made part of the  
4 transcript.

5 SENATOR MARTIN: Any objection?

6 Hearing none, so ordered.

7 MS. BENSON: Judge Carroll, you have before  
8 you the sworn statement you provided with detailed  
9 answers to over 30 questions regarding judicial  
10 conduct, statutory qualification, office  
11 administration, and temperament.

12 Are there any amendments you would like to  
13 make at this time to your sworn statement?

14 MS. CARROLL: No.

15 MS. BENSON: Thank you, Judge Carroll.

16 Mr. Chairman, I'd ask that that also be  
17 entered into the record.

18 SENATOR MARTIN: Without objection, so  
19 ordered.

20 MS. BENSON: One final procedural matter for  
21 the members of the Commission. I note for the record  
22 that based on the testimony contained in the  
23 candidate's PDQ, which had been included in the record  
24 with the candidate's consent, Judge Carroll meets the  
25 statutory requirements for this position regarding age,

1 residence, and years of practice.

2 Judge Carroll, why would you like to be a  
3 circuit court judge?

4 MS. CARROLL: Well, for the last ten years,  
5 I've been serving as a summary court judge, which I  
6 have truly enjoyed. It's not probably something that I  
7 thought when I graduated from law school that I would  
8 eventually do, but I was given the opportunity and I  
9 really enjoy it.

10 After ten years though, I would love to have  
11 the opportunity to work with more complex lawsuits and  
12 legal issues, and I would love to be able to work with  
13 attorneys more. As you know, at the summary court  
14 level, in many of the cases the litigants are pro se;  
15 and it makes it interesting, but I do miss that  
16 interaction with attorneys.

17 MS. BENSON: Judge Carroll, can you explain  
18 to the Commission how you feel your legal and  
19 professional experience thus far will assist you to be  
20 an effective judge?

21 MS. CARROLL: Well, since graduating from  
22 law school, I've been a trial attorney. So for the 12  
23 years, I was in the courtroom practically every day. I  
24 was an assistant solicitor trying cases, and then I was  
25 promoted to deputy solicitor, and I actually was

1 responsible for running the courtroom.

2           So I was supervising the other attorneys, I  
3 was making sure things were running well. So I had a  
4 tremendous amount of experience trying cases and making  
5 sure the courtroom was running the way it needed to  
6 be. For the last ten years, as a judge, I have been in  
7 court every single day.

8           I start most mornings at 7:45, and I go to  
9 City Court, and I go from 7:45 to 9 o'clock. I hear  
10 approximately 15,000 cases through that court. At 9  
11 o'clock, I report to the county and I have court every  
12 single day. So I'm hearing criminal cases as well as  
13 civil cases.

14           And then every other Thursday I'm in circuit  
15 court doing drug court. So I am in court constantly.  
16 Through my experience, I have realized that probably  
17 the most important talent to have as a judge is to have  
18 a good temperament. It is about the way you treat the  
19 litigants.

20           If you had asked me ten years ago what the  
21 most important thing would be to be a judge, I would  
22 say knowing the law. Obviously, that is very  
23 important; but it's more important to know that you  
24 gave every person who appeared before you the  
25 opportunity to say exactly what they feel like they

1 need to say, and when they leave at the end of the day,  
2 they feel like they were able to express themselves and  
3 that the judge truly listened.

4 MS. BENSON: Judge, could you tell the  
5 Commission what kind of legacy you would like to leave  
6 as a judicial officer for the state?

7 MS. CARROLL: Absolutely. If I was to  
8 retire tomorrow, I would like people to remember me as  
9 being fair and open-minded.

10 MS. BENSON: And, Judge, what suggestions  
11 would you offer for improving the backlog of cases on  
12 the docket both for general sessions and common pleas  
13 in the circuit court?

14 MS. CARROLL: Well, working hard, number  
15 one. Communication between all the parties. I know,  
16 for my docket, we're under an order by the Supreme  
17 Court to resolve any criminal case within 60 days and  
18 any civil case within 90 days, and I'm able to do that  
19 merely by getting those parties in as quickly as  
20 possible, setting up docket and status hearings, and  
21 just moving things along.

22 MS. BENSON: Judge Carroll, you indicated in  
23 your personal data questionnaire that your husband is  
24 currently employed with the Aiken County Sheriff's  
25 Office.



1           How have you dealt with conflicts with that  
2 in the past and how would you continue to do so if you  
3 became a circuit court judge?

4           MS. CARROLL: I currently deal with any sort  
5 of conflict by not doing any cases that he's involved  
6 with. And it's not been much of a problem in the past  
7 because he would investigate the general session court  
8 cases and I would hear the magistrate court case.

9           So I don't hear any cases involving anything  
10 he's worked on, and I don't hear any cases involving  
11 anyone that he supervises, and it's not been an issue.

12           Occasionally there will be a time where  
13 somebody will appear before me on a murder charge or a  
14 charge that he was personally involved with, and at  
15 that point I disclose the conflict, I let them know my  
16 husband works at the sheriff's department, and I give  
17 them the opportunity for them to have another judge  
18 come in and hear the case.

19           If I am fortunate enough to get this  
20 position, my husband will retire, because he's actually  
21 older than I am. He is retired now, he's on a TERI  
22 plan, so he would just do that a little earlier.

23           MS. BENSON: Judge Carroll, the Commission  
24 received 71 ballot box surveys regarding you with ten  
25 additional comments. And I would like to note for the

1 Commission that Judge Carroll received no negative  
2 comments through the ballot box and she received some  
3 very complimentary comments, including the highest  
4 character; even-tempered; would make a terrific judge;  
5 Judge Carroll possesses all the qualities of a superb  
6 judge; she would be a wonderful addition to the bench;  
7 an outstanding candidate for the bench; this is the  
8 type of person we need more of on the bench; highly  
9 qualified; and fair-minded.

10 Judge Carroll, I've got a few more  
11 housekeeping issues I need to ask you.

12 Have you sought or received the pledge of  
13 any legislator prior to this date?

14 MS. CARROLL: No, I have not.

15 MS. BENSON: Have you sought or have you  
16 been offered a conditional pledge of support of any  
17 legislator pending the outcome of your screening?

18 MS. CARROLL: I have not.

19 MS. BENSON: Have you asked any third  
20 parties to contact members of the General Assembly on  
21 your behalf?

22 MS. CARROLL: I have not.

23 MS. BENSON: Are you aware of anyone  
24 attempting to intervene in any part of the process on  
25 your behalf?

1 MS. CARROLL: I am not.

2 MS. BENSON: Have you contacted any members  
3 of the Commission?

4 MS. CARROLL: I have not.

5 MS. BENSON: Do you understand that you are  
6 prohibited from seeking a pledge or commitment until 48  
7 hours after the formal release of the Commission's  
8 report?

9 MS. CARROLL: Yes, I am.

10 MS. BENSON: Have you reviewed the  
11 Commission's guidelines on pledging?

12 MS. CARROLL: Yes.

13 MS. BENSON: As a follow-up, are you aware  
14 of the penalties for violating the pledging rules; that  
15 is, it is a misdemeanor and, upon conviction, the  
16 violator must be fined not more than \$1,000 or in  
17 prison not more than 90 days?

18 MS. CARROLL: I'm aware of that.

19 MS. BENSON: Mr. Chairman, the Midlands  
20 Citizens Commission found Judge Carroll well-qualified  
21 in the evaluative criteria of ethical fitness,  
22 professional and academic ability, character,  
23 reputation, experience, and judicial temperament.

24 The committee found Judge Carroll qualified  
25 in the evaluative criteria of constitutional

1 qualifications, physical health, and mental stability.

2 In summary, the committee stated that it was  
3 honored to interview Judge Carroll. She is by far the  
4 most experienced and well-rounded candidate we  
5 interviewed this term. She is more than ready to serve  
6 on the circuit court. We strongly believe she is most  
7 imminently qualified to serve on circuit court, and we  
8 are confident she would serve our state in an  
9 outstanding manner.

10 I would just note for the record that any  
11 concerns raised during this investigation regarding the  
12 candidate were incorporated into the questioning of the  
13 candidate today.

14 Mr. Chairman, I have no further questions at  
15 this time.

16 SENATOR MARTIN: Any questions from members  
17 of the Commission?

18 Thank you very much, Judge Carroll. We  
19 appreciate your candor and openness in answering our  
20 questions. As you know, the record will remain open  
21 and you could be called back before the report is  
22 published if the need arises. I would only reiterate  
23 the 48-hour rule regarding pledges.

24 We thank you for offering, we thank you for  
25 your service to the community and the people of South

1 Carolina.

2 MS. CARROLL: Thank you so much. Have a  
3 good day.

4 SENATOR MARTIN: Welcome.

5 MR. ENGLEBARDT: Thank you, Mr. Chairman.

6 SENATOR MARTIN: Thank you for being here,  
7 Mr. Englehardt. Could you raise your right hand and  
8 repeat after me.

9 (Eric K. Englehardt was duly sworn, after  
10 which testimony commenced at 3:47 p.m.)

11 SENATOR MARTIN: The Judicial Merit  
12 Selection Commission has thoroughly investigated your  
13 qualifications for the bench. Our inquiry is focused  
14 on the nine evaluative criteria.

15 It has included a survey of the bench and  
16 bar, a thorough study of your application materials,  
17 verification of your compliance with state ethics laws,  
18 a search of newspaper articles in which your name  
19 appears, a study of previous screenings, and a check  
20 for economic conflicts of interest.

21 We received one affidavit filed in  
22 opposition to your election, one witness is present to  
23 testify. Do you have a brief opening statement you'd  
24 like to make at this time?

25 MR. ENGLEBARDT: Merely just to thank the

1 Commission for all your hard work and for the  
2 consideration today. I look forward to speaking with  
3 you about all the issues involved in my candidacy, my  
4 qualifications, and my ability to serve.

5 SENATOR MARTIN: Sure. Thank you very  
6 much. Would you please answer counsel's questions at  
7 this time.

8 MR. ENGLEBARDT: Yes, sir.

9 MR. FIFFICK: Mr. Englebardt, is someone  
10 here with you today?

11 MR. ENGLEBARDT: Yes. This is my wife,  
12 Helen Burris, who is here with me today.

13 MR. FIFFICK: Mr. Englebardt, you have  
14 before you the personal data questionnaire you  
15 submitted as part of your application and amendment.

16 Are there any amendments you would like to  
17 make at this time?

18 MR. ENGLEBARDT: No, sir.

19 MR. FIFFICK: Mr. Chairman, I would like to  
20 ask that Mr. Englebardt's personal data questionnaire  
21 be entered as an exhibit into the hearing record.

22 SENATOR MARTIN: Is there any objection?

23 Hearing none, so ordered.

24 (EXH. 17, Personal Data Questionnaire of  
25 Eric K. Englebardt and Sworn Statement of Eric K.

1 Englebardt, marked for identification.)

2 MR. FIFFICK: Mr. Englebardt, you also have  
3 before you the sworn statement you provided with  
4 detailed answers to over 30 questions regarding  
5 judicial conduct, statutory qualification, office  
6 administration, and temperament.

7 Are there any amendments you would like to  
8 make at this time to your sworn statement?

9 MR. ENGLEBARDT: No, sir.

10 MR. FIFFICK: At this time, I would ask that  
11 Mr. Englebardt's sworn statement be entered as an  
12 exhibit into the hearing record.

13 SENATOR MARTIN: Yes, we'd be glad to enter  
14 it as an exhibit. I apologize.

15 MR. FIFFICK: As one final procedural  
16 matter, I note for the record that based on the  
17 testimony contained in the candidate's PDQ, which had  
18 been included in the record with the candidate's  
19 consent, Mr. Englebardt meets the statutory  
20 requirements for this position regarding age,  
21 residence, and years of practice.

22 Mr. Englebardt, why do you now want to serve  
23 as a circuit court judge?

24 MR. ENGLEBARDT: I have long sought the  
25 bench, as I think everybody on the Commission knows,

1 and I set my sights on that position out of an  
2 abundance of feeling that I'd like to serve the  
3 community in a way that I think would best take  
4 advantage of who I am and how I approach things.

5 I have spent many years as an arbitrator, as  
6 a mediator, hearing cases, helping parties resolve  
7 disputes, and have found a way to bring my advocating  
8 to the other.

9 I believe that sitting on the bench and  
10 helping the judicial system from that angle would be a  
11 very strong way for me to continue this service forward  
12 as I expand my career and move forward.

13 MR. FIFFICK: Thank you, sir. Can you  
14 explain to the Commission how you feel your legal and  
15 professional experience thus far will assist you to be  
16 an effective judge?

17 MR. ENGLEBARDT: First of all, I think that  
18 my experience as a trial lawyer is first and foremost.  
19 I've tried more than 70 jury trials to verdict. I have  
20 handled thousands of cases over the course of my time  
21 as a lawyer.

22 And I believe that all of that together  
23 works toward giving me the experience necessary to be  
24 an effective judicial member. On top of that, when you  
25 look at my experience as a mediator, having mediated



1 and arbitrated over 800 cases, I'm very used to being  
2 in a position where I've got parties who are  
3 adversarial to each other and trying to be the most  
4 reasonable person in the room, allowing the judicial  
5 process to go forward and either bring resolution or  
6 make a decision depending on which one of those  
7 positions I may have during the course of that  
8 particular hearing.

9 MR. FIFFICK: Thank you. Are there any  
10 areas, including subjective areas, of law that you  
11 would need to additionally prepare for in order to  
12 serve as judge, and how would you handle that  
13 additional preparation?

14 MR. ENGLEBARDT: I think what has always  
15 been an issue is my lack of experience as a criminal  
16 lawyer, and I've embraced that as opposed to shy away  
17 from it. I have always -- any time I've had to take  
18 the judicial qualification exam, I have focused on the  
19 criminal questions because I understand that that's the  
20 area of law which I've practiced the least.

21 But I love a challenge and love the  
22 opportunity to learn and expand what I do as a lawyer  
23 from the bench because I understand that, as a judge,  
24 I'm still a lawyer, and that gives me the opportunity  
25 to increase my knowledge about a variety of things. I

1 very much look forward to the opportunity to learn that  
2 part of the law and use what I learn on the bench.

3 MR. FIFFICK: Thank you. Although you  
4 addressed this in your sworn statement, could you  
5 please explain to the members of the Commission what  
6 you think is the appropriate demeanor of a judge?

7 MR. ENGLEBARDT: Again, I touched on this a  
8 minute ago. Being the most reasonable person in the  
9 courtroom to me is the most important thing a judge can  
10 remember. Any time there's litigation in front of you,  
11 you've got parties who are emotionally involved.

12 Taking the emotion out of the situation and  
13 allowing the facts to be more important is, to me, one  
14 of the judge's biggest roles, and I think I'm very well  
15 suited for that.

16 MR. FIFFICK: Is there any circuit court  
17 judge currently on the bench that you would like to  
18 model yourself after or particularly exemplifies the  
19 characteristics that a circuit court judge should have?

20 MR. ENGLEBARDT: I'm going to answer that  
21 question by naming someone who's not been on the bench  
22 very long, but this comes from my own personal  
23 experience. About eight months ago, I was involved in  
24 a very contentious lawsuit with counsel -- my  
25 co-counsel and plaintiff's counsel didn't get along,

1 and the parties really didn't get along.

2 And Judge Letitia Verdin tried that case and  
3 did an exemplary job in taking the emotions out of that  
4 case, both between the parties and between the lawyers,  
5 which was a very difficult thing.

6 In fact, she and I talked after the trial,  
7 and I told her that that, to me, was one of the hardest  
8 things I've ever seen a judge do, and that's exactly  
9 how I would like to handle a case like that.

10 MR. FIFFICK: When you leave the bench, what  
11 would you like your legacy to be as a circuit court  
12 judge?

13 MR. ENGLEBARDT: I think the answer to that  
14 would be that I always was fair and that I always did  
15 my best to make sure justice was done for every party,  
16 no matter where they came from.

17 MR. FIFFICK: Do you have suggestions you  
18 would offer for improving the backlog of cases on the  
19 docket both for general sessions and common pleas in  
20 the circuit court?

21 MR. ENGLEBARDT: You know, it's easy to jump  
22 on my experience in ADR to answer that question, but I  
23 do think that's the answer. In Greenville County, we  
24 don't have much of a backlog on the civil side because  
25 of mandatory mediation, and I hope eventually we find

1 the funds to bring that statewide.

2 I also believe that there's an opportunity  
3 to use mediation in a limited way in the criminal side  
4 in terms of helping resolve either issues or helping  
5 with plea deals and things like that that can reduce  
6 the backlog on the criminal side of the docket.

7 MR. FIFFICK: Do you currently carry  
8 malpractice insurance and, if so, how long have you  
9 carried it?

10 MR. ENGLEBARDT: I do, and I've had it since  
11 I started practicing law in 1989.

12 MR. FIFFICK: The Commission received 310  
13 ballot box surveys regarding your candidacy, and one of  
14 the two negative responses relayed the following: I  
15 tried to mediate a case with him.

16 We were interrupted for his cell phone and  
17 e-mail relating to some sports activity. He was  
18 distracted and made little effort to mediate. He did  
19 not facilitate conversations, and the parties had to  
20 wait for him. We left four hours later with very  
21 little mediation accomplished.

22 Any comment on that?

23 MR. ENGLEBARDT: Only surprise. I don't  
24 remember that, that's certainly not my MO. You know,  
25 frankly, I'm not sure where that comes from. I have --

1 as I said, I have been able to develop a mediation  
2 practice based on my ability to relate to the parties  
3 and the lawyers. My clients are the lawyers.

4 If I behaved that way regularly, I certainly  
5 would not have the business that I have. I was named  
6 very recently the mediation lawyer of the year for  
7 Greenville by my peers. That, to me, speaks much  
8 louder than one statement by somebody who was unhappy  
9 with the mediation.

10 MR. FIFFICK: And these are anonymous  
11 responses, I'll put that in the record as well.

12 MR. ENGLEBARDT: I understand that. I think  
13 that my ability to listen and respond and help parties  
14 evaluate their cases is my forte. And being distracted  
15 certainly wouldn't help me with that. I think I'm a  
16 very good listener when it comes to those kind of  
17 situations.

18 MR. FIFFICK: Mr. Brock, would you like to  
19 come forward?

20 You can have a seat, Mr. Englehardt.

21 Mr. Brock, we're going to swear you in in a  
22 moment here. I'll briefly summarize what we've got  
23 here. You filed a complaint against Mr. Englehardt on  
24 October 30, 2012, and you will have an opportunity to  
25 address the Commission after you're sworn in.

1           You're a certified public accountant and  
2 former business partner of Rick Erwin of Greenville.  
3 And your complaint stems from Mr. Englebardt's services  
4 as an arbitrator in a case involving yourself and your  
5 former business partner, Rick Erwin, of Greenville.

6           In your detailed affidavit, which is in the  
7 Commission's possession, you submit the following: As  
8 an arbitrator, Mr. Englebardt failed and erred to  
9 consider South Carolina Code Section 15-36-100(B),  
10 which you maintain required that an expert witness  
11 affidavit from a CPA be involved, in that this was a  
12 malpractice claim.

13           Based on this, your attorney filed a motion  
14 to dismiss the malpractice claim. Mr. Englebardt  
15 denied this motion. You maintain that you were, thus,  
16 needlessly subjected to nine seven-hour days of  
17 arbitration; and, further, you questioned the fact that  
18 it took Mr. Englebardt seven and a half months to issue  
19 the decision.

20           Second, you maintain that Mr. Englebardt  
21 commented that Mr. Erwin's West End Grille was his  
22 wife's favorite place to dine, and that he should have  
23 declined to arbitrate a case involving his wife's  
24 favorite restaurateur.

25           You further allege that Mr. Englebardt

1 engaged in inappropriate small talk with Mr. Erwin  
2 about a concert that they had both attended at the  
3 Bi-Lo center on the night before one of the arbitration  
4 hearings.

5 Third, you also allege that Mr. Englebardt  
6 erred in determining there was no bad faith involved in  
7 the issue before him; that Mr. Englebardt erred in  
8 determining that you were guilty of breach of duty of  
9 an accountant; that Mr. Englebardt lacked the requisite  
10 knowledge to assess the amounts you claimed were due to  
11 you, that being accounting knowledge specifically; and,  
12 finally, you allege that Mr. Englebardt erred in ruling  
13 that you were liable for payroll taxes and that you  
14 submitted checks DOR, but that Mr. Erwin reversed the  
15 checks and used these funds instead for his own best  
16 purposes.

17 They'll swear you in now.

18 (George H. Brock was duly sworn, after which  
19 testimony commenced at 3:59 p.m.)

20 MR. FIFFICK: I also would offer the  
21 complaint and Mr. Englebardt's response as exhibits to  
22 be entered into the record.

23 (EXH. 18, Complaint of George H. Brock and  
24 Response of Eric K. Englebardt, marked for  
25 identification.)

1 MR. BROCK: I do have additional  
2 information.

3 MR. FIFFICK: It was a statement from his  
4 attorney, and I suppose that could be entered into the  
5 record too if there's no objection.

6 MR. BROCK: Should I pass this out?

7 MR. FIFFICK: Yes. And counsel has received  
8 the PDF of that this morning and I have reviewed it.  
9 It substantially summarizes the complaint.

10 MR. SELLERS: Is it timely? Is it filed in  
11 the time line required by the rules?

12 MR. FIFFICK: Technically, you could  
13 consider it a supplemental submission, but he did not  
14 submit it before the deadline on the 30th.

15 SENATOR MARTIN: Let me just remind  
16 Mr. Brock that what we are interested in is testimony  
17 that's relevant to this judicial candidate's character  
18 and fitness. You know, we certainly regret the  
19 circumstances that bring you here today that you feel  
20 like whatever the outcome of your case was, while we  
21 regret that, that's obviously not what we are  
22 interested in.

23 MR. BROCK: I understand that. Thank you.

24 PROFESSOR FREEMAN: Just a question, sir.  
25 We had a summary of your allegations by counsel here.



1 Do you agree with his summary or did he -- I'm talking  
2 about the oral summary that you just presented.

3 MR. BROCK: I pretty much agree with that,  
4 yes.

5 PROFESSOR FREEMAN: I heard what he said and  
6 I took it into account, I just want to know if he's  
7 wrong anywhere along the line.

8 MR. BROCK: Well, first of all, let me just  
9 say this: I'm here --

10 PROFESSOR FREEMAN: I understand. I just  
11 had a simple question.

12 MR. BROCK: The simple question was do I  
13 agree?

14 PROFESSOR FREEMAN: Yes.

15 MR. BROCK: There's some other issues I  
16 believe that I'd like to bring up.

17 PROFESSOR FREEMAN: Thank you.

18 MR. FIFFICK: Feel free to address those  
19 issues.

20 MR. BROCK: First of all, let me say I'm  
21 here in my own time, and I have no upside or downside  
22 for being here. I feel like I was harmed by several  
23 people. And, you know, when you have an agreement  
24 that's not agreed to, then why do you have an  
25 agreement, what's the purpose of the law in the first

1 place?

2                   And my contentions are several. Number one,  
3 I was expelled from an LLC just by a letter and I was  
4 not given any type of compensation by that; and in  
5 addition to that, I was not paid any funds due to me by  
6 the -- after the takeover that was due from the LLC.

7                   And by Mr. Erwin's own admission, he took  
8 over as sole proprietor. And if he took over the  
9 assets, he takes over the liabilities. I'm an  
10 accountant, I know that you guys know that too. So  
11 that happened.

12                   Ten days later, I was sued for failure to  
13 adhere to generally accepted accounting principles by  
14 his wife, by Rick Erwin's wife. And generally accepted  
15 accounting principles does not apply in this county; in  
16 fact, I do not do any generally accepted accounting  
17 work. My work is basically all tax and consulting.

18                   And so just ask your own accountant if he  
19 applies generally accepted accounting principles to  
20 balance his bank account, and he'll think you're  
21 crazy.

22                   Anyway, it was alleged that I did not follow  
23 generally accepted accounting principles, and I was in  
24 -- in my practice. And, actually, there was no damages  
25 asked, so there had to be some kind of motivation. The

1 motivation obviously is I was being expelled from the  
2 partnership and, therefore, this lawsuit was just laid  
3 on as additional teeth in the expulsion.

4           So I was wrong. So on the first day of  
5 arbitration, my attorney, Robert Wilson, who I still  
6 respect a great deal, 68 years old, he's been around  
7 the block a few times, made a motion that Mr. -- or  
8 Ms. Erwin did not consider the code section that was  
9 mentioned, I didn't memorize it, but anyway, and that  
10 you cannot sue another professional without another  
11 professional's testimony.

12           That makes sense to me. I'm a fan of the  
13 law. It seems to me, if you have an engineering  
14 problem, you've got to get an engineer to say there's a  
15 problem. If there's a medical issue, you've got to  
16 have a doctor say there's a medical problem or  
17 malpractice.

18           In my case, there was no CPA involved. No  
19 one knew what generally acceptable accounting  
20 principles was, including Mr. Englebardt. And so I was  
21 subject to -- and I think I had the thing wrong, I  
22 think it was seven days of arbitration over three and a  
23 half years; I think I said nine. But that's what I was  
24 subject to.

25           And the entire time, it was just mud thrown

1 on the wall to see what stuck, that was her MO. The MO  
2 of my attorney was the old school, he's 68 years old,  
3 UVA law grad. He just held back and said, George, the  
4 law wins. In this case, it didn't.

