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JUDICIAL MERIT SELECTION COMMISSION

PUBLIC HEARINGS

Tuesday, November 27, 2012

9:10 a.m.

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

REPORTED BY: LISA GARSON  
COURT REPORTER

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1 MEMBERS IN ATTENDANCE:

2 REPRESENTATIVE F.G. DELLENEY JR, CHAIRMAN

3 SENATOR LARRY A. MARTIN, VICE-CHAIRMAN

4 REPRESENTATIVE DAVID J. MACK, III

5 H. DONALD SELLERS, ESQUIRE

6 PROFESSOR JOHN P. FREEMAN

7 SENATOR FLOYD NICHOLSON

8 JOHN DAVIS HARRELL, ESQUIRE

9 SENATOR GEORGE "CHIP" E. CAMPSEN

10 REPRESENTATIVE ALAN D. CLEMMONS

11 AMY JOHNSON McLESTER

12 ERIN B. CRAWFORD, ESQUIRE

13 COUNSEL:

14 JANE SHULER, CHIEF COUNSEL

15 PATRICK G. DENNIS

16 ANDY FIFFICK

17 KATHERINE WELLS

18 PAULA BENSON

19 STEVE DAVIDSON

20 (INDEX AT REAR OF TRANSCRIPT)

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REPRESENTATIVE DELLENEY: Okay. We'll call the Judicial Selection Committee to order, and if you'll bring in the first candidate please.

Good morning, Judge Benjamin.

JUDGE BENJAMIN: Good morning.

REPRESENTATIVE DELLENEY: We have before us this morning the Honorable DeAndrea Gist Benjamin, who seeks a position for the Circuit Court, 5th Circuit, Seat Number 1.

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

(Judge DeAndrea Gist Benjamin was duly sworn, after which testimony commenced at 9:10 a.m.)

REPRESENTATIVE DELLENEY: Thank you, ma'am.

The Judicial Merit Selection Commission has thoroughly investigated your qualifications for service on the bench. Our inquiry has primarily focused on nine evaluative criteria, which include a survey of the bench and the bar, a thorough study of your application materials, verification of your compliance with state ethics laws, a search of any newspaper articles in which your name may have appeared, a study of previous screenings, and a check for economic conflicts of interest.

1 Do you have a brief opening statement that  
2 you'd like to make at this time?

3 JUDGE BENJAMIN: Yes, sir.

4 I would like to say thank you. I've been on  
5 the bench for about a year and a half now. I've enjoyed  
6 it, and I've currently been appointed by the Chief Admin  
7 Justice in Richland and Kershaw Counties, so most of my  
8 time has been in Richland and Kershaw. I have had to  
9 travel some, but it has been a wonderful opportunity.  
10 Thank you.

11 REPRESENTATIVE DELLENEY: Thank you, ma'am. If  
12 you would answer any questions that our able counsel may  
13 have for you.

14 MR. DENNIS: Thank you.

15 Judge Benjamin, you have before you the  
16 Personal Data Questionnaire you submitted as part of your  
17 application.

18 Are there any amendments that you would like to  
19 make at this time to your PDQ?

20 JUDGE BENJAMIN: No, sir.

21 MR. DENNIS: Mr. Chairman, I would like to ask  
22 at this time that Judge Benjamin's Personal Data  
23 Questionnaire be entered as an exhibit into the hearing  
24 record.

25 REPRESENTATIVE DELLENEY: It will be done at

1 this point in the transcript without objection.

2 (EXH. 1, Personal Data Questionnaire of Judge  
3 DeAndrea Gist Benjamin, marked for identification.)

4 MR. DENNIS: Judge Benjamin, you also have  
5 before you your sworn statement that you provided with  
6 detailed answers to over 30 questions regarding judicial  
7 conduct, statutory qualifications, office administration,  
8 and temperament.

9 Are there any amendments that you would like to  
10 make to this document?

11 JUDGE BENJAMIN: No, sir.

12 MR. DENNIS: Mr. Chairman, I would ask that  
13 Judge Benjamin's sworn statement be admitted as an  
14 exhibit into the hearing record.

15 REPRESENTATIVE DELLENEY: It will be entered  
16 into the record at this point without objection.

17 (EXH. 1A, Sworn Statement of Judge DeAndrea  
18 Gist Benjamin, marked for identification.)

19 MR. DENNIS: As a final procedural matter, I  
20 note for the record that based on the testimony contained  
21 in the candidate's PDQ, Judge DeAndrea Gist Benjamin  
22 meets the statutory requirements of this position  
23 regarding age residence and years of practice.

24 And since you are a Circuit Court candidate for  
25 the 5th Circuit, Judge Benjamin, would you please state

1 the city and the circuit in which you reside.

2 JUDGE BENJAMIN: Yes. I live in Columbia,  
3 South Carolina, 5th Circuit.

4 MR. DENNIS: Thank you.

5 Judge Benjamin, you are currently a part-time  
6 Municipal Judge for the City of Columbia. Could you  
7 please tell the Commission why you now want to serve as a  
8 Circuit Court Judge.

9 JUDGE BENJAMIN: As I stated earlier, I've  
10 enjoyed the experience for the last year and a half.  
11 I've had an opportunity to meet a lot of people,  
12 attorneys and litigants. It is my belief that I've had  
13 an impact on the persons that have appeared before me,  
14 and I would appreciate being able to serve for another  
15 six years.

16 MR. DENNIS: Thank you, ma'am.

17 Could you briefly outline one or two things  
18 that you've accomplished on the bench and maybe one or  
19 two you'd like to accomplish if elected to a second term.

20 JUDGE BENJAMIN: Well, I have our docket  
21 numbers down. I'm chief administrator for the criminal  
22 docket. The numbers are down in Richland, and we've been  
23 working hard on that since July with the solicitor's  
24 office and public defender's office and local attorneys.

25 The civil docket in Richland County is under a

1 year. Cases usually appear within a year's time on the  
2 civil docket. Things that I have to look forward to in  
3 the next six years, if I'm reelected, will be the  
4 takeover of the docket that was given to us last week.

5 I've already met with and talked with the clerk  
6 of courts and the solicitor regarding a plan to make our  
7 criminal system -- our criminal docket more efficient.

8 MR. DENNIS: Thank you, ma'am.

9 You addressed this in your sworn affidavit, but  
10 can you please explain what you feel the appropriate  
11 demeanor for a Circuit Court Judge is.

12 JUDGE BENJAMIN: Well, I teach my children --  
13 my mom taught me to treat others as you would have  
14 them -- treat people the way they would like to be  
15 treated. So I always remember that.

16 My demeanor is always -- I think my comments  
17 reflect my demeanor. My demeanor is always pleasant, and  
18 my temperament is always good.

19 MR. DENNIS: Thank you, ma'am.

20 I have a few housekeeping issues.

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

23 JUDGE BENJAMIN: No, sir.

24 MR. DENNIS: Have you sought or have you been  
25 offered a conditional pledge of support of any legislator

1 pending the outcome of your screening?

2 JUDGE BENJAMIN: No, sir.

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

6 JUDGE BENJAMIN: No, sir.

7 MR. DENNIS: Are you aware of anyone attempting  
8 to intervene in the process on your behalf?

9 JUDGE BENJAMIN: No, sir.

10 MR. DENNIS: Have you contacted any members of  
11 this Commission?

12 JUDGE BENJAMIN: No, sir.

13 MR. DENNIS: 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 JUDGE BENJAMIN: I am aware.

18 MR. DENNIS: Have you reviewed the Commission's  
19 guidelines on pledging?

20 JUDGE BENJAMIN: Yes.

21 MR. DENNIS: Are you aware of the penalties for  
22 violating the pledging rules; that is, it's a misdemeanor  
23 and, upon conviction, the violator must be fined not more  
24 than \$1,000 or imprisoned not more than 90 days?

25 JUDGE BENJAMIN: Yes.



1 MR. DENNIS: I would note that any concerns  
2 raised during the investigation regarding the candidate  
3 were incorporated into the questioning of Judge Benjamin  
4 today.

5 Mr. Chairman, I have no further questions.

6 REPRESENTATIVE DELLENEY: Thank you, ma'am.

7 Does any member of the Commission have any  
8 questions of Judge Benjamin today?

9 There being no questions, we thank you for your  
10 willingness to serve as a Circuit Court Judge.

11 This concludes this portion of your screening  
12 process; however, the record is open until the report is  
13 published and until it becomes a final report of the  
14 Commission; and 48 hours after that, you can seek  
15 pledges.

16 Prior to the time that it becomes a report of  
17 the Commission, we could reopen your public hearing and  
18 bring you back and ask you questions. That's very  
19 unlikely, but I want to remind you of the 48-hour rule.

20 Thank you for your service, and thank you for  
21 offering, and I hope you have a good rest of the day.

22 JUDGE BENJAMIN: Thank you for changing the  
23 schedule for me.

24 REPRESENTATIVE DELLENEY: Yes. And thank you  
25 for being here.

1 Staff counsel tells me that we need a brief  
2 executive session that we ordinarily would have taken  
3 before Judge Benjamin.

4 Do I hear a motion for executive session?

5 MR. SELLERS: Yes.

6 REPRESENTATIVE CLEMMONS: Second.

7 REPRESENTATIVE DELLENEY: All in favor say,  
8 "Aye".

9 (Multiple speakers respond, "Aye.")

10 REPRESENTATIVE DELLENEY: All right. We're now  
11 in executive session.

12 (The Committee went into executive session from  
13 9:17 a.m. to 9:50 a.m.)

14 REPRESENTATIVE DELLENEY: The veil is lifted.  
15 We are now in public session.

16 We are honored to have before us the Honorable  
17 Joseph Derham Cole, who is seeking reelection for Circuit  
18 Court, 7th Circuit, Seat Number 1.

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

21 (Judge Joseph Derham Cole was duly sworn, after  
22 which testimony commenced at 9:17 a.m.)

23 REPRESENTATIVE DELLENEY: Judge Cole, have you  
24 had an opportunity to review your Personal Data  
25 Questionnaire?

1 JUDGE COLE: I have.

2 REPRESENTATIVE DELLENEY: Is it correct?

3 JUDGE COLE: It is.

4 REPRESENTATIVE DELLENEY: Are there any changes  
5 that need to be made?

6 JUDGE COLE: No.

7 REPRESENTATIVE DELLENEY: Do you object to our  
8 making that summary part of the record of your sworn  
9 testimony?

10 JUDGE COLE: I do not.

11 REPRESENTATIVE DELLENEY: It will be made as  
12 part of the record of your sworn testimony.

13 (EXH. 2, Personal Data Questionnaire of Judge  
14 Joseph Derham Cole, marked for identification.)

15 REPRESENTATIVE DELLENEY: Thank you, sir.

16 The Judicial Merit Selection Commission has  
17 thoroughly investigated your qualifications for service  
18 on the bench. Our inquiry has primarily focused on nine  
19 evaluative criteria, which include a survey of the bench  
20 and the bar, a thorough study of your application  
21 materials, verification of your compliance with state  
22 ethics laws, a search of any newspaper articles in which  
23 your name may have appeared, a study of previous  
24 screenings, and a check for economic conflicts of  
25 interest.

1           There are no affidavits filed in opposition to  
2 your election. There are no witnesses here to testify.  
3 Do you have a brief opening statement that you would like  
4 to make?

5           JUDGE COLE: I don't have a statement, but I do  
6 want to thank the Committee for your service and for the  
7 time and effort you put into this process. I know it's  
8 time consuming.

9           REPRESENTATIVE DELLENEY: Thank you, sir. If  
10 you would answer any questions our counsel may have for  
11 you.

12           MS. WELLS: Thank you, Mr. Chairman.

13           Judge Cole, you also have before you your sworn  
14 statement that you provided with detailed answers to over  
15 30 questions regarding judicial conduct, statutory  
16 qualifications, office administration, and temperament.

17           Do you have any amendments that you would like  
18 to make to this document?

19           JUDGE COLE: No.

20           MS. WELLS: Mr. Chairman, at this time, I would  
21 ask that Judge Cole's sworn statement be entered as an  
22 exhibit into the hearing record.

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

25           (EXH. 2A, Sworn Statement of Judge Joseph

1 Derham Cole, marked for identification.)

2 MS. WELLS: Judge Cole, you have served as a  
3 circuit court judge since 1992; that is, 20-years on the  
4 bench. Please explain to the Commission why you want to  
5 continue serving as a circuit court judge.

6 JUDGE COLE: Well, I tell people all the time,  
7 if you want to be a judge, a circuit judge is the best  
8 job around. I find it to be interesting, challenging; I  
9 find it to be rewarding. I feel like because I've been  
10 there 20 years, and I've gained a lot of experience and  
11 knowledge over that time, I can make a significant  
12 contribution to continuing to administer justice and  
13 implement a system that's fair and just to all.

14 MS. WELLS: Thank you.

15 Since you want to continue to serve, would you  
16 explain one or two brief accomplishments that you feel  
17 you have completed during your tenure, and do you have a  
18 goal that you would like to accomplish if you are  
19 reelected?

20 JUDGE COLE: Well, of course, a judge always  
21 has a goal to ensure there's fairness in the courtroom so  
22 people feel good about the outcome once they've been in  
23 the court and they feel they've been treated fairly and  
24 reasonably and that the outcome is appropriate.

25 One of the accomplishments that I feel like

1 I've had is that in 2008, or prior to 2008, in  
2 Spartanburg, the solicitor controls and manages the  
3 criminal court docket. In 2008, the solicitor, who is  
4 not the solicitor now, but the solicitor then agreed with  
5 the chief justice to implement a new docket management  
6 program, and it was a pilot program in Spartanburg  
7 County. Cherokee is also in Spartanburg, but it was not  
8 going to be part of that project.

9 Up to that time, we averaged about 12,000 on  
10 the criminal docket. In 2008, I think there were 11,600.  
11 At that time the age of the cases -- ideally the chief  
12 wanted 80 percent of the docket to be less than 180 days,  
13 and at that time we had 32 percent of our docket at less  
14 than 180 days. When I took over as chief administrative  
15 judge in 2011, we had 11,600 cases on the docket.  
16 Twenty-nine percent were less than 180 days -- or only 29  
17 percent were less than 180 days old.

18 Since that time, and as of now, we have less  
19 than 7,300 cases on the docket. And we are now at 47  
20 percent of those cases less than 180 days old, so I think  
21 we made a drastic improvement. I'm not taking credit for  
22 all the work that was done, but I'm fairly satisfied that  
23 had I not been running that docket with a stern voice and  
24 firm hand that we wouldn't have had a lot of cooperation  
25 that we had.

1           So I think that I played a significant role in  
2 us having a successful docket management program  
3 implemented, and I understand that this is going to be  
4 going perhaps statewide as of January.

5           MS. WELLS: You addressed this in your sworn  
6 affidavit -- Judge Cole, would you please explain to the  
7 members of the Commission what you think is the  
8 appropriate demeanor of a circuit court judge.

9           JUDGE COLE: Certainly. I think a judge needs  
10 to be patient, I think a judge needs to be dignified, I  
11 think a judge needs to be attentive, I think a judge  
12 needs to be openminded, I think a judge needs to be  
13 respectful, and I think a judge needs to carefully  
14 consider matters brought before the judge, to be willing  
15 and able to listen to both sides of an argument or a  
16 business dispute, to fairly decide that dispute, and to  
17 consider all the arguments and everything presented to  
18 common sensibly and reasonably apply the law that's  
19 applicable in the case, and to render a decision that's  
20 fair and not based upon any personal bias of the judge  
21 and not based upon the identity of the litigants and  
22 lawyers.

23           MS. WELLS: Thank you.

24           Judge Cole, the Commission received 576 ballot  
25 box surveys. As we discussed, 29 of those marked you as

1 unqualified as to judicial temperament. That does mean  
2 that over 500 people found you well-qualified or  
3 qualified, but 29 is a substantial number to find you're  
4 not qualified because of your judicial temperament.

5 How do you respond to those questioning your  
6 judicial temperament?

7 JUDGE COLE: Well, I don't know what the  
8 circumstances were or what their experience was in court  
9 with me, obviously, but I think most people will tell you  
10 that I have a tendency to run a tight ship. I don't  
11 tolerate people showing up late for court. I don't  
12 tolerate people who are not prepared when they come to a  
13 hearing to present a case. I don't like game playing; I  
14 don't tolerate that very well. I expect there to be  
15 honesty and openness. And if you have a problem, tell me  
16 you have a problem.

17 When you come to court, I expect you to be  
18 respectful and to follow the rules. If you don't,  
19 sometimes I express my displeasure. And I'm not going to  
20 say that I've never become irritated in court because I'm  
21 certain that I have, but if someone says I'm habitually  
22 ill-tempered, that's not so. I might say also that my  
23 management of that criminal docket system might have a  
24 lot to do with those who say I lack proper judicial  
25 temperament because you can't operate that docket if you



1 let the lawyers run the docket.

2 I'm not going to be the chief administrative  
3 judge in January, so I expect those numbers will come  
4 down, and the judge that takes over, his will probably go  
5 up.

6 MS. WELLS: There are also 69 additional  
7 comments submitted in the survey where people made  
8 specific comments about you as a judge. Many of these  
9 remarks were highly complimentary as to your ability as a  
10 circuit court judge, including your academic ability, but  
11 about 22 of these indicated concerns.

12 Some of those were with your judicial  
13 temperament, and some of those were about taking overly  
14 long to rule, with some decisions not being issued until  
15 one or two years after the hearing, and that you were  
16 grossly behind in your work.

17 How would you respond to those concerns on  
18 delay of ruling, and would you do anything differently to  
19 address these concerns?

20 JUDGE COLE: Well, let me say that my general  
21 philosophy is to maximize the use of court time. I spend  
22 a lot of time in court, and I think if you don't spend a  
23 lot of time in court, then cases don't get moved. In a  
24 civil court, you might try two cases. The same might go  
25 for criminal court, too, except in criminal court most

1 cases are disposed of by way of guilty pleas.

2           The problem being is that if a judge is not in  
3 the courtroom to ensure and the jury is not present to  
4 ensure that a case can be called to trial, if it is and  
5 it's not disposed of by way of a guilty plea, then it  
6 just gets put off. Many people don't make that decision  
7 until you make them come into a courtroom and do  
8 something with the case.

9           So I try to maximize the use of court time, and  
10 I try to be in court so that doesn't occur and so someone  
11 doesn't say, Well, the judge is not there, so we'll put  
12 off our decision in the case or agree to a guilty plea  
13 some other time.

14           As a result of that, perhaps I have not set  
15 aside enough time for me to be outside of court in order  
16 to address matters that I had taken under advisement. I  
17 expect the criticism can only come from nonjury weeks,  
18 and we have a lot of nonjury weeks in court in  
19 Spartanburg.

20           Most of the cases that I handle are disposed of  
21 during that week, perhaps that day that the hearing is  
22 held. I do take matters under advisement when lawyers  
23 submit briefs, which, more often than not, they don't  
24 submit them until the day of the hearing. Most judges  
25 don't allow that, but I do allow that, and I give the

1 other side an opportunity to respond if they need to.

2           So perhaps I have failed in not setting aside  
3 enough time from court to reasonably address those  
4 matters that I've taken under advisement, but I certainly  
5 recognize the importance of timely ruling in cases, and I  
6 make every effort to do that. Have I failed in some  
7 respects? Perhaps I have.

8           I don't know who's complaining or what the  
9 delay they're complaining about is, but certainly a year  
10 would be a long time to have a case pending. That may be  
11 something that got lost in the cracks or fell through the  
12 cracks. I'm not sure about that, but I want the  
13 Commission to know that I certainly recognize the  
14 importance of timely ruling in cases that I take under  
15 advisement, and I try to do that.

16           What will I do in the future? I'll have to set  
17 aside time from court to accomplish that or whatever time  
18 is necessary. But as I say, I guess I have not done that  
19 to the extent I should have simply because I think if a  
20 judge is in a courtroom, it makes getting cases disposed  
21 of more efficient than when a judge is not in a  
22 courtroom.

23           MS. WELLS: I have just a few housekeeping  
24 issues. Have you sought or received the pledge of any  
25 legislator prior to this date?

1 JUDGE COLE: I have not.

2 MS. WELLS: Have you sought or have you been  
3 offered a conditional pledge of support of any legislator  
4 pending the outcome of your screening?