5 And my attorney prepared the documents with  
6 the code sections and the court cases and handed it to  
7 Mr. Englebardt, and it was immediately handed back to  
8 my attorney by Mr. Englebardt, he didn't even read it.  
9 And, of course, it was denied, but he didn't even  
10 consider it.

11 And so for three and a half years, I was  
12 going into mediation asking -- being asked questions  
13 about my credibility, and I think it was a disgrace.  
14 And the thing that was even more bizarre, because we  
15 had an operating agreement, we had all the documents,  
16 there was documents showing amounts owed to me, there  
17 was financial statements, there was general ledgers,  
18 there was all kind of documentations of money that was  
19 due to me from the LLC which was taken from me by just  
20 a simple letter. Okay?

21 And Mr. Englebardt overlooked all that and  
22 said that because the amounts changed during the --  
23 they kept changing, that they did not exist. And I  
24 don't know how close Mr. Englebardt's been to an  
25 accounting course, but balance sheet amounts change.

1           And I provided to the counsel a copy of a  
2 general ledger showing -- I don't know what exhibit it  
3 was -- but that, you know, that my notes have changed  
4 over time. So, you know, I was due nothing, you know.

5           This guy comes over, writes a letter, takes  
6 over my interest and pays me nothing and it's okay. I  
7 don't understand that. Finally, at the end, and this  
8 will be the last thing I say, or point that I'll make,  
9 is that the final point was that I owed Mr. Erwin  
10 \$8,000, or \$7,600 with interest. I actually wrote the  
11 check for 8.

12           But what it was, was I -- I had been  
13 expelled from this partnership for three or four  
14 months, I had no rights there, I could not dine there  
15 with my ownership rights, I could not -- I didn't have  
16 access to any accounting or anything like that. So I  
17 just stayed away.

18           But I did see that when Mr. Erwin closed the  
19 restaurant -- by the way, he closed it because he  
20 wasn't paying me rent. So that's a whole separate  
21 issue. But when he did close the restaurant, he was  
22 supposed to go to court about paying my rent four days  
23 later, so he decided to close the restaurant.

24           But he didn't pay all the payroll taxes, and  
25 that wasn't a prudent thing to do. So what I did is, I

1 saw in the bank that there was money in the bank. So  
2 what I did, I paid the payroll taxes with cashier's  
3 checks, hand-delivered them to the South Carolina  
4 Department of Revenue, hand-delivered them down to the  
5 Internal Revenue Service.

6 And Mr. Erwin stopped those checks. I have,  
7 in this last example, copies of the checks attached,  
8 copies of the certified checks. I don't know how you  
9 stop a certified check, but he did it. And then the  
10 Department of Revenue made the determination that  
11 Mr. Erwin was responsible for those monies because he  
12 stopped the checks.

13 I delivered them, he stopped them, so they  
14 went after Mr. Erwin. So Mr. Englebardt corrected  
15 that, he thought, by making me repay Mr. Erwin for  
16 checks that he stopped to the South Carolina Department  
17 of Revenue, because the Department of Revenue went  
18 after him, not me.

19 And he said, in effect, that South  
20 Carolina Department of Revenue made an incorrect  
21 decision and I had to pay Mr. Erwin. So there it is.  
22 I don't know what more I can say. Like I said, it was  
23 seven days of arbitration, three and a half years,  
24 there was a lot of things that went on, a lot of, I  
25 think, lack of independence.

1           There was some comments every day almost  
2 about the reviews of his restaurant and the accolades  
3 of the opening of his new restaurant, you know. And I  
4 was being interviewed for malpractice when there's no  
5 other CPA saying I did anything wrong, there's just  
6 Mr. Erwin and there's Ms. Erwin.

7           And Mr. Englebardt had no -- had really no  
8 determination of what's going on, he just really was  
9 out of touch. And that's all I'm going to say. He  
10 might have done 800 mediations, he done maybe one  
11 wrong, but he did this one -- he mused this one. So  
12 that's all I have to say.

13           Any questions?

14           SENATOR MARTIN: Any questions?

15           PROFESSOR FREEMAN: I just want to  
16 summarize, that's your basic allegation as to the  
17 character, integrity, and fitness of Mr. Englebardt?

18           MR. BROCK: Well, he overlooked the law,  
19 okay? He did not even read the code section that you  
20 mentioned.

21           PROFESSOR FREEMAN: Thank you, sir.

22           SENATOR MARTIN: Thank you very much.

23           Mr. Englebardt?

24           MR. ENGLEBARDT: Mr. Chairman and members of  
25 the Commission, I want you to know that I take this

1 allegation very seriously. I believe I owed it to  
2 everyone involved to take a critical look at my  
3 decision and my behavior in this case, and I think it  
4 needed to be looked at on two levels.

5           First, after receiving the complaint, I  
6 reviewed my the file and my decision and some of the  
7 two notebooks full of evidence in this case. I remain  
8 today, standing before you under oath, convinced that  
9 my decisions were sound, they were the product of  
10 significant unbiased consideration and deliberation.

11           However, I am human, and I have yet to meet  
12 anyone who doesn't make mistakes; I don't see any in my  
13 review of this, but I'm certainly willing to admit that  
14 others can view things differently than I do. In many  
15 ways, that is the nature of the beast when it comes to  
16 litigation, and, more importantly, in judging; to put  
17 one's self in the role of the fact finder is to open  
18 one's decision to criticism.

19           Secondly, and much importantly to me, I have  
20 considered the allegation that I appear to be lacking  
21 in independence and was biased. There are no  
22 transcripts for me to review, there are no tapes for me  
23 to listen to. But I know myself and I know I'm neither  
24 biased for or against parties before me in an  
25 arbitration or a mediation ever.



1 I was named by my peers as arbitration  
2 lawyer of the year for this year and as mediation  
3 lawyer of the year for 2013 by the same publication.  
4 That sounds less than humble, but I simply could not  
5 have the reputation I have or the practice I have for  
6 being able to do my job if I appeared lacking in  
7 independence or was biased.

8 When I was asked to undertake this  
9 arbitration from the beginning, I was well aware of the  
10 judicial responsibility to avoid matters where my  
11 impartiality would be suspect. I would not have taken  
12 this case if I could not be unbiased.

13 This was a long-standing, especially  
14 contentious litigation. The parties were involved in  
15 many emotional disputes throughout this even before I  
16 was involved, including personal attacks. In my role  
17 as the arbitrator, I felt it was important to lower the  
18 temperature in the room, to get the parties to focus on  
19 facts, not emotion.

20 I did that by being myself, having  
21 conversations about what was going on in the world and  
22 in their lives, not just in one party's life but in  
23 everybody's life. I'm very cognizant that there's a  
24 fine line between acting in an independent and biased  
25 manner and being social in order to have -- to avoid an

1 appearance of impropriety or bias just in the human  
2 nature of being friendly and social.

3           In my analysis of the situation, I focused  
4 on answering that question: Did my discussions with  
5 the parties cross that line, were my actions viewed  
6 that way at that time only from the perspective of  
7 looking back after my ruling, and that leads me to say  
8 that never once during the lengthy period of this  
9 case -- and it was one year of hearings, the case  
10 lasted longer, but there was a lot of discovery before  
11 I got involved in it -- never once during the period of  
12 these hearings did anyone ever personally raise with me  
13 an issue about my appearing to be lacking independence,  
14 not a phone call, not an e-mail, not a comment during a  
15 break in the hearing.

16           These are lawyers I have known and worked  
17 with my entire career. I know if I'm in that  
18 situation, where I think the arbitrator is acting  
19 inappropriately, I'm going to pull him in the hallway  
20 and I'm going to say, You know what, let's not talk  
21 about the restaurant.

22           Never a word before this complaint was  
23 brought in, nothing professionally, nothing  
24 personally. As a professional, this had been a  
25 difficult but very useful exercise for me.

1           The vast majority of my practice is serving  
2 as a neutral. I'm proud of the recognition I've  
3 achieved, and the only -- and that only underscores the  
4 importance of not only remaining neutral but the  
5 importance of appearing to remain neutral.

6           This has caused me to re-visit these  
7 concepts in a very real situation. Having to walk this  
8 path, I'm convinced that I did my job honestly and  
9 correctly and that neither party had reason to feel I  
10 didn't. I acted appropriately and I'm sure of it.  
11 Thank you.

12           MR. FIFFICK: Professor, do you have a  
13 question?

14           PROFESSOR FREEMAN: I think you made a good  
15 presentation there, but I have this question: Was this  
16 a malpractice case, and, if it was, how could it go  
17 forward without an expert?

18           MR. ENGLEBARDT: I think, Professor Freeman,  
19 if you look at my report, I made a clear ruling that it  
20 was -- well, let me back up. This is not in the  
21 report, it was a motion in limine, I forget, I talked  
22 about this in my response.

23           It was brought up in a motion in limine. We  
24 had a hearing. You've got one side's position on it;  
25 the other side had an alternative position. I

1 absolutely read everything that was presented to, and  
2 we had arguments about it. And I ruled that, no, this  
3 was not a malpractice action, this was a breach of  
4 contract action. In fact, I ruled that GAAP -- just  
5 like Mr. Brock asked, GAAP did not apply to the  
6 situation.

7 But what I ruled is, in him going forward  
8 with his functions under the contract, he breached the  
9 contract, and that's why I ruled the way I did.

10 REPRESENTATIVE MARTIN: Any others?

11 MR. SELLERS: I know you do a lot of  
12 mediations, Mr. Englehardt. This was an arbitration;  
13 is that correct?

14 MR. ENGLEBARDT: Yes, sir.

15 MR. SELLERS: I don't know how the process  
16 worked in this case, but normally each side gets to  
17 vett the arbitrator before they're selected; is that  
18 correct?

19 MR. ENGLEBARDT: That's correct.

20 MR. SELLERS: Did that happen in this case?

21 MR. ENGLEBARDT: It did.

22 MR. SELLERS: So you were asked by each side  
23 to dispose any particular bias you may have, and both  
24 considered you and I assume others as well; is that  
25 correct?

1 MR. ENGLEBARDT: I would assume so.

2 MR. SELLERS: And they both agreed to select  
3 and use you as an arbitrator?

4 MR. ENGLEBARDT: In fact, I made a point to  
5 make sure that Ms. Erwin understood that Mr. Wilson and  
6 I had practiced law together and had known each other  
7 and been friends for 25 years.

8 MR. SELLERS: Who was on the other side?

9 MR. ENGLEBARDT: Mr. Erwin's wife.

10 MR. FIFFICK: One final question. You  
11 addressed at one point the seven and a half months it  
12 took and the fact that you waived the fee for the  
13 order.

14 Would you just discuss that time period and  
15 the circumstances surrounding that?

16 MR. ENGLEBARDT: Yes, sir. As I said in my  
17 written response, this was a learning experience for  
18 me. This was, to be fair, the biggest and longest case  
19 I'd ever arbitrated. I had 45 single-spaced  
20 typewritten notes. I had my laptop in the hearing room  
21 with me at all times, I took notes, color coded.

22 As I made decisions, some would be red and  
23 some would be green so when I went back I could look at  
24 it. But it was complicated, and there were lots of  
25 claims and lots of counterclaims. It took me too long,

1 I'll freely admit that, and that's why I waived the  
2 fee, because it shouldn't have taken me that long.

3 But I've learned a lot about -- this would  
4 be great experience for me, a nonjury case, to  
5 understand how to organize your thoughts and how to  
6 rule more quickly, and I think it actually worked to my  
7 advantage.

8 I felt terrible for the parties that it took  
9 so long. I think my letter that went to the lawyers is  
10 attached to my response. But I waived the fee  
11 accordingly.

12 MR. FIFFICK: Thank you.

13 SENATOR MARTIN: Thank you very much.

14 Mr. Brock, do you have anything you'd like  
15 to say in rebuttal?

16 MR. BROCK: Yes, I would. First of all,  
17 until the counsel started asking questions, I don't  
18 know what Mr. Englehardt said really, other than it was  
19 a campaign speech or it was almost like he was running  
20 for political office, he didn't really touch on the  
21 specifics.

22 For example, how can you overlook \$85,000  
23 that's owed when somebody takes over the assets of your  
24 business? How do you overlook that? I wish somebody  
25 would ask him that question. And he says that the

1 amount changed over time. Balance sheets change over  
2 time.

3 And then he also says I was confused about  
4 an amount that was owed to a gentlemen named Gene Dore  
5 and, therefore, it didn't exist. Maybe I was  
6 confused. We're talking about all these arbitration  
7 days, but the documentation is there for all of those  
8 numbers.

9 And Mr. Englebardt said that it's okay for  
10 someone to write a letter and take over the assets of  
11 the business and cherry pick the liabilities.  
12 Mr. Erwin paid every dime of the liabilities of that  
13 business except for what I was involved in. I had to  
14 pay other people because Mr. Erwin did not pay them,  
15 and that's what he's tried to do with the payroll  
16 taxes.

17 He tried to stop those checks so that I  
18 would be responsible. And the South Carolina  
19 Department of Revenue said, no, no, no, you can't stop  
20 these checks, Mr. Brock brought them down here and  
21 handed them to me. So they made Mr. Erwin pay for that  
22 and took it out of his refund.

23 Mr. Englebardt said, No, George, Mr. Brock  
24 is responsible for that, he said the South Carolina  
25 Department of Revenue is wrong. How can that happen?

1 I don't understand. He took over the balance sheet, he  
2 took over the assets but not the liability -- we're  
3 talking about Erwin. Mr. Englebardt said that's okay.

4 And as far as the litigation, he said it was  
5 a contract issue; well, that's debatable too. If you  
6 read his order, that I breached the contract as an  
7 accountant, accountant was capitalized, to me, that's a  
8 CPA. I was not operating as a CPA. I was not even  
9 really operating as an accountant, you know.

10 So I was doing -- what I was thinking I was  
11 going to do is tax returns at the end of the year,  
12 which they all got done, and that's it. He says I  
13 breached my duties and accountant. Now, I don't  
14 understand it.

15 There's bookkeeping issues, sure; but I  
16 don't do bookkeeping. So I think Mr. Englebardt is  
17 wrong. He gave a good campaign speech, and he hasn't  
18 been able to answer the questions I put to him right  
19 now, and he's not really good about answering the  
20 questions you've asked, actually.

21 PROFESSOR FREEMAN: I have one more  
22 question.

23 SENATOR MARTIN: Certainly.

24 PROFESSOR FREEMAN: You sent an e-mail to  
25 Mr. Englebardt on October 30th at 5:01 in the morning



1 that said "October surprise."

2 What were you saying to him then? What were  
3 you doing then at 5:01 in the morning?

4 MR. BROCK: Well, I was finishing up my  
5 report, and I wanted him to know something was coming  
6 down.

7 PROFESSOR FREEMAN: Is that -- in your mind,  
8 were you acting in a professional manner at that point?

9 MR. BROCK: At 5:01 in the morning, probably  
10 not. But I did not put anything in the meat of the  
11 e-mail, just "October surprise" on the heading, and  
12 that's it.

13 PROFESSOR FREEMAN: Would you agree if I  
14 called it a menacing e-mail?

15 MR. BROCK: I don't think it was menacing.  
16 I was letting him know that something was coming down.

17 PROFESSOR FREEMAN: Something to worry  
18 about?

19 MR. BROCK: If I wanted to be menacing, I  
20 would have written a really derogatory body to that.

21 PROFESSOR FREEMAN: Why did you send  
22 anything, sir? I'm just curious.

23 MR. BROCK: At 5:01 in the morning, I  
24 obviously had been working on this, and it was my  
25 mistake. Are we concentrating on my mistakes or are we

1 here to --

2 PROFESSOR FREEMAN: Sir, that was my  
3 thought; I had a question about it.

4 MR. BROCK: I've answered it, have I not?

5 PROFESSOR FREEMAN: Yes, sir, you have.

6 SENATOR MARTIN: All right. Thank you very  
7 much. Come back, Mr. Englebardt.

8 MR. FIFFICK: Have you sought or received --

9 SENATOR CAMPSSEN: Mr. Chairman, can I ask a  
10 question?

11 SENATOR MARTIN: Yes.

12 SENATOR CAMPSSEN: You said that your  
13 decision turned upon a breach of contract, not  
14 malpractice; is that correct?

15 MR. ENGLEBARDT: Yes, sir.

16 SENATOR CAMPSSEN: What is the duty that was  
17 breached or the contractual obligation?

18 MR. ENGLEBARDT: Senator, I'm not really  
19 prepared to deal with this like an appellate panel, but  
20 I think I can answer the question. In the operating  
21 agreement, Mr. Brock agreed to provide bookkeeping  
22 services to the business, and I found that he breached  
23 that term of the contract.

24 It was not accounting malpractice, it was  
25 that he failed to book keep in such a way to allow the

1 business to go forward in a positive manner, and that  
2 was eventually the problem. That was the basis for my  
3 ruling that he had breached the contract, that was part  
4 of the basis.

5 And I think, if you read the order, I give a  
6 variety of reasons and then secondary reasons for each  
7 of my rulings.

8 SENATOR MARTIN: All right.

9 MR. FIFFICK: Back to the housekeeping  
10 issues.

11 MR. ENGLEBARDT: Yes, sir.

12 MR. FIFFICK: Have you sought or received  
13 the pledge of any legislator prior to this date?

14 MR. ENGLEBARDT: I have not.

15 MR. FIFFICK: Have you sought or have you  
16 been offered a conditional pledge of support of any  
17 legislator pending the outcome of your screening?

18 MR. ENGLEBARDT: I have not.

19 MR. FIFFICK: Have you asked any third  
20 parties to contact members of the General Assembly on  
21 your behalf?

22 MR. ENGLEBARDT: No, sir.

23 MR. FIFFICK: Are you aware of anyone  
24 attempting to intervene in any part of the process on  
25 your behalf?

1 MR. ENGLEBARDT: I am not.

2 MR. FIFFICK: Have you contacted any members  
3 of the Commission?

4 MR. ENGLEBARDT: I have not.

5 MR. FIFFICK: Do you understand that you are  
6 prohibited from seeking a pledge or commitment until 48  
7 hours after the formal release of the Commission's  
8 report?

9 MR. ENGLEBARDT: Yes, sir.

10 MR. FIFFICK: Have you reviewed the  
11 Commission's guidelines on pledging?

12 MR. ENGLEBARDT: I have.

13 MR. FIFFICK: As a follow-up, are you aware  
14 of the penalties for violating the pledging rules; that  
15 is, it is a misdemeanor and, upon conviction, the  
16 violator must be fined not more than \$1,000 or in  
17 prison not more than 90 days?

18 MR. ENGLEBARDT: Yes, sir.

19 MR. FIFFICK: I would note that the Upstate  
20 Citizens Committee reported that Mr. Englehardt was  
21 qualified in the categories of constitutional  
22 qualifications, physical health, and mental stability;  
23 and found Mr. Englehardt well-qualified in ethical  
24 fitness, professional and academic ability, character,  
25 reputation, experience, and judicial temperament.

1 I would just note for the record that any  
2 concerns raised during this investigation regarding the  
3 candidate were incorporated into the questioning of the  
4 candidate today.

5 Mr. Chairman, I have no further questions.

6 SENATOR MARTIN: Anyone else?

7 MR. BROCK: Can I respond to something?

8 SENATOR MARTIN: I think we're pretty well  
9 done.

10 MR. BROCK: Well, I did not contract to do  
11 bookkeeping, it was never mentioned in any agreement.

12 SENATOR MARTIN: All right.

13 Well, Mr. Englebardt, before you leave, just  
14 one thing. This portion of the screening process is  
15 complete, but there could be a need to call you back at  
16 some point in time before the final report is  
17 published. Please keep in mind the 48-hour rule.

18 We appreciate you being here today and  
19 answering our questions, and thank you for offering  
20 your services.

21 MR. ENGLEBARDT: Thank you, sir.

22 MR. FIFFICK: Mr. Brock, I'll note that the  
23 Commission will consider the totality of the testimony.  
24 There's not a decision being made here, that decision  
25 will be made later. So this is not a dismissal of your

1 complaint or anything along those lines, that's dealt  
2 with at the end of the day.

3 SENATOR MARTIN: Welcome, Mr. Floyd. We  
4 appreciate you being here.

5 MR. FLOYD: Thank you.

6 SENATOR MARTIN: Please raise your right  
7 hand and repeat after me.

8 (Joey Randall Floyd was duly sworn, after  
9 which testimony commenced at 4:29 p.m.)

10 SENATOR MARTIN: Have you had the  
11 opportunity to review the personal data questionnaire?

12 MR. FLOYD: I have, yes, sir.

13 SENATOR MARTIN: Is it correct? Does  
14 anything need to be changed?

15 MR. FLOYD: Not that I'm aware of, no, sir.

16 SENATOR MARTIN: Do you object to our making  
17 this summary part of the record of your sworn  
18 testimony?

19 MR. FLOYD: Not at all.

20 SENATOR MARTIN: It will be done at this  
21 time.

22 (EXH. 19, Personal Data Questionnaire of  
23 Joey Randall Floyd, Supplemental Answers to the  
24 Personal Data Questionnaire of Joey Randall Floyd, and  
25 Sworn Statement of Joey Randall Floyd, marked for

1 identification.)

2 SENATOR MARTIN: The Judicial Merit  
3 Selection Commission has thoroughly investigated your  
4 qualifications for the bench. Our inquiry is focused  
5 on the nine evaluative criteria.

6 It has included a survey of the bench and  
7 bar, a thorough study of your application materials,  
8 verification of your compliance with state ethics laws,  
9 a search of newspaper articles in which your name  
10 appears, a study of previous screenings, and a check  
11 for economic conflicts of interest.

12 There are no affidavits filed in opposition  
13 to your election and no witnesses are here to testify.

14 So do you have a brief opening statement  
15 that you'd like to make at this time?

16 MR. FLOYD: Nothing beyond thank y'all for  
17 letting me appear before you. I have my wife with me,  
18 her name is Ellie Floyd; the better half, I should  
19 say.

20 SENATOR MARTIN: Will you answer counsel's  
21 questions, please.

22 MR. FLOYD: I will.

23 MR. GOLDIN: Mr. Chairman and members of the  
24 Commission, I have a few procedural matters to take  
25 care of with this candidate first.

1           Mr. Fuller, you have before you the personal  
2 data questionnaire you submitted as part of your  
3 application and amendment.

4           Are there any amendments you would like to  
5 make at this time?

6           MR. FLOYD: Not that I'm aware of.

7           MR. GOLDIN: Mr. Fuller, you have before you  
8 the sworn statement you provided with detailed answers  
9 to over 30 questions regarding judicial conduct,  
10 statutory qualification, office administration, and  
11 temperament.

12           Are there any amendments you would like to  
13 make at this time to your sworn statement?

14           MR. FLOYD: No.

15           MR. GOLDIN: At this time, Mr. Chairman, I  
16 would like to ask that Mr. Fuller's sworn statement be  
17 entered in as an exhibit into the hearing record.

18           SENATOR MARTIN: Without objection, so  
19 ordered.

20           MR. GOLDIN: One final procedural matter.

21           I note for the record that based on the  
22 testimony contained in the candidate's PDQ, which had  
23 been included in the record with the candidate's  
24 consent, Mr. Fuller meets the statutory requirements  
25 for this position regarding age, residence, and years



1 of practice.

2 Mr. Fuller, why do you now want to serve as  
3 a circuit court judge?

4 MR. FLOYD: Serving as a circuit court  
5 judge, I believe, is an honor and a privilege. I enjoy  
6 practicing law. I think that the opportunity to serve  
7 as a circuit court judge would enable me to continue  
8 the study of law.

9 I consider myself to be a student of the  
10 law, and I enjoy it, and it's, as every judicial  
11 candidate I think that you'll hear from, it's also a  
12 goal of mine to be a circuit court judge, and that's  
13 why I'd like to do it.

14 MR. GOLDIN: Can you explain to the  
15 Commission how you feel your legal and professional  
16 experience thus far will assist you to be an effective  
17 judge?

18 MR. FLOYD: Sure. Over the course of my  
19 practice I've had the opportunity to, as my documents  
20 clearly show, I am primarily -- I am a civil litigator,  
21 and I have litigated cases ranging from \$600 to  
22 multimillion dollar stakes. I think the thing that's  
23 prepared me the most is probably defending lawyers  
24 throughout my practice.

25 I've had the opportunity to step out into

1 some areas that I don't typically practice in, such as  
2 personal injury, workers' compensation, and bankruptcy,  
3 to learn the areas of the law and also give me an  
4 understanding of how to look in and drill deeper,  
5 because a legal malpractice case essentially involves a  
6 case within a case.

7           You have to understand the underlying case  
8 before you try the alleged malpractice case. And I've  
9 had the opportunity to appear in a number of courts  
10 across the state. I practiced -- as my documents show,  
11 I practiced in a small firm.

12           And when you practice in a small firm, you  
13 find yourself traversing the state, going to motion  
14 hearings, going to roster hearings, appearing in front  
15 of numerous judges, and I've also appeared in front of  
16 a number of master in equity courts in the state.

17           And I think I know what characteristics and  
18 what -- I've been able to draw on a lot of different  
19 judges, and I think I understand what makes a good  
20 judge.

21           MR. GOLDIN: Mr. Fuller, are there any areas  
22 of law that you would need to additionally prepare for  
23 in order to serve as judge, and how would you go about  
24 that preparation?

25           MR. FLOYD: Again, my documents, I think,

1 show that I am a civil litigator. What my documents  
2 don't necessarily show you is my work ethic, my  
3 resolve, my persistence, and how willing I am to work  
4 to learn other areas of the law.

5 I don't think it's any secret that I don't  
6 have any criminal experience, and I am prepared to  
7 learn those things. I've already started trying to  
8 take some CLEs and trying to educate myself in those  
9 things.

10 While I may not possess all of the criminal  
11 experience knowledge that I need right now, I can tell  
12 you that I'll work hard and I'll do what I have to do  
13 to educate myself to be ready to try that first case.  
14 And my work ethic, I think, will help me get there.

15 MR. GOLDIN: Thank you. Mr. Fuller,  
16 although you address this in your sworn statement,  
17 could you please explain to the members of the  
18 Commission what you think is the appropriate demeanor  
19 of a judge?

20 MR. FLOYD: Sure. I think the appropriate  
21 demeanor -- to sum it up in a sentence, I would say  
22 that every person who appears in the court should feel  
23 that they had their fair day in court. It may not work  
24 out exactly how they wanted it to work out, but they  
25 come out of court feeling like it was a fair day and

1 had their shot and their day.

2 In describing it in words, I would say fair,  
3 attentive, impartial, decisive, and being prompt in  
4 ruling in things. Promptness, the more I've thought  
5 about it, the more I think that is a good  
6 characteristic, because it's important for a judge to  
7 be prompt in issuing his rulings so it doesn't hold up  
8 the case.

9 MR. GOLDIN: Is there any circuit court  
10 judge currently on the bench that you would like to  
11 model yourself after or particularly exemplifies the  
12 characteristics that a circuit court judge should have?

13 MR. FLOYD: Well, there are really too many  
14 for me to name just one. I think the characteristics  
15 that I like to draw off of are those that are patient;  
16 that will give you time to make your argument even  
17 though they may not necessarily agree with you; they  
18 will give you your time to make the record; and be  
19 courteous and polite to all litigants.

20 And sometimes I think they have patience to  
21 a fault. I see myself wondering why some judges let  
22 people go on so long, but I understand; it's their day  
23 in court, and they want to give them the opportunity so  
24 they have their fair day in court.

25 MR. GOLDIN: Thank you. When you leave the

1 bench, what would you like your legacy as the judge on  
2 circuit court to be?

3 MR. FLOYD: First of all, I want to make it  
4 to the bench. But once I got off, I certainly would  
5 want people to think of me as being fair and reasonable  
6 and would always give them a fair day, a fair shot.

7 MR. GOLDIN: What suggestions would you  
8 offer for improving the backlog of cases on the docket  
9 both for general sessions and common pleas in the  
10 circuit court?

11 MR. FLOYD: Well, since I'm on this side of  
12 the bench, that is not on the bench, anything I say  
13 here is probably going to be an armchair quarterback  
14 and I will be heavily ridiculed.

15 But one thing I have noticed recently is the  
16 nonjury motion hearings. One frustrating aspect on the  
17 part of private practitioners is a simple motion to  
18 compel can hold up a case for months and months when a  
19 party doesn't respond.

20 I've noticed the courts have started,  
21 especially in Richland County, they've set aside Friday  
22 afternoons to hear nonjury motion hearing terms of  
23 court, which is good, you can move some of those  
24 motions along. It doesn't hold up the backlog of  
25 cases.

1           It's amazing how a motion for summary  
2 judgment, a motion to compel, can logjam everything  
3 because, if you don't have the documents, you can't  
4 take a deposition. If you can get those motions heard  
5 so the cases can be ready for trial whenever they come  
6 up on the docket, you're not going to suffer as many  
7 delays.

8           I don't have enough information on the  
9 criminal docket to know, but from what I've gathered  
10 based on my conversations with my friends who practice  
11 in the criminal bar, discovery is very important.

12           The solicitor's office has got to work with  
13 the law enforcement, they've got to get criminal  
14 defense attorneys that information so they're prepared  
15 to give meaningful advice to their clients so they can  
16 keep that docket moving.

17           The most important thing is to try to keep  
18 that docket moving and move them on towards the end.

19           MR. GOLDIN: Mr. Fuller, do you currently  
20 carry malpractice insurance in your law practice and,  
21 if so, how long have you carried malpractice insurance?

22           MR. FLOYD: I do carry malpractice  
23 insurance. We've carried it the entire time I've been  
24 practicing law. As my documents show, I've been with  
25 the same firm for the past 11 years, at Bruner Powell

1 Wall & Mullins. We've always maintained malpractice  
2 insurance.

3 And I can't remember specific numbers, I'm  
4 probably not going to say it right, but I think it's 2  
5 million and 4 million, as I recall.

6 MR. GOLDIN: Thank you, Mr. Fuller.

7 I just have some housekeeping issues now.

8 Have you sought or received the pledge of  
9 any legislator prior to this date?

10 MR. FLOYD: No.

11 MR. GOLDIN: Have you sought or have you  
12 been offered a conditional pledge of support of any  
13 legislator pending the outcome of your screening?

14 MR. FLOYD: No.

15 MR. GOLDIN: Have you asked any third  
16 parties to contact members of the General Assembly on  
17 your behalf?

18 MR. FLOYD: No.

19 MR. GOLDIN: Are you aware of anyone  
20 attempting to intervene in any part of the process on  
21 your behalf?

22 MR. FLOYD: Not to my knowledge.

23 MR. GOLDIN: Have you contacted any members  
24 of the Commission?

25 MR. FLOYD: No.

1 MR. GOLDIN: Do you understand that you are  
2 prohibited from seeking a pledge or commitment until 48  
3 hours after the formal release of the Commission's  
4 report?

5 MR. FLOYD: Yes.

6 MR. GOLDIN: Have you reviewed the  
7 Commission's guidelines on pledging?

8 MR. FLOYD: I have.

9 MR. GOLDIN: As a follow-up, are you aware  
10 of the penalties for violating the pledging rules; that  
11 is, it is a misdemeanor and, upon conviction, the  
12 violator must be fined not more than \$1,000 or in  
13 prison not more than 90 days?

14 MR. FLOYD: Yes, I am aware of that.

15 MR. GOLDIN: I would just note to this  
16 Commission that Mr. Fuller received no negative ballot  
17 box surveys. He also -- the Midlands Citizens  
18 Committee found Mr. Fuller well-qualified in the  
19 evaluative criteria of ethical fitness, professional  
20 and academic ability, character, reputation, and  
21 judicial temperament.

22 The committee found Mr. Floyd qualified in  
23 the areas of constitutional qualifications, physical  
24 health, mental stability, and experience.

25 In summary, the committee reported that



1 they, once again, enjoyed seeing Mr. Fuller. We think  
2 he is both a great attorney and a great person. He has  
3 integrity, energy, and compassion, and we feel that he  
4 would make an excellent judge.

5 We feel that he is well-qualified to serve  
6 on the circuit court, and we believe he would serve in  
7 an exemplary manner.

8 I would just note for the record that any  
9 concerns raised during this investigation regarding the  
10 candidate were incorporated into the questioning of the  
11 candidate today.

12 Mr. Chairman, I have no further questions.

13 SENATOR MARTIN: Any questions by members of  
14 the Commission?

15 Hearing none, thank you for answering our  
16 questions today. This concludes this portion of the  
17 screening process. As you know, the record will remain  
18 open until the report is published, and you may be  
19 called back at such time if the need arises. I'll  
20 remind you of the 48-hour rule and ask that you be  
21 mindful of that.

22 Anyone that inquires with you about whether  
23 or not they may advocate for you in the event you're  
24 screened out, remind them, please, of the 48-hour rule.  
25 We thank you for offering and I thank you for your

1 service to South Carolina.

2 MR. FLOYD: Thank you. Thank you all.

3 SENATOR MARTIN: Welcome, Mr. Hall. Welcome  
4 to the Commission.

5 MR. HALL: Good afternoon.

6 SENATOR MARTIN: Would you raise your right  
7 hand and repeat after me.

8 (Daniel DeWitt Hall was duly sworn, after  
9 which testimony commenced at 4:43 p.m.)

10 SENATOR MARTIN: Have you had an opportunity  
11 to review your personal data questionnaire?

12 MR. HALL: I have.

13 SENATOR MARTIN: Is it correct? Does  
14 anything need to be changed?

15 MR. HALL: No, it's correct.

16 SENATOR MARTIN: Do you object to our making  
17 this summary a part of the record?

18 MR. HALL: I do not object.

19 SENATOR MARTIN: That will be done at this  
20 point.

21 (EXH. 20, Personal Data Questionnaire of  
22 Daniel DeWitt Hall and Sworn Statement of Daniel DeWitt  
23 Hall, marked for identification.)

24 SENATOR MARTIN: The Judicial Merit  
25 Selection Commission has thoroughly investigated your

1 qualifications for the bench. Our inquiry is focused  
2 on the nine evaluative criteria.

3 It has included a survey of the bench and  
4 bar, a thorough study of your application materials,  
5 verification of your compliance with state ethics laws,  
6 a search of newspaper articles in which your name  
7 appears, a study of previous screenings, and a check  
8 for economic conflicts of interest.

9 We have received no affidavits in support or  
10 filed in opposition to your election, and no witnesses  
11 are here to testify.

12 Do you have a brief opening statement?

13 MR. HALL: I'll waive opening.

14 SENATOR MARTIN: Thank you very much. So  
15 would you please answer counsel's questions.

16 MS. ANZELMO: Mr. Hall, you have before you  
17 the sworn statement you provided with detailed answers  
18 to over 30 questions regarding judicial conduct,  
19 statutory qualification, office administration, and  
20 temperament.

21 Are there any amendments you would like to  
22 make at this time to your sworn statement?

23 MR. HALL: No, there is not.

24 MS. ANZELMO: At this time, Mr. Chairman, I  
25 would ask that Mr. Hall's sworn statement be entered as

1 an exhibit into the hearing record.

2 SENATOR MARTIN: Without objection, so  
3 ordered.

4 MS. ANZELMO: I note for the record that  
5 based on the testimony contained in the candidate's  
6 PDQ, which had been included in the record with the  
7 candidate's consent, Mr. Hall meets the statutory  
8 requirements for this position regarding age,  
9 residence, and years of practice.

10 Mr. Hall, why do you want to serve as a  
11 circuit court judge?

12 MR. HALL: I've enjoyed the 25 years I've  
13 served as an attorney in York County, South Carolina,  
14 and I've enjoyed and deeply appreciate working with  
15 people and lawyers.

16 And I view that having the opportunity to,  
17 if elected to the circuit court judge, to be in a  
18 position where I can continue to deal with people and  
19 to ensure that the citizens of South Carolina have a  
20 fair and impartial venue to come and defendants in  
21 criminal cases and defendants in civil cases to have a  
22 fair and impartial hearing.

23 MS. ANZELMO: Can you explain to the  
24 Commission how you feel your legal and professional  
25 experience thus far will assist you to be an effective

1 judge?

2 MR. HALL: I have a pretty varied  
3 background. When I got out of law school, I was 33,  
4 had done some other things prior to law school; in  
5 fact, I managed a cattle operation, I had -- I worked  
6 in a meat business for about five years, and then took  
7 my wife and children to law school, had three children.

8 When I finished law school, I had four  
9 children. So when I got out, I worked in our  
10 solicitor's office for about two and a half years, then  
11 I went out on my own and had my own private practice in  
12 York for about eight or nine years, where I also served  
13 as a part-time municipal judge.

14 I missed prosecution and went back to work  
15 in our solicitor's office; did that for 12 years, until  
16 about a year and a half ago I made the change to our  
17 public defender's office and have been representing  
18 indigent defendants for the last year and a half.

19 I think all of these things give me a pretty  
20 unique legal background by which to understand people  
21 and their problems and trying to help people and help  
22 our community.

23 MS. ANZELMO: Are there any areas, including  
24 subjective areas, of law that you would need to  
25 additionally prepare for in order to serve as judge,

1 and how would you handle that additional preparation?

2 MR. HALL: Obviously, most of my practice  
3 has been in the area of criminal, either prosecution or  
4 defense work. When I was in private practice, I did  
5 some limited civil work, but that would be an area that  
6 I would need to work on. And I believe I can learn  
7 what I need to to serve in civil court.

8 MS. ANZELMO: Although you address this in  
9 your sworn statement, could you please explain to the  
10 members of the Commission what you think is the  
11 appropriate demeanor of a judge?

12 MR. HALL: Patient, fair, and impartial.

13 MS. ANZELMO: Is there any circuit court  
14 judge currently on the bench that you would like to  
15 model yourself after?

16 MR. HALL: Certainly. I serve in a circuit  
17 where John Hayes is one of the longest-serving circuit  
18 court judges in our state. He certainly has a -- I  
19 deeply appreciate his intellect and his knowledge of  
20 the law.

21 I have enjoyed serving with Michael Nettles,  
22 from Marion, who I believe brings a -- the people  
23 skills that he has in the courtroom of keeping  
24 litigants at ease is an attribute that I would like to  
25 model.

1           Another judge, a recent judge, Frank Addy  
2 from Greenwood, who I've used that has a real keen  
3 intellect and is able to apply that with his people  
4 skills, I admire his abilities in the courtroom.

5           So I guess I know one particular single  
6 judge; but the judges I've had an opportunity to be in  
7 front of are judges that all bring unique qualities  
8 that I'd like to see, if elected, to be able to learn  
9 from them and apply some of those things.

10           MS. ANZELMO: If you are elected, when you  
11 leave the bench, what would you like your legacy as the  
12 judge on circuit court to be?

13           MR. HALL: To be fair and impartial and kind  
14 to the people who come into the courtroom.

15           MS. ANZELMO: What suggestions would you  
16 offer for improving the backlog of cases on the docket  
17 both for general sessions and common pleas in the  
18 circuit court?

19           MR. HALL: In York County, I think we have  
20 -- our common pleas docket is not backlogged; I think  
21 it's because the judges are able to keep -- you know,  
22 they're in charge of the civil docket and have been  
23 able to keep that moving.

24           On the criminal docket, we are in a part of  
25 the state where our criminal docket, I think, is one of

1 the few dockets where it is fairly current. I've been  
2 able to be involved on the solicitor's side of that and  
3 now on the public defender's side.

4 We have a system in place where docket  
5 management -- a system that lays the foundation to  
6 where we are today that cleaned up old cases. And I  
7 think the biggest thing is communication between  
8 lawyers on both side.

9 I think, as a judge, you can facilitate that  
10 by being sure that you provide an opportunity for  
11 opposing counsel to assist them in bringing cases to a  
12 head. I think the judge's involvement in making sure  
13 that the contentious nature, often nature of court, is  
14 lessened, and the judge does have an obligation to try  
15 to seek to resolve cases as quickly as he can.

16 MS. ANZELMO: Thank you. Mr. Hall, the  
17 Commission received 70 ballot box surveys regarding you  
18 with 13 additional comments. There were a couple of  
19 those surveys that indicated concerns. One of the  
20 concerns raised was that you would impede your own  
21 views to the court rather than simply interpreting the  
22 law.

23 What response would you offer to this  
24 concern?

25 MR. HALL: I've been a defense attorney and



1 a prosecutor, that's two completely different views.  
2 Oftentimes the views of representation -- that's not a  
3 problem.

4 MS. ANZELMO: The second concern noted that  
5 you may lack the intellectual capacity to be a judge.

6 What would your response be to that concern?

7 MR. HALL: I took and passed two bar exams  
8 in one week back in the day when you could take the  
9 South Carolina and the North Carolina bar; I was  
10 thankfully able to pass that.

11 I'm no intellectual genius or giant, maybe  
12 perseverance allowed me to do that, but I think that  
13 part of my past indicates an intellectual ability to  
14 learn what I need to as a judge.

15 MS. ANZELMO: Thank you. Mr. Hall, you  
16 reported on your own, and your SLED report actually  
17 didn't disclose this, but you reported on your own that  
18 back in October of 2006 you were found guilty of  
19 hunting deer over bait.

20 Would you like to explain the circumstances?

21 MR. HALL: I live in a rural part of York  
22 County, but it's not terribly rural. I have some older  
23 adult sons who like to deer hunt; I don't deer hunt.  
24 But I decided one afternoon after a long week of court  
25 that I would go in my tennis shoes and blue jeans and

1 my single-shot shotgun and sit in the deer stand.

2           There was another individual who had put  
3 some corn out. I knew that was against the law. But I  
4 was sitting there, and a wildlife officer drove across  
5 my property to the deer stand and wanted to know what I  
6 was doing. And I told him I was hunting.

7           And I ended up having -- I had a bench  
8 trial. Actually, there was a case from Greenwood at  
9 the time that dealt with the issue of hunting over  
10 bait, and I attempted to argue that in front of the  
11 magistrate and lost and paid the court costs.

12           MS. ANZELMO: Thank you. Just a few  
13 housekeeping issues now.

14           Have you sought or received the pledge of  
15 any legislator prior to this date?

16           MR. HALL: I have not.

17           MS. ANZELMO: Have you sought or have you  
18 been offered a conditional pledge of support of any  
19 legislator pending the outcome of your screening?

20           MR. HALL: No, I have not.

21           MS. ANZELMO: Have you asked any third  
22 parties to contact members of the General Assembly on  
23 your behalf?

24           MR. HALL: No, I haven't.

25           MS. ANZELMO: Are you aware of anyone

1 attempting to intervene in any part of the process on  
2 your behalf?

3 MR. HALL: No.

4 MS. ANZELMO: Have you contacted any members  
5 of the Commission?

6 MR. HALL: I have not.

7 MS. ANZELMO: Do you understand that you are  
8 prohibited from seeking a pledge or commitment until 48  
9 hours after the formal release of the Commission's  
10 report?

11 MR. HALL: I understand that.

12 MS. ANZELMO: Have you reviewed the  
13 Commission's guidelines on pledging?

14 MR. HALL: I have.

15 MS. ANZELMO: As a follow-up, are you aware  
16 of the penalties for violating the pledging rules; that  
17 is, it is a misdemeanor and, upon conviction, the  
18 violator must be fined not more than \$1,000 or in  
19 prison not more than 90 days?

20 MR. HALL: I do, I understand that.

21 MS. ANZELMO: I would note that the Piedmont  
22 Citizens Committee found Mr. Hall qualified in the  
23 areas of constitutional qualifications, physical  
24 health, and mental stability.

25 The committee found him well-qualified in

1 the areas of ethical fitness, professional and academic  
2 ability, character, reputation, experience, and  
3 judicial temperament.

4 I would also note for the record that any  
5 concerns raised during this investigation regarding the  
6 candidate were incorporated into the questioning of the  
7 candidate today.

8 Mr. Chairman, I have no further questions.

9 SENATOR MARTIN: Thank you, Mr. Hall.

10 I'm curious about one thing. The argument  
11 you made in front of the magistrate, was it an equal  
12 protection argument?

13 MR. HALL: You know, there's an old saying  
14 that a shoe cobbler has holes in his shoes and your  
15 worst lawyer is yourself. I think that applied in my  
16 case.

17 SENATOR MARTIN: Just for the record, I  
18 agree with you, that it's a little unfair that the  
19 upstate is restricted and the lowstate can hunt over  
20 bait.

21 MR. HALL: I did have some concerns in my  
22 conversation with the officer, I asked him why he was  
23 over there. And he had been surveilling my property  
24 for about a week, and I had some concerns, you know, my  
25 wife was out hanging clothes, of him slinking around in

1 the woods. But I was guilty.

2 SENATOR MARTIN: I understand.

3 Mr. Hall, I welcome you to come hunt over  
4 bait in Horry County.

5 The chairman has come back, and he'll finish  
6 up, Mr. Hall.

7 REPRESENTATIVE DELLENEY: Mr. Hall, we  
8 thank you so much for being here. Thank you so much  
9 for your willingness to offer for election and go  
10 through this process.

11 Of course, this concludes this portion of  
12 the screening process. As you know, this portion of  
13 the record will remain open until this report is  
14 published. At any time before we file the report, the  
15 Commission can call you back and ask for questions of  
16 you, although it's unlikely, it could happen.

17 And I'd like to remind you about the 48-hour  
18 rule, that after the draft report becomes the report of  
19 the Commission, you cannot seek commitments for 48  
20 hours. I'm sure you're acquainted with that rule.

21 And we thank you for offering, and I hope  
22 you have a safe trip back to York.

23 MR. HALL: Thank you.

24 (Discussion off the record.)

25 REPRESENTATIVE DELLENEY: We are going into

1 executive session.

2 (The Judicial Merit Selection Commission  
3 went into executive session from 4:58 p.m. to  
4 5:20 p.m.)

5 REPRESENTATIVE DELLENEY: We are back out of  
6 executive session in open session. And we're about to  
7 vote on Circuit Court At-Large Seat Number 14.

8 Is there any member that does not find any  
9 of the candidates at least qualified? That's Harvin,  
10 Josey, Kelly, Miller, Newman, Sampson, and Scott.

11 Is there anyone that doesn't believe that  
12 they're all at least qualified?

13 REPRESENTATIVE CLEMMONS: Qualified.

14 REPRESENTATIVE DELLENEY: Raise your hand if  
15 you find them qualified.

16 All in favor of finding Lucius Scott Harvin  
17 qualified and nominated, raise your hand.

18 MS. SHULER: Zero.

19 REPRESENTATIVE DELLENEY: All in favor of  
20 finding Jon Rene Josey qualified and nominated, raise  
21 your hand.

22 MS. SHULER: Seven.

23 REPRESENTATIVE DELLENEY: All in favor of  
24 finding R. Keith Kelly qualified and nominated, raise  
25 your hand.

1 MS. SHULER: Eight.

2 REPRESENTATIVE DELLENEY: All in favor of  
3 finding David Warren Miller qualified and nominated,  
4 raise your hand.

5 MS. SHULER: Are you voting proxy?

6 SENATOR NICHOLSON: Yes.

7 MS. SHULER: Six.

8 REPRESENTATIVE DELLENEY: All in favor of  
9 finding Jared Sullivan Newman qualified and nominated,  
10 raise your hand.

11 MS. SHULER: Zero.

12 REPRESENTATIVE DELLENEY: All in favor of  
13 finding April Woodard Sampson qualified and nominated,  
14 raise your hand.

15 MS. SHULER: Zero.

16 REPRESENTATIVE DELLENEY: All in favor of  
17 finding Clifford Scott qualified and nominated, raise  
18 your hand.

19 MS. SHULER: Nine.

20 So we have Jon Rene Josey at seven votes,  
21 Keith Kelly eight, and Clifford Scott nine. Those are  
22 the three that were found qualified and nominated.

23 REPRESENTATIVE DELLENEY: Everybody  
24 satisfied with that?

25 SENATOR CAMPSER: Say that again. Who won?

1 MS. SHULER: Josey, Kelly, and Clifford  
2 Scott.

3 REPRESENTATIVE DELLENEY: Is there anyone  
4 that doesn't believe that all the candidates are  
5 qualified, Askins, Dukes, Murphy, Pauling, and Price?

6 Everybody who believes they're qualified,  
7 raise your hand.

8 SENATOR CAMPSER: What are we on?

9 REPRESENTATIVE DELLENEY: Finding them all  
10 qualified.

11 MS. SHULER: So ten.

12 REPRESENTATIVE DELLENEY: All in favor of  
13 finding Jerome P. Askins, III, qualified and nominated  
14 raise your hand.

15 SENATOR NICHOLSON: Proxy.

16 MS. SHULER: Ten.

17 REPRESENTATIVE DELLENEY: All in favor of  
18 finding The Honorable Marvin H. Dukes qualified and  
19 nominated, raise your hand.

20 SENATOR NICHOLSON: Proxy.

21 MS. SHULER: Seven.

22 REPRESENTATIVE DELLENEY: All in favor of  
23 finding The Honorable Maite Murphy qualified and  
24 nominated, raise your hand.

25 MS. SHULER: Ten.



1 SENATOR NICHOLSON: Proxy.

2 REPRESENTATIVE DELLENEY: All in favor of  
3 finding Curtis Anthony Pauling, III, qualified and  
4 nominated, raise your hand.

5 MS. SHULER: Zero.

6 REPRESENTATIVE DELLENEY: All in favor of  
7 finding The Honorable Bentley Douglas Price qualified  
8 and nominated, raise your hand.

9 MS. SHULER: One.

10 So it was Jerome Askins, Marvin Dukes, and  
11 Judge Murphy.

12 Laurie, can you collect the vote sheets for  
13 these two races?

14 (Discussion off the record.)

15 REPRESENTATIVE DELLENEY: Are we ready for  
16 Mr. Hocker?

17 We have before us this evening the Honorable  
18 Donald Bruce Hocker, and he seeks a position before the  
19 Circuit Court At-Large, Seat Number 16. If you would,  
20 Judge Hocker, please raise your right hand to be  
21 sworn.

22 (Donald Bruce Hocker was duly sworn, after  
23 which testimony commenced at 5:30 p.m.)

24 REPRESENTATIVE DELLENEY: Have you had an  
25 opportunity to review your personal data

1 questionnaire?

2 MR. HOCKER: Yes, sir, I have.

3 REPRESENTATIVE DELLENEY: Is it correct?

4 MR. HOCKER: It is correct. I did have one  
5 amendment to the amount of postage and stationery  
6 expense, and that was -- that amendment was done back  
7 in October.

8 REPRESENTATIVE DELLENEY: Did you bring  
9 anybody with you that you need to introduce today?

10 MR. HOCKER: Yes, sir. I would very much  
11 like to introduce my wife, Gail. We've been married  
12 for 36 years, and she has been certainly truly  
13 supportive of my endeavors to become a judge.