5 JUDGE COLE: I have not.

6 MS. WELLS: Have you asked any third parties to  
7 contact members of the General Assembly on your behalf?

8 JUDGE COLE: I have not.

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

11 JUDGE COLE: I am not.

12 MS. WELLS: Have you contacted any members of  
13 this Commission?

14 JUDGE COLE: I have not.

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

19 JUDGE COLE: I do.

20 MS. WELLS: Have you reviewed the Commission's  
21 guidelines on pledging?

22 JUDGE COLE: Yes. I have.

23 MS. WELLS: As a follow-up, are you aware that  
24 the penalties for violating the pledging rules are  
25 misdemeanor, and upon conviction, the violator must be

1 fined not more than \$1,000 or imprisoned not more than 90  
2 days?

3 JUDGE COLE: Yes.

4 MS. WELLS: I would note that the Upstate  
5 Citizens Committee found Judge Cole qualified in the  
6 evaluative criteria of constitutional qualifications,  
7 physical health, and mental stability.

8 The Committee found Judge Cole well-qualified  
9 in the evaluative criteria of ethical fitness,  
10 professional and academic ability, character, reputation,  
11 experience, and judicial temperament.

12 I just note for the record that any concerns  
13 raised during the investigation regarding the candidate  
14 were incorporated into the questioning today.

15 Mr. Chairman, I have no further questions.

16 REPRESENTATIVE DELLENEY: Do any members of the  
17 Commission have questions for Judge Cole?

18 There being none, I thank you, Judge Cole, for  
19 your service and willingness to continue to serve, and  
20 this concludes this portion of the screening process.

21 As you know, the record remains open until the  
22 report is published and until it becomes a final report  
23 of the Commission. After 48 hours you can seek pledges,  
24 but prior to the time that it becomes a report of the  
25 Commission, we could reopen your public hearing and bring

1 you back and ask you questions. That's very unlikely,  
2 but I want to remind you. You are well aware of the  
3 48-hour rule, and on top of that, you have no opposition.

4 I'd like to thank you for offering and thank  
5 you for your service, and have a safe trip back to  
6 Spartanburg.

7 JUDGE COLE: Thank you. Nice to see you all.

8 REPRESENTATIVE DELLENEY: We have before us  
9 this morning Mr. Thomas R. Goldstein, who seeks a  
10 position with the Circuit Court, 9th Circuit, Seat Number  
11 1.

12 And I believe Professor Freeman has recused  
13 himself from this race. He had a conflict of some sort,  
14 and he has recused himself, so he will not be part of the  
15 deliberations or considerations in your race.

16 If you would, sir, please raise your right hand  
17 to be sworn.

18 (Thomas R. Goldstein was duly sworn, after  
19 which testimony commenced at 10:15 a.m.)

20 REPRESENTATIVE DELLENEY: Thank you, sir.

21 Have you had an opportunity to review your  
22 Personal Data Questionnaire?

23 MR. GOLDSTEIN: Yes, sir. I have.

24 REPRESENTATIVE DELLENEY: Is it correct?

25 MR. GOLDSTEIN: Yes, sir. It is.

1           REPRESENTATIVE DELLENEY: So I assume nothing  
2 needs to be changed.

3           MR. GOLDSTEIN: I did send Ms. Shuler a brief,  
4 and I'm assuming maybe it's attached, but I did send a  
5 very brief amplification to the answer to the one  
6 question concerning judicial activism.

7           I don't see that attached, but that is the one  
8 amendment that I did make.

9           MS. SHULER: I don't have that, if you can  
10 re-e-mail it.

11          MR. GOLDSTEIN: It's very short. I can almost  
12 recite what it said.

13          MS. SHULER: Can you offer it orally for the  
14 record?

15          MR. GOLDSTEIN: Sure. There was a question  
16 related to judicial activism. I amplified that answer by  
17 sending to Ms. Shuler a letter which I will resend.

18          The amplification was -- in my original letter,  
19 I think I said, I don't believe judicial activism exists.  
20 And I amplified that by saying, Well, it does exist.  
21 What I meant to say was, it doesn't exist if a judge  
22 follows the law.

23          In other words, you have to step outside of the  
24 role as a judicial officer in order to engage in judicial  
25 activism. So that was the amplification, and I'll resend

1 that.

2 REPRESENTATIVE DELLENEY: Okay. With that  
3 inclusion and your oral amendment, we'll accept that.  
4 And do you object to once you get the written amendment  
5 back to us, we'll include that?

6 Do you object to our making the Personal Data  
7 Questionnaire summary, along with your oral amendment,  
8 plus the amendment that you'll be submitting to us, do  
9 you object to our making that part of your sworn  
10 testimony?

11 MR. GOLDSTEIN: No, sir. Not at all.

12 REPRESENTATIVE DELLENEY: All right. It will  
13 be done at this point in the transcript.

14 (EXH. 4, Personal Data Questionnaire of Thomas  
15 R. Goldstein, marked for identification.)

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



1           There are no affidavits filed in opposition to  
2 your election, and there are no witnesses here to  
3 testify. Do you have a brief opening statement that you  
4 would like to make?

5           MR. GOLDSTEIN: Well, the only brief opening  
6 statement is that I would like to say, I think this is  
7 consistent with my role as a lawyer. What an honor it  
8 has been, not only to serve as a lawyer with the South  
9 Carolina Bar for 30 years, but also to have an  
10 opportunity to participate in this process.

11           Unless you desire more than that, that's all I  
12 have to say.

13           REPRESENTATIVE DELLENEY: No, sir. We like  
14 brevity. If you would answer any questions our able  
15 counsel may have.

16           MR. DENNIS: Thank you, Mr. Chairman.

17           Just for clarity in the record, the oral  
18 amendment that Mr. Goldstein just offered is to his sworn  
19 statement, not to his Personal Data Questionnaire, so  
20 we'll accept that as part of his sworn statement and make  
21 that part of the record at this time.

22           Is that acceptable, Mr. Goldstein?

23           MR. GOLDSTEIN: Yes, sir.

24           MR. DENNIS: At this time, Mr. Chairman, I'd  
25 ask that Mr. Goldstein's sworn statement with that oral

1 amendment be made part of the record.

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

4 (EXH. 4A, Sworn Statement of Thomas R.  
5 Goldstein, marked for identification.)

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

12 Mr. Goldstein, would you please state for the  
13 record the city and circuit in which you reside.

14 MR. GOLDSTEIN: Charleston, South Carolina, 9th  
15 Judicial Circuit.

16 MR. DENNIS: Thank you, sir.

17 Will you please tell the Commission why you  
18 want to serve as a circuit court judge.

19 MR. GOLDSTEIN: Well, I'll try to be brief. As  
20 I said in my brief opening remark, it has been an  
21 incredible honor to be a member of the Bar for 30 years  
22 and be involved in the active trial practice in all  
23 courts.

24 I'm going to give the same answer that I gave  
25 to the screening committees, and I would like to do it in

1 two ways. I'd like to answer your question anecdotally  
2 and then directly, if that's permissible.

3 The anecdote is that three years ago, after  
4 Thanksgiving, I road my bike to Publix. It was about  
5 4:30 in the afternoon. It was a day after Thanksgiving,  
6 so it was a busy day. While I was there, I got mugged in  
7 the parking lot. And during the process, I was screaming  
8 for people to help me, to call 9-1-1.

9 Much to my surprise, nobody did a thing.  
10 Fortunately, it ended in something of a stalemate, and I  
11 didn't get hurt. I was struck by how the impulse of  
12 people is to pass on by and not do anything. So that's  
13 the anecdotal answer to your question.

14 I've been a trial lawyer for a lot of years,  
15 and when I walk into a courtroom and I see something  
16 that's just wrong, I know I have two choices. I can  
17 shrug my shoulders, and say, well, I'll just pass on by,  
18 or I can do something about it.

19 So I have chosen to offer myself as a  
20 candidate, to throw myself into the process and offer  
21 myself as an alternative. I realize that the prospect of  
22 running against an incumbent judge is an arduous one and  
23 not to be lightly undertaken. But that's a direct answer  
24 to your question, that I saw something that I thought was  
25 wrong, and I wanted to offer the General Assembly, the

1 legislature, an opportunity to have an alternative  
2 candidate, and that's me.

3 MR. DENNIS: Mr. Goldstein, can you offer the  
4 Commission a brief description of how your legal and  
5 professional experience, at this point in your career,  
6 will assist you in being a circuit court judge.

7 MR. GOLDSTEIN: Well, I guess the best way to  
8 answer that is when I graduated from the University of  
9 South Carolina Law School, I packed up that weekend, and  
10 I started Monday as a public defender in Charleston.

11 It was an interesting experience to say, Here  
12 you go, kid, here are your files. I said, Well, I'm not  
13 admitted to the Bar yet. They said, We don't care about  
14 that. So I got thrown into the fire very quickly. Of  
15 course, you are allowed to practice under the student  
16 practice rule. I was not doing anything not permitted by  
17 the rules.

18 But since that time, I've had an active trial  
19 practice. I've tried cases in common pleas, general  
20 session, United States District Court. I've petitioned  
21 the United States Supreme Court on three occasions. I've  
22 practiced before the South Carolina Court of Appeals and  
23 the South Carolina Supreme Court.

24 So I've had a wide and varied experience. My  
25 answer is going to deviate a little bit, to go back to

1 your first question. And this is really the reason I'm  
2 running. One thing that I've learned about the judicial  
3 system in trial practice is that lawyers run that  
4 process, not judges.

5 Judges are umpires. They call balls, they call  
6 strikes, but they remain above the fray, and they do not  
7 get involved. And that's the main reason I'm offering  
8 myself as a candidate. If I were elected, I would adhere  
9 to that principle, allowing lawyers to run cases and not  
10 insert myself into the case.

11 There's a famous line -- I don't know if you  
12 remember The Verdict with Paul Newman. The judge takes  
13 over the case, and Paul Newman looks up at the judge and  
14 says, Judge, if you're going to try my case for me,  
15 please don't screw it up. It's a great funny scene in  
16 that movie, but I see too often judges who insert  
17 themselves into cases, and I don't think it's a proper  
18 way to operate a court.

19 MR. DENNIS: Mr. Goldstein, do you think there  
20 are any substantive areas of law that you would need  
21 additional preparation for before taking the bench?

22 MR. GOLDSTEIN: Sure. I think I would be weak  
23 on criminal practice. It's been years since I practiced  
24 in criminal court, although I was a public defender and  
25 did have wide experience. It's been years since I did

1 that. That was at the beginning of my career.

2           However, the first appellate case I handled and  
3 won was State versus Sparkman, which is still cited to  
4 this day as an important case on the right to confront  
5 witnesses. So, yeah, I would have to work hard at coming  
6 up to speed on criminal procedure. I keep up with the  
7 Advance Sheets, not as well as I should, but I do keep up  
8 with the Advance Sheets. Sure, I would be weak in that  
9 area, and I would have to work at it.

10           MR. DENNIS: Can you describe the appropriate  
11 demeanor for a circuit court judge?

12           MR. GOLDSTEIN: Yes. Umpire, above the fray,  
13 don't get involved in a case. A judge calls balls and  
14 strikes. That's all a judge does.

15           MR. DENNIS: Do you have any suggestions for  
16 alleviating the backlog in the court of common pleas and  
17 the general session?

18           MR. GOLDSTEIN: Absolutely. Rule 16 of the  
19 South Carolina Rules of Civil Procedure is the most  
20 overlooked rule in the entire rules of civil procedure;  
21 requires every case to have a status conference with a  
22 judge. You file a pretrial brief, and you're supposed to  
23 get together and talk.

24           Judges don't talk to lawyers anymore. It  
25 started in the federal court, and now it's with the state

1 court. Judges are behind closed doors. You can't get to  
2 them. They won't talk to you. They're unapproachable.

3 If I were a judge, the first thing that I would  
4 do is ask the clerk of court to assign me an office  
5 that's not behind closed doors. There is no effort, or  
6 very little effort, by the judiciary these days, and it's  
7 a trickle-down effect from the federal court system. It  
8 started with federal court, and now we have it.

9 Nobody talks about cases. I have recently  
10 tried a bunch of cases, and not once did I have a  
11 conversation with a judge about what the case was about.  
12 Not once. If you want to move cases, that's how you do  
13 it. The rule exists. The same thing -- of course, the  
14 Supreme Court just took care of the backlog in the  
15 general sessions court because they just issued an order  
16 taking that away from the solicitor on the grounds that  
17 it violated the separation of powers.

18 I'm not sure that I fully understand the  
19 opinion, but it's separation powers violation. So now  
20 the power to move the criminal docket is with the judges,  
21 which it has never been before just a few weeks ago.

22 MR. DENNIS: Thank you. As a practicing  
23 attorney, do you carry malpractice insurance? And, if  
24 so, how long have you carried malpractice insurance?

25 MR. GOLDSTEIN: Ever since I've been a lawyer.

1 I've never not carried it. I can't imagine any lawyer  
2 who would practice law without it.

3 MR. DENNIS: During our preliminary  
4 conversations, you discussed with me a professional  
5 negligence lawsuit filed against you. I believe that  
6 suit has since been settled.

7 MR. GOLDSTEIN: It was resolved.

8 MR. DENNIS: Can you give the salient details  
9 to the Commission in that lawsuit and explain how it was  
10 resolved.

11 MR. GOLDSTEIN: I would love to, and I'm glad  
12 you brought that up, and there is a confidentiality  
13 agreement in place so I can't. Of course, you can send  
14 me a subpoena, and I'll tell you everything.

15 I represented a client in an extremely complex  
16 construction litigation case, and I was able to detect a  
17 weakness through the manner in which the insurance  
18 carrier handled the case for the manufacturers. It was a  
19 modular home, so I'm going to use a little bit of slang  
20 here. I tee'd it up for a bad faith claim because I saw  
21 an opportunity.

22 When it came time to pursue the bad faith  
23 claim, naturally I had to step aside because I had become  
24 a witness at that point. I was going to send the case to  
25 a lawyer in Hilton Head who specializes in that kind of



1 thing, but my client wanted me to send it to a lawyer in  
2 Wilmington, North Carolina, which I did.

3 That lawyer settled the case for \$750,000, and  
4 then that lawyer turned around and filed a claim against  
5 me on the grounds that, but for my negligence, they would  
6 have gotten more than \$750,000. My carrier defended the  
7 case, and based on the advice of the carrier, we resolved  
8 it without litigation.

9 And I think that's all can I say, but if you  
10 send me a subpoena, I'll come back and tell you  
11 everything that you want to know about it.

12 MR. DENNIS: Unlikely to be necessary but thank  
13 you. The Commission also received a significant number  
14 of ballot box responses on you -- several written  
15 responses. Several of those called into question your  
16 temperament. Understanding that the written responses  
17 don't contain any specifics or incidents, can you please  
18 respond to the Commission, to the extent possible, the  
19 ballot box survey comments.

20 MR. GOLDSTEIN: Well, it's hard to respond to  
21 an anonymous complaint, especially one that lacks  
22 specificity. I don't -- I have a lot of flaws, and we  
23 could spend several days discussing them. I don't think  
24 my temperament is one of them. I think I'm pretty  
25 easygoing, and, if anything, that's gotten me in trouble

1 over the years. The lack of intensity has probably led me  
2 into more trouble than any problem with temperament.

3 I made the offer to you privately, and I'll  
4 make the offer to this committee under oath. You can  
5 check with any of the local judges and do it anonymously.  
6 If they say, Yeah, I have a problem with him, I'll  
7 withdraw. I don't think I have a problem with  
8 temperament, and I can't imagine what that relates to.

9 I am an advocate, and I'll advocate strongly  
10 for a client, but I don't apologize for being an advocate  
11 for a client.

12 MR. DENNIS: Along the same lines, there were  
13 at least two additional responses that call into question  
14 your ethical fitness. Would you offer a response to  
15 that?

16 MR. GOLDSTEIN: I've never had anybody ever  
17 challenge my ethical fitness. I think my reputation is  
18 good among the Charleston-Berkeley Bar. Again, I make  
19 the same offer to you: Do it anonymously. If you can  
20 talk to one of the local judges who gives any doubt about  
21 my ethical fitness, you don't even have to tell me who  
22 said it. I'll just drop out. I've never done anything  
23 unethical. Not even close.

24 MR. DENNIS: The citizens committee report  
25 contained a mild reservation about your criminal law

1 experience, and I know you've touched on your time as a  
2 public defender.

3 Can you offer a little more of a description of  
4 what type of criminal law you've practiced throughout  
5 your career beyond being a public defender.

6 MR. GOLDSTEIN: Very limited. Probably five  
7 percent of my practice has been in the criminal area. I  
8 mean, I've handled the regular pallet of small criminal  
9 cases; you know, DUIs, driving under suspensions. I'm  
10 handling a criminal appeal right now. The briefs haven't  
11 been filed yet, but I'm waiting on the transcript, and  
12 I'll be filing it shortly in the South Carolina Court of  
13 Appeals.

14 There have been clients that have insisted on  
15 me handling their criminal cases because of our long  
16 relationship, even though I try to tell them I don't do  
17 criminal work. And those have been criminal domestic  
18 violence, DUIs, but nothing that would be a high level of  
19 criminal practice. No murder trials.

20 I've handled -- I was about to say no  
21 housebreaking, but I have handled some housebreaking  
22 cases. I'd say about five percent of my practice.

23 MR. DENNIS: Thank you, sir. I just have some  
24 housekeeping issues. Have you sought or received the  
25 pledge of any legislator prior to this date?

1 MR. GOLDSTEIN: No, I have not.

2 MR. DENNIS: Have you sought or have you been  
3 offered a conditional pledge of support of any legislator  
4 pending the outcome of your screening?

5 MR. GOLDSTEIN: No, sir.

6 MR. DENNIS: Have you asked any third parties  
7 to contact members of the general assembly on your  
8 behalf?

9 MR. GOLDSTEIN: No, sir.

10 MR. DENNIS: Are you aware of anyone attempting  
11 to intervene in any part of the process on your behalf?

12 MR. GOLDSTEIN: No. I am not.

13 MR. DENNIS: Have you contacted any members of  
14 this Commission?

15 MR. GOLDSTEIN: No, sir.

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

20 MR. GOLDSTEIN: Yes. I do.

21 MR. DENNIS: Have you reviewed the Commission's  
22 guidelines on pledging?

23 MR. GOLDSTEIN: Yes. I have.

24 MR. DENNIS: As a follow-up, are you aware that  
25 the penalties for violating the pledging rules are

1 misdemeanor, and, upon conviction, the violator must be  
2 fined not more than \$1,000 or imprisoned not more than 90  
3 days?

4 MR. GOLDSTEIN: Yes.

5 MR. DENNIS: I would note for the record, Mr.  
6 Chairman, that the Lowcountry Citizens Committee found  
7 Mr. Goldstein well-qualified for all areas except  
8 experience as noted above, for which they found him  
9 qualified.

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

13 Mr. Chairman, I have no further questions.

14 REPRESENTATIVE DELLENEY: Do any members of the  
15 Commission have questions for Mr. Goldstein?

16 SENATOR MARTIN: Mr. Goldstein, during your  
17 testimony you indicated or gave me the impression that  
18 there was a moment in time that you were in the courtroom  
19 and you saw something wrong.

20 Would you care to elaborate? What did you see?

21 MR. GOLDSTEIN: Well, I realize that I'm  
22 running against an incumbent, and if we can have a frank  
23 conversation and be completely honest with each other, I  
24 realize that Seat 1 in the 9th Judicial Circuit is  
25 traditionally reserved for a minority member.

1 I also realize that the general assembly has  
2 instituted a program within the code that promotes  
3 judicial diversity to better reflect the makeup of our  
4 state. I'm completely in favor of that. I totally  
5 support it, and it was with a very heavy heart that I  
6 launched this campaign because it goes against my desire  
7 to see that kind of diversity reflected on the bench.

8 So I undertook this very reluctantly. So I  
9 want to offer you that by way of background, and I was --  
10 I thought long and hard about it, about how it would be  
11 perceived that I was challenging because there's not  
12 enough minority representation on the bench. I mean, the  
13 general assembly was right when it said in making  
14 nominations, race, gender, and other demographics should  
15 be considered.

16 I mean, that's what the code said. So I'm  
17 giving you that by way of background, and I don't want to  
18 say anything bad about my opposition. That's not why I'm  
19 here, and I really don't want to. Let me digress a  
20 little bit, and at the risk boring you all, I'll briefly  
21 quote T.S. Eliot: The greatest treason is to do the  
22 right thing for the wrong reason.