14 REPRESENTATIVE DELLENEY: Do you object to  
15 my making your summary a part of the record of your  
16 sworn testimony?

17 MR. HOCKER: No objection.

18 REPRESENTATIVE DELLENEY: That will be done  
19 at this point in the transcript

20 (EXH. 21, Personal Data Questionnaire of  
21 Donald Bruce Hocker, Amendment to the Personal Data  
22 Questionnaire of Donald Bruce Hocker, and Sworn  
23 Statement of Donald Bruce Hocker, marked for  
24 identification.)

25 REPRESENTATIVE DELLENEY: The Judicial Merit

1 Selection Commission has thoroughly investigated your  
2 qualifications for the bench. Our inquiry is focused  
3 on the nine evaluative criteria.

4 It has included a survey of the bench and  
5 bar, a thorough study of your application materials,  
6 verification of your compliance with state ethics laws,  
7 a search of newspaper articles in which your name  
8 appears, a study of previous screenings, and a check  
9 for economic conflicts of interest.

10 We have not received any affidavits in  
11 opposition to your election, and there are no witnesses  
12 here to testify.

13 Do you have a brief opening statement you'd  
14 like to make?

15 MR. HOCKER: Mr. Chairman, I would, and it  
16 will be very brief. I'm just truly grateful to have  
17 another opportunity to seek a circuit court position,  
18 and it is certainly an honor and a privilege and a  
19 pleasure to once again appear before this Commission.

20 REPRESENTATIVE DELLENEY: Thank you, sir.  
21 At this time, would you answer any questions our able  
22 counsel, Ms. Dean, may have.

23 MR. HOCKER: Be glad to.

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

25 Judge Hocker, first of all, we have some

1 procedural matters to take up. You have before you the  
2 personal data questionnaire you submitted as part of  
3 your application and amendment.

4 Are there any amendments you would like to  
5 make at this time?

6 MR. HOCKER: No, ma'am.

7 MS. DEAN: Mr. Chairman, I would like to ask  
8 that Judge Hocker's personal data questionnaire and  
9 amendment be entered in as an exhibit to the hearing  
10 record now.

11 REPRESENTATIVE DELLENEY: It will be done at  
12 this point in the transcript.

13 MS. DEAN: Thank you.

14 Judge Hocker, you have before you the sworn  
15 statement you provided with detailed answers to over 30  
16 questions regarding judicial conduct, statutory  
17 qualification, office administration, and temperament.

18 Are there any amendments you would like to  
19 make at this time to your sworn statement?

20 MR. HOCKER: No, ma'am.

21 MS. DEAN: At this time, Mr. Chairman, I  
22 would like to ask that Judge Hocker's sworn statement  
23 be entered as an exhibit into the record.

24 REPRESENTATIVE DELLENEY: Without objection,  
25 it will be done at this point in the transcript.

1 MS. DEAN: I note for the record that based  
2 on the testimony contained in the candidate's PDQ,  
3 which had been included in the record with the  
4 candidate's consent, Judge Hocker meets the statutory  
5 requirements for this position regarding age,  
6 residence, and years of practice.

7 Judge Hocker, will you please state the city  
8 and circuit in which you reside.

9 MR. HOCKER: I reside in Laurens, South  
10 Carolina, the Eighth Judicial Circuit.

11 MS. DEAN: Judge Hocker, after being an  
12 attorney since 1981 and associate probate judge for the  
13 past 28 years, why do you now want to serve as a  
14 circuit court judge?

15 MR. HOCKER: Several reasons. One, I think  
16 I'm certainly qualified to serve as a circuit court  
17 judge. As you've just noted I've been a practicing  
18 attorney for 31 and a half years, have practiced  
19 extensively in the circuit court, both in the civil  
20 side, common pleas court, and the general sessions  
21 court, the criminal side.

22 And also I've certainly had the privilege of  
23 serving as associate probate judge in Laurens County  
24 for over 28 years. And I'm humbled by the fact that  
25 the Supreme Court will routinely assign me to hear

1 cases across the State of South Carolina.

2 So by virtue of those two things, I believe  
3 I am certainly qualified to be a circuit court judge,  
4 and I feel like I can certainly be an asset to the  
5 circuit court bench. Certainly, if I'm elected, I will  
6 be fair and impartial, I will be certainly respectful  
7 to all of the litigants and attorneys appearing before  
8 me, and I will start court on time.

9 MS. DEAN: Thank you, Judge Hocker. Are  
10 there any areas, including subjective areas, of law  
11 that you would need to additionally prepare for in  
12 order to serve as judge, and how would you handle that  
13 additional preparation?

14 MR. HOCKER: No, I think I'm fully prepared  
15 to serve in all areas that would come before me.  
16 Certainly there would be times in a particular case  
17 where some advance research maybe would have to be  
18 done. Certainly the -- I would make sure that I was  
19 fully prepared and had full knowledge of the type of  
20 case and facts of the case before it ever got started.

21 But I think -- as a general proposition, I  
22 think I have the sufficient knowledge to serve as judge  
23 in all areas in the circuit court.

24 MS. DEAN: Thank you. Judge Hocker,  
25 although you address this in your sworn affidavit,

1 could you please explain to the members of the  
2 Commission what you think is the appropriate demeanor  
3 of a judge.

4 MR. HOCKER: Well, certainly, as I stated a  
5 moment ago, I think it is vitally important for any  
6 judge, whether it's a circuit court judge or any other  
7 judge, to show respect at all times for not only the  
8 litigants in the case but also the attorneys appearing  
9 before the court; to also show that court is fair and  
10 impartial in all types of cases, regardless of the  
11 litigants or the attorneys appearing before the court.

12 MS. DEAN: Is there any circuit court judge  
13 currently on the bench that you would like to model  
14 yourself after or particularly exemplifies the  
15 characteristics that a circuit court judge should have?

16 MR. HOCKER: Well, we had just an  
17 outstanding circuit court judge, Jim Johnson, who  
18 unfortunately died back in 2008. And I know that Jim  
19 was certainly well-respected within the bar, he had  
20 tremendous judicial temperament, had a great knowledge  
21 and grasp of the law.

22 And if I could come anywhere close to  
23 exemplifying Judge Johnson's qualities and  
24 characteristics, that will be a tremendous feat.

25 MS. DEAN: When you leave the bench, what

1 would you like your legacy as a circuit court judge to  
2 be?

3 MR. HOCKER: That I was always fair and  
4 impartial and always showed courtesy and respect to  
5 anyone who appeared before me.

6 MS. DEAN: What suggestions would you offer  
7 for improving the backlog of cases on the docket both  
8 for general sessions and common pleas in the circuit  
9 court?

10 MR. HOCKER: I believe a circuit court judge  
11 needs to take a more proactive position in the  
12 scheduling and docketing of cases, not only in general  
13 sessions but also in common pleas.

14 Certainly in the general sessions area, I  
15 think in most circuits the solicitor has complete  
16 control of the docket. And I'm not suggesting taking  
17 that away from the solicitor, but I think the court  
18 needs to be more involved in the scheduling and  
19 docketing of cases; and certainly that would hold true  
20 on the civil side as well.

21 MS. DEAN: Judge Hocker, do you currently  
22 carry malpractice insurance in your law practice and,  
23 if so, how long have you carried malpractice insurance?

24 MR. HOCKER: I do carry it, and I've carried  
25 it since I started practicing in 1981.



1 MS. DEAN: Thank you, Judge Hocker. We just  
2 have a few more housekeeping issues now.

3 MR. HOCKER: Certainly.

4 MS. DEAN: Have you sought or received the  
5 pledge of any legislator prior to this date?

6 MR. HOCKER: No, ma'am.

7 MS. DEAN: Have you sought or have you been  
8 offered a conditional pledge of support of any  
9 legislator pending the outcome of your screening?

10 MR. HOCKER: No, ma'am.

11 MS. DEAN: Have you asked any third parties  
12 to contact members of the General Assembly on your  
13 behalf?

14 MR. HOCKER: No, ma'am.

15 MS. DEAN: Are you aware of anyone  
16 attempting to intervene in any part of the process on  
17 your behalf?

18 MR. HOCKER: No, ma'am.

19 MS. DEAN: Have you contacted any members of  
20 the Commission?

21 MR. HOCKER: No, ma'am.

22 MS. DEAN: Do you understand that you are  
23 prohibited from seeking a pledge or commitment until 48  
24 hours after the formal release of the Commission's  
25 report?

1 MR. HOCKER: I understand that.

2 MS. DEAN: Have you reviewed the  
3 Commission's guidelines on pledging?

4 MR. HOCKER: I have.

5 MS. DEAN: As a follow-up, are you aware of  
6 the penalties for violating the pledging rules; that  
7 is, it is a misdemeanor and, upon conviction, the  
8 violator must be fined not more than \$1,000 or in  
9 prison not more than 90 days?

10 MR. HOCKER: Yes, I am.

11 MS. DEAN: I would note for the record that  
12 the Piedmont Citizens Committee found Judge Hocker  
13 qualified in the criteria of constitutional  
14 qualifications, physical health, and mental stability;  
15 that is the highest possible finding for those three  
16 categories.

17 Judge Hocker was also found well-qualified  
18 in the criteria of ethical fitness, professional and  
19 academic ability, character, reputation, experience,  
20 and judicial temperament.

21 I would further note for the record that any  
22 concerns raised during the investigation regarding the  
23 candidate were incorporated into today's questioning.

24 Mr. Chairman, I have no further questions.

25 REPRESENTATIVE DELLENEY: Does anybody on

1 the Commission have any questions of Judge Hocker?

2 Thank you, Judge Hocker. We appreciate your  
3 willingness to appear before us and your willingness to  
4 seek the circuit court.

5 This concludes this portion of the screening  
6 process. As you know, this portion of the record will  
7 remain open until this report is published. At any  
8 time before we file the report, the Commission can call  
9 you back and ask for questions of you; although it's  
10 unlikely, it could happen.

11 And I'd like to remind you about the 48-hour  
12 rule, that after the draft report becomes the report of  
13 the Commission, you cannot seek commitments for 48  
14 hours. I'm sure you're acquainted with that rule.

15 But in any event, I'd like to thank you for  
16 offering, and I hope you and your wife have a safe trip  
17 back home.

18 MR. HOCKER: Thank you very much,  
19 Mr. Chairman, and thank you very much members of this  
20 Commission.

21 REPRESENTATIVE DELLENEY: Next we have Alex  
22 Kinlaw.

23 Judge Kinlaw, we're happy to have you with  
24 us this evening. We have before us today the Honorable  
25 Alex Kinlaw, Jr., who is currently a family court

1 judge, and seeks position on the Circuit Court  
2 At-Large, Seat Number 16.

3 If you would, Judge Kinlaw, raise your right  
4 hand to be sworn.

5 (Alex Kinlaw, Jr., was duly sworn, after  
6 which testimony commenced at 5:42 p.m.)

7 REPRESENTATIVE DELLENEY: Thank you, sir.  
8 Have you had an opportunity to review the personal data  
9 questionnaire?

10 MR. KINLAW: I have.

11 REPRESENTATIVE DELLENEY: And is it correct?

12 MR. KINLAW: Yes, it's correct.

13 REPRESENTATIVE DELLENEY: So nothing needs  
14 to be changed?

15 MR. KINLAW: Nothing needs to be changed.

16 REPRESENTATIVE DELLENEY: Do you object to  
17 making this part of the record of your sworn testimony?

18 MR. KINLAW: I do not.

19 REPRESENTATIVE DELLENEY: Then it will be  
20 done at this point in the transcript without  
21 objection.

22 (EXH. 22, Personal Data Questionnaire of  
23 Alex Kinlaw, Jr.; Amendment to the Personal Data  
24 Questionnaire of Alex Kinlaw, Jr., Completed Statement  
25 of Economic Interests Form, New Letter of Reference;

1 and Sworn Statement of Alex Kinlaw, Jr., marked for  
2 identification.)

3 REPRESENTATIVE DELLENEY: The Judicial Merit  
4 Selection Commission has thoroughly investigated your  
5 qualifications for the bench. Our inquiry is focused  
6 on the nine evaluative criteria.

7 It has included a survey of the bench and  
8 bar, a thorough study of your application materials,  
9 verification of your compliance with state ethics laws,  
10 a search of newspaper articles in which your name  
11 appears, a study of previous screenings, and a check  
12 for economic conflicts of interest.

13 There are no affidavits filed in opposition  
14 to your election, and there are no witnesses here to  
15 testify.

16 Do you have a brief opening statement you'd  
17 like to make?

18 MR. KINLAW: Yes. I'm delighted to have the  
19 opportunity to appear before this Commission again. I  
20 appeared before the Commission I guess three or four  
21 years ago, and at that time I indicated that one of the  
22 things I was concerned about was access to the courts  
23 and also making sure the litigants had due process.

24 I've tried to do that in the almost four  
25 years I've been on family court. We've done a lot of

1 things in Greenville, a lot of remarkable things. We  
2 have the highest family court filings in the state.  
3 We've done a lot of things.

4 I served as the chief administrative judge  
5 for the last year, and we're kind of moving things  
6 along. So when I got this opportunity to apply for  
7 this position, I felt I could do the same thing on the  
8 circuit court that I was able to do on the family court  
9 if given the opportunity.

10 REPRESENTATIVE DELLENEY: Thank you, sir.

11 If you would answer any questions our able  
12 counsel may have for you.

13 MR. KINLAW: Yes, sir.

14 MS. WELLS: Thank you. Judge Kinlaw, you  
15 have before you the personal data questionnaire you  
16 submitted as part of your application and amendment.

17 Are there any amendments you would like to  
18 make at this time?

19 MR. KINLAW: No.

20 MS. WELLS: I note for the record that based  
21 on the testimony contained in Judge Kinlaw's PDQ, which  
22 had been included in the record with the candidate's  
23 consent, Judge Kinlaw meets the statutory requirements  
24 for this position.

25 I believe you addressed this somewhat in

1 your opening statement, Judge Kinlaw, but please  
2 explain to the Commission why you would now like to  
3 serve as the circuit court judge, since you currently  
4 serve as a family court judge for the 13th Circuit in  
5 Greenville.

6 MR. KINLAW: Well, I'll just elaborate on  
7 what I started to say when I first appeared. Three and  
8 a half years ago, almost four years ago, when I came  
9 before this Commission, one of the things I told the  
10 Commission and I told all the members, that my primary  
11 focus was, number one, make sure all litigants have  
12 access to the courts, and also make sure that that's  
13 done in an expeditious fashion and make sure that  
14 nobody's due process is being infringed upon.

15 So I had some ideas about how to move the  
16 docket along. I've been the administrative judge for  
17 the last year. And just let me tell you some of the  
18 things that we've been able to do in Greenville.  
19 Greenville County has the highest filings of family  
20 court matters in the state; in other words, 87 percent  
21 of the matters that are filed in Greenville from the  
22 time of filing until the matter is adjudicated, we have  
23 the highest rating in the state.

24 And I've kept that rating under my watch for  
25 the last year, 87 percent; I think Spartanburg trails

1 us. One of the reasons we've been able to do that, as  
2 administrative judge, sometimes you have to do a lot of  
3 things that lawyers may not understand, but you want to  
4 do it because you're primarily concerned about moving  
5 the docket.

6 As an example, when I took over, when I  
7 became administrative judge, I noticed that a lot of  
8 the filings in Greenville, lawyers would file cases and  
9 leave the cases open; in other words, pleadings would  
10 be filed, cases would be open, and there would be no  
11 subsequent pleadings filed; there would be temporary  
12 hearings scheduled, temporary orders issued, but it's  
13 been almost a year since the temporary order was  
14 issued.

15 I told the clerk's office that lawyers need  
16 to monitor their own cases; in other words, from the  
17 date of filing to the time we met up before the 365-day  
18 required rule for the matter to be litigated, it's up  
19 to the lawyers to monitor that.

20 So instead of giving lawyers notification  
21 that the case was going to be dismissed, I stopped that  
22 practice, and I started dismissing cases where there  
23 was no action in the file for months and months and  
24 months. Lawyers were upset.

25 But I'm here to tell you tonight that



1 they've gotten on board with that process and they  
2 understand it. As a matter of fact, if you really  
3 think about it, it's helpful to the litigant to move  
4 matters along. You've got to move matters along.  
5 You've got to give litigants their day in court, and  
6 that's a way to do it.

7           The other thing we implemented in Greenville  
8 County -- and I noticed when I took this job, we have  
9 an A, B, and C docket; which means that on contested  
10 cases, the A case doesn't go, the B case goes, the C  
11 case goes.

12           I traveled to 14 other counties since I've  
13 had this job, and every time I go to one of these  
14 counties, ahead of time I tell the clerk's office, if  
15 you don't have an A, B, C docket for me when I get  
16 there, if this A case settles, I want the lawyers on  
17 standby so we have a backup case so we don't waste  
18 court time.

19           Because if I've got a case scheduled for  
20 three days and that case settles on day one, we've a  
21 judge who's sitting around for two days with nothing to  
22 do, and that shouldn't happen. I will commend our  
23 chief justice.

24           We are in the process of making sure that  
25 all the counties statewide have A, B, C dockets; so

1 that's something that is happening, and I'm proud of  
2 that, and I think that's going to move it along.

3 Also, the Department of Social Services  
4 docket, we try to move that along because they're  
5 federally funded, so a lot of their litigation is based  
6 on funding. So the quicker they can get in court, the  
7 better off they're going to be.

8 So I set aside two weeks, I took one week as  
9 a chambers week, to give them an opportunity to have  
10 their cases heard so I could move them along. So the  
11 whole thing -- what I'm really saying is, to answer  
12 your question is, I'm about moving cases along, and  
13 sometimes you have to get lawyers on board.

14 I think they're on board because they're  
15 trying to move cases along. Litigants are happy that  
16 their cases are being heard. So I think I could do the  
17 same thing on the circuit court level that I've done on  
18 the family court level.

19 We've got things in place now that are  
20 working very well, that are moving cases, moving the  
21 docket along, that kind of thing.

22 The only other thing I would add is that we  
23 have a backlog of adoption actions that need to be  
24 heard, and didn't realize how many. So when I started  
25 in Greenville about a year ago, we set aside three

1 times a year on a Thursday or Friday where we only hear  
2 adoption actions, whether they're DSS related adoption  
3 actions, private adoption actions; and we've done that  
4 in Greenville, that's carried over into some other  
5 counties I think Spartanburg is trying to do that, York  
6 is trying to do that.

7 That allows these cases to matriculate  
8 through the system in an expeditious fashion. So I  
9 know I've talked too much, but I just wanted to let you  
10 know kind of what we were doing in Greenville.

11 And when I heard the chief justice announce  
12 that he has these at-large positions -- and let me just  
13 say this to you: You can create at-large judge  
14 positions, but the reason that -- you've got to have  
15 persons who are willing to get in there and make sure  
16 that a docket down in Beaufort or a docket down in  
17 Florence County, the criminal dockets are moving  
18 along.

19 And the way you do that is you come in and  
20 you get court started. As some lawyers know, court all  
21 the time -- in general sessions, court doesn't always  
22 start at 9 o'clock, but I think it needs to. I think  
23 you need to start cases early, get cases done, and move  
24 along. So that is the impetus on which I made  
25 application for this position.

1 MS. WELLS: Thank you, Judge Kinlaw. Are  
2 there any areas, including subjective areas, of law  
3 that you would need to additionally prepare for in  
4 order to serve as judge, and how would you handle that  
5 additional preparation?

6 MR. KINLAW: Well, before I made application  
7 for the family court, I've handled as lead counsel four  
8 death penalty cases during my practice; I handled two  
9 down in Greenwood County and two in Greenville County.  
10 I was lead counsel on all of those cases.

11 I served as public defender on the criminal  
12 side for almost three years, two and a half -- two  
13 years, give or take, somewhere in there. Then when I  
14 was in private practice, I handled a number of civil  
15 matters. I handled cases primarily in the circuit  
16 court. I did very little federal court work, but I did  
17 primarily in the circuit court.

18 So I'm very familiar with civil litigation  
19 and very familiar with criminal litigation on the  
20 criminal side. Not only did I handle death penalty  
21 cases, I handled felony cases, misdemeanor cases, all  
22 of those cases when I was in practice and also during  
23 my tenure at the public defender's office.

24 So I'm well-rounded. The only thing that I  
25 didn't do in my private practice a lot, I didn't do any

1 type of tax litigation, I didn't do anything of that  
2 nature, so I didn't do too much of that.

3 MS. WELLS: You address this in your sworn  
4 affidavit, but would you please explain to the members  
5 of the Commission what you think is the appropriate  
6 demeanor for a circuit court judge?

7 MR. KINLAW: You know, one of the things  
8 that I learned when I became a judge was how you appear  
9 before the litigants in front of you is extremely  
10 important. And you've got to be attentive, you've got  
11 to be -- and you've got to be fair.

12 And all your expression, in terms of  
13 demeanor, has to expound that, because, you know,  
14 having practiced as long as I did, I went before a lot  
15 of judges and I saw all kind of demeanors. And I  
16 always said to myself, If I ever get an opportunity to  
17 be a judge, what kind of demeanor would I have?

18 And I sort of patterned myself by looking at  
19 all the judges out there. And I think you need to let  
20 people know that you care about what they have, and I  
21 think, if you do that, irregardless of the decision,  
22 the litigants want to know that you listened, that you  
23 were attentive, and that you showed some degree of  
24 compassion in your interaction with them.

25 MS. WELLS: Is there a circuit court judge

1 currently on the bench that you would like to model  
2 yourself after or that you believe particularly  
3 exemplifies the characteristics a circuit court judge  
4 should have?

5 MR. KINLAW: I'm going to answer that  
6 question because I'm going to give you a fair answer.  
7 This judge used to be on the circuit court, but I used  
8 to always watch him and I appeared before him on  
9 numerous occasions. But one thing I liked about him --  
10 and I'll tell you his name in a minute -- was he was  
11 always the same way no matter what, and he was always  
12 fair, and he always treated everybody with respect.

13 And that was our former associate justice,  
14 Judge Moore, from Greenwood. I thought that he was --  
15 had an excellent, excellent demeanor, and you always  
16 knew that even though things may not go your way, you  
17 always knew that you got a fair decision from him. So  
18 I would pick him.

19 MS. WELLS: When you leave the bench, what  
20 would you like your legacy to be as a judge on the  
21 circuit court?

22 MR. KINLAW: That I was a judge that was --  
23 that treated everybody fairly; that I was attentive;  
24 that I was academically prepared for the matters that  
25 came before me; and that I gave everybody their

1 opportunity to express their ideas, whether they were  
2 represented by counsel or whether they were pro se.

3 And I think, you know, when you've got the  
4 whole access to the justice argument, we've got self-  
5 represented litigants now, and it's really important to  
6 me that they come to court and they get the same kind  
7 of respect that attorneys get; and I try to do that, I  
8 really, really do.

9 Because when you get self-represented  
10 litigants who appear in court, they pay a \$150 filing  
11 fee, that's a lot of money to them. And I try to make  
12 sure -- I don't do the case for them, but I try to make  
13 sure that they're treated fairly, because I think it's  
14 important.

15 MS. WELLS: You mentioned several different  
16 suggestions for improving the backlog of cases on the  
17 docket. Do you have anything additional you wanted to  
18 add for either the general sessions or the common pleas  
19 and the circuit court to help with the backlog?

20 MR. KINLAW: Well, you know, there's a  
21 debate right now in the general sessions court on  
22 whether or not the solicitor should handle the docket  
23 or whether the court should. And I will say I've been  
24 to a lot of different circuits.

25 And in some circuits, the solicitor does an

1 excellent job of handling the docket, and then there  
2 are some circuits in which I think the court would  
3 probably be helpful. I think that's still up for  
4 debate.

5 I think the chief justice and court  
6 administration are trying to work on smoothing that  
7 out. But if I had to make a suggestion, whoever  
8 handles the docket, I think you've got to prioritize  
9 violent versus nonviolent cases in terms of those cases  
10 coming into court in a timely fashion.

11 And let me just give you an example. When I  
12 was in private practice and I was representing a  
13 criminal defendant, it took almost a year, well over a  
14 year, before the case went to court. Well, in that  
15 period of time, my client accrued two other offenses  
16 just like the one I was representing him on.

17 So my question is: What would have been the  
18 outcome if he had access sooner? So I think if you've  
19 got violent offenses, you've got to prioritize those to  
20 make sure that either those cases are before the court  
21 by way of a plea or they're before the court by way of  
22 a trial, you've got to prioritize them.

23 Then you go to nonviolent, then you go to  
24 the third category, which may include other offenses  
25 where there's no violence involved, such as maybe



1 shoplifting or a driving offense.

2 MS. WELLS: Judge Kinlaw, the bar received  
3 297 ballot box surveys for you, which contained 31  
4 additional comments; of those, ten indicated concerns.

5 These concerns included that -- alleging you  
6 were disorganized; that you lack an adequate work  
7 ethic; that you do not read affidavits given to you  
8 during temporary hearings; that you are not timely in  
9 your decisions; and that sometimes you're condescending  
10 to other attorneys and your clients.

11 How do you respond to these concerns?

12 MR. KINLAW: Let me just address the  
13 affidavit portion. We get 15 minutes to hear temporary  
14 hearings. In Greenville, we could probably have around  
15 20 temporary hearings within a 15-minute window.  
16 Lawyers get mad, but we implemented in Greenville an  
17 8-page rule.