23 And I take that to heart. So the moment for me  
24 was being openly treated disparately and being singled  
25 out for disparate treatment. And if you want me to, I

1 can tell you the exact moment and exact situation. But  
2 it was clear to everybody in the room, and the moment  
3 became one of those indelible moments that has been  
4 talked about in the corridors in the Charleston County  
5 Courthouse.

6 And I invite you to call the staff, call the  
7 clerks, call the people who make the system work. I'll  
8 be glad to define it for you in particular, if you want  
9 me to.

10 SENATOR MARTIN: I was curious because you were  
11 saying that you were getting ready to present a case.  
12 Maybe it didn't involve you.

13 MR. GOLDSTEIN: It involved me, and it made me  
14 feel like my client wasn't getting a fair shake. And  
15 that's when I said, you know -- and I go back to my  
16 mugging story.

17 I'm in the parking lot, and I'm screaming, Call  
18 9-1-1. People walking by me and nobody's doing anything  
19 and I didn't want to be that person. I didn't want to  
20 just walk by. So here I am.

21 SENATOR MARTIN: Thank you.

22 REPRESENTATIVE MACK: Thank you. I was  
23 concerned with what you stated -- your last statement.

24 I'm not to assume that you're implying that  
25 there's a quota system or certain seats are specified for

1 African-Americans. That's how you started your  
2 statement.

3 MR. GOLDSTEIN: Let me clear that up. The U.S.  
4 Supreme Court has said that quota systems are  
5 unconstitutional. But the General Assembly says in  
6 making nominations, race, gender, national origin, and  
7 other demographic factors should be considered by the  
8 Commission -- that's you all -- should be considered by  
9 the Commission to ensure nondiscrimination to the  
10 greatest extent possible to all segments of the  
11 population.

12 REPRESENTATIVE MACK: But you mentioned a  
13 particular seat, as if to imply that this was designed  
14 for an African-American.

15 MR. GOLDSTEIN: No. No. That seat was before  
16 Judge Jefferson. That seat was held by Judge Martin, and  
17 before that, it was held by Richard Fields.

18 REPRESENTATIVE MACK: Well, I can name several  
19 white judges, so that's problematic for me in terms of  
20 your perception.

21 MR. GOLDSTEIN: No. My purpose in saying that  
22 was that I feel bad about there is not enough diversity  
23 on the bench, and here I am offering myself as a  
24 candidate against a minority member of the bench. That  
25 goes against my -- I'm not talking about you all. That



1 goes against my fundamental core beliefs because I don't  
2 think there has been sufficient diversity on the South  
3 Carolina bench for many years.

4 It's now being addressed and corrected, so I'm  
5 in support of this provision in the code. So what I was  
6 trying to say is that I feel bad about being here and  
7 seeking this nomination.

8 REPRESENTATIVE MACK: Well, from my  
9 perspective, as an African-American and a member of the  
10 Commission, it's nothing to feel bad about. When you  
11 talk about diversity as not having special consideration,  
12 just the opportunity to compete, which you're having.

13 One of the things that is important for you to  
14 keep in mind is that there may be a succession of  
15 African-Americans for one seat, but I can name many seats  
16 that there's a succession of white males. Diversity is a  
17 funny thing. What you want to be able to do is, when all  
18 is said and done, you don't have like you have back in  
19 the '50s, an all white situation.

20 So I don't want you to feel that this is a,  
21 quote-unquote, black seat or -- the Commission doesn't  
22 think like that.

23 MR. GOLDSTEIN: I understand that.

24 REPRESENTATIVE DELLENEY: Does any other member  
25 of the Commission have any questions?

1           SENATOR NICHOLSON: I had the same thought,  
2 because the first statement you made was this was a black  
3 seat.

4           MR. GOLDSTEIN: No. That isn't what I meant.  
5 Let me correct that right now.

6           SENATOR NICHOLSON: That's what you said  
7 though.

8           MR. GOLDSTEIN: Let me correct it. That is not  
9 what I intended. That may be what I said, but I was in  
10 error when I spoke. What I said was that my belief --  
11 that my core philosophical principals coincide with this  
12 provision in the code.

13           And this provision in the code, that the  
14 General Assembly put in here, is to promote diversity on  
15 the bench. We're in agreement on that. But yet here I  
16 am challenging a minority member of the bench. It goes  
17 against my core philosophical principals because I would  
18 want to promote diversity on the bench, not inhibit or  
19 work against it. That was what I was trying to say.

20           SENATOR NICHOLSON: If you feel so bad about  
21 it, no one forced you to run. So you're sort of  
22 contradicting yourself.

23           MR. GOLDSTEIN: No. No. No. The greatest  
24 gift this country ever bestowed on all of us is the right  
25 to offer ourselves as candidates and to participate in

1 the process. And just because it goes -- just because I  
2 have thoughts about how it may be perceived or how I  
3 might be contributing in some small measure against  
4 diversity, I'm entitled to have those thoughts and have  
5 those feelings, but I also have the right to offer myself  
6 as a candidate.

7 SENATOR NICHOLSON: I agree, but when I offered  
8 myself, I felt good about it, not bad.

9 MR. GOLDSTEIN: I understand.

10 REPRESENTATIVE DELLENEY: Anybody else have any  
11 questions for Mr. Goldstein?

12 Okay. There being no further questions, Mr.  
13 Goldstein, thank you for offering to serve, and this  
14 concludes this portion of the screening process.

15 As you know, the record remains open until the  
16 report is published and until it becomes a final report  
17 of the Commission. Forty-eight hours after that, you can  
18 seek pledges, but prior to the time that it becomes a  
19 report of the Commission, we could reopen your public  
20 hearing and bring you back and ask you questions. That's  
21 very unlikely, but I want to remind you.

22 I'd like to thank you for offering and thank  
23 you for your service, and have a safe trip home.

24 MR. GOLDSTEIN: Thank you.

25 REPRESENTATIVE DELLENEY: We have before us the

1 Honorable Deadra L. Jefferson, who seeks re-election to  
2 the Circuit Court, 9th Circuit, Seat Number 1.

3 If you would, please, raise your right hand to  
4 be sworn.

5 (Judge Deadra L. Jefferson was duly sworn,  
6 after which testimony commenced at 10:45 a.m.)

7 REPRESENTATIVE DELLENEY: Judge Jefferson, have  
8 you had an opportunity to review your Personal Data  
9 Questionnaire?

10 JUDGE JEFFERSON: I have.

11 REPRESENTATIVE DELLENEY: Is it correct?

12 JUDGE JEFFERSON: Yes, sir.

13 REPRESENTATIVE DELLENEY: Are there any changes  
14 that need to be made?

15 JUDGE JEFFERSON: No, sir.

16 REPRESENTATIVE DELLENEY: Do you object to our  
17 making that summary part of the record of your sworn  
18 testimony?

19 JUDGE JEFFERSON: I do not.

20 REPRESENTATIVE DELLENEY: It will be made as  
21 part of the record of your sworn testimony.

22 (EXH. 3, Personal Data Questionnaire of Judge  
23 Deadra L. Jefferson, marked for identification.)

24 REPRESENTATIVE DELLENEY: Thank you.

25 The Judicial Merit Selection Commission has

1 thoroughly investigated your qualifications for service  
2 on the bench. Our inquiry has primarily focused on nine  
3 evaluative criteria, which include a survey of the bench  
4 and the bar, a thorough study of your application  
5 materials, verification of your compliance with state  
6 ethics laws, a search of any newspaper articles in which  
7 your name may have appeared, a study of previous  
8 screenings, and a check for economic conflicts of  
9 interest. There are no affidavits filed in opposition to  
10 your election. There are no witnesses here to testify.

11 Before I go any further, I'd also like to point  
12 out that Professor Freeman has recused himself from this  
13 hearing or from the deliberation. But in any event, do  
14 you have a brief opening statement you'd like to make?

15 JUDGE JEFFERSON: In the interest of time, I  
16 would defer to the end of the process if you have any  
17 questions for me.

18 REPRESENTATIVE DELLENEY: Thank you, ma'am. If  
19 you would answer any questions that our able counsel, Ms.  
20 Shuler, may have for you.

21 MS. SHULER: Good morning. You have before you  
22 the sworn statement. Do you have any amendments to your  
23 sworn statement?

24 JUDGE JEFFERSON: No, ma'am. Not at this time.

25 MS. SHULER: I would ask that it be offered as

1 an exhibit into the hearing record.

2 REPRESENTATIVE DELLENEY: It will be done at  
3 this point without objection.

4 (EXH. 3A, Sworn Statement of Judge Deadra  
5 Jefferson, marked for identification.)

6 MS. SHULER: Judge Jefferson, please state the  
7 city and circuit in which you reside.

8 JUDGE JEFFERSON: I live in Charleston, South  
9 Carolina, the 9th Circuit, Seat 1.

10 MS. SHULER: You have served 11 years on the  
11 circuit court bench, and before that you served on the  
12 family court bench. Why do you want to continue serving  
13 and be a circuit court judge?

14 JUDGE JEFFERSON: This has been, I have to say,  
15 one of the most gratifying experiences of my life,  
16 serving the citizens of South Carolina. I was thinking  
17 back over that very question, and I was reminded of my  
18 first hearing when I ran for family court, and my  
19 colleague asked me, he said, What would you change about  
20 the system, Judge Jefferson? And, I said, That's a  
21 really interesting question and a dangerous one, because  
22 it would be very disconcerting to me to look at the  
23 system from the outside, not knowing internally how it  
24 operated, and wanting to make changes before I really  
25 knew what the system was all about.

1           And, you know, Mike, he looked at me like, wow,  
2 that's a surprisingly mature answer. But I say that and  
3 preface my answer by saying that everything that I've  
4 done up to this point prepared me to serve in this  
5 office, and if I continue to serve in it, I think what is  
6 most gratifying is serving the citizens of this state and  
7 educating them about the system.

8           And now having served in the position that I  
9 was in, being able to make institutional changes that  
10 affect the citizens of South Carolina, I think one of the  
11 most gratifying things is I'm such a believer in our  
12 system.

13           Every day I'm given just the sheer opportunity  
14 to serve our citizens and to help them understand the  
15 system and to renew their faith in the system. So that  
16 is why I would want to continue.

17           MS. SHULER: You've just shared why you want to  
18 continue serving. Could you share one or two brief  
19 accomplishments that you've completed and a goal that you  
20 would like to accomplish if reelected.

21           JUDGE JEFFERSON: I think one of the most  
22 gratifying things -- this year I was selected vice  
23 president of the Circuit Judges Association, and I think  
24 there's nothing more gratifying than being recognized by  
25 your peers in that type of role. The other is, although

1 I've probably -- and my colleagues would share in this --  
2 nobody wants to be chief administrative judge, but it's  
3 still quite an honor to serve in that capacity.

4 I had served in that capacity in 2008, 2009,  
5 2011, and 2012. So I see that as a great compliment and  
6 confidence in my ability, as well as my service on the  
7 Access to Justice Commission and educating our citizens  
8 about that judicial branch of government.

9 And, in addition to that, giving access to what  
10 we call the working poor in our state and making sure  
11 that they have access to our system of justice.

12 My goal at this point is to continue to work  
13 with Access to Justice. We have recently opened, as a  
14 commissioner, a self-help center in Newberry, and my  
15 goal, at this point, is that I would like to open other  
16 self-help centers in South Carolina for those who cannot  
17 afford legal services. It gives them access to the  
18 system and helps them accomplish simple things that they  
19 need to accomplish legally and being able to do it  
20 themselves. So I'm working towards that goal in  
21 Charleston.

22 MS. SHULER: Thank you, Judge Jefferson.

23 Can you share with the Commission what you  
24 believe to be the appropriate demeanor for a judge.

25 JUDGE JEFFERSON: A judge should always be



1 patient, courteous, dignified, and, in the appropriate  
2 circumstance, firm. And I think sometimes judges should  
3 have a little levity. When people come to court, it's  
4 incredibly stressful. It is something that we do every  
5 day and we take for granted: Knowledge of the system and  
6 how it works.

7 And sometimes people need to be put at ease in  
8 that environment and not to take yourselves so seriously.  
9 Sometimes a little levity is appropriate as well to ease  
10 people and put them at ease and know that we're there to  
11 help them.

12 MS. SHULER: Since your last screening, you  
13 have, in your PDQ and SLED, noted several additional  
14 lawsuits filed against you. I'll take you through each  
15 of those.

16 A lawsuit has been filed against you in 2011 in  
17 the South Carolina Common Pleas by Kevin Robert Grover.  
18 Please explain the nature and disposition of that  
19 lawsuit.

20 JUDGE JEFFERSON: Mr. Grover was a litigant in  
21 a case. It was a summary judgment. He was notified of  
22 the hearing. Both parties were active in a pro se  
23 capacity -- I might be wrong. And I was left with very  
24 little resort because he did not avail himself to the  
25 process. Surprising enough, a day after the ruling, he

1 drove to South Carolina and filed suit against me, the  
2 clerk of court, the other lawyer involved, and another  
3 lawyer involved.

4           Everybody that was involved in that entire  
5 hearing, he filed suit against. It was my  
6 understanding -- I accepted service, turned it over, and  
7 a lawyer was assigned. A hearing was held for summary  
8 judgment, and the case was dismissed. It's my  
9 understanding that ruling has not been appealed.

10           MS. SHULER: Judge Jefferson, the SLED report  
11 indicated a second lawsuit filed against you in 2011 in  
12 the United States District Court, by a prisoner Anthony  
13 James. Could you please explain the nature and  
14 disposition of this lawsuit.

15           JUDGE JEFFERSON: I have no independent  
16 recollection of Mr. James. I can only assume that I had  
17 contact with him in some capacity in the criminal court  
18 or common pleas court. I was made aware of the suit when  
19 we talked because he had not effected service, and it was  
20 my understanding that it was dismissed.

21           MS. SHULER: The Commission received 660 ballot  
22 box surveys with 80 additional comments. Of those  
23 comments, 30 indicated concern. And I would note that  
24 you had several very positive comments, including several  
25 saying you're one of the best judges on the bench, and

1 you have excellent judicial temperament.

2           The concerns indicated and the comments were in  
3 five central areas. The first concern is that you do not  
4 have a sufficient grasp of the substantive laws governing  
5 evidence to be effective from the bench, and that this  
6 lack of understanding of the law leads to bias and unfair  
7 decision making.

8           I would note that in the ballot box survey, 660  
9 people responded to the question regarding evaluative  
10 criteria and professional and academic ability. 297  
11 respondents found you well-qualified, 215 found you  
12 qualified, 89 found you unqualified, and 65 had no  
13 opinion.

14           I would also note that you received the highest  
15 score on the Commission's practice and procedures test of  
16 all the judicial court candidates. So turning back to  
17 the first concern, that you do not have a sufficient  
18 grasp of substantive law, what response would you offer  
19 to that concern?

20           JUDGE JEFFERSON: I would just say that I  
21 consider myself a student of the law. I think it's a  
22 judge's responsibility to know the law. It is their  
23 responsibility to, of course, act impartially and in an  
24 unbiased fashion because a judge has no one to reward and  
25 no one to punish.

1           I think the judge is the only objective voice  
2 in the courtroom. It is not an advocate for either  
3 party. Every year I take more than the required amount  
4 of hours of continuing legal education credit. I've  
5 spoken at numerous seminars. I turn down a lot of  
6 requests to speak because I feel my first responsibility  
7 is to my court and holding court and disposing cases. So  
8 there are lots of times that I turn down invitations to  
9 speak.

10           I would say in response to the comment that I  
11 do not have a sufficient grasp of evidence, I, on a  
12 routine basis -- I developed this habit when I clerked.  
13 I read the rules monthly. I read annotations and keep  
14 abreast of the law. I've been invited by the National  
15 Judicial College to facilitate a course in advanced  
16 evidence, and so I -- that would be my response regarding  
17 evidence.

18           In addition to that, I continue to find that we  
19 get used to doing things a certain way. And when we're  
20 doing things a certain way, and when we get confronted  
21 with the way they're supposed to be done, we still have  
22 that mindset. And so when confronted with that -- Well,  
23 you didn't do it the right way -- sometimes it's just a  
24 learning curve when dealing with lawyers.

25           In addition to that, I would say that I've

1     tried, at the trial court level, some of the most  
2     difficult cases at the trial level in this state, and  
3     they've been subject to rigorous appellate review. So I  
4     think that -- looking for the word that I want to use --  
5     I apologize -- I'm a little nervous -- that  
6     counterbalances those comments.

7                   MS. SHULER: Judge Jefferson, the second  
8     comment indicates that you did not have enough experience  
9     trying cases, especially civil cases. I would note in  
10    the ballot box survey that 579 people responded to the  
11    survey question concerning criteria of experience. In  
12    that criteria of experience, 351 respondents found you  
13    well-qualified; 189 found you qualified; 39 unqualified;  
14    86 had no opinion.

15                   What response would you offer to these concerns  
16    about your lack of experience?

17                   JUDGE JEFFERSON: When I practiced law I  
18    practiced in a very small firm where I had an inordinate  
19    amount of exposure to different types of cases and  
20    probably went to court a lot faster than most lawyers go  
21    into court now.

22                   In addition to that, I was a circuit court law  
23    clerk, which is an invaluable experience, and I learned  
24    an incredible amount about trying cases. In other words,  
25    as a clerk, I always tell my clerks to pay attention to

1 what you know to do and what is the right thing to do;  
2 how to do things well and what, under any circumstances,  
3 not to do in a courtroom.

4           So I believe that I've had more than adequate  
5 experience trying cases. Actually in my second year of  
6 practice, I tried an excessive force civil rights case in  
7 federal court. I was in a small firm, so my partners  
8 gave me my part of the file and said, This is your  
9 responsibility. I think my responsibility at the time  
10 was to argue a motion and handle three or four  
11 witnesses -- one who was an expert out of Atlanta -- a  
12 causation expert.

13           So I think that comment is a little misplaced.  
14 I don't want to say "misplaced" because that's someone's  
15 reality. But taking that into consideration, at this  
16 point on the family court for five years, I tried cases  
17 in a nonjury capacity where I was the fact finder. I  
18 wouldn't even guesstimate how many cases I tried at that  
19 level. And in the circuit court, I tried three or four  
20 cases a week and some of the most difficult cases, from  
21 defamation to products liability.

22           And the comments that I get from lawyers is  
23 that they appreciate that I'm thoughtful, that I study  
24 cases before I come to court, that I take their input  
25 seriously. I've never had any negative comments from the

1 bar, at least in my courtroom, regarding the handling of  
2 difficult cases.

3           And in addition to that, I would say that my  
4 reputation is such that the Supreme Court has given me  
5 proof of jurisdiction of several very complicated cases.  
6 It is not, in my experience, that they do that unless  
7 they believe you're qualified to handle it and that they  
8 know you're meticulous and that you'll dispose of the  
9 case sufficiently and that you'll manage it and that it's  
10 going to be well-tried. So I would just offer that  
11 explanation.

12           MS. SHULER: Thank you, Judge Jefferson.

13           The third concern indicated that you have  
14 difficulty making rulings or that you avoid making  
15 rulings. What response would you offer to those  
16 comments?

17           JUDGE JEFFERSON: I would say -- and I was  
18 looking back at my records -- with the exception -- since  
19 2008 or 2010, I was chief administrative judge. In 2010,  
20 when I was not chief judge, I have a share of nonjury,  
21 which, when my secretary and I looked back, somewhere  
22 between 10 and 13 terms of nonjury -- just hearing  
23 motions.

24           If I had difficulty making decisions, I don't  
25 think court administration would assign me that kind of a

1 load, in terms of nonjury cases. And my docketing clerks  
2 tell me that they love when I have nonjury because I make  
3 a decision and that we move cases.

4 Judge Field, my mentor, who I admire so very  
5 much, says, It is your job to make a decision, good, bad,  
6 or indifferent. You're not always going to be right, so  
7 as a judge you have to make decisions. I try to study  
8 before court. Our files are on-line, so during weekends  
9 I can read files at home. I do my best to be abreast of  
10 a case before I go to court.

11 But in a civil trial, of course, you're not  
12 going to know as much as the judge. You have a little  
13 learning curve as you get into learning that case, but I  
14 try to be prepared for court. We have to report to court  
15 administration if we have something under advisement. If  
16 you look at that, you would see, very rarely do I have  
17 anything under advisement.

18 I generally rule from the bench. I feel that  
19 the lawyers need a decision in terms of strategy: Where  
20 am I going with the trial preparation. And a lot of  
21 times in the motions practice, that's what makes your  
22 case move along and get off the docket so you can get it  
23 tried.

24 But the other part, and I think this again --  
25 perception can be reality for people, so I would never



1 dilute that perception. But there's a part of my  
2 personality, because I'm a people person, that knows the  
3 effects that litigation can have people's life. We go to  
4 court everyday. It doesn't affect us the way it affects  
5 the litigant.

6 For them that case is their whole life, maybe  
7 for three years and the harsh affects that can have on  
8 their life. Because I'm objective, I can think down the  
9 road, where sometimes lawyers don't have that capacity.

10 So sometimes I'll suggest in status  
11 conferences, Listen, have you all thought about doing it  
12 this way or doing it that way? Because litigation  
13 doesn't affect us, but it's affecting these clients. And  
14 the other part of it is that we have developed the system  
15 and, you know, my colleagues and I have discussed it at  
16 length, whether it's a reflection of the economy -- a  
17 win-lose mentality in court when nobody wins.

18 So sometimes I'll encourage lawyers to resolve  
19 cases. I wouldn't say I do it a lot, but I do sometimes  
20 where I see the deleterious effect it's going to have on  
21 the litigant.

22 Sometimes I know the effects that that ruling  
23 will have, at least momentary, on a person's life, when  
24 in many instances, it can be resolved, and people can  
25 have some semblance of quality instead of the albatross

1 of this litigation hanging with them.

2 MS. SHULER: Judge Jefferson, the fourth  
3 concern indicates that you have poor judicial temperament  
4 and that you are often condescending with attorneys and  
5 litigants. I note that 590 people responded to the  
6 question regarding judicial temperament.

7 Of those, 347 found you well-qualified, 151  
8 found you qualified, 82 found you unqualified, and 75  
9 offered no opinion. What response would you offer to  
10 this concern regarding your judicial temperament?

11 JUDGE JEFFERSON: I would -- there's some  
12 observations that I have about the system, and I have the  
13 ability to have hindsight perspective on it, especially  
14 in terms of looking at attorneys' behavior.

15 I've seen not just -- again, in our circuit,  
16 and even as an organization, we've begun to discuss this  
17 because we see the profession of law as an honorable one.

18 Some of the things we see in court are really  
19 very disturbing. It makes my heart heavy, is the term  
20 that I would use, in terms of what I see as the decline  
21 in the attitude of the attorneys' civility and their  
22 regard for the court.

23 And I've shared with Ms. Shuler some of the  
24 things that I've experienced. When things happen in  
25 court, I always look to me first. What could I have done

1 better? How could I have helped, you know, someone  
2 understand how the system works?

3 But I have found that with this decline in  
4 behavior and attitude -- and I think the light bulb came  
5 on for me one day -- I always shake jurors' hands and  
6 thank them for their service when we're done with a case.  
7 And repeatedly I have gotten comments, you have the  
8 patience of Job. How could you have tolerated that  
9 attorney's behavior? It was just atrocious.

10 I let it roll off. I have the personality  
11 where I just let it roll off me. It doesn't affect me.  
12 Every 12 jurors is a potential client, and you have to  
13 measure your behavior. I shouldn't have to monitor your  
14 behavior. You're part of a noble profession. But it  
15 dawned on me that that perception of the public, of our  
16 system, was not -- because of this behavior -- was just  
17 not becoming a good one.

18 So once I began to see what I thought was a  
19 significant decline in attorney's behavior, even in the  
20 way lawyers treat one another, I sought out my mentor,  
21 and he said, Dear, I don't know how to advise you on that  
22 because I never experienced anything like that in my time  
23 on the bench.

24 In those responses, I think that's what you see  
25 a reaction to. I'll quote one of my friends: It's

1 easier to loosen up than to tighten up. So when you have  
2 an affable personality, you let a lot of stuff slide.  
3 When you then have to tighten up a little -- because I  
4 realized some things, if I was not careful, could become  
5 chaotic with lawyers' behavior even after the court has  
6 ruled -- continued arguing.

7 I always felt when I practiced law that even if  
8 a judge ruled against me, I always said, Thank you. Even  
9 though I didn't win this one today, there's always  
10 tomorrow because I have other clients. But there's been  
11 a significant change in the attitude of lawyers and their  
12 respect for the court that I have found troubling.

13 So I think that's a reaction to me in the sense  
14 of having to tighten up and become a little more stern in  
15 terms of courtroom professionalism. I hope that answers  
16 the question.

17 MS. SHULER: Thank you, Judge Jefferson.

18 The last concern from the ballot box was that  
19 you have poor time management skills. How would you  
20 respond?

21 JUDGE JEFFERSON: There are many things that  
22 affect court and time in court. I am a bit of a  
23 workaholic. I know that about myself. But I'm a system  
24 kind of person. I always have systems in place and  
25 checklists and other things to make sure that things run

1 efficiently because it's a system and it has to run  
2 efficiently.

3 I think sometimes, and as you all know, I'm not  
4 going to repeat the chief justice's mantra -- it seems  
5 like astronomical numbers. We have 5,000 case filings  
6 per capita, per judge, in this state, with 46 circuit  
7 judges. So you have to wear many different hats. As  
8 chief judge, I have to wear the hat of litigating because  
9 I have a full docket, and I have to wear the hat of being  
10 chief administrative judge.

11 Yesterday we had status conferences. We  
12 started at ten, and it took us about an hour and a half  
13 to go through all the cases. Now, did all the lawyers  
14 who were in that courtroom make me feel like, gosh, I  
15 could have been using my time more efficiently somewhere  
16 else? Maybe. It's just, in some aspects, the nature of  
17 the process. And the other thing I would say, my friend  
18 Sam Claussen, he and I had a meeting. He took over as  
19 the president of the Bar, and I said, Sam, it's the  
20 funniest thing. When I'm at docket meeting, it takes 75  
21 minutes, but when my secretary and the docketing clerk do  
22 the docket meeting, if I'm stuck in court, it takes them  
23 like ten minutes. I said, I'm thinking about not coming  
24 to docket meeting anymore. And he started laughing. He  
25 said, Judge, it's very simple. You have the authority to

1 act. Nobody else does.

2 And that rang in my psyche. I said, you know,  
3 you have a point. I have the authority to act. When I'm  
4 chief judge, I answer all the questions. Nothing -- in  
5 other words, I'm the catalyst of all the activity at the  
6 courthouse. I have to say "yes" or "no" to everything.  
7 If there's a fire, I have to put it out.

8 For example, I have lawyers -- 20 lawyers in a  
9 construction case. And they ask me in February for a  
10 status conference. I can't wait until April to have a  
11 status conference with them. I have to schedule that  
12 status conference before court, and even if we start at  
13 9:00, it might go to 9:35 because I have 25 lawyers.

14 Even if that happens, I go into the courtroom,  
15 and I will tell the lawyers in my trial, I'm in the  
16 middle of a status conference. We're going to finish  
17 soon. Why don't you all mark exhibits so that as we  
18 start the case, we can move along efficiently. It is not  
19 in any way a poor time management or the court's  
20 inability to manage its time.

21 Again, I've been in Charleston four years  
22 straight, which I'm not complaining because I really like  
23 being at my house. But with travel it's a little  
24 different. Every courthouse is different. Charleston is  
25 one of the biggest jurisdictions in the state. Our

1 jurors have to walk three blocks to get to the  
2 courthouse, whether it's raining, whether it's cold. It  
3 can take you 40 minutes to get from the exit on Meeting  
4 Street to the courthouse no matter what time of day it  
5 is.

6 So I have to be flexible with jurors when we're  
7 paying \$10 a day, who are not being paid by their  
8 employers to come serve. I'll just give you one  
9 example. I had a lady one day who was about 30-minutes  
10 late. This lady came in, and she was out of breath and  
11 harried: I'm late, and I'm so sorry. I said, Take a  
12 deep breath; it's going to be fine. She said, I just  
13 left my son at the hospital. He had an asthma attack  
14 last night. I just left my son and my husband at the  
15 hospital to come to jury duty.

16 That just really drove home for me the point  
17 that people not -- they're not deliberately tardy. And  
18 there are many reasons why jurors are late, and that does  
19 affect when you start court. I won't say it happens all  
20 the time, but it does happen. That doesn't mean the  
21 court doesn't have the ability to manage its time, but  
22 there are some things that intervene with that ability  
23 to, you know -- court is supposed to start at 9:30.

24 Doesn't mean that we aren't ready to start at  
25 9:30. It just means -- and I will also say this doesn't

1 happen very often, but as you walk down the hallway, the  
2 deputy says, Judge, can I talk with you while we're  
3 walking because I need this or I need that or the clerk  
4 needs something.

5 Or sometimes even when you take a break from  
6 court, if I have two lawyers having a discovery dispute  
7 at a deposition, I might take that phone call so they can  
8 finish that deposition and not file a motion and wait  
9 three months to finish that deposition. That's maybe two  
10 percent; not something that is chronic. And I believe  
11 people's time is valuable, and I always try to engage the  
12 lawyers, and I say to the litigants and the jurors that  
13 we value your time.

14 MS. SHULER: Thank you, Judge Jefferson.

15 Mr. Thomas Goldstein, who has filed for the  
16 Circuit Court, 9th Circuit, Seat 1, whose seat you  
17 currently hold, has just testified under oath that he was  
18 treated with disparity in your courtroom, so that he felt  
19 his client was not treated fairly.

20 He did not cite a specific case, but what has  
21 been your treatment of Mr. Goldstein when he has appeared  
22 before you in your courtroom?

23 JUDGE JEFFERSON: I think that I've always been  
24 courteous with him as I am with everybody. As a matter  
25 of fact, we had a docket meeting yesterday. He told me



1 that he had to have some things -- we were scheduling  
2 cases, and he told me some things that were going on in  
3 his life. And I said, Well, I think you need to take the  
4 time to deal with those things. I don't think you should  
5 rush back to court. I treat him as I would treat any  
6 other lawyer, with courtesy, with respect, with dignity.

7 I feel that we're the face of the system, and  
8 the only way people have confidence in the way it works  
9 is if we treat everyone equally. If you did a scale and  
10 say, Do I treat everyone the same all the time, that's  
11 impossible. But the nature of my personality, I try to  
12 treat everybody the same.

13 One of the cleaning ladies told me the other  
14 day, You always have a smile on your face. I said, In  
15 life there's no reason not to. There's no reason not to  
16 be kind and courteous. I would say that I've treated him  
17 the way I've treated every other lawyer that comes into  
18 my courtroom, and I also try to look behind. Even  
19 recently I had a young lawyer, and I noticed a change in  
20 his behavior. He was running late and doing some other  
21 things. And instead of me saying, You know what, you've  
22 been late to court recently, I took him aside and said,  
23 I've noticed a change in your behavior. Is something  
24 going on? Do you need some help?

25 Instead of assuming the worst of folks, we need

1 to assume -- my assumption is, there's something going  
2 on. If someone has a level of behavior in court and it's  
3 changed, my assumption is, there's something going on.  
4 One of the comments I often get from young lawyers is,  
5 I'm so appreciative when I try my first case with you  
6 because even when I miss things, you have a real way of  
7 helping me come back around without embarrassing me.

8           And I often get letters from litigants and  
9 jurors about what a positive experience they had in my  
10 courtroom. So I would say that I treated him fairly and  
11 with courtesy; however, with the turn in our economy,  
12 people have a win-lose mentality about court. And when  
13 things don't go the way they want them to go, it's  
14 inevitable that you have a perception that things didn't  
15 go the way I wanted them to go.

16           Unfortunately or fortunately, the court is  
17 the -- you know, you're the center of the system. So I  
18 really don't take it personally. Sometimes perception is  
19 reality, and I think that's just the nature of the  
20 process.

21           MS. SHULER: Thank you, Judge Jefferson.

22           Some housekeeping issues to cover with you.  
23 Have you sought or received the pledge of any legislator  
24 prior to this date?

25           JUDGE JEFFERSON: No, ma'am.

1 MS. SHULER: Have you sought or have you been  
2 offered a conditional pledge of support of any legislator  
3 pending the outcome of your screening?

4 JUDGE JEFFERSON: No, ma'am.

5 MS. SHULER: Have you asked any third parties  
6 to contact members of the General Assembly on your  
7 behalf?

8 JUDGE JEFFERSON: No, ma'am.

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

11 JUDGE JEFFERSON: No, ma'am.

12 MS. SHULER: Have you contacted any members of  
13 this Commission?

14 JUDGE JEFFERSON: No, ma'am.

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

19 JUDGE JEFFERSON: Yes, ma'am.

20 MS. SHULER: Have you reviewed the Commission's  
21 guidelines on pledging?

22 JUDGE JEFFERSON: Yes, ma'am.

23 MS. SHULER: Are you aware that the penalties  
24 for violating the pledging rules are misdemeanor, and  
25 upon conviction, the violator must be fined not more than

1 \$1,000 or imprisoned not more than 90 days?

2 JUDGE JEFFERSON: Yes, ma'am.

3 MS. SHULER: I would note that the Lowcountry  
4 Citizens Committee found Judge Jefferson qualified in  
5 evaluative criteria of constitutional qualification,  
6 physical health, and mental stability. The committee  
7 found her well-qualified in the evaluative criteria of  
8 ethical fitness, character, professional and academic  
9 ability, reputation, experience, and judicial  
10 temperament.

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

15 Mr. Chairman, I have no other questions for  
16 Judge Jefferson.

17 REPRESENTATIVE DELLENEY: Does any member of  
18 the Commission have any questions for Judge Jefferson?

19 There being no questions, thank you, Judge  
20 Jefferson, for your willingness to continue to serve.

21 This concludes this portion of the screening  
22 process. As you know, the record remains open until the  
23 report is published and until it becomes a final report  
24 of the Commission. Forty-eight hours after that, you can  
25 seek pledges, but prior to the time that it becomes a

1 report of the Commission, we could reopen your public  
2 hearing, and bring you back and ask you questions.  
3 That's very unlikely, but I want to remind you.

4 I'd like to thank you for offering and thank  
5 you for your service, and have a safe trip back to  
6 Charleston.

7 JUDGE JEFFERSON: Thank you.

8 REPRESENTATIVE DELLENEY: Okay. We have before  
9 us this morning the Honorable Gordon B. Jenkinson.

10 JUDGE JENKINSON: Yes, sir.

11 REPRESENTATIVE DELLENEY: Before we get  
12 started, Senator Campsen is not here. Senator Martin has  
13 his proxy. Senator Campsen has recused himself in this  
14 hearing. We have before us this morning the Honorable  
15 Gordon B. Jenkinson, who seeks to be reelected to Family  
16 Court, 3rd Circuit, Seat Number 3.

17 Judge Jenkinson, would you raise your right  
18 hand to be sworn.

19 (Judge Gordon B. Jenkinson was duly sworn,  
20 after which testimony commenced at 11:35 a.m.)

21 REPRESENTATIVE DELLENEY: Judge Jenkinson, have  
22 you had an opportunity to review your Personal Data  
23 Questionnaire?

24 JUDGE JENKINSON: I have.

25 REPRESENTATIVE DELLENEY: Is it correct?

1 JUDGE JENKINSON: It is.

2 REPRESENTATIVE DELLENEY: Are there any changes  
3 that need to be made?

4 JUDGE JENKINSON: No.

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

8 JUDGE JENKINSON: No, sir.

9 REPRESENTATIVE DELLENEY: It will be made as  
10 part of the record of your sworn testimony.

11 (EXH. 5, Personal Data Questionnaire of Judge  
12 Gordon B. Jenkinson, marked for identification.)

13 REPRESENTATIVE DELLENEY: Thank you, sir.

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

24 We have received two affidavits filed in  
25 opposition to your candidacy, and there are two witnesses

1 present to testify. Do you have a brief opening  
2 statement that you'd like to make?

3 JUDGE JENKINSON: Yes, sir.

4 I wasn't expecting to make an opening  
5 statement, but I would like to take advantage of that.

6 The Simpsons have testified against me. I've  
7 heard four or five of their cases, father and son, over  
8 the course of three or four years. If I made any errors,  
9 they were errors of law. And as I understand it, Mr.  
10 Simpson Senior is on appeal to the Court of Appeals, and  
11 I understand oral arguments ought to be heard next month.

12 So if I made an error, I made an error of law.  
13 And I feel like the same complaint, as far as Simpson  
14 Junior -- and I'll refer to them as Simpson Senior and  
15 Simpson Junior. If I made an error in Simpson Junior's  
16 case, it was an error of law. But that decision was not  
17 appealed and it's the law of the case.

18 REPRESENTATIVE DELLENEY: Thank you, sir.

19 Would you answer any questions our able counsel  
20 has for you.

21 MR. DENNIS: For the Commission and the  
22 participants' clarification, procedurally, since this is  
23 an unusual hearing, I'm going to ask Judge Jenkinson all  
24 of the standard questions that are normally asked with  
25 everything on the record, and then we'll proceed to the

1 two complaints.

2 The complaints are substantially similar in  
3 nature, so I'm going to ask that Mr. Simpson Senior and  
4 Mr. Simpson Junior each come up and state whatever they  
5 need to say to the Commission and be subject to questions  
6 from the Commission. And then we'll ask Judge Jenkinson  
7 to reply to both Simpson Senior and Simpson Junior at one  
8 time, if that's kosher with everyone on the Commission.

9 REPRESENTATIVE DELLENEY: All right.

10 MR. DENNIS: Thank you, Judge.

11 You've already placed your PDQ on the record.  
12 You also have before you your sworn statement. You  
13 answered about 30 questions in that sworn statement that  
14 cover a variety of subject matters. Do you have any  
15 objection to that being part of the record?

16 JUDGE JENKINSON: No, sir.

17 MR. DENNIS: Mr. Chairman, I'd ask that Judge  
18 Jenkinson's sworn statement be made part of the record.

19 REPRESENTATIVE DELLENEY: It will be done at  
20 this point without objection.

21 (EXH. 5A, Sworn Statement of Judge Gordon B.  
22 Jenkinson, marked for identification.)

23 MR. DENNIS: Judge Jenkinson, can you tell the  
24 Commission why you'd like to continue to serve as a  
25 family court judge.



1           JUDGE JENKINSON: Well, I enjoy very much -- at  
2 the risk of sounding a little cheesy, I think it's a job  
3 that God put me on earth to do. I really enjoy it. It's  
4 a challenge every day. I think I've heard everything  
5 until I start court the following week on Monday morning,  
6 and I hear something completely new. It's the most  
7 challenging thing that I've ever done.

8           MR. DENNIS: Thank you, sir.

9           Would you please outline one or two brief  
10 accomplishments from your time on the bench so far and  
11 any additional goals you'd like to accomplish before  
12 leaving the bench.

13          JUDGE JENKINSON: My accomplishments?

14          MR. DENNIS: Yes, sir.

15          JUDGE JENKINSON: Well, I guess the case I'm  
16 most proud of was a case that originated in Dorchester  
17 County. It was a three-day trial. The mother made  
18 allegations of sexual abuse against the father. It  
19 involved a 27-day trial in Charleston County.

20                I did not hear that case, but the judge ruled  
21 that the mother made up all the allegations. The mother  
22 was pro se in the case that I heard in Dorchester County.  
23 It was a very unusual situation. The father was living  
24 in Israel, and he was studying to be a rabbi. He was  
25 from Charleston, and he intended to relocate to South

1 Carolina if he could find a job with a synagog in the  
2 area. He hadn't seen his child in over a year.

3 The mother had completely alienated, not only  
4 the father, but the maternal grandmother who was very  
5 close to the child. The mother's expert was a well known  
6 expert in the Lowcountry, a psychologist, a professor at  
7 the Citadel. He testified that reunification was out of  
8 the question because this child was alienated from the  
9 father and grandmother, and he very strongly recommended  
10 that all further contact with the father and the daughter  
11 be stopped.

12 I heard from a psychologist and psychiatrist in  
13 the Columbia area, and they asked me to order a program  
14 where the child would be in-house for six months to a  
15 year away from the mother. It was a very serious step.  
16 The guardian ad litem attorney was greatly opposed to  
17 that relief. I granted the relief. The child is now  
18 living with the father, as I understand it, and the  
19 guardian has recently recanted her position.