18 We are encouraging attorneys not to bring  
19 judges stacks of unrelated e-mails, pictures, text  
20 messages, what have you. When you go to the other  
21 circuits, it's common for lawyers to bring you stacks  
22 of information. And I'm sure I speak for the rest of  
23 my colleagues.

24 We want to read the pertinent affidavits,  
25 which means the affidavits from the litigants, the

1 affidavits from any therapists or any professional  
2 person that may lend some insight into the case, and  
3 also some e-mails if they're relevant.

4 But lawyers tend to bring -- operate under  
5 the theory that the more affidavits and e-mails and  
6 text messages I've got, the better my case is, and  
7 that's not necessarily the case.

8 So if you see me or any other judge, and you  
9 characterize that as flipping through, we are trying to  
10 find the affidavit -- the important affidavits that go  
11 to the crux or the meat of the case. And typically the  
12 other affidavits, when you start reading them, it's  
13 character affidavits where John Doe is saying that  
14 Sally Doe is a good mom; it's repetitive and it's all  
15 the same thing. So you flip through those. You want  
16 to read that plaintiff and that defendant and those  
17 other supporting affidavits.

18 Now, as to the point regarding making  
19 decisions, I do not make decisions -- some of my  
20 colleagues make decisions from the bench. I do make a  
21 a lot of decisions from the bench, but I am fine taking  
22 the matter under advisement so I can make a proper  
23 decision.

24 And I tell you what, if the matter involves  
25 something financial, where I've got to really look at

1 some numbers, I can't do that in 15 minutes at a  
2 temporary hearing; you've got to take those matters  
3 under advisement.

4           So I'm a little shocked at the allegation  
5 that I've said anything condescending to other  
6 attorneys; I would never do that. You know why?  
7 Because I was an attorney at one time. I know how it  
8 is, I've been in the yard; I was in the yard for 26  
9 years before I did this, before I became a judge.

10           I know how it is when you're on that side,  
11 and I know how important it is to want to get in the  
12 courtroom. And I'll tell you what I do. I make very  
13 certain that I start on time. You know why? Because I  
14 don't -- I remember how it was when I used to sit out  
15 there in the waiting room waiting for the judge to get  
16 started and I had to wait an hour and a half because  
17 the judge was behind; I don't do that.

18           I make sure that I look out for that private  
19 practitioner who's sitting out in the waiting room  
20 trying to get into court. So I start on time and I --  
21 and if lawyers ask for 30 minutes on a case, you've got  
22 to hold them to 30 minutes, particularly in bigger  
23 circuits where you don't have a lot of time.

24           You can't give lawyers an hour on a  
25 30-minute case, you just can't do it; and when you

1 don't do that, lawyers get upset with you, they get  
2 upset with the judge, they get upset with the court,  
3 and that's what occurs.

4 So that's -- and I think the other  
5 allegation regarding disorganized, let me just say this  
6 to you: I've sat on this bench for almost four years,  
7 and I've heard hundreds of cases and I've been to 13 or  
8 14 counties.

9 I've had one published appeal in almost four  
10 years. So we -- I will continue to try to make sure  
11 that everybody is treated fairly, I'll continue to do  
12 what I'm doing, but I think that it's important that  
13 the litigants feel like they're getting a fair shot.

14 So whoever those lawyers are, I don't know  
15 who they are, but I hope I continue to work with them  
16 and they'll understand what I was trying to do and  
17 still trying to do and will continue to do.

18 MS. WELLS: Thank you, Judge. Have you  
19 sought or received the pledge of any legislator prior  
20 to this date?

21 MR. KINLAW: I have not.

22 MS. WELLS: Have you sought or have you been  
23 offered a conditional pledge of support of any  
24 legislator pending the outcome of your screening?

25 MR. KINLAW: I have not.

1 MS. WELLS: Have you asked any third parties  
2 to contact members of the General Assembly on your  
3 behalf?

4 MR. KINLAW: I have not.

5 MS. WELLS: Are you aware of anyone  
6 attempting to intervene in any part of the process on  
7 your behalf?

8 MR. KINLAW: No, I am not.

9 MS. WELLS: Have you contacted any members  
10 of this Commission?

11 MR. KINLAW: I have not.

12 MS. WELLS: Do you understand that you are  
13 prohibited from seeking a pledge or commitment until 48  
14 hours after the formal release of the Commission's  
15 report?

16 MR. KINLAW: I do.

17 MS. WELLS: Have you reviewed the  
18 Commission's guidelines on pledging?

19 MR. KINLAW: I have.

20 MS. WELLS: As a follow-up, are you aware of  
21 the penalties for violating the pledging rules; that  
22 is, it is a misdemeanor and, upon conviction, the  
23 violator must be fined not more than \$1,000 or in  
24 prison not more than 90 days?

25 MR. KINLAW: I understand that, yes.

1 MS. WELLS: Thank you, Judge Kinlaw. I  
2 would note that the Upstate Citizens Committee reported  
3 that Judge Kinlaw was qualified for the criteria of  
4 constitutional qualifications, physical health, and  
5 mental stability.

6 They found him well-qualified as to ethical  
7 fitness, professional and academic ability, character,  
8 reputation, experience, and judicial temperament.

9 Also, I would note for the record that any  
10 concerns raised during the investigation regarding the  
11 candidate were incorporated into the questioning of  
12 Judge Kinlaw today.

13 Mr. Chairman, I have no further questions.

14 REPRESENTATIVE DELLENEY: Does anybody on  
15 the Commission have any questions for Judge Kinlaw?

16 There being none, thank you, Judge Kinlaw.  
17 We appreciate your willingness to keep serving and your  
18 willingness to run for the circuit court.

19 This concludes this portion of the screening  
20 process. As you know, this portion of the record will  
21 remain open until this report is published. At any  
22 time before we file the report, the Commission can call  
23 you back and ask for questions of you; although it's  
24 unlikely, it could happen.

25 And I'd like to remind you about the 48-hour

1 rule, that after the draft report becomes the report of  
2 the Commission, you cannot seek commitments for 48  
3 hours. I'm sure you're acquainted with that rule.

4 And, again, I'd like to thank you for  
5 offering and hope you have a safe trip back to  
6 Greenville.

7 MR. KINLAW: Thank you.

8 REPRESENTATIVE DELLENEY: Next we have the  
9 Honorable John Reaves McLeod.

10 Good afternoon -- or good evening. We have  
11 before us today the Honorable John Reaves McLeod, who  
12 has his father, Patin McLeod, here. We're glad to see  
13 you here.

14 He seeks a position on the Circuit Court  
15 At-Large, Seat Number 16. If you would at this time  
16 please raise your right hand to be sworn.

17 (John Reaves McLeod was duly sworn, after  
18 which testimony commenced at 6:06 p.m.)

19 REPRESENTATIVE DELLENEY: Thank you, sir.  
20 Have you had an opportunity to review your personal  
21 data questionnaire?

22 MR. McLEOD: Yes, sir.

23 REPRESENTATIVE DELLENEY: Is it correct?

24 MR. McLEOD: Yes, sir.

25 REPRESENTATIVE DELLENEY: So nothing needs

1 to be changed?

2 MR. McLEOD: No, sir.

3 REPRESENTATIVE DELLENEY: Do you object to  
4 making this summary part of the record of your sworn  
5 testimony?

6 MR. McLEOD: No, sir.

7 REPRESENTATIVE DELLENEY: It will be done so  
8 at this point in the transcript.

9 (EXH. 23, Personal Data Questionnaire of  
10 John Reaves McLeod, Amendment to the Personal Data  
11 Questionnaire of John Reaves McLeod, and Sworn  
12 Statement of John Reaves McLeod, marked for  
13 identification.)

14 REPRESENTATIVE DELLENEY: The Judicial Merit  
15 Selection Commission has thoroughly investigated your  
16 qualifications for the bench. Our inquiry is focused  
17 on the nine evaluative criteria.

18 It has included a survey of the bench and  
19 bar, a thorough study of your application materials,  
20 verification of your compliance with state ethics laws,  
21 a search of newspaper articles in which your name  
22 appears, a study of previous screenings, and a check  
23 for economic conflicts of interest.

24 We have no affidavits filed in opposition to  
25 your election, and there are no witnesses present here



1 to testify.

2 Do you have a brief opening statement you'd  
3 like to make?

4 MR. McLEOD: Yes, sir. I appreciate it.  
5 First of all, I'd like to thank the Commission and  
6 their staff, as well as the Bar Committee and the  
7 Citizens Committee for helping put all of this together  
8 and make sure that we continue to have a strong  
9 judiciary, so I do thank y'all for that.

10 I'll be happy to take any questions y'all  
11 have.

12 MS. SHULER: Good afternoon, Judge.

13 MR. McLEOD: Good afternoon.

14 MS. SHULER: You have before you the  
15 personal data questionnaire you submitted as part of  
16 your application and amendment.

17 Are there any amendments you would like to  
18 make at this time?

19 MR. McLEOD: Is that what was taken away  
20 from me?

21 MS. SHULER: That was the amendment to your  
22 PDQ, I believe.

23 MR. McLEOD: I had a letter I sent, is that  
24 what we're referring to?

25 MS. SHULER: I think that letter was an

1 amendment to your PDQ, and I think that was a letter.

2 MR. McLEOD: I don't have anything else at  
3 this time.

4 MS. SHULER: So we have offered your PDQ and  
5 your letter of amendment as an exhibit to Chairman  
6 Delleney, and you have no additional amendments to your  
7 sworn statement?

8 MR. McLEOD: No, ma'am.

9 MS. SHULER: I'd like to offer that,  
10 Mr. Chairman, as an exhibit.

11 REPRESENTATIVE DELLENEY: Without objection,  
12 it will be admitted at this point in the transcript.

13 MS. SHULER: Judge McLeod, would you state  
14 the city and circuit in which you reside.

15 MR. McLEOD: Walterboro, and it's the 14th  
16 Circuit.

17 MS. SHULER: Judge McLeod, after practicing  
18 law for ten years and serving as a part-time magistrate  
19 for Colleton County, why do you now want to serve as a  
20 circuit court?

21 MR. McLEOD: I feel that public service is  
22 in my blood, quite honestly, and I feel like this is  
23 the best way for me to do it. As my father, who's here  
24 now, and my grandfather before me as well as a number  
25 of others, they have faithfully served the law in some

1 capacity, and I feel like I'm imminently qualified to  
2 be a judge, and I do feel like it is one of the best  
3 ways I can do to help serve the public of South  
4 Carolina.

5 MS. SHULER: Thank you, Judge McLeod. Can  
6 you explain to the Commission how you feel your legal  
7 and professional experience thus far will assist you to  
8 be an effective judge?

9 MR. McLEOD: Absolutely. I believe I have a  
10 very well-rounded background in the ten years I've been  
11 practicing law. I've served as the City prosecutor for  
12 the Town of Walterboro. Prior to that, I was also a  
13 circuit court judge's clerk, Judge Gregory down in  
14 Beaufort, he's now retired.

15 While I was prosecutor, I was serving --  
16 well, my law firm, I was in private practice doing  
17 mostly civil law. In 2007, I believe it's 2007, I was  
18 appointed magistrate court judge in Colleton County,  
19 and at that point I was able to quit with the  
20 prosecutor work and start being a judge, quite  
21 honestly. And I've been a judge for five years.

22 You know, I've had a lot of trials, met a  
23 lot of people, done a lot of things that I think you do  
24 as a judge. We all know that magistrate level offenses  
25 aren't general session offenses, they don't rise to

1 that level; they rise to the level you set them at.

2 But as a magistrate, I have to do the  
3 evidence, I have to make rulings just as any other  
4 judge on the bench would. And I believe, especially  
5 with these last five years of being a part-time  
6 magistrate, that I've developed what I consider good  
7 experience to be a circuit court judge.

8 MS. SHULER: Judge McLeod, I know you just  
9 touched on this, but I would note that you have handled  
10 a limited number of criminal trials in general sessions  
11 court, in part due to your conflict of interest with  
12 your role as a magistrate.

13 How would you additionally prepare for  
14 handling matters in general session if elected to serve  
15 as a circuit court judge?

16 MR. McLEOD: And that's an accurate  
17 statement. As a judge in magistrate court, I can't  
18 handle criminal cases. I have had the pleasure of  
19 going out to the National Judicial College in Reno,  
20 Nevada and taking a two-week course out there.

21 I would fully expect to be able to utilize  
22 things such as that to help broaden my base of, as you  
23 say, of not having many trials as a lawyer in criminal  
24 court. Again, I've had -- I feel like I've had a lot  
25 in magistrate's court as a criminal court.

1           But I feel like to take advantage of things  
2 like that, also to take advantage of the judges that  
3 are there. You know, Judge Buckner, in our circuit,  
4 he's a really smart judge, and I think it would behoove  
5 me to bend their ears when it comes to things like  
6 that. So I believe those type avenues would certainly  
7 be helpful.

8           MS. SHULER: Judge McLeod, in your letter  
9 amendment dated October 19, 2012, you said that 90  
10 percent of your practice is civil litigation when  
11 you're not serving as a magistrate.

12           Of that amount, roughly 10 percent of those  
13 cases had a jury impaneled, with the most recent case  
14 being on October 10, 2012. So a lot of your cases  
15 don't actually result in jury trials, the civil matters  
16 that you handle; is that correct?

17           MR. McLEOD: That would be correct. We're  
18 in a mandatory mediation circuit, and Judge Buckner  
19 takes it very seriously, you have to mediate cases.  
20 And, quite honestly, the mediation has done what the  
21 chief justice has wanted it to do, and that's not for  
22 people to try cases, to lessen the burden on the  
23 court. So a lot of that is directly related to that.

24           A lot of that is also a venue that I  
25 practice a lot of law in, which is Allendale County.

1 As a defendant in Allendale County, you don't get good  
2 jurors, and that tends to make the client want to  
3 settle cases.

4 MS. SHULER: Is there anything you think you  
5 could do to additionally prepare to serve the circuit  
6 court in handling civil litigation?

7 MR. McLEOD: Again, kind of the same thing.  
8 I'd fall back on what the question was about criminal  
9 matters. You know, as a lawyer, my cases are my cases;  
10 as a judge, my cases are my cases. So I would still  
11 fall back on exactly what I told you the first time. I  
12 think there are avenues out there, continuing legal  
13 education out there, that is superb.

14 MS. SHULER: Judge McLeod, could you explain  
15 to the members of the Commission what you think is the  
16 appropriate demeanor for a judge?

17 MR. McLEOD: I think a cool, level-headed  
18 demeanor is very important for a judge. I try to pride  
19 myself in magistrate's court, and I really look up to  
20 judges who do the same thing. The most important thing  
21 to me is that the litigants, the attorneys, they all  
22 feel like they're getting a fair shake.

23 And I think the only way you can do that  
24 where people understand they're getting a fair shake is  
25 to be as level-headed and have as cool and calm a

1 demeanor as possible. You know, the nature of the  
2 beast is half of them aren't going to like you after  
3 the case is over as a judge, that's just what happens.

4 But as long as they feel like they've gotten  
5 a fair shake from you, they're generally okay with it;  
6 they understand the process.

7 MS. SHULER: Is there any circuit court  
8 judge currently on the bench that you would like to  
9 model yourself after or particularly exemplifies the  
10 characteristics that a circuit court judge should have?

11 MR. McLEOD: Judge Dennis, I really enjoy  
12 being with him. I also like very much Judge Few, who's  
13 now on the Circuit Court of Appeals. Also Judge --  
14 both Coopers, Tommy Coopers, I've really enjoyed being  
15 with.

16 We're fortunate to have Judge Buckner in our  
17 circuit, who's a strong-willed person, and I don't mean  
18 that in a negative way, and it's been beneficial to  
19 appear before him quite often.

20 MS. SHULER: Thank you. When you leave the  
21 bench, what would you like your legacy as the judge on  
22 circuit court to be?

23 MR. McLEOD: Well, I would hope it would be  
24 exactly what I said, what I hope my demeanor would be;  
25 that he's a fair, honest, straightforward judge that a

1 person believes, a litigant believes and really feels  
2 that they got the best out of the judge and they got a  
3 fair shot at what they're asking for.

4 And I tell litigants when they come into  
5 magistrate's court all the time, I say, Listen, this  
6 may not be a big case, but it's y'all's case, and it's  
7 the most important thing going on in the world right  
8 now. That I think is very important. And if I could  
9 be remembered as such I think that would be quite an  
10 honor.

11 MS. SHULER: What suggestions would you  
12 offer for improving the backlog of cases on the docket  
13 both for general sessions and common pleas in the  
14 circuit court?

15 MR. McLEOD: We had roll call in Walterboro  
16 today. And I don't know if the solicitors will be  
17 angry if I say this or not, I think not having them set  
18 their own dockets would help in criminal court.

19 And the other court, circuit court, I think  
20 the mediation, that is not mandatory throughout the  
21 state, but it is mandatory in a lot of the circuits, I  
22 think that has truly helped.

23 You certainly could always increase the  
24 jurisdictional amount in magistrate's court. But I  
25 think, as my material shows, magistrate's court has got



1 a pretty heavy load too, but that's certainly nothing  
2 that magistrate's court would shy away from at all.

3 MS. SHULER: Thank you. Do you currently  
4 carry malpractice insurance in your law practice and,  
5 if so, how long have you carried malpractice insurance?

6 MR. McLEOD: We do carry malpractice  
7 insurance, and it's for as long as I've been a lawyer.

8 MS. SHULER: Judge McLeod, the Commission  
9 received 128 ballot box surveys regarding you with nine  
10 written comments, three of which indicated concerns.

11 Those concerns can be summarized into two  
12 areas. The first indicated that you do not possess  
13 sufficient legal knowledge to serve as a judge.

14 What response would you offer to this  
15 concern?

16 MR. McLEOD: I would be totally opposite of  
17 that. I feel like that's inaccurate. Again, I've been  
18 a judge for five years. I feel like I've done what I  
19 told you I wish people would see about me.

20 MS. SHULER: The second concern indicated  
21 that you do not possess the proper judicial temperament  
22 for a judge, that you are rude to the elderly and poor,  
23 and lack experience representing the common person.

24 What response would you offer to this  
25 concern?

1           MR. McLEOD: Again, I just find that to be  
2 totally opposite out of how that's handled in my court,  
3 as well as the other judges in magistrate court. I  
4 don't really know how else to counter such a statement  
5 other than I just don't believe that to be accurate.

6           MS. SHULER: I would note for the record  
7 that some of the other written ballot box concerns say  
8 that you would be an asset to the State of South  
9 Carolina; an excellent selection for the judiciary;  
10 good person; good lawyer; had several cases with and  
11 against this candidate and he would make an excellent  
12 candidate and he would make a great judge; he is  
13 mild-mannered and would decide cases based on the law  
14 and the facts. So I would offer that.

15           I have some housekeeping issues to cover  
16 with you, Judge McLeod.

17           Have you sought or received the pledge of  
18 any legislator prior to this date?

19           MR. McLEOD: No, ma'am.

20           MS. SHULER: Have you sought or have you  
21 been offered a conditional pledge of support of any  
22 legislator pending the outcome of your screening?

23           MR. McLEOD: No, ma'am.

24           MS. SHULER: Have you asked any third  
25 parties to contact members of the General Assembly on

1 your behalf?

2 MR. McLEOD: No, ma'am.

3 MS. SHULER: Are you aware of anyone  
4 attempting to intervene in any part of the process on  
5 your behalf?

6 MR. McLEOD: No, ma'am.

7 MS. SHULER: Have you contacted any members  
8 of the Commission?

9 MR. McLEOD: No, ma'am.

10 MS. SHULER: Do you understand that you are  
11 prohibited from seeking a pledge or commitment until 48  
12 hours after the formal release of the Commission's  
13 report?

14 MR. McLEOD: If I may, when Senator Campsen  
15 was appointed, I had initially contacted him via the  
16 introductory letter, so I do want to clarify that, but  
17 that was prior to him being on the Commission.

18 MS. SHULER: So other than the letter of  
19 introduction to a member at the time that was not a  
20 member of the Commission, there's been no other  
21 contact?

22 MR. McLEOD: Yes, ma'am.

23 MS. SHULER: Do you understand that you are  
24 prohibited from seeking a pledge or commitment until 48  
25 hours after the formal release of the Commission's

1 report?

2 MR. McLEOD: Yes, ma'am.

3 MS. SHULER: As a follow-up, are you aware  
4 of the penalties for violating the pledging rules; that  
5 is, it is a misdemeanor and, upon conviction, the  
6 violator must be fined not more than \$1,000 or in  
7 prison not more than 90 days?

8 MR. McLEOD: I'm aware.

9 MS. SHULER: The Lowcountry Citizen  
10 Committee found Judge McLeod qualified in the  
11 evaluative criteria of constitutional qualifications,  
12 physical health, and mental stability.

13 They found Judge McLeod well-qualified in  
14 the evaluative criteria areas of ethical fitness,  
15 professional and academic ability, character,  
16 reputation, experience, and judicial temperament.

17 I would just note for the record that any  
18 concerns raised during this investigation regarding the  
19 candidate were incorporated into the questioning of the  
20 candidate today, and I have nothing further of this  
21 candidate.

22 REPRESENTATIVE DELLENEY: Thank you,  
23 Ms. Shuler.

24 Does any member of the Commission have any  
25 questions for Judge McLeod?

1           There being none, thank you, Judge McLeod,  
2     for appearing before us tonight. This concludes this  
3     portion of the screening process. As you know, this  
4     portion of the record will remain open until this  
5     report is published. At any time before we file the  
6     report, the Commission can call you back and ask for  
7     questions of you; although it's unlikely, it could  
8     happen.

9           And I'd like to remind you about the 48-hour  
10    rule, you've already acknowledged that you're familiar  
11    with that.

12           MR. McLEOD: Yes, sir.

13           MS. SHULER: Of course, expiration of that  
14    period will be printed on the front of the report, and  
15    you will know when that is. In any event, I thank you  
16    for offering, and I hope you and your father have a  
17    safe trip back to Waltherboro.

18           MR. McLEOD: Thank you, sir.

19           REPRESENTATIVE DELLENEY: Next is, looks  
20    like, William Vickery Meetze. Good evening,  
21    Mr. Meetze.

22           MR. MEETZE: Good evening.

23           REPRESENTATIVE DELLENEY: We have before us  
24    today Mr. William Vickery Meetze, who seeks a position  
25    on the Circuit Court At-Large, Seat Number 16.

1           If you would please raise your right hand to  
2 be sworn.

3           (William Vickery Meetze was duly sworn,  
4 after which testimony commenced at 6:23 p.m.)

5           REPRESENTATIVE DELLENEY: Do you have  
6 anybody you need to introduce us to?

7           MR. MEETZE: I would be proud to introduce  
8 my wife, Anna, who is here with me this evening.

9           REPRESENTATIVE DELLENEY: We're glad to have  
10 you here.

11           Have you had an opportunity to review your  
12 personal data questionnaire?

13           MR. MEETZE: I have.

14           REPRESENTATIVE DELLENEY: Is it correct?

15           MR. MEETZE: Yes, Your Honor.

16           REPRESENTATIVE DELLENEY: Does it need any  
17 changes?

18           MR. MEETZE: It does not.

19           REPRESENTATIVE DELLENEY: Do you object to  
20 our making this a part of the record to your sworn  
21 testimony?

22           MR. MEETZE: I have no objection.

23           REPRESENTATIVE DELLENEY: It will be done so  
24 at this point in the transcript.

25           (EXH. 24, Personal Data Questionnaire of

1 William Vickery Meetze, Sworn Statement of William  
2 Vickery Meetze, and Amendment to the Sworn Statement of  
3 William Vickery Meetze, marked for identification.)

4 REPRESENTATIVE DELLENEY: The Judicial Merit  
5 Selection Commission has thoroughly investigated your  
6 qualifications for the bench. Our inquiry is focused  
7 on the nine evaluative criteria.

8 It has included a survey of the bench and  
9 bar, a thorough study of your application materials,  
10 verification of your compliance with state ethics laws,  
11 a search of newspaper articles in which your name  
12 appears, a study of previous screenings, and a check  
13 for economic conflicts of interest.

14 We have no affidavits filed in opposition to  
15 your election, nor are there any witnesses to testify.

16 Do you have a brief opening statement you'd  
17 like to make?

18 MR. MEETZE: I would just like to say that I  
19 appreciate all of you being here, and I'm thankful for  
20 the opportunity to stand before you in seeking this  
21 position.

22 REPRESENTATIVE DELLENEY: Thank you, sir.

23 Answer any questions our able counsel may  
24 have for you.

25 MR. ODOM: Good evening, Mr. Meetze.

1 MR. MEETZE: Good evening.

2 MR. ODOM: Mr. Meetze, you have before you  
3 the sworn statement and amendment you provided with  
4 detailed answers to over 30 questions regarding  
5 judicial conduct, statutory qualification, office  
6 administration, and temperament.

7 Are there any additional amendments you  
8 would like to make at this time to your sworn  
9 statement?

10 MR. MEETZE: There are not.

11 MR. ODOM: At this time, Mr. Chairman, I  
12 would like to ask that Mr. Meetze's sworn statement and  
13 amendment be entered into the record.

14 REPRESENTATIVE DELLENEY: Without objection,  
15 it will be done at this point in the transcript.

16 MR. ODOM: One final procedural matter. I  
17 note for the record that based on the testimony  
18 contained in the candidate's PDQ, which had been  
19 included in the record with the candidate's consent,  
20 Mr. Meetze meets the statutory requirements for this  
21 position regarding age, residence, and years of  
22 practice.

23 Mr. Meetze, why would you now like to serve  
24 as a circuit court judge?

25 MR. MEETZE: You know, my grandfather used



1 to always tell me that judges are the protectors of the  
2 constitution, and I've always been -- in my  
3 professional career, I've been in public service of  
4 some kind or another, and a lot of that has been trying  
5 to look after individual's rights, primarily  
6 constitutional rights; as a prosecutor, looking out for  
7 rights of the victims, and as a criminal defense  
8 lawyer, looking out for rights of my clients.

9           But that's something that's always stuck  
10 with me. And I think having the opportunity to be a  
11 circuit court judge would certainly allow me to do  
12 that, it's something I feel very strongly about along  
13 with public service.

14           But judges are not only protectors of the  
15 constitution, but they're also protectors of the laws  
16 of this state and our country, the liberties of  
17 individuals that come before the court, and they ensure  
18 that court is run fairly and officially with the  
19 objective of seeking a just result.

20           And I can't think of any higher honor or  
21 admirable profession. And I think for all of those  
22 reasons is why I would like to be a circuit court  
23 judge.

24           MR. ODOM: Mr. Meetze, can you explain to  
25 the Commission how you feel your legal and professional

1 experience thus far will assist you to be an effective  
2 judge?

3 MR. MEETZE: I think my legal experience in  
4 my career to this point, I think from the very  
5 beginning, has limited itself towards being a circuit  
6 court judge. I started out from 1999 -- excuse me,  
7 from 1998 to '99 being a law clerk for Judge Brogdon.

8 During that time, Judge Brogdon was the  
9 chief administrative judge for a period in the Twelfth  
10 Circuit, as well as chief administrative judge in the  
11 Third Circuit. During that time, he was assigned to a  
12 couple of different complex litigation cases, one  
13 involving Rotor Carolina, one involving Santee Cooper.  
14 I was able to work on those cases with him.

15 He would ask questions, we would go over  
16 legal issues in regards to those kinds of things. He  
17 was, obviously, as chief administrative judge, was  
18 getting a lot of different default judgment motions  
19 that we would work on, and I got a lot of experience in  
20 that regard; minor settlements; motions practices;  
21 listening to summary judgment motions; appeals; and I  
22 got, I feel like, a very well-rounded background  
23 through that clerkship.

24 As I moved on from there and became a  
25 practicing attorney, I've always been a trial

1 attorney. For the last 13 years, I have been a trial  
2 attorney in circuit court; have tried many, many cases  
3 and handled many, many other cases of a wide, wide  
4 range, anything from misdemeanor charges all the way up  
5 to murder cases.

6 I not only experienced trying cases, which  
7 gives me a strong background in the rules of evidence,  
8 but I've studied Rules of Civil Procedure, I always try  
9 to keep up with advance sheets and things like that and  
10 try to be as up on the law as I can in my profession.

11 Being a prosecutor for a period of time as  
12 well as a defense attorney, you also deal with people,  
13 and I think that's something that's always very  
14 important, dealing with people, either victims of  
15 crimes or the defendants in criminal actions and their  
16 families.

17 You deal with folks of a wide variety of  
18 backgrounds, some very different from yours. Not  
19 everybody, unfortunately, that you deal with is  
20 necessarily pleased with how you've handled their  
21 matters, and in doing so, you really learn to deal with  
22 people, which I think is important.

23 But more importantly, you learn how to have  
24 patience, learn how to have proper temperament. And  
25 also throughout my career, I've always tried to take on

1 a leadership role in any office that I've been in,  
2 helping younger attorneys as I've gained experience,  
3 getting to work on the time.

4 And I think being a strong leader deems  
5 itself also, because one quality of leadership is that  
6 of decision-making, which I also think is an enviable  
7 characteristic for a circuit court judge.

8 MR. ODOM: Mr. Meetze, you stated in your  
9 application that you took the South Carolina bar exam  
10 twice. Are there any areas, including subjective  
11 areas, of law that you would need to additionally  
12 prepare for in order to serve as a circuit court judge,  
13 and how would you handle that additional preparation?

14 MR. MEETZE: I do not think I need any  
15 additional preparation to be able to serve effectively  
16 as a circuit court judge. Obviously, I have spent my  
17 entire career practicing in circuit court on the  
18 general sessions side.

19 So as a practicing attorney, I have not  
20 worked in civil court, in common pleas court, so to  
21 speak; however, as I said earlier, I did, I believe,  
22 get a wonderful background clerking for Judge Brogdon,  
23 who I really feel like is one of the quintessential  
24 judges.

25 I just really think he was outstanding and

1 really provided me with a good background with all of  
2 the cases that I got to work on with him, including the  
3 two complex litigation cases that I mentioned earlier.  
4 That's something that has always stuck with me.

5           Additionally, I've always done my own  
6 research, and I'm very adept at legal research.  
7 Reading cases, applying cases to facts, reading  
8 statutes, applying statutes to the sets of facts, and  
9 applying the law to facts I've always been very good  
10 at.

11           Also, not having practiced in civil court,  
12 so to speak, I wouldn't come into that area with any  
13 kind of preconceived biases or anything like that.  
14 Plus, I'm smart enough to know that I don't know  
15 everything, even in the areas that I have experience  
16 in.

17           And even judges that I've always been in  
18 front of, whenever they're confronted with any legal  
19 issue, regardless of their background and experience,  
20 they have always taken the time to look up the law and  
21 review everything before making a decision, and I think  
22 I do that very well, and, therefore, I think I've got  
23 all the experience that I would need to be an effective  
24 judge.

25           MR. ODOM: Now, Mr. Meetze, although you

1 address this in your sworn statement, could you please  
2 explain to the members of the Commission what you think  
3 is the appropriate demeanor of a judge?

4 MR. MEETZE: I believe the proper demeanor  
5 for a judge would be to be very humble, to be fair, and  
6 to show respect primarily. I think -- if you wanted to  
7 sum it up, I would say sort of follow the Golden Rule,  
8 treat others the way you would like to be treated.

9 I think the judge is sort of the centerpiece  
10 of the courtroom, they control the courtroom, and in  
11 doing so, I think it's important that the judge get  
12 respect from the other personnel in the courtroom, as  
13 well as the litigants, as well as anyone who has  
14 business in the court.

15 And I've always felt like the best way to  
16 get respect is to give respect. And I think that that  
17 is really the only way I can see going about doing the  
18 job properly, would be to be humble, to be fair, and to  
19 be respectful of everyone else.

20 MR. ODOM: Mr. Meetze, what suggestions  
21 would you offer for improving the backlog of cases on  
22 the docket both for general sessions and common pleas  
23 in the circuit court?

24 MR. MEETZE: I think, with regards to common  
25 pleas, I think maybe having more of a motions terms

1 or -- to try to speed up the process. And, also, being  
2 able to reach decisions on motions quicker I think  
3 would also speed the process up.

4           There's a number of times where judges may  
5 be assigned to a term of common pleas, and somewhere in  
6 that term, for whatever reason, they run through the  
7 cases on the roster by Tuesday afternoon, and then  
8 you've got the rest of that week with not a lot going  
9 on or anything going on.

10           If there was a way to be able to fill that  
11 time up with hearing motions and doing more pretrial  
12 stuff without a jury, I think that could help a backlog  
13 with regard to common pleas.

14           With regard to general sessions, I think  
15 that, as dockets grow larger on the general sessions  
16 side, I think it really takes attorneys on both sides,  
17 the prosecutors' office and the defense attorneys'  
18 office, rolling up their sleeves, getting organized,  
19 developing a plan to move cases, and just getting out  
20 there and doing it.

21           There's case management systems, and all  
22 those things help; when they're done properly they can  
23 help very much. But prosecutors have to know their  
24 cases, and the bigger the docket gets, the harder that  
25 is. And it just takes harder work and it takes more

1 organization and a good plan and for that plan to be  
2 executed.

3 MR. ODOM: Mr. Meetze, your responses to  
4 questions on the PDQ reflect that 99 percent of your  
5 practical experience over the past five years and all  
6 of your continuing legal education courses have been  
7 centered around criminal law.

8 Additionally, a comment on the ballot box  
9 survey expressed a concern that you lack civil trial  
10 experience.

11 What explanation can you offer the  
12 Commission and how would you compensate for that lack  
13 of experience if you were elected to circuit court?

14 MR. MEETZE: As I said, I don't believe that  
15 any lack of experience inhibits my ability to be an  
16 effective judge and do judicial service. I certainly  
17 read a lot of law, know how to apply law. I know how  
18 to read and apply statutes and interpret statutes.

19 Not having practiced in civil court, so to  
20 speak, again, I would not be coming into that area with  
21 any kind of bias or preconceived notions in regard to  
22 anything. I would certainly be as impartial as one  
23 could possibly be.

24 The strengths that I have are things that  
25 you don't learn. I think that the strength of



1 patience, temperament, decision-making are all the  
2 stronger and strongest characteristics that I have, and  
3 I think that those characteristics are what would make  
4 me effective more so than any perceived lack of  
5 experience as a trial attorney in common pleas court.

6 MR. ODOM: Mr. Meetze, your SLED report  
7 revealed that you were sued for legal malpractice in  
8 federal court by a prisoner for whom you had served as  
9 his public defender.

10 Now, I understand that the federal court  
11 dismissed this complaint without service of process,  
12 and never notified of any judgements.

13 What can you briefly tell the Commission  
14 about this matter?

15 MR. MEETZE: This was an individual that I  
16 represented on a burglary in the first-degree charge.  
17 He was arrested in December of 2009. The case  
18 eventually went to court, I believe it was in September  
19 of 2010. It was dealt with; not long after, I believe,  
20 he filed his action.

21 It was dismissed, I think, sometime around  
22 September the 10th or 20th. I didn't even know about  
23 it until I was alerted about it through this process.  
24 By the time all of that happened, Mr. Fagan had gone to  
25 court, we had gotten -- I had gotten the prosecutor to

1 reduce that charge to a burglary in the second-degree,  
2 and I pled him and he received a probationary sentence  
3 to where he would not have to do any active time unless  
4 he violated his probation.

5 So I think, by the time the matter was  
6 dismissed, we had dealt with his case, I think, fairly,  
7 and it was dealt with in a way that he was very pleased  
8 with the outcome.

9 MR. ODOM: Thank you, Mr. Meetze. I just  
10 have some housekeeping issues now.

11 Have you sought or received the pledge of  
12 any legislator prior to this date?

13 MR. MEETZE: I have not.

14 MR. ODOM: Have you sought or have you been  
15 offered a conditional pledge of support of any  
16 legislator pending the outcome of your screening?

17 MR. MEETZE: I have not.

18 MR. ODOM: Have you asked any third parties  
19 to contact members of the General Assembly on your  
20 behalf?

21 MR. MEETZE: I have not.

22 MR. ODOM: Are you aware of anyone  
23 attempting to intervene in any part of the process on  
24 your behalf?

25 MR. MEETZE: No, sir, I am not.

1 MR. ODOM: Have you contacted any members of  
2 the Commission?

3 MR. MEETZE: I have not.

4 MR. ODOM: Do you understand that you are  
5 prohibited from seeking a pledge or commitment until 48  
6 hours after the formal release of the Commission's  
7 report?

8 MR. MEETZE: I do understand that.

9 MR. ODOM: Have you reviewed the  
10 Commission's guidelines on pledging?

11 MR. MEETZE: I have.

12 MR. ODOM: And as a follow-up, are you aware  
13 of the penalties for violating the pledging rules; that  
14 is, it is a misdemeanor and, upon conviction, the  
15 violator must be fined not more than \$1,000 or in  
16 prison not more than 90 days?

17 MR. MEETZE: I am aware of that.

18 MR. ODOM: Thank you, Mr. Meetze.

19 Mr. Chairman, I would note that the Pee Dee  
20 citizens committee reported that Mr. Meetze is  
21 qualified in the evaluative criteria of constitutional  
22 qualifications, physical health and mental stability,  
23 ethical fitness, professional and academic ability,  
24 character, reputation, experience, and judicial  
25 temperament.

1           The committee noted that Mr. Meetze's  
2 courtroom experience is heavily weighted on the  
3 criminal side with almost no civil court experience.  
4 The committee clarified that in finding Mr. Meetze  
5 qualified rather than well-qualified in all areas, it  
6 was not expressing a concern about his abilities, but  
7 rather his current level of experience.

8           Finally, I would just note for the record  
9 that any concerns raised during this investigation  
10 regarding the candidate were incorporated into the  
11 questioning of the candidate today.

12           I have no further questions.

13           REPRESENTATIVE DELLENEY: Does anybody with  
14 the Commission have any questions for Mr. Meetze?

15           There being none, thank you, Mr. Meetze, for  
16 appearing before us tonight.

17           This concludes this portion of the screening  
18 process. As you know, the report will remain open  
19 until such time it is published in a draft report and  
20 then, after a 48-hour period, it turns into the report  
21 of the Commission.

22           Up until that time, we can recall you if we  
23 so desire to ask you questions on any issue; that's  
24 unlikely but it is a possibility. And you have  
25 acknowledged that you understand the 48-hour rule, that

1 you can't seek commitments until after that time has  
2 passed. And, of course, it will be on the front of the  
3 report, that time when you are allowed to seek  
4 commitments.

5 We thank you again for offering to serve,  
6 and thank you for your service to the State of South  
7 Carolina. I hope you and your wife have a safe trip  
8 back home.

9 MR. MEETZE: Thank y'all so much.

10 REPRESENTATIVE DELLENEY: Good evening,  
11 Ms. Newman,

12 MR. MEETZE: Good evening.

13 REPRESENTATIVE DELLENEY: Today we have  
14 before us Jocelyn Newman, who seeks a position with the  
15 judicial Circuit Court at-Large, Seat Number 16.

16 If you would at this time please raise your  
17 right hand to be sworn.

18 (Jocelyn Newman was duly sworn, after which  
19 testimony commenced at 6:41 p.m.)

20 REPRESENTATIVE DELLENEY: Thank you, ma'am.

21 Have you had an opportunity to review the  
22 personal data questionnaire?

23 MS. NEWMAN: Yes.

24 REPRESENTATIVE DELLENEY: And is it correct?

25 MS. NEWMAN: Yes.

1                   REPRESENTATIVE DELLENEY: Does it need any  
2 changes at all?

3                   MS. NEWMAN: It does not.

4                   REPRESENTATIVE DELLENEY: And do you object  
5 to our making that summary a part of the record of your  
6 sworn testimony?

7                   MS. NEWMAN: I do not.

8                   REPRESENTATIVE DELLENEY: It will be done at  
9 this point in the transcript.

10                   (EXH. 25, Personal Data Questionnaire of  
11 Jocelyn Newman and Sworn Statement of Jocelyn Newman,  
12 marked for identification.)

13                   REPRESENTATIVE DELLENEY: The Judicial Merit  
14 Selection Commission has thoroughly investigated your  
15 qualifications for the bench. Our inquiry is focused  
16 on the nine evaluative criteria.

17                   It has included a survey of the bench and  
18 bar, a thorough study of your application materials,  
19 verification of your compliance with state ethics laws,  
20 a search of newspaper articles in which your name  
21 appears, a study of previous screenings, and a check  
22 for economic conflicts of interest.

23                   We have no affidavits filed in opposition to  
24 your election, and there are no witnesses here to  
25 testify.

1 Do you have a brief opening statement you'd  
2 like to make?

3 MS. NEWMAN: I do not, due to the late hour.

4 REPRESENTATIVE DELLENEY: You get bonus  
5 points for that.

6 Please answer any questions that our able  
7 counsel has for you.

8 MS. NEWMAN: Good evening.

9 MS. SHULER: You have somebody special with  
10 you today. Would you like to introduce her?

11 MS. NEWMAN: My mother is here, Patricia  
12 Newman.

13 MS. SHULER: You also have before you your  
14 sworn statement. Do you have any amendments you'd like  
15 to make to your sworn statement at this time?

16 MS. NEWMAN: No, I don't.

17 MS. SHULER: I'd like to have that offered  
18 as an exhibit to the record.

19 REPRESENTATIVE DELLENEY: Without objection,  
20 it will be part of the transcript.

21 MS. SHULER: Ms. Newman, will you please  
22 state the city and circuit in which you reside.

23 MS. NEWMAN: I reside in Columbia in the  
24 Fifth Judicial Circuit.

25 MS. SHULER: Ms. Newman, since being

1 licensed as an attorney since 2004, why do you now want  
2 to serve as a circuit court judge?

3 MS. NEWMAN: It is something that I have  
4 always wanted to do. I have spent my career preparing  
5 for that. I've tried to diversify my experience to  
6 prepare for the bench. It will be an intellectual  
7 challenge for me, as I'm sure it would be for anyone,  
8 but I'm prepared, I think, at this point in my career  
9 to take on that challenge.

10 MS. SHULER: Can you explain to the  
11 Commission how you feel your legal and professional  
12 experience thus far will assist you in being a circuit  
13 court judge?

14 MS. NEWMAN: Absolutely. As I've said, I've  
15 tried to diversify my experience. I've done a number  
16 of trials, tried a number of cases on various different  
17 topics. I've practiced both civil and criminal law,  
18 both as a prosecutor and I've done some criminal  
19 defense work.

20 I also do work for both plaintiffs and  
21 defendants in my civil practice, as well as my judicial  
22 clerkship and judicial internship while in law school  
23 have prepared me for the bench.

24 MS. SHULER: Thank you. Are there any  
25 areas, including subjective areas, of law that you



1 would need to additionally prepare for in order to  
2 serve as judge, and how would you handle that  
3 additional preparation?

4 MS. NEWMAN: I'm certain that there are; I  
5 cannot list them. But I don't think that any one  
6 person could practice in every single area of the law.  
7 But that's the purpose of research, reading advance  
8 sheets, preparing in and advance of hearings, and  
9 things like that.

10 MS. SHULER: Would you share with the  
11 Commission what you believe to be the appropriate  
12 demeanor for a judge?

13 A Absolutely. A judge should always  
14 remain calm, cool and collected, for lack of a better  
15 expression; to be respectful of all parties, litigants,  
16 attorneys; to maintain control at the same time.

17 MS. SHULER: Is there any circuit court  
18 judge currently on the bench that you would like to  
19 model yourself after or that exemplifies these  
20 characteristics?

21 MS. NEWMAN: In all honesty, Judge Goodstein  
22 has been a role model to me. She is a very pleasant  
23 person, she always has a great spirit about her, but is  
24 very intelligent, knows the law, and takes control when  
25 necessary.

1 I guess an expected response may have also  
2 been my father, and absolutely he's been a role model  
3 for me my entire life.

4 MS. SHULER: If you're elected to serve,  
5 when you leave the bench, what would you like your  
6 legacy as the judge on circuit court to be?

7 MS. NEWMAN: I would like to be known as  
8 someone who was fair, someone who considered all -- I  
9 don't know, all arguments so that people felt they were  
10 heard; and even if they don't agree with my decision in  
11 the end, that at least they feel they've gotten a fair  
12 trial or a fair hearing.

13 MS. SHULER: What suggestions would you  
14 offer for improving the backlog of cases on the docket  
15 both for general sessions and common pleas in the  
16 circuit court?

17 MS. NEWMAN: As to general sessions, I know  
18 there's been some talk lately amongst the judiciary and  
19 some amongst the legislature about the court being in  
20 control of the docket as opposed to the solicitors; I  
21 think, if done properly, that would help to decrease  
22 the backlog of cases.

23 But also just holding people accountable  
24 both in civil court and criminal court. And when I say  
25 that, I mean that when a case is scheduled for trial,

1 that people should be prepared for trial. Certainly  
2 there are some exceptions in certain instances, but  
3 those should be the exceptions and not the rule. And I  
4 think doing that would help to decrease the backlog.

5 MS. SHULER: Do you currently carry  
6 malpractice insurance in your law practice and, if so,  
7 how long have you carried malpractice insurance?

8 MS. NEWMAN: I do. I have been at  
9 Richardson Plowden since August of 2007. The firm has  
10 malpractice insurance, and they've had it for a number  
11 of years, but I've been covered by that policy since  
12 that time.

13 MS. SHULER: Ms. Newman, the Commission  
14 received 174 ballot box surveys with 14 written  
15 comments, four of which indicate concerns that you do  
16 not have much experience as an attorney to be a judge.

17 What response would you offer to the  
18 Commission on that concern?

19 MS. NEWMAN: As I said, I've tried a number  
20 of cases. I'd like to think that I have packed a lot  
21 into a short period of time. You know, as to my age in  
22 particular, I don't think that that is dispositive of  
23 anything necessarily, it's what you do in the time and  
24 not necessarily the number of years that you've been  
25 practicing.

1 I do meet the statutory requirements for the  
2 position. But, also, there have been a number of  
3 judges that have been elected at my age with about my  
4 practice experience who still serve on the bench,  
5 Justice Hearn is an example. She's served in family  
6 court and the court of appeals and is the second woman  
7 on our Supreme Court, and so I think that my experience  
8 is sufficient.

9 MS. SHULER: Thank you. I would note that  
10 some positive ballot box responses indicate that she  
11 has excellent judicial temperament, is well liked,  
12 bright, and honest in all her dealings with her; is an  
13 excellent person; exudes those special qualities  
14 necessary to be a circuit court judge; and has been a  
15 phenomenal student of the law were some of the  
16 examples.

17 Mr. Chairman, at this time, I would like to  
18 request that we now go into executive session to handle  
19 a matter.

20 REPRESENTATIVE DELLENEY: Do I hear a motion  
21 to go into executive session?

22 SENATOR MARTIN: So moved.

23 PROFESSOR FREEMAN: Second.

24 REPRESENTATIVE DELLENEY: All in favor?  
25 Unanimous. We're in executive session.

1                   (The Judicial Merit Selection Commission  
2 went into executive session from 6:49 p.m. to  
3 6:51 p.m.)

4                   REPRESENTATIVE DELLENEY: The veil is  
5 lifted. We're back in public session.

6                   MS. SHULER: Ms. Newman, have you sought or  
7 received the pledge of any legislator prior to this  
8 date?

9                   MS. NEWMAN: I have not.

10                  MS. SHULER: Have you sought or have you  
11 been offered a conditional pledge of support of any  
12 legislator pending the outcome of your screening?

13                  MS. NEWMAN: I have not.

14                  MS. SHULER: Have you asked any third  
15 parties to contact members of the General Assembly on  
16 your behalf?

17                  MS. NEWMAN: I have not.

18                  MS. SHULER: Are you aware of anyone  
19 attempting to intervene in any part of the process on  
20 your behalf?

21                  MS. NEWMAN: No.

22                  MS. SHULER: Have you contacted any members  
23 of the Commission?

24                  MS. NEWMAN: I have not.

25                  MS. SHULER: Do you understand that you are

1 prohibited from seeking a pledge or commitment until 48  
2 hours after the formal release of the Commission's  
3 report?

4 MS. NEWMAN: Yes, ma'am.

5 MS. SHULER: Have you reviewed the  
6 Commission's guidelines on pledging?

7 MS. NEWMAN: I have.

8 MS. SHULER: Are you aware of the penalties  
9 for violating the pledging rules; that is, it is a  
10 misdemeanor and, upon conviction, the violator must be  
11 fined not more than \$1,000 or in prison not more than  
12 90 days?

13 MS. NEWMAN: Yes.

14 MS. SHULER: I would note that the Midlands  
15 Citizens Committee found Ms. Newman to be qualified in  
16 the evaluative criteria of constitutional  
17 qualifications, mental stability, and experience.

18 The committee found her well-qualified in  
19 the evaluative criteria of ethical fitness,  
20 professional and academic ability, character,  
21 reputation, and judicial temperament.

22 The committee stated in summary, Ms. Newman  
23 is an excellent candidate for the circuit court and we  
24 feel that she is an outstanding attorney. She has the  
25 intellect, maturity, integrity, and work ethic to be an

1 outstanding judge.

2 We feel that she is well-qualified, and we  
3 look forward to seeing her in this position.

4 I would just note for the record that any  
5 concerns raised during this investigation regarding the  
6 candidate were incorporated into the questioning of the  
7 candidate today.

8 I have no further questions, Mr. Chairman.

9 REPRESENTATIVE DELLENEY: Thank you,  
10 Ms. Shuler.

11 Does any member of the Commission have any  
12 questions for Ms. Newman?

13 There being none, the Commission thanks you  
14 very much for appearing before us and for your offer as  
15 a candidate for circuit court. This concludes this  
16 portion of the screening process. As you know, the  
17 report will remain open until such time it is published  
18 in a draft report and then, after a 48-hour period, it  
19 turns into the report of the Commission.

20 Up until that time, we can recall you if we  
21 so desire to ask you questions on any issue; that's  
22 unlikely but it is a possibility. And you have  
23 acknowledged that you understand the 48-hour rule, that  
24 you can't seek commitments until after that time has  
25 passed. And, of course, it will be on the front of the

1 report, that time when you are allowed to seek  
2 commitments.

3 We thank you again for offering to serve,  
4 and thank you for your service to the State of South  
5 Carolina. I hope you and your mother have a safe trip  
6 back home.