20 So I take pride in that decision. There are a  
21 lot of nameless adoptions out there that I take a lot of  
22 pride in, that I think all family court judges do, but  
23 that is the most significant case.

24 MR. DENNIS: Thank you, sir.

25 Would you explain to the Commission what you

1 feel the appropriate demeanor for a family court judge  
2 is.

3 JUDGE JENKINSON: Calm, of course, and that  
4 trait can be very difficult to follow sometimes; fair,  
5 and hopefully, smart. Maybe that doesn't always surface,  
6 but being calm and fair goes a long way if you're doing  
7 your job properly in the family court.

8 MR. DENNIS: All right.

9 Judge, I'm going to run through some simple  
10 housekeeping issues with you.

11 Have you sought or received the pledge of any  
12 legislator prior to this date?

13 JUDGE JENKINSON: No, sir.

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

17 JUDGE JENKINSON: No, sir.

18 MR. DENNIS: Have you asked any third parties  
19 to contact members of the General Assembly on your  
20 behalf?

21 JUDGE JENKINSON: No, sir.

22 MR. DENNIS: Are you aware of anyone attempting  
23 to intervene in any part of the process on your behalf?

24 JUDGE JENKINSON: No, sir.

25 MR. DENNIS: Have you contacted any members of

1 this Commission?

2 JUDGE JENKINSON: No. I have not.

3 MR. DENNIS: 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 JUDGE JENKINSON: Yes. I do.

8 MR. DENNIS: Have you reviewed the Commission's  
9 guidelines on pledging?

10 JUDGE JENKINSON: Yes. I have.

11 MR. DENNIS: As a follow-up, are you aware that  
12 the penalties for violating the pledging rules are  
13 misdemeanor, and, upon conviction, the violator must be  
14 fined not more than \$1,000 or imprisoned not more than 90  
15 days?

16 JUDGE JENKINSON: Yes.

17 MR. DENNIS: Thank you.

18 I would note for the record that the Pee Dee  
19 Citizens Committee found Judge Jenkinson well-qualified  
20 for all criteria for which that designation was  
21 available; qualified for the remaining three, which was  
22 the highest designation.

23 And I would note for the record that, absent  
24 the complaints, any other issues that were raised in the  
25 course of the investigation were dealt with in this

1 questioning.

2 With the permission of the Chairman, I'll  
3 proceed with the complaint at this time.

4 REPRESENTATIVE DELLENEY: That's fine.

5 MR. DENNIS: Thank you.

6 REPRESENTATIVE DELLENEY: I think the first  
7 complainant is Mr. William Simpson Senior; is that  
8 correct?

9 MR. DENNIS: There's a complicated procedural  
10 history with this set of cases, so I'm going to briefly  
11 lay out the procedure.

12 I've told Mr. Simpson Senior and Mr. Simpson  
13 Junior that if they disagree with anything that I say,  
14 that they'll have an opportunity to clarify that before  
15 the Commission.

16 Both Mr. Simpson Senior and Mr. Simpson Junior  
17 divorced their wives. The final decrees were issued by  
18 two separate judges. Mr. Simpson Junior's decree was  
19 issued by former Judge Andrews. Mr. Simpson Senior's  
20 decree was issued by former Judge Turbeville.

21 Simpson Senior's divorce decree was appealed to  
22 the South Carolina Court of Appeals on several grounds.  
23 South Carolina Court of Appeals remanded the issue back  
24 to the trial court for the issue of attorneys' fees.

25 By the time it got to the trial court, Judge

1 Turbeville was no longer on the bench. Judge Jenkinson  
2 had replaced him. At that time Judge Jenkinson heard the  
3 matter that involved Simpson Senior, Simpson Junior, and  
4 Simpson Farms, LLC. All three were the holders of real  
5 property that were affected by Judge Turbeville's earlier  
6 divorce decree.

7           The substance of Simpson Senior and Simpson  
8 Junior's claim -- there are other issues -- is that Judge  
9 Jenkinson did not properly notify them that he planned to  
10 take up equitable distribution issues at that hearing,  
11 that he exceeded his authority by taking up equitable  
12 distribution issues on remand, and they also comment on  
13 Judge Jenkinson's inability to hear, in their opinion,  
14 and make note of the fact they did not feel he paid  
15 adequate attention to their matter while it was before  
16 him, due to his publishing of a novel that appeared  
17 shortly after their hearing was completed.

18           That's a brief explanation of the facts, and I  
19 would ask Mr. Simpson Senior to come forward and offer  
20 anything that he would like to offer the Commission,  
21 starting with, if he thinks I've stated anything  
22 unfairly, to correct me.

23           REPRESENTATIVE DELLENEY: Mr. Simpson, please  
24 raise your right hand to be sworn.

25           (Mr. Simpson Senior was duly sworn, after which

1 testimony commenced.)

2 REPRESENTATIVE DELLENEY: Thank you, sir.

3 Answer any questions that counsel may have.

4 MR. SIMPSON SENIOR: I think that you correctly  
5 gave a basic outline of what we're here today for.

6 MR. DENNIS: Thank you, sir.

7 At this point, I would just ask you to offer to  
8 the Commission what it is that you believe Judge  
9 Jenkinson failed to do or did do that is within this  
10 Committee's jurisdiction that should disqualify him to  
11 serve on the family court bench.

12 REPRESENTATIVE DELLENEY: I remind you, sir,  
13 that what we're dealing with today is the judicial  
14 candidate's character and fitness. We're not  
15 re-litigating anything or trying the appeal.

16 MR. SIMPSON SENIOR: I would like to read from  
17 my affidavit. Page one of my affidavit would be, the  
18 nature of my testimony consisted of Judge Jenkinson's  
19 misconduct in my divorce case and the reason that I  
20 object to his reappointment. On page two of my  
21 affidavit, I'd like to give a little background, even  
22 though you gave a background. I'd like to give this  
23 background that I wrote.

24 My divorce was originally heard by Judge  
25 Turbeville. He was a trial judge who wrote and filed the

1 final decree in force, dated December 31, 2004. Tab one  
2 is attached. The final order indemnified in detail the  
3 division of marital property of this 34-year marriage.  
4 This was a complex and cantankerous divorce that involved  
5 numerous plats of land. The plaintiffs sought to  
6 include, as marital assets, property that was either not  
7 mine to transfer or property that was in the LLC, of  
8 which I am a half member.

9 In sum and substance, Judge Turbeville awarded  
10 plaintiff cash and land totaling \$784,055. I have  
11 complied with this order. I have paid all ordered  
12 attorney fees and court costs, and I appealed the final  
13 order. The plaintiff did not appeal. Subsequent to  
14 Judge Turbeville's final decree order in December 2004,  
15 he retired. Judge Jenkinson took his place.

16 The Court of Appeals upheld Judge Turbeville's  
17 final order, remanding only as to attorney fees. At this  
18 point, I was confident in the Court of Appeals' decision  
19 and understood on remand before Judge Jenkinson was the  
20 sole issue of attorney fees. In fact, subject to the  
21 Court of Appeals review on May 28, 2010, on tab three,  
22 page eight, Judge Jenkinson concluded in his order that I  
23 was not in contempt of Judge Turbeville's order; that I  
24 cannot transfer real estate title in an LLC, citing South  
25 Carolina codes of law; and that the plaintiff's request



1 for attorney fees on that matter was denied, but that he  
2 would hear us on attorney fees at another time.

3 And the next hearing before Judge Jenkinson,  
4 eight months later, was January 6, 2011. And this is why  
5 I'm here today. The only thing that come back -- the  
6 only order that came back on the order of South Carolina  
7 Court of Appeals was attorney fees. And that's the only  
8 thing that I thought I was going back to court for  
9 because I had done everything else.

10 This is the reason why I'm saying he abused his  
11 discretion and authority. Even the order of May 28th --  
12 and this was what I'm saying on January 6, 2011, before  
13 Judge Jenkinson, and I'll read it. It was my  
14 understanding that this hearing -- that the only issue  
15 before the court was alimony and attorney fees. I felt  
16 ambushed when the plaintiff's counsel introduced Exhibit  
17 9 to the court revisiting the issue of property division,  
18 given that the Court of Appeals had upheld Judge  
19 Turbeville's final order.

20 If plaintiff's counsel introduced the exhibit  
21 into record, Judge Jenkinson accepted it and  
22 inappropriately heard plaintiff's counsel on the issue of  
23 property division all over again. Judge Jenkinson  
24 ignored the Court of Appeal order which upheld Judge  
25 Turbeville's final order, and he also threw out his own

1 order, dated May 28, 2010, tab four -- a copy of the  
2 transcript of January 6, 2011, hearing.

3 And Judge Jenkinson took it upon himself to  
4 circumvent legal procedure and ignore the order from the  
5 Court of Appeals. And below are some transcript  
6 references of the January 6th hearing -- January 6th  
7 hearing, that I would point out to the Commission as to  
8 the back-and-forth concerning the new exhibits  
9 re-litigating what had already been ruled on and upheld.

10 And in these transcripts -- this is just going  
11 to show the inconsistency of what Judge Jenkinson did.  
12 The only order that was before him was a remand of  
13 attorney fees from the appeals court. I mean, what order  
14 am I supposed to look at? And I would like to give you a  
15 brief outline on these transcripts showing, if you look  
16 at page 25, line 10 to 14, the colloquy between counsel  
17 and the court, where the court, which is Judge Jenkinson,  
18 admits that it is bound by Judge Turbeville's percentages  
19 but revises the original order anyway.

20 And if you look at page 28, tab 4. I'd like  
21 you to look at tab 4, page 28.

22 MR. DENNIS: Mr. Simpson, if I could interject  
23 here for just one moment. Much of what you're describing  
24 is a legal argument. Whether or not Judge Jenkinson had  
25 the appropriate legal authority is a matter that is

1 before the South Carolina Court of Appeals.

2 That's not really within the purview of this  
3 Commission. This Commission is really interested in  
4 matters that relate to Judge Jenkinson's ethical fitness  
5 to serve, his physical ability, the nine criteria.

6 And while you may well prove to be right in  
7 your legal argument, that's not something that this  
8 Committee has the authority to review or even comment on,  
9 particularly since it's pending in the Fourth Court of  
10 Appeals. It would be inappropriate for them to comment  
11 on whether or not Judge Jenkinson ruled correctly. If  
12 you have some additional points that you relate to Judge  
13 Jenkinson's overall fitness to be a judge, I think that's  
14 what the Committee would like to know.

15 MR. SIMPSON SENIOR: I understand exactly what  
16 you're saying, and the way -- the only thing that I  
17 understand is that there is a procedure of law. And the  
18 procedure of law is that, I, myself, complied with an  
19 order that was sent back from the appeals court.

20 Judge Jenkinson -- only thing that he had at  
21 that time was a remand of attorney fees. That was the  
22 only thing that I thought I was going to court for. And  
23 for Judge Jenkinson -- to me, I have to follow the  
24 procedure of law.

25 I mean, when I didn't like -- and I didn't like

1 Judge Turbeville's order, and I stand before this  
2 Commission and say that today. But I appealed to the  
3 South Carolina Court of Appeals, and the reason why I  
4 appealed is because of what I just said. And when the  
5 appeals court order come back remanding only attorney's  
6 fees, that was the only order that I thought I had to  
7 follow. And I did that.

8           And the reason why I object to his  
9 reappointment is because of his inconsistent -- back and  
10 forth. And I'll read it to you of what he has done. Not  
11 only to me, but other people that have come before him,  
12 and you'll see it as I read it through. And it's like I  
13 say on tab 4, on the back of my affidavit, page 29, line  
14 4 to 6. Judge Jenkinson says -- this is on my affidavit,  
15 page 3. Judge Jenkinson says, I don't believe I have the  
16 authority to overturn paragraph 106 of Judge Turbeville's  
17 decree, and he does anyway.

18           And then page 40, lines 8 to 10. Mr. Tinkler  
19 is representing my son, William Simpson Junior, and said  
20 that this hearing was scheduled to hear alimony and  
21 attorney fees. Not property division. Mr. Tinkler  
22 requested time after the hearing to respond, and Judge  
23 Jenkinson says it will do that, but then the court goes  
24 ahead and makes a ruling anyway page 42, line 1 to 16.  
25 Even though he had just told Mr. Tinkler he would give

1 him time to respond, Mr. Tinkler reminds the court on  
2 page 43, line 23 and 25, that earlier the court had  
3 agreed to give him time to respond to the plaintiff's  
4 exhibit, which outlined how the property should be  
5 divided, he holds the Court of Appeals stay in Judge  
6 Turbeville's final order. That's page 45, line 24 and  
7 25, and into page 46.

8           And Mr. Tinkler points out to the court that  
9 the effects of the court ruling revising the property  
10 division has put Simpson Junior in a position of giving  
11 away his property twice. At that point, the court gives  
12 the defendant seven days to respond. Upon this  
13 agreement, Mr. Tinkler does not attend an afternoon  
14 session, but at page 116, line 12 through 15, the court  
15 says it may make a decision tomorrow. And he just said  
16 he'd give him seven days.

17           And that's inconsistent with having said he  
18 would allow him to respond before he would rule. He's  
19 consistently inconsistent. His abuse of authority and  
20 discretion is totally inconsistent. I mean, here's a  
21 high-powered Court of Appeals that the only thing they  
22 remanded back was attorney fees. And Judge Jenkinson --  
23 I'm a litigant. I don't know nothing about legal law.  
24 And what case am I supposed to listen to? To the Court  
25 of Appeals, the highest court in the land in the State of

1 South Carolina.

2 A lower court comes back in and revisits an  
3 order and hands out another order. And this is the  
4 reason I strongly object to his reappointment, because of  
5 the inconsistency of my case.

6 REPRESENTATIVE DELLENEY: Mr. Simpson, would  
7 you answer a question from Professor Freeman?

8 PROFESSOR FREEMAN: What I'm understanding your  
9 criticisms pertain to are what took place on January 6th,  
10 2011.

11 MR. SIMPSON SENIOR: That's correct.

12 PROFESSOR FREEMAN: Just one day, one hearing.  
13 You believe that he acted beyond his authority; is that  
14 right?

15 MR. SIMPSON SENIOR: Right.

16 PROFESSOR FREEMAN: You criticized him for not  
17 giving you and your counsel adequate notice about what  
18 was being presented, correct?

19 MR. SIMPSON SENIOR: That's correct.

20 PROFESSOR FREEMAN: And changing his mind as he  
21 went through that hearing, correct?

22 MR. SIMPSON SENIOR: The only thing that I can  
23 say is the only order that was placed from the Court of  
24 Appeals was a remand of additional attorney fees. Judge  
25 Jenkinson had already, on May 28, 2011, issued an order

1 that he didn't even have jurisdiction to make that order.  
2 And he goes into great detail explaining that I was not  
3 in contempt, that I could not give away property that I  
4 did not own because the man's house was in it.

5 I was a 50 percent member in the LLC. He  
6 didn't have any authority to go back and look at his  
7 own -- he changed his own order.

8 PROFESSOR FREEMAN: Let me ask this. I thought  
9 you were complaining about him deciding something without  
10 proper authority, and you confirmed that I was right on  
11 that. Are the issues that you have raised in your  
12 affidavit, and here today, in your appeal before the  
13 Court of Appeals right now?

14 MR. SIMPSON SENIOR: To answer your question, I  
15 still have to go back and look at -- we're complaining of  
16 sending back to the Court of Appeals -- the plaintiff on  
17 that side and on our side are saying the same thing --  
18 back to the Court of Appeals -- did not have  
19 jurisdiction.

20 They're saying the same thing and we're saying  
21 the same thing. Judge Jenkinson did not have  
22 jurisdiction, and this appeal is going back to the Court  
23 of Appeals saying the same thing on both sides.

24 PROFESSOR FREEMAN: Which you've raised here  
25 with us.

1           MR. SIMPSON SENIOR: Yes. And I'd further --  
2 on page 5 of my affidavit, in giving a summary -- the  
3 facts pertaining to Judge Jenkinson's misconduct in my  
4 case consisted of violating legal proceeding. And in  
5 summary, an inappropriate comment on the record about my  
6 relationship with a bank.

7           He changed a prior judge's final order, which,  
8 to my understanding of South Carolina law, he can't do  
9 unless there's new evidence, and there was none. He  
10 changed the final order in favor of the plaintiff, but I  
11 would note that the plaintiff had not preserved the issue  
12 on appeal nor appealed the final order. And I would like  
13 to say that one more time. He changed the final order in  
14 favor of the plaintiff, but I would note that the  
15 plaintiff had not preserved the issue for appeal nor  
16 appealed the final order.

17           How can Judge Jenkinson make any changes after  
18 the fact under these circumstances? He violated legal  
19 procedure, rehearing what had already been adjudicated by  
20 a trial court and upheld by a higher court.

21           MR. DENNIS: Mr. Simpson, I'm sorry to  
22 interrupt a second time. If I could ask you to confine  
23 anything you have to say to Judge Jenkinson's character  
24 and fitness.

25           The legal issues are beyond this Committee,



1 particularly if they're before the Court of Appeals. We  
2 cannot make a determination as to whether Judge Jenkinson  
3 exceeded his authority or not. That's not something that  
4 this group has the ability to do.

5 MR. SIMPSON SENIOR: Well, I stand before you  
6 all today, saying, put yourself in my shoes. Put  
7 yourself in my shoes. I've got an order that come down  
8 from Turbeville, and I didn't like it, and I followed the  
9 procedures of the law.

10 And the law was that my other option, if I  
11 didn't like it, I appealed to the South Carolina Court of  
12 Appeals. South Carolina Court of Appeals, I appealed.  
13 The other side didn't appeal. The plaintiff didn't  
14 appeal. And then I'm going back to court on May 28,  
15 2011, with the understanding that I -- the only thing  
16 that was before that hearing that day was attorney fees.

17 And Judge Jenkinson goes into great detail, if  
18 you look on tab 3, on page 8. Look at his order on page  
19 3, tab 8. And I'd like to read it to you. Now, for it  
20 is ordered, the judge ordered and decreed as follows.  
21 William R. Simpson Senior is not held in civil contempt  
22 of court. Plaintiff request for attorney fees is hereby  
23 denied. Matters related to remand of attorney fees by  
24 Court of Appeals will be addressed at a separate hearing  
25 to be scheduled hereafter and heard by this court. Any

1 ruling within this order or without prejudice to either  
2 party regarding attorney fees and the consequence of the  
3 Court of Appeals order remain. So ordered Gordon B.  
4 Jenkinson.

5 That happened May 28, 2011. On January 6,  
6 2011, me going to court thinking that the only thing we  
7 looking at is attorney fees and here Judge Jenkinson  
8 takes in an exhibit -- takes in Exhibit 9 and accepts  
9 Exhibit 9 into court. He is flip-flopping back and  
10 forth, and it proves that he's held of a higher standard.  
11 Judge Jenkinson is not like me as a average person. I  
12 look to him as an authority. I'm not going to like what  
13 he says, either side.

14 But at the end of the day, I have to follow his  
15 order. And the reason why I'm saying all of this is  
16 because just under the inconsistency of him coming back  
17 and knowing that the only thing before him was that one  
18 remand of attorney fees. And that's the reason I'm here  
19 today to object to his reappointment.

20 MR. DENNIS: Let me see if I can just sum up.  
21 Do you have anything that you want to offer beyond the  
22 fact that Judge Jenkinson exceeded his authority in the  
23 January 6th hearing?

24 REPRESENTATIVE DELLENEY: Do you have anything  
25 to offer beyond your affidavit and what you have provided

1 us with the transcripts and orders that are currently  
2 before us?

3 MR. SIMPSON SENIOR: The thing that I would  
4 like to give to this court or Commission today is that in  
5 my mind I was convinced that I was bound by -- Judge  
6 Jenkinson was bound by an order from the South Carolina  
7 Court of Appeals remanding attorney fees. And I don't  
8 think he had the jurisdiction to come and rejudicate  
9 (SIC) an order that he knows nothing about.

10 REPRESENTATIVE DELLENEY: And that's currently  
11 on the Court of Appeals.

12 MR. SIMPSON SENIOR: On the Court of Appeals,  
13 both sides are saying he doesn't have jurisdiction. And  
14 the reason why I would like to reappoint to that part is  
15 that Judge Jenkinson does not follow the higher court's  
16 order, and he violated the rule when he ignored the  
17 higher court's order on remand. And if you look on page  
18 7, Rule 7(a), it's, "Shall be grounds for discipline for  
19 a judge to willfully violate a valid court order issued  
20 by a court of this state".