7 MS. NEWMAN: Thank you. Thank you all.

8 REPRESENTATIVE DELLENEY: Next we have  
9 Mr. Grady L. Patterson, III.

10 Good evening, Mr. Patterson. We have before  
11 us today Mr. Grady L. Patterson, III, who seeks a  
12 position with the Circuit Court at-Large, Seat Number  
13 16.

14 If you would, sir, raise your right hand to  
15 be sworn.

16 (Grady L. Patterson, III, was duly sworn,  
17 after which testimony commenced at 6:56 p.m.)

18 REPRESENTATIVE DELLENEY: Have you had an  
19 opportunity to review your personal data questionnaire?

20 MR. PATTERSON: I looked back over it, yes,  
21 sir.

22 REPRESENTATIVE DELLENEY: Is it correct?

23 MR. PATTERSON: Yes, sir.

24 REPRESENTATIVE DELLENEY: So it does not  
25 need to be changed?



1 MR. PATTERSON: No, sir.

2 REPRESENTATIVE DELLENEY: Do you object to  
3 our making this summary a part of your record of sworn  
4 testimony?

5 MR. PATTERSON: No, sir.

6 REPRESENTATIVE DELLENEY: It will be done so  
7 at this point in the transcript.

8 (EXH. 26, Personal Data Questionnaire of  
9 Grady L. Patterson, III, and Sworn Statement of Grady  
10 L. Patterson, III, marked for identification.)

11 REPRESENTATIVE DELLENEY: The Judicial Merit  
12 Selection Commission has thoroughly investigated your  
13 qualifications for the bench. Our inquiry is focused  
14 on the nine evaluative criteria.

15 It has included a survey of the bench and  
16 bar, a thorough study of your application materials,  
17 verification of your compliance with state ethics laws,  
18 a search of newspaper articles in which your name  
19 appears, a study of previous screenings, and a check  
20 for economic conflicts of interest.

21 There are no affidavits filed in opposition  
22 to your election, and there are no witnesses here to  
23 testify.

24 Do you have a brief opening statement you'd  
25 like to make?

1 MR. PATTERSON: Yes, sir. I'm pleased to be  
2 here, I thank you for the opportunity. I know that it  
3 took the -- as a candidate, it took a long time to put  
4 the information together, so I understand the work that  
5 you have before you and appreciate that.

6 REPRESENTATIVE DELLENEY: Thank you, sir.

7 If you would, sir, answer any questions that  
8 our able counsel, Mr. Dennis, has for you.

9 MR. PATTERSON: Yes, sir.

10 MR. DENNIS: Good evening, Mr. Patterson.  
11 You have before you the sworn statement you provided  
12 with detailed answers to over 30 questions regarding  
13 judicial conduct, statutory qualification, office  
14 administration, and temperament.

15 Are there any amendments you would like to  
16 make at this time to your sworn statement?

17 MR. PATTERSON: No.

18 MR. DENNIS: Mr. Chairman, I'd ask that  
19 Mr. Patterson's statement be made an exhibit to the  
20 record.

21 REPRESENTATIVE DELLENEY: Without objection,  
22 it will be done at this point in the transcript.

23 MR. DENNIS: Mr. Chairman, I note for the  
24 record that based on the testimony contained in the  
25 candidate's PDQ, which had been included in the record

1 with the candidate's consent, Mr. Patterson meets the  
2 statutory requirements for this position regarding age,  
3 residence, and years of practice.

4 Mr. Patterson, will you please state the  
5 city and circuit in which you reside.

6 MR. PATTERSON: I reside in Columbia, Fifth  
7 Judicial Circuit.

8 MR. DENNIS: Thank you. Mr. Patterson,  
9 would you explain to the Commission why you would like  
10 to serve as a circuit court judge?

11 MR. PATTERSON: Yes. I feel like that I've  
12 been trained, really, when I look back over my career,  
13 for just this opportunity. You know, when you take the  
14 time to look at your strengths and your weaknesses and  
15 you judge yourself, you find -- well, I've found that  
16 I believe I have seen strengths that would lend  
17 themselves to this position.

18 I feel like I'm a listener, I feel like I  
19 respect individuals; and in doing that, I've learned  
20 that focus gives me an opportunity to take in those  
21 facts that I've learned, and I think I have an ability  
22 to assimilate those facts and apply the law to them.

23 Weaknesses I don't believe would detract at  
24 all. I've got the experience of a broad practice, and  
25 I think that my involvement in complex matters dealing

1 primarily in litigation has prepared me for this  
2 position, and I look forward to the opportunity. Thank  
3 you.

4 MR. DENNIS: Mr. Patterson, do you feel that  
5 there are any areas, including subjective areas, of law  
6 that you would need to additionally prepare for in  
7 order to serve as judge, and how would you handle that  
8 additional preparation?

9 MR. PATTERSON: I don't feel like I need any  
10 additional preparation. I have not had a history of  
11 criminal practice, I've been involved in civil  
12 litigation, often complex civil litigation; however, in  
13 the past year, I have become associated or been  
14 associated by several former assistant prosecutors,  
15 particularly one from the Fifth Judicial Circuit who  
16 has associated me on a number of cases.

17 And I have had a great experience, starting  
18 from zero, meeting the client, dealing with the issues,  
19 motions, been to court with a former assistant. It's  
20 been a tremendous help, and I feel like I've learned a  
21 lot, and I feel like I'm ready to go.

22 MR. DENNIS: Mr. Patterson, would you please  
23 explain to the members of the Commission what you think  
24 is the appropriate demeanor of a judge?

25 MR. PATTERSON: Circuit court judge should

1 be courteous, dignified, and well-prepared; primarily  
2 courteous and respectful of those who come before him.

3 MR. DENNIS: Is there a circuit court judge  
4 currently serving that you'd like to model yourself  
5 after?

6 MR. PATTERSON: No longer serving, Judge Jim  
7 Johnson was a real role model. I was in the attorney  
8 general's office when he was there prior to taking the  
9 bench and learned a great deal from him there and while  
10 he was on the bench.

11 Currently serving, Judge Hayes. I admire  
12 his ability and particularly his demeanor.

13 MR. DENNIS: Mr. Patterson, if you could  
14 choose, what would you like your legacy as a judge to  
15 be?

16 MR. PATTERSON: I would like to be  
17 remembered as knowledgeable, well-prepared, respectful  
18 of people, and a student of the law.

19 MR. DENNIS: What suggestions would you have  
20 for easing the backlog in both common pleas and general  
21 sessions courts?

22 MR. PATTERSON: In common pleas, we have a  
23 system set up, a certain structure, and it has certain  
24 procedures you go through. And if we want to get more  
25 cases through that system, one way, of course, is to

1 divert those cases before they're tried, that would be  
2 the mediation and arbitration system that we've already  
3 implemented.

4           Some ways after they're into the court  
5 system would be to -- I think you would use the complex  
6 case designation probably more; that gives the judge an  
7 opportunity to stay with the case, and that way he can  
8 control the timing and scheduling of it.

9           Scheduling orders would be used, and I think  
10 I'd use the status conference procedure more often  
11 rather than right before trial. I think I would keep  
12 up with the cases more. So a lot of it comes down to  
13 the judge's involvement and making sure that the  
14 dockets move on.

15           On the criminal side, the solicitor controls  
16 the docket, but the judge can ask for a roster of cases  
17 or a list of cases for trial. And then, again, call a  
18 status conference procedure where we can move those  
19 cases along.

20           MR. DENNIS: Final question for you this  
21 evening, Mr. Patterson. As a practicing attorney, do  
22 you currently carry malpractice insurance and how long  
23 have you carried that insurance?

24           MR. PATTERSON: I do currently carry  
25 malpractice insurance. Let's see, I came out of the

1 attorney general's office in 1985 and carried it up  
2 until a couple of years ago, and then I had a little  
3 gap, and then currently have it.

4 MR. DENNIS: Thank you, sir.

5 Mr. Chairman, at this point, I'd like to  
6 note that Mr. Patterson received at least 114  
7 individual replies on the ballot box survey, 11  
8 individual comments were submitted concerning  
9 Mr. Patterson, and not a single one of them was  
10 negative; in fact, they were all positive.

11 I just have some housekeeping issues now.

12 Have you sought or received the pledge of  
13 any legislator prior to this date?

14 MR. PATTERSON: No.

15 MR. DENNIS: Have you sought or have you  
16 been offered a conditional pledge of support of any  
17 legislator pending the outcome of your screening?

18 MR. PATTERSON: No.

19 MR. DENNIS: Have you asked any third  
20 parties to contact members of the General Assembly on  
21 your behalf?

22 MR. PATTERSON: No.

23 MR. DENNIS: Are you aware of anyone  
24 attempting to intervene in any part of the process on  
25 your behalf?

1 MR. PATTERSON: No.

2 MR. DENNIS: Have you contacted any members  
3 of this Commission?

4 MR. PATTERSON: No.

5 MR. DENNIS: Do you understand that you are  
6 prohibited from seeking a pledge or commitment until 48  
7 hours after the formal release of the Commission's  
8 report?

9 MR. PATTERSON: Yes.

10 MR. DENNIS: Have you reviewed the  
11 Commission's guidelines on pledging?

12 MR. PATTERSON: Yes.

13 MR. DENNIS: More specifically, are you  
14 aware of the penalties for violating the pledging  
15 rules; that is, it is a misdemeanor and, upon  
16 conviction, the violator must be fined not more than  
17 \$1,000 or in prison not more than 90 days?

18 MR. PATTERSON: Yes.

19 MR. DENNIS: I would note that the Midlands  
20 Citizens Committee found Mr. Patterson well-qualified  
21 as to each of the evaluative criteria for which that  
22 designation is available and qualified for the  
23 remaining three, qualified being the highest available  
24 category, and concluded that he was most eminently  
25 qualified to serve on the circuit court.



1 I would just note for the record that any  
2 concerns raised during this investigation regarding the  
3 candidate were incorporated into the questioning of the  
4 candidate today.

5 REPRESENTATIVE DELLENEY: Thank you,  
6 Mr. Dennis.

7 Does any member of the Commission have any  
8 questions for Mr. Patterson?

9 PROFESSOR FREEMAN: I just wanted to say  
10 that for somebody who's been practicing over 30 years  
11 and is so well-known and has such a large response by  
12 lawyers and not one unkind thing said about him speaks  
13 volumes about what kind of contact you are, and I  
14 salute you for it,

15 MR. PATTERSON: Thank you, sir.

16 REPRESENTATIVE DELLENEY: Any other  
17 questions from the Commission?

18 There being none, Mr. Patterson, again, I'd  
19 like to thank you for your willingness to serve. This  
20 concludes this portion of the screening process. As  
21 you know, this portion of the record will remain open  
22 until this report is published. At any time before we  
23 file the report, the Commission can call you back and  
24 ask for questions of you, although it's unlikely, it  
25 could happen.

1           And I'd like to remind you about the 48-hour  
2 rule, that after the draft report becomes the report of  
3 the Commission, you cannot seek commitments for 48  
4 hours. I'm sure you're acquainted with that rule.

5           With that, I'd like to again thank you for  
6 offering and hope you have a safe trip back home.

7           MR. PATTERSON: Thank you, sir.

8           REPRESENTATIVE DELLENEY: Thank you.

9           MR. PATTERSON: Thanks to the Commission.

10          REPRESENTATIVE DELLENEY: Next we have  
11 Robert L. Reibold.

12          Mr. Reibold, good evening.

13          MR. REIBOLD: Thank you.

14          REPRESENTATIVE DELLENEY: We have before us  
15 today Mr. Robert L. Reibold, who seeks a position on  
16 the Circuit Court At-Large, Seat Number 16.

17          If you would please raise your right hand to  
18 be sworn.

19          (Robert L. Reibold was duly sworn, after  
20 which testimony commenced at 7:07 p.m.)

21          REPRESENTATIVE DELLENEY: And do you have  
22 someone with you that you need to introduce?

23          MR. REIBOLD: I sure do. I'm lucky enough  
24 to have my wife, Sheila, who's back here in the red.

25          REPRESENTATIVE DELLENEY: We're glad to have

1 you here tonight.

2 Have you had an opportunity to review your  
3 personal data questionnaire?

4 MR. REIBOLD: This certainly looks to be it.

5 REPRESENTATIVE DELLENEY: And is it correct?

6 MR. REIBOLD: It is correct.

7 REPRESENTATIVE DELLENEY: Does anything need  
8 to be changed?

9 MR. REIBOLD: I do have two small  
10 amendments. One is that, in my economic disclosure, I  
11 disclosed that my wife is an employee of the state, the  
12 Department of Health and Human Services, as an  
13 attorney; and, like all state employees, she did  
14 receive the 3 percent raise in the budget, so that's an  
15 amendment.

16 And the second one is that I spent \$34 in  
17 paper and postage on this campaign.

18 REPRESENTATIVE DELLENEY: With those  
19 amendments, do you have any objection to our making the  
20 summary with the amendments part of the record of your  
21 sworn testimony?

22 MR. REIBOLD: No, sir.

23 REPRESENTATIVE DELLENEY: It will be done at  
24 this point in the transcript.

25 (EXH. 27, Personal Data Questionnaire of

1 Robert L. Reibold, Amendment to the Personal Data  
2 Questionnaire of Robert L. Reibold, and Sworn Statement  
3 of Robert L. Reibold, marked for identification.)

4 REPRESENTATIVE DELLENEY: The Judicial Merit  
5 Selection Commission has thoroughly investigated your  
6 qualifications for the bench. Our inquiry is focused  
7 on the nine evaluative criteria.

8 It has included a survey of the bench and  
9 bar, a thorough study of your application materials,  
10 verification of your compliance with state ethics laws,  
11 a search of newspaper articles in which your name  
12 appears, a study of previous screenings, and a check  
13 for economic conflicts of interest.

14 We have received no affidavits filed in  
15 opposition to your election, and there are no witnesses  
16 here to testify.

17 Do you have a brief opening statement you'd  
18 like to make?

19 MR. REIBOLD: Very brief. I realize it's  
20 been a long day for everyone. There were 13 candidates  
21 in my race alone, so I appreciate your patience and  
22 attention; and, in return, I will try to be as honest  
23 as I can and to answer your questions as thoroughly and  
24 completely as I can.

25 REPRESENTATIVE DELLENEY: Thank you, sir.

1           Answer any questions our able counsel,  
2 Ms. Dean, may have for you.

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

4           Mr. Reibold, you have before you the  
5 personal data questionnaire you submitted as part of  
6 your application and amendment.

7           Are there any amendments you would like to  
8 make at this time?

9           MR. REIBOLD: No, ma'am.

10          MS. DEAN: At this time, Mr. Chairman, I  
11 would like to ask that Mr. Reibold's sworn statement be  
12 entered into the record at this point..

13          REPRESENTATIVE DELLENEY: Without objection,  
14 it will be done so at this point in the transcript.

15          MS. DEAN: One final procedural matter. I  
16 note for the record that based on the testimony  
17 contained in the candidate's PDQ, which had been  
18 included in the record with the candidate's consent,  
19 Mr. Reibold meets the statutory requirements for this  
20 position regarding age, residence, and years of  
21 practice.

22          Mr. Reibold, will you please state the city  
23 and circuit in which you reside.

24          MR. REIBOLD: I reside in Columbia, South  
25 Carolina in the Fifth Judicial Circuit.

1 MS. DEAN: Thank you. Mr. Reibold, why do  
2 you now want to serve as a circuit court judge?

3 MR. REIBOLD: Well, the short answer is, for  
4 me, this is about public service. I ran last fall for  
5 this position, and I'm here again because I'm committed  
6 to it.

7 The long answer is that, in my practice, my  
8 job is to convince a judge or to convince a jury that  
9 the decision they should reach is the one that benefits  
10 my client. What I would prefer to do is to make sure  
11 that the decision that's reached in every case is the  
12 right decision. I might be idealistic.

13 I believe in the rule of the law and I  
14 believe in fair play, and I want to be in the business  
15 of making sure that the rules are followed and that  
16 people are treated fairly. I've had a focus on public  
17 service for as long as I can remember, all the way back  
18 to Key Club in high school.

19 In this area, I've been on the board for  
20 Keeping the Midlands Beautiful; I'm on the board for  
21 the Salvation Army; I have served on the City of  
22 Columbia Tree and Appearance Commission; I've raised  
23 money for the American Cancer Society; so I've always  
24 been focused on it.

25 But when I look around, I find that I am

1 inspired by other people who have made a larger  
2 commitment. Everybody in this room has made a  
3 commitment to public service, whether it's running for  
4 public office, being a member of this Commission, or  
5 being on the legislative staff.

6           You're all here not because of the money and  
7 not because of fame, but you're here to see South  
8 Carolina be a better place. I have that goal too. And  
9 I want to set a good example for my daughter, and I  
10 want to make a difference.

11           MS. DEAN: Thank you, Mr. Reibold. Can you  
12 now explain to the Commission how you feel your legal  
13 and professional experience thus far will assist you to  
14 be an effective judge?

15           MR. REIBOLD: Yes. I think my experience so  
16 far will prepare me in two ways, and there are really  
17 two tracks here. One is the technical ability or the  
18 legal knowledge to perform the job, and the other is  
19 somewhat of developing personal characteristics and  
20 learned behaviors that will help you be a better  
21 judge.

22           And I think I've been fortunate enough to  
23 have both of those circumstances in my career. The  
24 first job I had was as a law clerk to The Honorable  
25 J. Ernest Kinard, Jr. I had a wonderful experience

1 there. And I can't imagine a job that would be a  
2 better window into what it takes to be a circuit court  
3 judge than to be the circuit court judge's law clerk.

4 During that job, I had experience with  
5 criminal trials, I helped the judge try criminal  
6 trials, I helped try civil trials, we worked on  
7 expungements, we had PCRs, we had motions hearings. So  
8 I got a wide variety and a good viewpoint there.

9 After that, my first job was with a small  
10 firm in Columbia, Swaggert & Walker, I was a senior  
11 partner there. Harry Swaggert drilled into my head the  
12 attention to detail that I think is necessary, so  
13 Mr. Swaggert was beneficial there.

14 I've been in practice for about 17 years,  
15 and in that time I've tried cases in magistrate court,  
16 in circuit court, and in federal court. I've handled  
17 civil appeals, I've done a PCR, I've handled motions  
18 hearings.

19 In fact, this most recent year has been a  
20 sort of remarkable year for me. I had the opportunity  
21 to go argue a patent appeal before the United States  
22 Court of Appeals for the Federal Circuit; and while  
23 it's not substantive, I was admitted to the United  
24 States Supreme Court Bar.

25 And my partner and I successfully defended a



1 \$25 million trial in Aiken. So I've had some high  
2 water marks this year, and I'm thankful for that.

3 On the personal quality side, I think there  
4 are some qualities that are important in a judge. I  
5 think a judge needs to have patience, integrity,  
6 professionalism, and consistency. I think these are  
7 four characteristics that I've been exposed to and my  
8 career has helped me develop.

9 For example, integrity. In your career as a  
10 lawyer, you're going to be asked by your clients to do  
11 things that you probably shouldn't do. They're going  
12 to want you to say things in court that aren't true.  
13 And you have to remember that when you take on a  
14 client, that client doesn't own you, you still have to  
15 be your own person, you still have to have integrity,  
16 and you're an officer of the court.

17 In those situations, you develop the ability  
18 to resist those temptations, or certainly hopefully you  
19 do, and I believe I have. Consistency is important. I  
20 think the practice of law, like genius, is probably 99  
21 percent perspiration and only 1 percent inspiration.

22 And so you have to develop the habits and  
23 consistently apply those habits that lead to success in  
24 the practice of law. On the judicial side, certainly  
25 consistency is important there too. People who come

1 before you, whether it's a litigant, whether it's a  
2 solicitor, they certainly want to know how things are  
3 run in your courtroom, what is the likely outcome, how  
4 you will rule, so they have some idea of what's  
5 coming.

6 And if they can make an informed decision,  
7 they can rationally assess the risk in their case, and  
8 they can be good representatives in court. So I think  
9 those are qualities that are important.

10 Patience is very important. I think I've  
11 always had some patience, and I certainly have more  
12 patience now that I have an 18-year-old daughter at  
13 home -- I'm sorry, 18-month-old daughter at home. So I  
14 think that has helped too. But I think patience is a  
15 virtue of a circuit court judge, one without par.

16 You have to be able to let the people who  
17 come before you know that they were treated fairly.  
18 You have to be able to listen to what they have to say,  
19 even if you don't think it has merit. And I think  
20 those are important qualities, and I think my career  
21 has prepared me for that.

22 MS. DEAN: Thank you. Mr. Reibold, are  
23 there any areas, including subjective areas, of law  
24 that you would need to additionally prepare for in  
25 order to serve as judge, and how would you handle that

1 additional preparation?

2 MR. REIBOLD: Well, I think the obvious  
3 answer to that is that I don't have that much  
4 experience in criminal law; my practice has definitely  
5 been primarily civil, but I do have some criminal  
6 experience.

7 As I said, I was a clerk to Judge Kinard,  
8 and during that term, I had criminal experience. We  
9 tried criminal cases, we handled PCRs, we did  
10 expungements, we did guilty pleas. So I do have some  
11 access and some window on the criminal side of the  
12 bench.

13 Additionally, I've handled PCRs since I've  
14 been out personally. And within the last year, since I  
15 last appeared before this Commission, I've taken and  
16 successfully defended a criminal case. I've also gone  
17 to the bar association and I've purchased the Criminal  
18 Law of South Carolina Fifth Edition, and I'm trying to  
19 work my way through that, and that's solely in an  
20 effort to become more familiar with the criminal law of  
21 this state.

22 I read the criminal cases and the advance  
23 sheets. And I think between that kind of reading on  
24 the upside and additionally going to CLEs for criminal  
25 law, those things, I think, would help me make up that

1 gap in the criminal area.

2 MS. DEAN: Mr. Reibold, although you address  
3 this in your sworn statement, could you please explain  
4 to the members of the Commission what you think is the  
5 appropriate demeanor of a judge?

6 MR. REIBOLD: Certainly. I think I've hit  
7 on it a little bit already. I think a circuit court  
8 judge is the face of the system. When the people think  
9 of justice, they think of the person in the black robe,  
10 and that's an important role of a judge. The judge  
11 needs to perpetuate that so people have faith in the  
12 system.

13 People need to know that when they walk into  
14 the courtroom they're going to be treated fairly,  
15 they're going to be heard, and they're going to be  
16 listened to. So the proper courtroom demeanor for the  
17 judge is to have patience, to let people talk; I think  
18 those are very important. I don't think anger has any  
19 place in a courtroom. So patient, calm, and courteous  
20 is the demeanor you should have.

21 MS. DEAN: Is there any circuit court judge  
22 currently on the bench that you would like to model  
23 yourself after or that particularly exemplifies the  
24 characteristics a circuit court judge should have?

25 MR. REIBOLD: Well, I think that there are

1 two judges that I look up to, and, again, I want to  
2 make a differentiation between sort of the technical  
3 aspects and legal knowledge of the job and the  
4 characteristics that are necessary to be a good judge.

5 I think, on the legal side, I certainly look  
6 up to Judge Kinard, who I clerked for. I think he has  
7 an uncanny ability to wade through all of the garbage,  
8 so to speak, and find the appropriate issue and the key  
9 issue very quickly. Unfortunately, unlike Judge  
10 Kinard, I'm not a speed reader, so I don't have that  
11 ability and I probably won't.

12 But on the other side, the side of courtroom  
13 demeanor, the judge I would look up to the most would  
14 be Matthew Perry. I can't think of any other example  
15 of someone who could have a more appropriate demeanor  
16 in the courtroom than the late Judge Perry. I don't  
17 know that I could live up to that example, but he  
18 certainly would be an example.

19 MS. DEAN: When you leave the bench, what  
20 would you like your legacy as the judge on circuit  
21 court to be?

22 MR. REIBOLD: Frankly, I'm not really  
23 concerned about my legacy. I'm not the lawyer you're  
24 going to see in a fancy suit on the 6 o'clock news  
25 talking about a legal issue. At 6 o'clock I'm going to

1 be in my office with my sleeves rolled up working  
2 hard. At the end of the day, I'll be happy if what  
3 they say about me is that I was a loving husband to my  
4 wife and a good father to my daughter.

5 MS. DEAN: What suggestions would you offer  
6 for improving the backlog of cases on the docket, both  
7 for general sessions and for common pleas in the  
8 circuit court?

9 MR. REIBOLD: Well, I do have some  
10 suggestions. And one idea I want to touch on, I  
11 mentioned last year to this Commission when I appeared  
12 before them that I had an idea about a discovery issue  
13 that I thought would save a considerable amount of time  
14 in the civil context.

15 And just briefly, by way of background, in  
16 my practice, in the civil practice, you serve  
17 discovery, which is just a list of questions to the  
18 other side to try to find out information about their  
19 case; but you need those answers.

20 You need to find out who the witnesses are,  
21 where they received medical records, how much damages  
22 they're claiming in order to investigate and prepare  
23 your case.

24 And what happened all too often for me and a  
25 lot of my practitioners is that you serve these

1 questions on the other side, they have 30 days to  
2 respond, and you wouldn't get any answer; time would  
3 pass and nothing would come in.

4 So then your option is to file a motion to  
5 compel, which gets put in the nonjury motions docket,  
6 and depending on what county you're in, it might take  
7 another two, three, four, sometimes six or seven months  
8 before that motion gets heard.

9 And invariably the circuit court judge would  
10 order compliance, but very often there's additional  
11 time. So out of the 12-month period that you have to  
12 prepare your case before you're subject to trial, you  
13 could have anywhere between three and eight months  
14 before you really have the information you need to  
15 begin preparing a case.

16 And I think that's sort of a built-in delay,  
17 and unfortunately it happens. But I know I'm not  
18 alone, it happens quite a bit. Since I was last in  
19 front of this Commission, I joined the South Carolina  
20 Bar's Practice and Procedure Committee, and I proposed  
21 a rule change.

22 And right now it's been, I'm happy to say,  
23 unanimously endorsed by the committee, and we will be  
24 submitting a rule change to the House of Delegates.  
25 And hopefully, knock on wood, the Supreme Court will

1 adopt it next spring.

2 Another thing I think we should look at is  
3 there are essentially three ways to move a case off the  
4 docket and to reduce the backlog; one is to try the  
5 case, one is to settle the case, and one is to have the  
6 circuit court judge rule on the case before trial,  
7 either by way of a motion to dismiss or a summary  
8 judgment.

9 And I don't think we have to make a value  
10 judgment about whether we want circuit court judges to  
11 dismiss cases or rule on summary judgment; but in the  
12 current system, the rules are in place but the  
13 standards have been so high that it's almost virtually  
14 impossible to get that to happen.

15 And so that third way of disposing cases  
16 doesn't really exist for all practical intents and  
17 purposes in South Carolina like it does in federal  
18 court or like it does in states like Georgia. So I  
19 think we should take a look at that.

20 Again, nobody has to make a value judgment,  
21 but we do have to strictly enforce those rules. But  
22 that is certainly one area we can look at to see  
23 whether or not cases can be moved and the backlog can  
24 be reduced.

25 I don't practice in criminal law, but in



1 preparation, I have talked to some people who do to try  
2 to get some ideas. I understand that the criminal  
3 docket is mostly controlled by the solicitor, and I'm  
4 optimistic that some of the new technologies that have  
5 been put into place will help improve that docket  
6 system and improve efficiency.

7           Beyond that, I think that there are some  
8 basic questions about resource allocation. There are  
9 probably not enough public defenders and there are  
10 probably not enough solicitors to move criminal cases  
11 at a sufficient rate.

12           MS. DEAN: Thank you, Mr. Reibold. Do you  
13 currently carry malpractice insurance in your law  
14 practice, and if so, how long have you carried it?

15           MR. REIBOLD: I've had malpractice insurance  
16 for as long as I've been in practice.

17           MS. DEAN: As part of this process, we  
18 received 82 ballot box survey responses; of these 82,  
19 we received 11 written comments; and of those 11  
20 written comments, we received three comments that  
21 expressed concern over whether you would have  
22 appropriate judicial temperament.

23           Can you please address any concerns about  
24 that?

25           MR. REIBOLD: Certainly. I'm frankly

1 surprised to hear that. I've always been the nice guy,  
2 so to speak, and I've actually had to learn to stand up  
3 for myself and to be assertive in litigation.

4 I think I have been blessed with patience,  
5 and I think that that helps me quite a bit. I  
6 certainly don't type out and send the angry e-mail;  
7 everywhere I go people tell me not to do that, and I  
8 don't do that.

9 So I really don't think I have any  
10 temperament problems. I want to reassure the  
11 Commission that I would be calm and deliberate and  
12 there wouldn't be any anger in the courtroom.

13 MS. DEAN: For the record, I will note that  
14 some of those other written comments did include  
15 statements that you were courteous, professional, and  
16 intelligent.

17 There was one other comment that expressed  
18 concern over your criminal experience. I believe you  
19 touched on that before, but would you like to address  
20 that again?

21 MR. REIBOLD: Just briefly, I'll paraphrase  
22 my other comments. Certainly that is the area where I  
23 have not had much experience, I don't quibble with that  
24 one bit. But I am making effort to try to address --  
25 as I said, I've handled a criminal case this year, I've

1 had a PCR, I've bought and I'm reading through the Bar  
2 Association's textbook on criminal law; and, if  
3 elected, I'll continue that sort of outside education  
4 to try to close the gap.

5 MS. DEAN: Thank you, Mr. Reibold. I just  
6 have some housekeeping issues now.

7 Have you sought or received the pledge of  
8 any legislator prior to this date?

9 MR. REIBOLD: I have not.

10 MS. DEAN: Have you sought or have you been  
11 offered a conditional pledge of support of any  
12 legislator pending the outcome of your screening?

13 MR. REIBOLD: I have not.

14 MS. DEAN: Have you asked any third parties  
15 to contact members of the General Assembly on your  
16 behalf?

17 MR. REIBOLD: I have not

18 MS. DEAN: Are you aware of anyone  
19 attempting to intervene in any part of the process on  
20 your behalf?

21 MR. REIBOLD: No, I'm not aware of that at  
22 all.

23 MS. DEAN: Have you contacted any members of  
24 the Commission?

25 MR. REIBOLD: No, I have not.

1 MS. DEAN: Do you understand that you are  
2 prohibited from seeking a pledge or commitment until 48  
3 hours after the formal release of the Commission's  
4 report?

5 MR. REIBOLD: Yes, I do understand that.  
6 You're very thorough about letting us know.

7 MS. DEAN: Have you reviewed the  
8 Commission's guidelines on pledging?

9 MR. REIBOLD: Yes.

10 MS. DEAN: As a follow-up, are you aware of  
11 the penalties for violating the pledging rules; that  
12 is, it is a misdemeanor and, upon conviction, the  
13 violator must be fined not more than \$1,000 or in  
14 prison not more than 90 days?

15 MR. REIBOLD: I'm aware of that.

16 MS. DEAN: I would note for the record that  
17 the Citizens Committee found Mr. Reibold to be  
18 well-qualified for all categories and included multiple  
19 positive comments, which they summarized stating, Once  
20 again, the committee was very impressed with  
21 Mr. Reibold.

22 He is determined and serious and has great  
23 experience in civil law. He shows outstanding common  
24 sense and judgment and has an outstanding work ethic.  
25 We are certain he is very well-qualified to serve on

1 the circuit court, and we believe he would serve in an  
2 exemplary manner.

3 I'll note that the Midlands Citizens  
4 Committee report found you qualified for constitutional  
5 qualifications, physical health, and mental stability;  
6 and that is, of course, the highest rank that you can  
7 get for that, and then, as I said, well-qualified in  
8 the remaining categories.

9 I would just note for the record that any  
10 concerns raised during this investigation regarding the  
11 candidate were incorporated into the questioning of the  
12 candidate today.

13 Mr. Chairman, I have no further questions.

14 REPRESENTATIVE DELLENEY: Does any member of  
15 the Commission have any question for Mr. Reibold?

16 There being none, Mr. Reibold, we thank you  
17 so much for appearing before us this evening. This  
18 concludes this portion of the screening process. As  
19 you know, the report will remain open until such time  
20 it is published in a draft report and then, after a  
21 48-hour period, it turns into the report of the  
22 Commission.

23 Up until that time, we can recall you if we  
24 so desire to ask you questions on any issue; that's  
25 unlikely but it is a possibility. And you have

1 acknowledged that you understand the 48-hour rule, that  
2 you can't seek commitments until after that time has  
3 passed. And, of course, it will be on the front of the  
4 report, that time when you are allowed to seek  
5 commitments.

6 We thank you again for offering to serve,  
7 and thank you for your service to the State of South  
8 Carolina. In any event, I'd like to thank you for  
9 offering to serve the State of South Carolina, and I  
10 hope you and your wife have a safe trip back home.

11 MR. REIBOLD: Thank you, Mr. Chairman.

12 REPRESENTATIVE DELLENEY: Good evening,  
13 Mr. Voigt. Is that how you pronounce it?

14 MR. VOIGT: That's it.

15 REPRESENTATIVE DELLENEY: Nobody can  
16 pronounce my name, that's why I'm trying to pronounce  
17 yours right.

18 This evening we have before us Gregory  
19 Kenneth Voigt, who seeks a position with the Circuit  
20 Court At-Large, Seat Number 16.

21 If you would please raise your right hand to  
22 be sworn.

23 (Gregory Kenneth Voigt was duly sworn, after  
24 which testimony commenced at 7:30 p.m.)

25 REPRESENTATIVE DELLENEY: Thank you, sir.

1 Have you had an opportunity to review the personal data  
2 questionnaire?

3 MR. VOIGT: I have.

4 REPRESENTATIVE DELLENEY: Is it correct?

5 MR. VOIGT: Yes, it is.

6 REPRESENTATIVE DELLENEY: So nothing needs  
7 to be changed?

8 MR. VOIGT: Nothing needs to be changed.

9 REPRESENTATIVE DELLENEY: Do you object to  
10 our making this summary a part of the record of your  
11 sworn testimony?

12 MR. VOIGT: No, I don't.

13 REPRESENTATIVE DELLENEY: It will be done at  
14 this point in the transcript.

15 MR. VOIGT: All right.

16 (EXH. 28, Personal Data Questionnaire of  
17 Gregory Kenneth Voigt and Sworn Statement of Gregory  
18 Kenneth Voigt, marked for identification.)

19 REPRESENTATIVE DELLENEY: The Judicial Merit  
20 Selection Commission has thoroughly investigated your  
21 qualifications for the bench. Our inquiry is focused  
22 on the nine evaluative criteria.

23 It has included a survey of the bench and  
24 bar, a thorough study of your application materials,  
25 verification of your compliance with state ethics laws,

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

4 We have not received any affidavits filed in  
5 opposition to your election, and there are no witnesses  
6 here to testify.

7 Do you have a brief opening statement you'd  
8 like to make?

9 MR. VOIGT: I'll keep it very brief. I  
10 thank y'all for listening to me. I started in law  
11 school 24 years ago not knowing where I was going to go  
12 and quickly realized I wanted to be in a courtroom.

13 All my experiences in civil and criminal  
14 have convinced me that I want to remain in a courtroom,  
15 and I believe they have given me the perspective  
16 required to be a circuit court judge.

17 REPRESENTATIVE DELLENEY: Thank you,  
18 Mr. Voigt.

19 If you would answer any questions our able  
20 counsel has for you now.

21 MR. GENTRY: Mr. Chairman and members of the  
22 Commission, I have a few procedural matters to take  
23 care of with regards to this candidate first.

24 Mr. Voigt, you have before you the sworn  
25 statement you provided with detailed answers to over 30



1 questions regarding judicial conduct, statutory  
2 qualification, office administration, and temperament.

3 Are there any amendments you would like to  
4 make at this time to your sworn statement?

5 MR. VOIGT: No amendments.

6 MR. GENTRY: At this time, Mr. Chairman, I'd  
7 like to ask that Mr. Voigt's sworn statement be entered  
8 as an exhibit into the hearing record.

9 REPRESENTATIVE DELLENEY: It will be made  
10 part of the sworn testimony at this point in the  
11 transcript.

12 MR. GENTRY: I note for the record that  
13 based on the testimony contained in the candidate's  
14 PDQ, which had been included in the record with the  
15 candidate's consent, Mr. Voigt meets the statutory  
16 requirements for this position regarding age,  
17 residence, and years of practice.

18 Mr. Voigt, why do you now want to serve as a  
19 circuit court judge?

20 MR. VOIGT: Well, I have always enjoyed law,  
21 courtrooms. I think, in a courtroom, that's the  
22 cutting edge, the edge of the sword of justice; be it  
23 in civil matters where people's rights are being  
24 litigated, in criminal matters where our court's  
25 constitutional rights are fought for.

1 I've been in those trenches for years and  
2 years. I've seen many, many different kinds of judges,  
3 different styles, temperaments, and I've always  
4 thought, Maybe I can do that, maybe I can do better.  
5 I've always thought that I could be the patient person  
6 calling the game as I saw it, calling the case, and  
7 making sure that the correct result, in civil or  
8 criminal matters, is -- at least the possibility is  
9 there if the jury decides.

10 MR. GENTRY: Can you explain to the  
11 Commission how you feel your legal and professional  
12 experience thus far will assist you to be an effective  
13 judge?

14 MR. VOIGT: I've been in front of -- if I  
15 tried to count, I've probably been in front of --  
16 arguing at podiums such as this or standing in  
17 courtrooms in various counties and parishes and  
18 whatnot, I've probably been in front of 150 judges at  
19 minimum.

20 Every case has its unique qualities,  
21 concerns, every procedure does. I started out in civil  
22 defense, I started out with Travelers Insurance  
23 Company. I have received an education on the concerns  
24 that the defense community has.

25 I became a criminal defense attorney, and

1 that was 12 years that I was swimming upstream often.  
2 And I have two stints as a state prosecutor, so I've  
3 seen how that works. I've been a plaintiff's  
4 attorney. I think I'm one of the few people, as I  
5 scanned down your list, that have actually had criminal  
6 defense and prosecution, civil defense, and plaintiffs'  
7 case loads that I actively pursued for years. It kind  
8 of wears the rough edges off you when you get to see  
9 that.

10 MR. GENTRY: Are there any areas, including  
11 subjective areas, of law that you would need to  
12 additionally prepare for in order to serve as judge,  
13 and how would you handle that additional preparation?

14 MR. VOIGT: One of the things I've always  
15 done when I'm preparing to look at a case, I frankly go  
16 to the statutes, I go to the cases. I have been out of  
17 the civil game for seven years now, and I understand  
18 that that is something that I need to address, I need  
19 to go back, be it CLEs, and really actively study the  
20 current case of the law -- you know, the state of the  
21 law as it has been.

22 And I've been doing that in the last year to  
23 remind myself of all those things I may have forgotten  
24 in the last seven years. And I would actively try to  
25 bring that part of my game up to where I think my

1 criminal understanding is.

2 MR. GENTRY: Could you please explain to the  
3 members of the Commission what you think is the  
4 appropriate demeanor of a judge?

5 MR. VOIGT: When I go into a courtroom, I  
6 would like to be heard, I don't want to be cut off. I  
7 I would like to have the issues that I raise  
8 considered, not just superficially but in a deep way,  
9 in a way that expresses an understanding of the  
10 underlying law beneath it.

11 I think that citizens, when they come in the  
12 courtrooms, are sometimes amazed when they see the  
13 worst that we do as lawyers, the arguing that we can  
14 have. That's not -- the best courtrooms I've ever been  
15 in have been civil, not just a little, but a fairly  
16 regular dose of humor, something to lighten the mood.

17 I understand there are certain cases where  
18 there are very serious matters at hand that need to be  
19 treated very seriously.

20 The judges I have enjoyed the most going in  
21 front of them were people who could relate to each  
22 side, relate to all parties in a way that was not  
23 coming down from on high, was not condescending in any  
24 way, but could actually speak to them in a language and  
25 make rules so that they understood both what each party

1 was saying so the parties could understand what the  
2 ruling was.

3 MR. GENTRY: Is there any circuit court  
4 judge currently on the bench that you would like to  
5 model yourself after or particularly exemplifies the  
6 characteristics that a circuit court judge should have?

7 MR. VOIGT: I get along really well with all  
8 my local judges, I see them quite a bit; I see them  
9 warts and all. I wish the judges traveled a little bit  
10 more like they used to.

11 A couple that came through back when they  
12 traveled a little bit more that I really, really  
13 enjoyed, Michael Nettles from the Florence area, I  
14 think he's from Lake City; Knox McMann, who's local  
15 here; just a pleasure being in both of their  
16 courtrooms, and I really enjoyed both the thoroughness  
17 that they brought to the proceedings, as well as they  
18 made it easy for us to practice law, and I appreciated  
19 that.

20 MR. GENTRY: When you leave the bench, what  
21 would you like your legacy as the judge on circuit  
22 court to be?

23 MR. VOIGT: Judges sometimes have stories  
24 told about them, but the ones I want told about me  
25 would be that no matter how hot it got, no matter how

1     tempers flared, no matter how serious or momentous the  
2     issues, I never lost sight of the fairness, the end of  
3     the line, and that I called it as I saw it and that I  
4     was fair to all. Put it on my tombstone.

5             MR. GENTRY: What suggestions would you  
6     offer for improving the backlog of cases on the docket  
7     both for general sessions and common pleas in the  
8     circuit court?

9             MR. VOIGT: I don't have much experience  
10    with common pleas. From what I see so often, those  
11    dockets -- from where I sit in general sessions, so  
12    often those judges have something to do by Tuesday or  
13    Wednesday of every term, I know that happened in  
14    Charleston this week.

15            Sometimes I worry that civil litigants are  
16    afraid to try cases, and I wish that they would try  
17    more. One I think I have noticed in my circuit, I hope  
18    it's statewide, it used to be sometimes we scheduled  
19    for court at 9 a.m., but 9 a.m. meant 10:15; we'd be  
20    sitting there and waiting. And I noticed, almost  
21    uniformly, that almost every judge I go in front of now  
22    that 9 o'clock means 9 o'clock. I've practiced in  
23    front of some judges where it's 8 o'clock.

24            But working a full day, working through  
25    cases, and requiring attorneys to confront their cases;

1 in criminal cases, meaning that you don't allow easy  
2 continuances, you need to address the fairness of the  
3 motion, but having a criminal client address his  
4 criminal situation will often resolve the case  
5 favorably for him; in civil cases, knowing that there  
6 will be a fair result, knowing that if discussions need  
7 to be had, and often so much in resolving civil cases  
8 it's having that last conversation, sometimes with the  
9 aide of the court, having that conversation and knowing  
10 that it will be a fair-result conversation, should be  
11 able to lessen the caseload county wide.

12 MR. GENTRY: In 2011 you were named as a  
13 defendant in a prisoner lawsuit. Please share the  
14 nature and status of this lawsuit.

15 MR. VOIGT: It was dismissed before I ever  
16 knew about it. It was some sort of prisoner lawsuit  
17 where the sheriff got sued and my boss, the solicitor,  
18 got sued. I found out about it searching my name on  
19 the Internet. It's some sort of federal suit from the  
20 prison commission.

21 MR. GENTRY: The Commission received 58  
22 ballot box survey responses regarding your candidacy  
23 with 11 additional comments. Of those surveys, four  
24 indicated concerns.

25 One of those comments indicated that you

1 could not make a ruling that would err to the benefit  
2 of the accused in a criminal case; another comment  
3 indicated a concern about your experience in civil  
4 litigation; and a third comment indicated concern about  
5 your demeanor and general attitude towards others.

6           What response would you offer towards these  
7 concerns?

8           MR. VOIGT: I guess I'll take the last one  
9 first. I think every lawyer who is an advocate  
10 sometimes will rub somebody the wrong way. Somewhere  
11 along the line, I must have said something to someone  
12 or said it in a way that they didn't appreciate,  
13 although I think I generally -- I don't think that's my  
14 general reputation.

15           I just know that sometimes in the heat of  
16 battle you do rub people the wrong way. I wouldn't  
17 hire an attorney to defend me in a civil or criminal  
18 matter who didn't have the ability to offend somebody.  
19 That's not really much of an apology.

20           As to whether or not I could make a ruling  
21 that would err to the benefit of the defendant, that's  
22 someone who doesn't know me very well. One of the  
23 things as a prosecutor, what you have to do to come to  
24 the right decision is you have to -- you're sometimes  
25 doing already what the role of the judge is.



1           You have an 18-year-old kid and you're  
2 trying to direct him off the path he's on. Sometimes  
3 you have options at your disposal, things you can do  
4 other than bringing the full weight of the state to  
5 bear on him that will change the trajectory of his  
6 life.

7           There are options such as PTI, pretrial  
8 intervention, conditional discharges. There are other  
9 things we can do. I was a criminal defense attorney  
10 for 12 years, and for 12 years, I was one of those  
11 defense attorneys who carried a copy of the  
12 constitution in his pocket.

13           I very firmly believe that the first ten  
14 amendments of the constitution are the best ones. And  
15 any time an attorney is pressing me on those core  
16 constitutional rights and fairness, I appreciate that.  
17 I had a conversation with an attorney today, he didn't  
18 want this 17-year-old kid to get a felony conviction,  
19 and he made the same arguments that I used to make.

20           You draw the line at the felons. You don't  
21 want even -- and as in my case, I had overwhelming  
22 evidence if I wanted to convict him. But it was how do  
23 we get the best for society and best for this 17-year-  
24 old young man.

25           Well, you know, during the course of that

1 ten-minute argument, he had worn me down in 30 seconds,  
2 because I already knew what the facts were and where I  
3 was going to draw the line in this decision-making  
4 process. I knew the power I had over this kid.

5 But I also knew that I didn't want to deal  
6 with a 17-year-old who was facing his first felony  
7 conviction for a nonserious felony as well. And as a  
8 result, he got a misdemeanor and he's going to be on  
9 probation. But were I, you know, tied to a specific  
10 set of results, I couldn't have made that decision.

11 I'll hammer the ones that need to be  
12 hammered, I have no problem doing that. I've convicted  
13 plenty of people in this state for murder and they  
14 received the sentences that they deserved. But the  
15 fact that I couldn't see it from the other side is from  
16 somebody who didn't know me.

17 What was the second concern? I've forgotten  
18 the second concern.

19 MR. GENTRY: The second concern was a  
20 concern about your experience in civil litigation,  
21 which I believe you previously addressed.

22 MR. VOIGT: And I started out in criminal  
23 defense when I was in private practice. I had civil  
24 clients. I represented roofers, I represented bail  
25 bonds men, I represented a whole bunch of not the

1 wealthiest clients in the world.

2           And then I gradually switched and did more  
3 plaintiffs' work, more personal injury. I can't claim  
4 to have done highly complicated civil litigation or  
5 commercial litigation, but I'm a quick study. I have  
6 successfully sued and tried many civil cases.

7           Unfortunately, I came here -- I'm kind of an  
8 accidental prosecutor. I had gotten away from  
9 prosecution, and circumstances beyond my control  
10 brought me to South Carolina, where I'm very happy to  
11 be. And all my civil practice and all my experience  
12 and those people who know me from them are in the  
13 environs of Louisiana and New Orleans. So they don't  
14 know me, but I did practice.

15           MR. GENTRY: Have you sought or received the  
16 pledge of any legislator prior to this date?

17           MR. VOIGT: No.

18           MR. GENTRY: Have you sought or have you  
19 been offered a conditional pledge of support of any  
20 legislator pending the outcome of your screening?

21           MR. VOIGT: No.

22           MR. GENTRY: Have you asked any third  
23 parties to contact members of the General Assembly on  
24 your behalf?

25           MR. VOIGT: No.

1 MR. GENTRY: Are you aware of anyone  
2 attempting to intervene in any part of the process on  
3 your behalf?

4 MR. VOIGT: No.

5 MR. GENTRY: Have you contacted any members  
6 of the Commission?

7 MR. VOIGT: No.

8 MR. GENTRY: Do you understand that you are  
9 prohibited from seeking a pledge or commitment until 48  
10 hours after the formal release of the Commission's  
11 report?

12 MR. VOIGT: Yes.

13 MR. GENTRY: Have you reviewed the  
14 Commission's guidelines on pledging?

15 MR. VOIGT: Yes, I have.

16 MR. GENTRY: As a follow-up, are you aware  
17 of the penalties for violating the pledging rules; that  
18 is, it is a misdemeanor and, upon conviction, the  
19 violator must be fined not more than \$1,000 or in  
20 prison not more than 90 days?

21 MR. VOIGT: Yes.

22 MR. GENTRY: I would note that the  
23 Lowcountry Citizens Committee found Mr. Voigt qualified  
24 in the evaluative criteria of constitutional  
25 qualifications, physical health, and mental stability.

1           The committee found Mr. Voigt well-qualified  
2     in the evaluative criteria of ethical fitness,  
3     professional and academic ability, character,  
4     reputation, and judicial temperament.

5           The committee found Mr. Voigt qualified with  
6     reservations in the evaluative criteria of experience  
7     and commented that it had a concern about his lack of  
8     experience in civil court.

9           I would just note for the record that any  
10    concerns raised during this investigation regarding the  
11    candidate were incorporated into the questioning of the  
12    candidate today.

13           Mr. Chairman, I have no further questions.

14           REPRESENTATIVE DELLENEY: Does anybody on  
15    the Commission have any questions for Mr. Voigt?

16           There being none, thank you, again,  
17    Mr. Voigt, for appearing before us this evening. This  
18    concludes this portion of the screening process. As  
19    you know, this portion of the record will remain open  
20    until this report is published. At any time before we  
21    file the report, the Commission can call you back and  
22    ask for questions of you, although it's unlikely, it  
23    could happen.

24           And I'd like to remind you about the 48-hour  
25    rule, that after the draft report becomes the report of

1 the Commission, you cannot seek commitments for 48  
2 hours. I'm sure you're acquainted with that rule.

3 And, again, I thank you for offering to  
4 serve, and I hope you have a safe trip back home.

5 MR. VOIGT: Thank you very much.

6 REPRESENTATIVE DELLENEY: That concludes our  
7 business, and we'll meet at 9:00 in the morning.

8 (The hearings were adjourned at 7:49 p.m.)

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CERTIFICATE OF REPORTER

I, Rita A. DeRouen, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing transcript was taken before me on the date and at the time and location stated on page 1 of this transcript; that all statements on the record at the time of proceeding were recorded stenographically by me and were thereafter transcribed; that the foregoing transcript as typed is a true, accurate, and complete record of the proceeding to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this day of 2012, at Columbia, Richland County, South Carolina.

\_\_\_\_\_  
Rita A. DeRouen  
Registered Professional Reporter  
Notary Public  
State of South Carolina at Large  
My Commission expires:  
August 12, 2019

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