21 REPRESENTATIVE DELLENEY: And it's on appeal to  
22 the Court of Appeals. And did you file any grievances  
23 against Judge Jenkinson?

24 MR. SIMPSON SENIOR: The only thing that I  
25 filed was an appeal saying he does not have jurisdiction.

1           REPRESENTATIVE DELLENEY: We can't rule on  
2 whether or not he had jurisdiction. The only thing we  
3 can decide is character and fitness. Do you have  
4 anything to add along the lines of character and fitness,  
5 except what is in the transcripts and orders and  
6 affidavits that you have provided this Commission, what  
7 you've said today so far?

8           MR. SIMPSON SENIOR: His character would show  
9 throughout the process of this ordeal.

10          REPRESENTATIVE DELLENEY: What about his  
11 character shows this?

12          MR. SIMPSON SENIOR: It shows that he doesn't  
13 respect the law. Is he above the law? I have to abide  
14 by it. I mean, to come in and rule on an order that's  
15 already been heard, and then for him to come back in --  
16 would this not be character?

17          REPRESENTATIVE DELLENEY: Well, I can  
18 understand why you say that, but also that is on appeal  
19 to the next level above Judge Jenkinson, and that court  
20 will decide whether or not he's violated the law and gone  
21 beyond his jurisdiction. We can't decide that.

22                 So you contend that he didn't give you notice;  
23 two, he kept changing his mind; three, he didn't have the  
24 proper authority; he didn't observe legal procedure; he  
25 didn't follow the law as given in the previous Court of

1 Appeals decision.

2 And as a result of that, you think that he  
3 doesn't have the fitness to be a Family Court Judge; is  
4 that correct?

5 MR. SIMPSON SENIOR: That's correct.

6 REPRESENTATIVE DELLENEY: Does that pretty much  
7 sum up all of your complaints against him?

8 MR. SIMPSON SENIOR: Yes, sir. The only thing  
9 is that I'm very fortunate, to a certain extent, that I  
10 just want you to know other people have been affected by  
11 his orders. You got to remember, we don't want to be  
12 here today. I got work to do on the farm. This has been  
13 going on for ten years. We're asking for some clarity.

14 That's why we went before Judge Jenkinson,  
15 thinking that the clarity of what we had been involved  
16 in -- a divorce. What happened eight months later, for  
17 him to completely change an order that he had no  
18 authority to, that's the bottom line.

19 REPRESENTATIVE DELLENEY: All right, sir.  
20 Thank you very much.

21 MR. SIMPSON SENIOR: I thank you for hearing  
22 me.

23 MR. DENNIS: Thank you, Mr. Simpson. If  
24 Mr. Simpson Junior could make his way to the podium  
25 please.

1 REPRESENTATIVE DELLENEY: If you would, sir,  
2 raise your right hand to be sworn.

3 (Mr. Simpson Junior was duly sworn, after which  
4 testimony commenced.)

5 REPRESENTATIVE DELLENEY: Answer any questions  
6 our counsel has for you.

7 MR. DENNIS: Mr. Simpson, you heard testimony  
8 by your father, and your complaints are similar.

9 Is there anything that you would like to add,  
10 in addition to what your father has already outlined  
11 before the Commission, or that differs in your complaint  
12 from his?

13 MR. SIMPSON JUNIOR: Yes, sir. I would.

14 I have one tab that -- I'm just going to agree  
15 with everything that my dad said, and the questions that  
16 you all asked and confirmed on those issues. But once we  
17 get into -- my case is separate from my dad's. I just  
18 want to say that he had heard my case -- issued -- and  
19 I'll just read this. On June 29, 2011, a hearing before  
20 Judge Jenkinson, in my divorce case, in the matter of  
21 William R. Simpson Junior. My ex-wife was in arrears on  
22 child support payments. Tab 6 in a binder. Judge  
23 Jenkinson finds defendant in contempt and sentences her  
24 to 60 days in jail with arrearages to be paid within 30  
25 days, including court costs and attorney fees.

1           Based on this ruling, the defendant was  
2 arrested and in custody for 15 days. As a result of this  
3 hearing, Judge Jenkinson issued an order, dated July 1,  
4 2011, against defendant, Becky Simpson, ordered her to  
5 pay \$8,525.80. Each payment must be made on or before  
6 July 29, 2011. Then we go to a October 27th hearing. At  
7 this time of the hearing, Becky Simpson had been arrested  
8 in Montana, pursuant to Judge Jenkinson's June 29th,  
9 2011, order.

10           Now, this lady -- she's been arrested due to  
11 Judge Jenkinson's order, and she's in jail in Montana.  
12 At this October hearing, the clerk of the family court  
13 testified as to defendant's payment history, and the math  
14 indicates she was in arrears of about \$1,200. In spite  
15 of this fact, Judge Jenkinson revisits the language which  
16 was on appeal by them. Judge Jenkinson revisits this  
17 language in his July 1, 2011, order and said, What he  
18 meant was different than what he wrote. See tab 10.

19           Judge Jenkinson says, And I think I was  
20 ambiguous in that provision, and I will think very  
21 seriously before I use that provision again because it's  
22 subject to more than one interpretation. Page 16, lines  
23 1 through 25, McKensie says, Your Honor, I think your  
24 order stands. This is my attorney. I think your order  
25 stands. The order was written, there was an appeal,

1 there was no motion to amend the order.

2 She was served with the order on the 22nd; 30  
3 days to appeal, and no one appealed. He said, Rule 26  
4 says -- anyway, it goes in -- Judge Jenkinson says, How  
5 about my interpretation of my order where I say that if  
6 she was two payments behind, not late -- that was another  
7 interpretation nobody knew about, not even his own clerk.

8 And it's consistently inconsistent with his  
9 ability to abuse his discretion of court. I just don't  
10 see how the judge and his character can demean the higher  
11 powers of court and basically just do what he wants to in  
12 the courtroom because he says it's a court of equity. I  
13 think there's procedures of law that lawyers have to go  
14 by, we have to go by.

15 Not only that, that this lady was locked up and  
16 in jail because of his order -- his interpretation of an  
17 order that was sent -- and she served jail time.

18 But during all this time, Judge Jenkinson wrote  
19 his book. A 300-page fiction novel during the time he's  
20 hearing my case because it was published 2011. And it  
21 says in this book -- go to one of his quotes -- what's  
22 right is right, what's wrong is wrong, an old  
23 African-American proverb. And I would have to say, he  
24 didn't follow the literature in his book issuing orders.  
25 None were appealed. None were sent out by none of the



1 defendants in this case.

2 His lack of demeanor of being able to hear us  
3 in court, and I don't know whether you noticed that here  
4 today, but he has to almost look at you and read lips to  
5 be able to know what's going on. That's another issue  
6 that he has. But the main thing, family court judges  
7 have about 5,000 cases a year in the State of South  
8 Carolina, from what I understand.

9 If I hear 5,000 cases a year and I can write a  
10 book -- 300 pages, a novel -- I don't think I'm putting  
11 too much interest in 400 cases a month in family court,  
12 and maybe that's not something that we need to have a  
13 family court judge doing.

14 I think he's lost his abuse of discretion and  
15 things that he's doing in his personal time. My order  
16 was, he's consistently changing his order in my father's  
17 case. It shows inattention, abuse of the laws that he's  
18 done, and it says, if you go through the canons, while  
19 writing a book is not bad within itself, it says, judge  
20 shall respect and comply with the law and shall act at  
21 all times in a manner that promotes public confidence in  
22 the integrity and impartiality of the judiciary.

23 That's not -- this book has nothing to do with  
24 any part of the judiciary, nothing to do with being a  
25 judge. And I'm here before you today -- that's my

1 biggest issue with him is his character in court to do  
2 this flip-flopping of cases. What order do we go by? I  
3 just don't understand it. If we go for one thing, this  
4 lady is locked up. We thinking we're getting justice.  
5 We got a 300-page novel. We got two appeals going.

6 One is an order that he should have never  
7 sought that was taken under his own wing; however, it  
8 happened. I just don't understand how a judge of any  
9 character can perform duties like this, if this is  
10 happening.

11 MR. DENNIS: Like I did with your father, I'm  
12 going to interrupt you to remind you that the  
13 jurisdictional issues are not within our purview, and we  
14 understand your distaste for the order that was issued,  
15 but that is a matter of law that a court of law will  
16 settle.

17 We are not a court of law and have no ability  
18 to delve into that issue.

19 MR. SIMPSON JUNIOR: I just wanted you to  
20 understand that the character of someone that's in a  
21 position of doing the things that we set out in our  
22 outlines -- the complaints before you all is, I feel  
23 like, legitimate complaints, and that should be the  
24 character of the judge and how he handles himself in  
25 court. And I just don't think that he's conducted

1 himself in this case, and it's not appropriate in  
2 anybody's case. And that's basically --

3 REPRESENTATIVE DELLENEY: Thank you.

4 Could you answer a question?

5 PROFESSOR FREEMAN: To sum up, you think he  
6 lacks character, and because of that, he's unfit to  
7 serve, and we should find him unqualified to be a judge  
8 in South Carolina, correct?

9 MR. SIMPSON JUNIOR: I find him inappropriate  
10 to be reappointed to his character, yes, sir. And my --  
11 I'm trying to think of the word -- the way handles  
12 himself around the laws, that he can tiptoe and do this,  
13 and I just don't think a judge should be able to do this  
14 without confining to the laws and procedures of law, that  
15 he's just going around and beyond.

16 PROFESSOR FREEMAN: Okay. I think I follow  
17 you. Thank you very much.

18 REPRESENTATIVE DELLENEY: Thank you, sir.

19 All right, Judge Jenkinson, we will recall you  
20 for a few questions.

21 MR. DENNIS: Can I ask you to clarify a few  
22 specific things? First, please comment on the issue  
23 raised by Mr. Simpson Junior about your hearing and  
24 whether that limits your ability to continue to serve the  
25 family court.

1           JUDGE JENKINSON: I don't think it does, and I  
2 was going to address that issue to begin with. I have  
3 stated that I wear hearing aids for the last 18 or 20  
4 years. And Mr. Simpson Junior said I read lips, and I  
5 do. That helps me a good deal.

6           I've seen a hearing loss expert at Duke  
7 University that is one of the leading experts in the  
8 world. And I see my audiologist regularly in Florence to  
9 keep up on my condition. And in my court, my court  
10 reporter and I have a system, and if I ask a witness or a  
11 lawyer to repeat something twice, and I don't hear it, we  
12 exchange glances. She takes her mask down and tells me  
13 what it is.

14           All the lawyers in the circuit know I have a  
15 hearing problem, and they compensate for it, as do their  
16 clients. If I'm out of the circuit and I have a trial of  
17 any length, I tell my lawyers about hearing loss and ask  
18 them to stand away where I can see them and ask them to  
19 speak up.

20           I don't think I've gotten myself in any serious  
21 problems. A number of older, very good family court  
22 lawyers profess to have hearing problems. I think I  
23 manage the problem well.

24           MR. DENNIS: Let's talk about the book.

25           JUDGE JENKINSON: The book, and I can

1 understand Mr. Simpson Junior's problems with me possibly  
2 writing a 300-page novel during this litigation, but  
3 that -- the problem that he has is not well-founded.

4 I finished this novel in 1999. It took me  
5 two-and-a-half-years to write it and 11 years to find a  
6 publisher. I've written three other books. All of those  
7 were written before I took this job in 2007.

8 I have not published one word since I took this  
9 job. I have not written one word of fiction. This job  
10 is physically and emotionally demanding, and hopefully I  
11 can get back to that passion when I retire.

12 MR. DENNIS: I'm going to ask you for a general  
13 response to much of what Mr. Simpson Junior had to offer,  
14 but I'm going to ask you to please set aside the legal  
15 issues.

16 We're not interested in whether or not you  
17 exceeded your jurisdiction because we have no recourse to  
18 address that. Those matters that pertain to your  
19 character and fitness to continue to be a family court  
20 judge are the matters that we would like to hear about,  
21 and I'd ask you to please respond.

22 JUDGE JENKINSON: Can I do that with one brief  
23 exception?

24 MR. DENNIS: Absolutely.

25 JUDGE JENKINSON: I just want to admit that

1 this is the most difficult case that I've had in 33-years  
2 of practice and five years on the bench. The difficulty  
3 was that Judge Turbeville, when he issued his ruling, he  
4 neglected -- basically a scribner's error that required  
5 all named defendants, two LLCs and Mr. Simpson Junior  
6 join in a conveyance to Mrs. Simpson.

7           If I didn't make the order that I did, she  
8 would have been shorted \$437,050. That's why I had to  
9 reform the order. All attorneys were notified by  
10 memorandum of the June 2011 hearing. Mr. Tinkler  
11 participated. I've reviewed his memorandum. I have  
12 written evidence of that. The hearings were bifurcated.  
13 I heard that after issues relating to only remand on  
14 attorney's fees, and that's why Mr. Tinkler left when he  
15 did. I can't think of any other issues that I should  
16 address as far as character and fitness, but I'll be  
17 happy to answer your questions.

18           MR. DENNIS: Thank you, Judge Jenkinson. Mr.  
19 Chairman, I have no more questions.

20           REPRESENTATIVE DELLENEY: Does any member of  
21 the Commission have questions for Judge Jenkinson? Okay.  
22 There being none, if you'll have a seat.

23           At this time, I'd like to call Mr. Simpson  
24 Senior back for a brief rebuttal.

25           MR. SIMPSON SENIOR: Judge Jenkinson says that

1 the only part before him on the 2011 hearing was alimony.  
2 He just said it again. Does he stand of a higher  
3 standard than the Court of Appeals when the only thing  
4 was a remand of attorney fees? And then just like I said  
5 on May 28th of 2011, Judge Jenkinson signs an order  
6 saying that I have complied with an order, and the only  
7 thing that's before him was attorney fees. Does the  
8 Court of Appeals -- does that mean anything?

9 REPRESENTATIVE DELLENEY: I think we'll find  
10 out when the Court of Appeals issues the order.

11 MR. SIMPSON SENIOR: If you look at the cost  
12 and expense of us being drug in and out of the courtroom  
13 because Judge Jenkinson thinks one way and then this way  
14 eight months later. What changed Judge Jenkinson's mind,  
15 and that was in his own words, the only thing before him  
16 was additional attorney fees that was remanded from the  
17 Court of Appeals.

18 I mean, who are we as a person to come before a  
19 judge, and we've done everything possible that we could  
20 do, and here's a judge that don't have to follow any  
21 orders. He's higher than the Court of Appeals and higher  
22 than the Supreme Court to make orders to come back from  
23 the South Carolina Court of Appeals. Does it mean  
24 anything? I mean that's where I stand at. He wrote an  
25 order against my son on putting a lady in jail, and she

1 spent 15 days in jail. That wasn't his intentions. What  
2 about her staying in jail for 15 days?

3 I think Judge Jenkinson is a good judge. I  
4 think he's a real good judge, but he doesn't follow  
5 procedure. And on top of that, just look at the only  
6 thing that the order wasn't even appealed by the South  
7 Carolina -- let me just read to you one thing that still  
8 gets to me.

9 Give Judge Jenkinson the benefit of the doubt,  
10 that he had the authority to listen to argument beyond  
11 Judge Turbeville's order. Give him the benefit of the  
12 doubt. It still would have been improper. It still  
13 would have been improper because the plaintiff never  
14 appealed Judge Turbeville's order. Never appealed. And  
15 there's a higher court. There's the Supreme Court.

16 That order could have been taken up, but, no,  
17 it was remanded back to him to address only attorney  
18 fees. He's got more authority? That's the reason why we  
19 here today. We feel like that he shouldn't be appointed  
20 because he doesn't follow procedure, and we're just  
21 asking for him not to be reappointed because how can we  
22 follow any order?

23 REPRESENTATIVE DELLENEY: We understand it.

24 MR. SIMPSON SENIOR: And, you know, writing a  
25 book, everybody seems to think you ought to have some



1 idle time, and he said he done it back in 1999, but 2011  
2 he got it published. But 400-plus cases -- the thing on  
3 television once a month to students. She picks out one  
4 case a month that's been decided by judges in family  
5 court.

6 And in that one case, these students are  
7 supposed to look at that, thinking that this higher  
8 court -- and I respect Judge Jenkinson. Anybody --  
9 they're different than me. Different in every capacity.  
10 I'm supposed to look up -- and just like you all here  
11 today, I come to you all to the benefit of one thing.

12 Not because I'm dissatisfied with the ruling in  
13 my case. Who am I supposed to follow? Judge Jenkinson  
14 from the bench? I'm supposed to look up to -- neither  
15 side is going to be happy, but the only thing before him  
16 was attorney fees. It was remanded. Nothing else.

17 And if he don't follow procedure of law in my  
18 case, what did he do with all these other people? We're  
19 not here to complain about our case. We're here strictly  
20 for one thing and one thing only; telling you how  
21 inconsistent he is on his orders. He makes a order  
22 May 28th. Eight months later -- not three or four months  
23 later -- eight months later, comes back and changes an  
24 order. He disobeyed the highest court's order for the  
25 State of South Carolina.

1           PROFESSOR FREEMAN: Mr. Chairman, I can tell  
2 you, I fully understand Mr. Simpson Senior's position.

3           I would like to hear from Mr. Simpson Junior to  
4 see if he has anything to reply.

5           MR. SIMPSON SENIOR: I would like to thank you  
6 for hearing us and taking the time.

7           REPRESENTATIVE DELLENEY: Thank you.

8           We know it takes a lot of courage to do what  
9 you did.

10          MR. SIMPSON SENIOR: I know this is probably  
11 inappropriate, but I want to show you some of the things  
12 that's come about, and you'll see why I'm here. And this  
13 might be inappropriate.

14          REPRESENTATIVE DELLENEY: Mr. Simpson, Junior,  
15 if you would like to exercise a brief reply.

16          MR. SIMPSON JUNIOR: I understand my father's  
17 aggravated with the court, with Judge Jenkinson's ability  
18 to do the things that he's done, his abuse of discretion,  
19 and I just wanted to let you all know that he said this  
20 was a very complex and difficult case. It wasn't.

21                 It went to the appeals court. They affirmed  
22 it, and they remanded attorneys' fees. And that was the  
23 end of the case. And that's basically all I have to say  
24 about it. It's not very complicated. It was done, and  
25 that was the sum of it, and all of this is the aftermath,

1 I guess, before you. That's all I have to say.

2 REPRESENTATIVE DELLENEY: Thank you, sir.

3 Okay. Does anyone else on the Commission have any  
4 questions of Mr. Simpson Junior?

5 There being none, thank you, sir, for your  
6 willingness to participate in the process, and we know it  
7 takes courage and time to come all the way up here to  
8 participate, and we appreciate you all coming.

9 MR. SIMPSON JUNIOR: Thank you, sir.

10 REPRESENTATIVE DELLENEY: Okay.

11 Judge Jenkinson, I'd like to thank you for your  
12 willingness to serve and your willingness to offer to  
13 continue to serve. This ends this portion of your  
14 screening process, and we'll then, after the screening is  
15 over, issue a report, and you're very familiar with the  
16 48-hour rule. After the expiration of the 48-hour rule,  
17 the report becomes the final report of the Commission,  
18 but up to that time, if we want to reconvene the public  
19 hearing and bring you back to testify, or bring the  
20 Simpsons back and clarify an issue, we could do that.

21 But with that, I'd like to thank you for  
22 coming, thank you for your service, and I hope you have a  
23 safe trip back home.

24 JUDGE JENKINSON: All right. Thank all of you.

25 REPRESENTATIVE DELLENEY: Good afternoon, Judge

1 Creech. We have before us the Honorable Wayne Morris  
2 Creech, who seeks reelection in the Family Court, 9th  
3 Circuit, Seat Number 4.

4 Would you please raise your right hand to be  
5 sworn.

6 (Judge Wayne Morris Creech was duly sworn,  
7 after which testimony commenced at 1:05 p.m.)

8 REPRESENTATIVE DELLENEY: Judge Creech, have  
9 you had an opportunity to review your Personal Data  
10 Questionnaire?

11 JUDGE CREECH: I have.

12 REPRESENTATIVE DELLENEY: Is it correct?

13 JUDGE CREECH: Yes, sir.

14 REPRESENTATIVE DELLENEY: Are there any changes  
15 that need to be made?

16 JUDGE CREECH: No, sir.

17 REPRESENTATIVE DELLENEY: Do you object to our  
18 making that summary part of the record of your sworn  
19 testimony?

20 JUDGE CREECH: No, sir.

21 REPRESENTATIVE DELLENEY: It will be made as  
22 part of the record of your sworn testimony.

23 (EXH. 6, Personal Data Questionnaire of Judge  
24 Wayne Morris Creech, marked for identification.)

25 REPRESENTATIVE DELLENEY: Thank you, sir.

1           The Judicial Merit Selection Commission has  
2 thoroughly investigated your qualifications for service  
3 on the bench. Our inquiry has primarily focused on nine  
4 evaluative criteria, which include a survey of the bench  
5 and the bar, a thorough study of your application  
6 materials, verification of your compliance with state  
7 ethics laws, a search of any newspaper articles in which  
8 your name may have appeared, a study of previous  
9 screenings, and a check for economic conflicts of  
10 interest.

11           We have no affidavits filed in opposition to  
12 your candidacy, and there are no witnesses present to  
13 testify. Do you have a brief opening statement that  
14 you'd like to make?

15           JUDGE CREECH: I would just like to say,  
16 Mr. Chairman, thank you all for the opportunity to serve,  
17 now almost 24 years, in this job. It's been a blessing  
18 for me, a wonderful opportunity for me to work in my  
19 profession in a way that really suits me, and, I guess,  
20 it's the place that I fit in the profession. I've loved  
21 every minute of it, and I thank you for it.

22           REPRESENTATIVE DELLENEY: Thank you, sir.  
23 Please answer any questions that our able counsel may  
24 have.

25           MR. FIFFICK: Good afternoon, Judge Creech.

1           You have before you a sworn statement that you  
2 provided with detailed answers to over 30 questions  
3 regarding judicial conduct, statutory qualifications,  
4 office administration, and temperament.

5           Are there any amendments that you would like to  
6 make at this time?

7           JUDGE CREECH: No, sir.

8           MR. FIFFICK: Thank you.

9           Mr. Chairman, at this time, I'd ask that Judge  
10 Creech's sworn statement be entered as an exhibit.

11           REPRESENTATIVE DELLENEY: Without objection it  
12 will be done at this point in the transcript.

13           (EXH. 6A, Sworn Statement of Judge Wayne Morris  
14 Creech, marked for identification.)

15           MR. FIFFICK: Judge Creech, can you tell the  
16 Commission why you'd like to continue to serve as a  
17 family court judge.

18           JUDGE CREECH: Well, you know, as I said, the  
19 thing that I like about the practice of law is that it's  
20 broad enough to accommodate our various personalities in  
21 the places that we might find that we fit.

22           Not everybody, for example, is suited to be a  
23 trial attorney, but there are plenty of places in the  
24 profession for them.

25           I should maybe go further and say, I love trial

1 work, but I was one of those that, like, some might can  
2 relate to, who was plagued by the feeling that I always  
3 had to win or to get a favorable result for my client.

4 And the opportunity to go from an advocacy  
5 position to that of a neutral decision maker is really  
6 the place that I feel comfortable, and I think that suits  
7 me best in the practice of law, which I love.

8 MR. FIFFICK: Thank you, sir.

9 Could you explain one or two accomplishments  
10 that you feel you have completed during your tenure and  
11 then a goal that you would like to accomplish if  
12 reelected.

13 JUDGE CREECH: I would say from the  
14 accomplishment standpoint, one of the things that I have  
15 accomplished, I am a firm believer in following the law  
16 and rules, sort of, to the strict letter.

17 And one of the things about that is that,  
18 regrettably, my mind is not capable of remembering all of  
19 the rules and all, you know, the things that we should  
20 consider in every case.

21 So one of the things that I did many years ago,  
22 was introduce to the bench something that I think most  
23 trial lawyers have been doing for a long time, and that's  
24 using checklists. A lot of the judges on the bench now,  
25 when they try cases, use checklists with various criteria

1 that are to be considered in the decision-making process,  
2 that, you know, I created or formulated for my use and  
3 have been disseminating for about the last eight years or  
4 so.

5 I've been working on a bench book project.  
6 I've done a first draft of that which many of the judges  
7 use all the time. It isn't in its final form. I'm  
8 working on that now in conjunction with law students from  
9 the Charleston School of Law. We're getting it in its  
10 final draft, and I think probably -- if you think what  
11 would be my greatest contribution to the family court  
12 bench, hopefully, if the Lord lets me live long enough,  
13 is to finish my bench book.

14 So those are the accomplishments or  
15 contributions. And what was the second part of the  
16 question?

17 MR. FIFFICK: I believe you answered that  
18 question with your bench book as your goal. Would you  
19 like to add to that?

20 JUDGE CREECH: Well, perhaps, yes, sir.

21 There is one goal that I do have. You know,  
22 I'm struggling with figuring out how to accomplish it.  
23 I've been very dismayed over the course of my career at  
24 the willingness of litigants to lie in court proceedings  
25 and to attempt to accomplish a distorted result by



1 offering perjured or otherwise falsified information.

2 I have attempted to make a deliberate point,  
3 when that happens before me, of referring the matter to  
4 the solicitor for prosecution, which in some instances  
5 has been fairly successful, depending on the circuit that  
6 you're in. And in other instances, trying to come up  
7 with other ways to deal with it myself, like a criminal  
8 contempt proceeding or something like that. It is a  
9 process that I hope, at some point, will better our legal  
10 process by reminding everyone how important it is to tell  
11 the truth.

12 MR. FIFFICK: Thank you, sir.

13 You address this in your sworn affidavit, but  
14 could you please relate to the members of the Commission  
15 what you feel the appropriate demeanor is for a judge.

16 JUDGE CREECH: Well, we're to be courteous,  
17 dignified, polite, fair, and give everybody an  
18 opportunity to be heard.

19 I think to the extent that the setting and  
20 everything that you -- settings may be a little different  
21 in different cases, but to the extent that you can put  
22 people at ease by being, I would say, friendly, because  
23 after all, you know, even though we call it an adversary  
24 system, it's dispute resolution, and that doesn't have to  
25 be a fight.

1           You know, it doesn't have to really be an  
2 argument in the meanest sense of it, and I think if you  
3 communicate that to litigants sometimes and also control  
4 the proceedings so that you don't let lawyers who are,  
5 you know, zealous advocates maybe go across the line and  
6 transform it into something that it shouldn't be, I think  
7 that's a great contribution to civility.

8           So, you know, I would simply say being a nice  
9 person is really what goes a long way toward being a good  
10 judge, and I try to be that.

11           MR. FIFFICK: Thank you, Judge Creech.

12           The Commission received 320 ballot box surveys  
13 regarding you with 45 additional comments. Many of those  
14 were positive comments, but eight of those comments were  
15 indicative of some concern. And I'll summarize two of  
16 them here, and you can address them together.

17           Two of them allege that you're prone to  
18 substituting your own personal beliefs for the rule of  
19 law. The first of these allege that you sometimes  
20 overreact or issue an overly harsh decision based on your  
21 Christian beliefs.

22           And the second alleges that you bring your own  
23 set of laws in the courtroom, such that your rulings are  
24 based on your personal beliefs and not the law. The  
25 second response goes further to allege that your rulings

1 impose your view for morality on others without regard  
2 for cultural differences.

3 Would you care to respond?

4 JUDGE CREECH: Yes, sir.

5 Are you familiar with the psychological theory  
6 called projection? Okay. That's where you accuse  
7 someone of what you're guilty of, and there are  
8 instances -- I am blessed. I don't make any qualms about  
9 it. I am a committed Evangelical Fundamentalist  
10 Christian, and, fortunately, I live in the Bible Belt in  
11 a conservative state with conservative laws.

12 So very seldom, frankly, do I have any real  
13 disagreement with anything that I'm being asked to do.  
14 But I also understand as a Christian -- if I can just  
15 talk about that. You know, my Christianity, bearing the  
16 name of Christ means everything to me, and, you know, I  
17 take that not just as part of my life but as my whole  
18 life. And so it does affect what I do. I want to  
19 explain how it affects.

20 You know, you can read the Bible, and there are  
21 some topics that are repeated over and over and over  
22 again because that's how important they are to God. And  
23 one of those topics is justice and judges, and it is  
24 abundantly clear that God has a great disdain for corrupt  
25 judges, for judges who are prejudiced against other

1 people for any reason, whether it's economic  
2 circumstances or whatever it might be.

3           It is clear to me that, as a judge, if I'm  
4 going to be a good Christian, I have to be fair to  
5 everyone. I have to be courteous to everyone because, as  
6 I believe, God made us all, and if he made us all, then  
7 simply because of the fact that God made you, I owe you  
8 respect. And I try to treat people that come into my  
9 courtroom with that kind of mindset.

10           I understand that issues before me are governed  
11 not by what I think, but by what the law is, and I'm  
12 guided in my Christian principles to understand that one  
13 of the abominations before God is lawlessness. And as a  
14 judge, I feel like if I don't follow the law, and if, as  
15 these people have suggested, I'm doing my own thing, then  
16 I would be a law unto myself, and I would be lawless.

17           And that is contrary to everything that I  
18 believe. The reason that I think I get some -- and I  
19 sense if I've got 340 responses, that the number of  
20 people that have suggested that is relatively small. So  
21 if that is the case, what I sometimes encounter are  
22 people who have a much more liberal view on certain  
23 social issues than South Carolina law dictates, and they  
24 want me to make a decision that's favorable to their  
25 client in certain social circumstances that I won't do

1 because I believe it's contrary to the law.

2 A classic example would be this: If a divorce  
3 is going on and a husband is seeking custody of his  
4 children, but he's married and living with his  
5 girlfriend, okay, I won't consider awarding him custody  
6 as long as he would be exposing his children to behavior  
7 that, under South Carolina law, is not only immoral but  
8 also criminal.

9 But some people want me to do that anyway, and  
10 I won't. And there are other issues like that. I don't  
11 know if that's a satisfactory response, but I'd be glad  
12 to answer any follow-ups if you have any.

13 MR. FIFFICK: Any follow-ups from the  
14 Commission?

15 Thank you. The third comment relates that you  
16 go overboard if the litigant violates one of your quirky  
17 interests. Can you respond to that? Or do you want to  
18 refer to your earlier answer?

19 JUDGE CREECH: That was one that, when we  
20 talked earlier, I was a little baffled by because I'm not  
21 one of those judges that have any kind of separate rules.  
22 I know that there are judges, for example, that have  
23 instructions to the bailiffs concerning a dress code.  
24 For example, don't wear shorts to court or a T-shirt to  
25 court. I don't have rules like that. If someone comes

1 in wearing shorts and a T-shirt, I don't make them leave.  
2 I simply tell them, Please, next time you come to court,  
3 don't wear shorts and a T-shirt. That's the way I handle  
4 that.

5 I don't have any rules. Now, I do have one  
6 thing that I do. There are a few judges, again, who have  
7 been influenced by me doing this, and they have started  
8 doing this also, but when there are child issues involved  
9 in a case, if there's a child custody case, if you come  
10 before me, I'm going to always ask you certain questions.  
11 And to save time -- that is, not to have me have to go to  
12 the trouble of asking these questions -- I carry around  
13 with me a safety questionnaire, which in child custody  
14 cases, I will ask the litigants to fill out.

15 And these are the questions asked: Do you or  
16 anyone who lives with you have a criminal record? Do you  
17 or anyone who lives with you have a problem with alcohol  
18 or drugs? Have you or anyone who lives with you ever  
19 been involved in any incidents or episodes of domestic  
20 violence? Have you or anyone who lives with you ever had  
21 your parental rights terminated as to a child for any  
22 reason? Have you been treated within the last three  
23 years for any physical illness that might limit your  
24 ability to care for a child or any mental illness or drug  
25 or alcohol problem?

1           The reason that I ask those questions is  
2 because in 1989, when I was holding court in Greenville,  
3 early in my career, it was not uncommon for lawyers to  
4 call and say, Judge, we have a case that we've settled,  
5 and we'd like to submit a consent order. It was a final  
6 consent order.

7           And I don't know why, but I asked on that  
8 occasion, Well, you know, what all does it involve? They  
9 said, It's a child custody, change of custody. And I  
10 said, No, I'm not going to sign a consent order. I need  
11 you all to come to the courthouse and appear before me  
12 and let me ask you some questions.

13           So when we had the hearing -- at the hearing  
14 the father and his lawyer came and the mother's lawyer  
15 came. The mother did not come. And again, I cannot  
16 explain why, but for the first time in my short career, I  
17 started off, after I asked questions about  
18 their agreement, I asked, Have you or anyone who lives  
19 with you ever been investigated by the Department of  
20 Social Services or any agency like that for the abuse or  
21 neglect a child?

22           Dad turned pale as a ghost. Both lawyers  
23 looked like they were going to vomit in the courtroom.  
24 And I said, What's wrong? Dad had a finding of sexual  
25 abuse of his ten-year old daughter entered against him

1 and was receiving, by agreement, custody of their  
2 ten-year old son.

3           When I found that out, I refused to approve the  
4 agreement. I appointed a guardian ad litem and said that  
5 the only way that that would happen would be by them  
6 trying the case and proving that it would be in the  
7 child's best interest for that to happen. Of course, you  
8 know how things work. I left Greenville, went home,  
9 never really knew what else happened to the case until  
10 maybe six months or a year later. I got a letter. Now,  
11 I will tell you that I have a scrapbook at home of  
12 letters, cards, and newspaper articles, most of which are  
13 uncomplimentary.

14           But this one was from the mother of the little  
15 boy, and she said, You know, Judge Creech, thank you for  
16 not approving that agreement. I couldn't come to court  
17 because I was so upset. I was seeing a psychiatrist, and  
18 I was having a nervous breakdown because my child, my  
19 son, was acting out. He was uncontrollable. I'm  
20 confident it was because of all of the abuse that we've  
21 suffered from my ex-husband, and you saved his life.

22           I ask those questions every time now, and if  
23 that's a quirky rule, so be it.

24           MR. FIFFICK: Thank you, Judge Creech.

25           The fourth comment states that you're generally



1 a suitable judge but occasionally act in capricious and  
2 arbitrary manner. Would you care to respond to that?

3 JUDGE CREECH: Yes, sir.

4 Sometimes when people lose their case, they're  
5 unhappy. Do you have time for me to tell you a funny  
6 story? I don't know if you do.

7 I had a lawyer friend -- as a matter of fact,  
8 we practiced law together at one time, and after I came  
9 on the bench, he appeared before me numerous times, and  
10 he lost every case he ever tried in front of me, but he  
11 had terrible cases.

12 And anyway, I didn't know it at the time, but a  
13 friend of his, another lawyer in the community, a  
14 prominent domestic lawyer, was appearing before me over  
15 and over again and getting positive results over and over  
16 again because he had good cases.

17 And unknown to me -- this was completely  
18 unknown to me -- the lawyer who was getting these  
19 positive results over and over again came in and he tried  
20 this case before me. And there was no other way to  
21 describe it, other than to say that I slammed him. I  
22 mean, he lost on every issue. I couldn't understand. It  
23 was so out of character to see this lawyer come in and  
24 have such a terrible case. He usually didn't have that.  
25 Well, I ruled, issued the order, and about a year later,

1 I saw him at an event, and he said, Wayne, want me to  
2 tell you a funny story? I said, Yeah. He said, Do you  
3 know so and so? I said, Oh, sure, I know him. I  
4 practiced law with him at one time. He asked, Yeah, well  
5 he and I were roommates in college, and he came to me and  
6 he asked me, he said, Tom, is Wayne mad with me? And Tom  
7 said, Well, I don't think so. He said, Well, I lose  
8 every case in front of him. And he asked Tom if Tom  
9 would try his case in front of me and see what the  
10 outcome would be. And that's the case that Tom lost on  
11 every point because this friend of mine just had bad  
12 cases.

13 I don't think I'm arbitrary or capricious, but  
14 I call them like I see them. And some people think that  
15 I'm not doing the right thing. Sort of like I used to  
16 with the little league umpire when my children went to  
17 bat and they struck out. I thought they were crazy.

18 MR. FIFFICK: Two final comments that go  
19 towards your judicial temperament. The first  
20 characterizes you as consistently agitated and one of the  
21 grouchiest judges on the bench and the second one is that  
22 you sometimes become unreasonable, rude, and harsh in  
23 your treatment with some of the parties and counsel. The  
24 second comment also alleges that at times you exhibit a  
25 seething, barely controllable rage. Would you care to

1 respond?

2 JUDGE CREECH: Yes, sir. That's not true.  
3 That's just false. Again, I would say, you know, I've  
4 been doing this 24 years. I have referred people to the  
5 grievance committee for misconduct and admonished them  
6 for not complying with rules. They don't always perceive  
7 a firm hand or, you know, a balanced but necessary  
8 approach to ethical misconduct as kindness. They think  
9 that I am going off the deep end or I am doing something  
10 horrible to them.

11 But the fact of the matter is that I would  
12 suggest -- and I don't want to put people down  
13 unnecessarily, but, you know, in the family court we deal  
14 with a small percentage of people that we have to  
15 recognize in the society, that are dysfunctional and  
16 unreasonable people.

17 That's part of the reason why many of them are  
18 in family court. Some of the people are lawyers. And  
19 so, you know, just because you get in the bar, doesn't  
20 mean that you are automatically a reasonable and  
21 non-dysfunctional individual. And, you know, I would  
22 simply adamantly, strenuously, completely deny those  
23 allegations.

24 MR. FIFFICK: Thank you, Judge Creech.

25 JUDGE CREECH: Did I get any positive things

1 about that?

2 MR. FIFFICK: We did get many positive  
3 comments, and some of the folks that have come before us  
4 and given testimony have said that they've used you as a  
5 model for the temperament and demeanor that a judge  
6 should exhibit. I was required to ask those questions,  
7 just so you know.

8 JUDGE CREECH: Praise the Lord. Thank you.

9 MR. FIFFICK: Thank you, sir.

10 I just have some housekeeping issues. Have you  
11 sought or received the pledge of any legislator prior to  
12 this date?

13 JUDGE CREECH: No. I have not.

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

17 JUDGE CREECH: No, sir.

18 MR. FIFFICK: Have you asked any third parties  
19 to contact members of the General Assembly on your  
20 behalf?

21 JUDGE CREECH: No, sir.

22 MR. FIFFICK: Are you aware of anyone  
23 attempting to intervene in any part of the process on  
24 your behalf?

25 JUDGE CREECH: No. I am not.

1 MR. FIFFICK: Have you contacted any members of  
2 this Commission?

3 JUDGE CREECH: No, sir.

4 MR. FIFFICK: 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 JUDGE CREECH: Yes. I do.

9 MR. FIFFICK: Have you reviewed the  
10 Commission's guidelines on pledging?

11 JUDGE CREECH: Yes. I have.

12 MR. FIFFICK: As a follow-up, are you aware  
13 that the penalties for violating the pledging rules are  
14 misdemeanor, and, upon conviction, the violator must be  
15 fined not more than \$1,000 or imprisoned not more than 90  
16 days?

17 JUDGE CREECH: Yes.

18 MR. FIFFICK: I would note that the Lowcountry  
19 Citizens Committee found Judge Creech well-qualified in  
20 evaluative criteria of ethical fitness, professional and  
21 academic ability, character, reputation, experience, and  
22 judicial temperament. The committee found Judge Creech  
23 qualified in the evaluative criteria of constitutional  
24 qualifications, physical health, and mental stability.

25 Any concerns raised during the investigation

1 regarding the candidate were incorporated into the  
2 questioning of the candidate today. Mr. Chairman, I have  
3 no further questions.

4 REPRESENTATIVE DELLENEY: Any member of the  
5 Commission have any questions for Judge Creech?

6 There being none, thank you, Judge Creech.  
7 Thank you for your willingness to serve and your  
8 willingness to continue to serve.

9 This concludes this portion of the screening  
10 process. We'll issue a draft report, and after the  
11 expiration of the 48-hour period, it will become the  
12 report of the Commission. Up to that time, we could  
13 reconvene a public hearing, bring you back to clarify an  
14 issue that someone might have.

15 We don't expect that to happen in your case.  
16 You don't have anyone running against you. Thank you for  
17 offering to serve, and I hope you have a safe trip back  
18 home.

19 JUDGE CREECH: Thank you. I hope I didn't take  
20 too much time. Nice to see you all.

21 REPRESENTATIVE DELLENEY: We have before us the  
22 Honorable Judge Garfinkel, who seeks reelection to the  
23 Family Court, 9th Judicial Circuit, Seat number 2.

24 Judge Garfinkle, if you would raise your right  
25 hand to be sworn.

1 (Paul Warren Garfinkle was duly sworn, after  
2 which testimony commenced at 1:40 p.m.)

3 REPRESENTATIVE DELLENEY: Thank you, sir. Have  
4 you had an opportunity to review your Personal Data  
5 Questionnaire?

6 JUDGE GARFINKLE: Yes, sir. I have.

7 REPRESENTATIVE DELLENEY: Is it correct?

8 JUDGE GARFINKLE: Yes, sir.

9 REPRESENTATIVE DELLENEY: I assume nothing  
10 needs to be changed.

11 JUDGE GARFINKLE: No, sir.

12 REPRESENTATIVE DELLENEY: Do you object to  
13 making that part of your sworn testimony?

14 JUDGE GARFINKLE: No, sir.

15 REPRESENTATIVE DELLENEY: That will be done at  
16 this point in the transcript.

17 (EXH. 7, Paul Warren Garfinkle's Personal Data  
18 Questionnaire, admitted into evidence.)

19 REPRESENTATIVE DELLENEY: Thank you, sir.

20 The Judicial Merit Selection Commission has  
21 thoroughly investigated your qualifications for service  
22 on the bench. Our inquiry has primarily focused on nine  
23 evaluative criteria, which have included a survey of the  
24 bench and the bar, a thorough study of your application  
25 materials, verification of your compliance with state

1 ethics laws, a search of any newspaper articles in which  
2 your name may have appeared, a study of previous  
3 screenings, and a check for any economic conflicts of  
4 interest.

5 We have one affidavit filed in opposition to  
6 your election, and there is one witness here to testify.  
7 Do you have a brief opening statement that you would like  
8 to make?

9 JUDGE GARFINKLE: Yes, sir. I do. First of  
10 all, I want to thank the Commission members for giving up  
11 your time in helping this process go forward.

12 It's work that you do that allows our state to  
13 be the envy of the nation. I've served on many national  
14 boards and commissions, and what they talk about is how  
15 our judges are elected. Everybody wants to come to South  
16 Carolina.

17 I want you to know that I've been a family  
18 court judge now for over 17-and-a-half-years. I've  
19 enjoyed every moment that I've been a family court judge.  
20 I feel that I have contributed to the welfare of the  
21 citizens of our state, mainly, the families and children  
22 that we deal with.

23 And that has been the focus of what I have done  
24 in the family court, is to focus my attention on how we  
25 can better serve our families and our children in this



1 state. And I would like to continue doing this as long  
2 as I'm able to do it.

3 REPRESENTATIVE DELLENEY: Thank you, sir. One  
4 thing I need to put on the record. Professor Freeman and  
5 Representative Mack have recused themselves from this  
6 hearing due to various conflicts, and they will not be  
7 part of the screening process in any way, whether the  
8 public hearing or the deliberation.

9 If you would answer any questions Ms. Shuler  
10 has for you.

11 MS. SHULER: Good afternoon. You have before  
12 you the sworn statement. Are there any additional  
13 amendments you would like to add at this time?

14 JUDGE GARFINKLE: No, ma'am. I think it is  
15 all, as far as I can tell, correct. If you want to enter  
16 it into the record, I have no objection.

17 MS. SHULER: Mr. Chairman, I would like to  
18 enter it into the record as an exhibit.

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

21 (EXH. 7A, Paul Warren Garfinkle's Sworn  
22 Statement, admitted into evidence.)

23 MS. SHULER: Judge Garfinkle, in your opening  
24 statement you informed the Commission that you wanted to  
25 continue to serve on the family court bench.

1           Could you briefly explain one or two  
2 accomplishments and a goal that you would work on, if  
3 you're reelected to the family court bench.

4           JUDGE GARFINKLE: Yes, ma'am. What I've  
5 done -- well, that might be a question. I've broken it  
6 down into what I call local, state, and national  
7 accomplishments, and I'll try to go through that quickly.

8           On the local level, I was involved and still  
9 continue to be involved in the Fatherhood Program, which  
10 restores children and their noncustodial parents, and the  
11 noncustodial parents are able to pay their child support.  
12 This program has been a success in Charleston and now is  
13 being copied throughout the state.

14           I was the first and only judge to ever have a  
15 DSS Drug Court Program, wherein children are taken out of  
16 foster care, on the average, eight months, rather than  
17 two-and-a-half-years under our present system. We have a  
18 70 percent success rate, as opposed to 25 percent in the  
19 normal DSS child abuse and neglect cases.

20           I started a program called Get A Job Program,  
21 which, in cooperation with the family court, Department  
22 of Labor and Workforce, and Vocational Rehabilitation for  
23 people who said that they could not find a job and pay  
24 child support, were able to secure jobs; some who  
25 received jobs close to my salary, I might admit, and they

1 were able to pay their child support.

2 We started a program called Fast Track Custody  
3 Program, wherein custody cases are resolved within 90  
4 days from the temporary hearing until the final  
5 resolution. All the custody and visitation issues are  
6 settled. This is working amazingly well in Charleston,  
7 and it's going to be rolled out in Greenville-Spartanburg  
8 very shortly.

9 I started to have, a number of years ago,  
10 weekly meetings with attorneys who are in practice less  
11 than one year and who are unfamiliar with family court.

12 We have what I call bring-your-own-lunch  
13 meetings, and this has been successful. I meet with at  
14 least one attorney per week, sometimes three and four a  
15 week. I give free CLEs on family court, and I'm the only  
16 family court judge to have been asked to serve on the  
17 Charleston School of Law Board of Advisors.

18 On the state level, I've been a member of the  
19 committee since 1997 to the present. That's the  
20 committee that gives the legislature recommendations on  
21 changes to family law. I've served on Children's Justice  
22 Task Force from 1996 to last year to recommend changes in  
23 DSS and the way they handle their cases.

24 I've been the longest serving member on the  
25 Chief Justice Advisory Committee, from 2002 to the

1 present. I'm the only sitting family court judge ever to  
2 receive an honorary doctorate degree. I received that in  
3 2005. My contributions to the family court bench -- I've  
4 been an instructor of New Judge's School from 2002, to  
5 the present, and I've served on the editorial board of  
6 the scholarly work called Marital Litigation.

7 I've served on the editorial board on two of  
8 the four editions, I believe the only family court judge  
9 ever so honored. On the national level, I've been a  
10 trustee of National Council of Juvenile and Family Court  
11 Judges for six years -- two three-year terms, from 2003  
12 to 2009.

13 I was asked by the National Judicial College to  
14 participate in a program called Leadership in the Courts,  
15 at the National Judicial College in Nevada. I  
16 participated in the two years of 2011 and this year.  
17 Both years only 44 judges in the nation were asked to  
18 participate. I'm the only sitting family court judge to  
19 ever have a publication published in the National  
20 Scholarly Journal. This was in the Family Court Review  
21 in 2012. I've been the subject of the lead article in  
22 the Fulton Dekalb County, Georgia, newsletter on the way  
23 I handle custody cases.

24 And recently I was invited, but must admit  
25 turned down, to be invited to address the Nebraska State

1 Bar. Honolulu, I might have accepted.

2 So those are my local, state, and national  
3 accomplishments.

4 MS. SHULER: As a follow-up, any goals that you  
5 have if you are reelected as family court judge?

6 JUDGE GARFINKLE: Yes, ma'am. There are three  
7 goals that I have for the future.

8 I have just established an interagency  
9 staffing, wherein every child brought into family court  
10 and is charged with any type of juvenile delinquent act  
11 will have staffing, and the family will be staffed by  
12 both Department of Social Services, Department of  
13 Juvenile Justice, the solicitor's office, and the Public  
14 Defender's office.

15 This is the first program like this and will go  
16 into effect in January. We will have monthly meetings on  
17 this so that every child and every family that appears in  
18 our court will be completely staffed with services  
19 offered to that.

20 And I've been invited to be the only judge to  
21 participate in a complete revamping on how the Department  
22 of Juvenile Justice handles the juveniles that are  
23 committed to their care. I'm taking a day's vacation in  
24 January to have a full-day program here in Columbia to  
25 meet with the Department of Juvenile Justice and to

1 completely revamp the way the children are handled.

2           And we're also in Charleston working on a  
3 parenting plan. As you know, the legislature has enacted  
4 that every custody case must have a parenting plan. We  
5 have a committee that I have been meeting with on a  
6 weekly basis made up of children's therapists, guardian  
7 ad litem attorney. And we'll have a parenting plan in  
8 Charleston County that will be the envy of the state. So  
9 these are some of the things that I have planned.

10           MS. SHULER: Thank you. Could you briefly  
11 explain to the Commission what you believe is the  
12 appropriate demeanor for a judge.

13           JUDGE GARFINKLE: I believe the appropriate  
14 demeanor for a judge is to listen and show respect to the  
15 parties, to the attorneys, and to rule when called upon  
16 with a decision, not delay a decision. And at all times  
17 try to give respect to the what's before the judge, the  
18 parties, and attorneys, without showing favoritism, bias,  
19 prejudice whatsoever.

20           MS. SHULER: Thank you, Judge Garfinkle.

21           Since your last screening, you have been sued  
22 several times, and I'm going to summarize the lawsuits  
23 and ask you what their dispositions are.

24           The first lawsuit was filed in U.S. District  
25 Court, District of South Carolina, in 2008, by David

1 Bartis. The second one was filed by Harold Simmons, in  
2 2009, in South Carolina Court of Common Pleas. The third  
3 one was filed in 2010, in U.S. District Court, District  
4 of South Carolina, by Brian Michael Murphy. And the last  
5 was filed by Harold Simmons in U.S. District Court,  
6 District of South Carolina, in 2010.

7 What is the disposition of all those lawsuits?

8 JUDGE GARFINKLE: Okay. The disposition of the  
9 Bartis one -- Mr. Bartis -- that was a federal lawsuit  
10 and was dismissed at the federal level. He appealed it  
11 to the Fourth Circuit Court of Appeals. It was dismissed  
12 there, and he appealed it to U.S. Supreme Court, where  
13 they did not agree to hear his case, and it was  
14 dismissed.

15 The other two lawsuits which you talked about  
16 were also federal lawsuits and were filed in Federal  
17 District Court. I never even knew about them. You had  
18 to inform me about them, Ms. Shuler, because the federal  
19 court dismissed it without even allowing it to be served.

20 In the federal system, they screen cases to see  
21 whether they're meritorious or not, and the case was  
22 deemed not to be meritorious, and it was not even served,  
23 so I never knew about it until the SLED check on me.

24 The one involving Mr. Simmons in state court  
25 was dismissed at the trial level. It's been dismissed

1 three or four times. He keeps asking for it to be  
2 reinstated. I spoke to the attorney involved in that  
3 case, and as of the Tuesday or Wednesday before  
4 Thanksgiving, there was a motion pending to dismiss, and  
5 I believe it was dismissed a fifth time.

6 MS. SHULER: Judge Garfinkle, since your last  
7 screening you had a grievance filed against you, which  
8 resulted in your receiving a letter of caution on  
9 January 4, 2011, due to critical remarks you made to  
10 litigants appearing before you.

11 Please explain the nature of the grievance and  
12 the efforts that you have made to address this.

13 JUDGE GARFINKLE: The nature of the grievance  
14 dealt with the fact that I had before me a custody case,  
15 and I read the file, as is my custom, and I read the  
16 related files. This was the third time that these  
17 parties had been in the family court over the custody of  
18 two children.

19 And by way of background, I'll tell you why I  
20 was concerned. I had just finished, a couple weeks  
21 before that, a very, very contentious case which also  
22 happened to be the third time the parents were in front  
23 of me taking -- seeking custody. It's the case where the  
24 father kidnapped the child, took the child to a remote  
25 cabin in Colorado.



1           The child was eventually brought back. The  
2 father went on trying to get custody of the child. After  
3 the case was over, the story that I'm told is that the  
4 father called the child and basically said, I don't care  
5 what the judge says, I'm coming to get you. The child  
6 hanged himself in the mother's closet.

7           I walk into court and found this case before  
8 me. This was also going to be a very contentious case,  
9 and it was the third time these people were going to be  
10 in court. I was very concerned about the other case, and  
11 I made some remarks that I must admit were inappropriate.  
12 I will tell you that I'm ashamed of them. I told them,  
13 You don't want your child to end up dead and found hanged  
14 in the closet.

15           That was over the top. I should not have done  
16 that, and I apologized to their counsel for making those  
17 remarks. And the lawyer in the room -- not one of the  
18 lawyers representing the party but the lawyer  
19 representing -- one of the litigants' attorney wrote a  
20 letter, and the commission investigated, and the Chairman  
21 of the Judicial Standards Commission basically wrote me  
22 back, saying, Be careful what you say. And I admit that  
23 was a little much, and I have toned down my remarks.

24           And now I give remarks that go on the Internet,  
25 and I have received nothing but praise. And one of the

1 lawyers responsible for putting the remarks on the  
2 Internet is here today in support of my candidacy.

3 MS. SHULER: Thank you, Judge Garfinkle.

4 The Commission has received 375 ballot box  
5 surveys -- anonymous surveys completed by the bench and  
6 Bar, regarding you, with 65 written comments, 20 of which  
7 indicate comments about your temperament. And I will say  
8 some good comments before I read the negative ones. You  
9 were an excellent judge, and you are very child focused.

10 But the concerns regarding your temperament:  
11 196 surveyors found you well-qualified, 64 found you  
12 qualified, 68 found you unqualified, and 47 had no  
13 opinion. Several comments indicated that you are  
14 extremely hard on attorneys who come into court  
15 unprepared.

16 What response would you offer to this concern?

17 JUDGE GARFINKLE: I expect attorneys who come  
18 before me to be not only prepared but well-prepared.  
19 It's as simple as that. And if attorneys are not  
20 prepared, are not familiar, or do not follow the rules,  
21 then I believe, you know, I should tell them. That's why  
22 I have these conferences with attorneys in my office and  
23 discuss with them how they can improve their practice.

24 I'm not a judge who looks at who the lawyers  
25 are or looks at who the litigants are. I go strictly by

1 the Rules of Civil Procedure in family court because I  
2 believe that the rules are to be followed. They create a  
3 level playing field for all litigants and all the  
4 attorneys, and I expect the lawyers to follow the basic  
5 rules.

6 And in that sense, I admit I'm very, very  
7 strict. I encourage lawyers to be good lawyers, to be  
8 great lawyers, exceptional lawyers. And I think the only  
9 way that can happen is to follow the rules. I was  
10 brought up in a house where my father laid out the rules.

11 If you followed the rules, the consequences  
12 were positive. If you didn't, they were negative. And I  
13 think the same thing applies in court, and we have rules  
14 that need to be followed.

15 MS. SHULER: As a follow-up, if an attorney  
16 comes into your court unprepared and they don't follow  
17 the rules and you are strict with them, does that  
18 strictness ever include yelling or raising your voice at  
19 the attorney?

20 JUDGE GARFINKLE: No. It does not. As is very  
21 obvious, I have a very deep, throaty voice. My wife  
22 tells me sometimes when I tell people good morning, it  
23 sounds like I'm criticizing. Sometimes I'll say to a  
24 lawyer, Have you read Rule 37, or whatever it is. If  
25 they haven't, they'll get offended by that.

1           So I can't change the depth of my voice, but  
2 sometimes I think that is perceived as being rude to  
3 lawyers, et cetera. I try not to be. I try to tone it  
4 down. As my wife always says to me, Paul, tone it down.  
5 And I do try, and I'm sorry if it's misperceived that  
6 way, but it goes back to my theory -- but it's my job to  
7 call lawyers and make sure that they are following the  
8 rules because they're representing the families and the  
9 children, and that's what family court is all about.

10           MS. SHULER: Judge Garfinkle, another comment  
11 indicated that you sometimes appear to be biased against  
12 DSS and certain parties. What is your response?

13           JUDGE GARFINKLE: My response would be twofold.  
14 Number one, in the affidavit that was filed on my  
15 behalf -- there's four or five, and one of the affidavits  
16 from Bobby Brisbane, who is one of the staff attorneys  
17 for Charleston County, talks about how I handle DSS  
18 cases.

19           Now, I believe that DSS has one of the most  
20 vital functions in our state court systems. They're  
21 there trying to help children and families or children  
22 who are already abused. I don't believe the system ought  
23 to abuse these children again.

24           Ms. Shuler, when you first raised that to me in  
25 our discussions prior to me coming here today, I invited

1 you, and I believe you did call the DSS chief counsel in  
2 Charleston, strictly without me talking to him. And I  
3 said, Please talk to him and ask him if he feels I'm too  
4 hard on DSS. His response was, Judge Garfinkle expects  
5 two things -- please correct me if this was not what you  
6 were told, Ms. Shuler -- lawyers to be prepared and  
7 lawyers to be honest. And I do. And I want DSS to have  
8 a plan for these children that is best for these  
9 children. I do not accept cookie-cutter plans where  
10 every child gets the same treatment plan over and over  
11 again.

12 DSS needs to craft a plan like a  
13 custom-tailored suit for that child and no other child.  
14 So if DSS comes in with the same plan over and over  
15 again, I will say something to the DSS staff like, This  
16 child will suffer under this plan. You need to go back  
17 and redo it and bring it back again next week.

18 I have done that, and I make no bones about  
19 that. I want our children to receive the greatest of  
20 what our state has to offer.

21 MS. SHULER: And I would note to the Commission  
22 members that in your notebook, Judge Garfinkle has  
23 provided the affidavits of Robin Beckham, retired master  
24 deputy of the Charleston County Sheriff's Office; Bonnie  
25 Brisbane, staff attorney to DSS; Melissa Brown, a family

1 law attorney; Rita Roach, staff attorney for South  
2 Carolina Legal Services; Jason Michael, a Charleston  
3 attorney who practices in family court; and James  
4 Finkling, former deputy sheriff who worked with Judge  
5 Garfinkle. Those affidavits are included in your  
6 notebooks.

7 Judge Garfinkle, another ballot box comment  
8 indicates that you can be condescending and that you have  
9 a sense of self importance that makes you difficult to  
10 deal with. What response would you have to offer to that  
11 comment?

12 JUDGE GARFINKLE: Again, I think it's a matter  
13 of perception because I insist on people following the  
14 rules that are set out for our court procedures. And I  
15 call lawyers down on it, and you find that a lot of  
16 lawyers don't like that. Lawyers don't like to be called  
17 on their mistakes, but I think it's more important in  
18 family court to make sure that the lawyers know and  
19 understand that when all is said and done in family  
20 court, unlike other courts, these people are still going  
21 to have a relationship with each other. These are still  
22 going to be the parents of their children. They have to  
23 be able to work together.

24 And I want lawyers to know and understand that  
25 that has to be their goal in trying to find a solution

1 for the family that is before them, the children that are  
2 before this court.

3 And as far as being condescending, I tell  
4 people all the time, I realize how, you know -- I look at  
5 myself my entire adult life -- I'm not just wearing it  
6 today -- I wear a Mickey Mouse watch to remind myself to  
7 relax. So I do realize that, hey, you have to take a  
8 deep breath and smile about it.

9 MS. SHULER: Thank you, Judge Garfinkle.

10 Mr. Chairman, a complaint has been filed  
11 against Judge Garfinkle. At this time I would ask Judge  
12 Garfinkle to please have a seat and that Ms. Elonda Fair  
13 O'Neill take the podium.

14 REPRESENTATIVE DELLENEY: Ms. O'Neill, please  
15 raise your right hand to be sworn.

16 (Elonda O'Neill, was duly sworn, after which  
17 testimony commenced.)

18 MS. SHULER: My Chairman, at the outset I would  
19 like to offer as an exhibit Ms. O'Neill's affidavit and  
20 Judge Garfinkle's response to her affidavit.

21 REPRESENTATIVE DELLENEY: Without objection  
22 that will be admitted.

23 MS. SHULER: And I would also like to offer the  
24 affidavit of Elizabeth Stringer, who was the guardian ad  
25 litem in the case that is raised in Ms. O'Neill's

1 complaint, and I will note that I have furnished the  
2 guardian's affidavit to both Ms. O'Neill and Judge  
3 Garfinkle.

4 REPRESENTATIVE DELLENEY: Ms. Stringer's  
5 affidavit will likewise be entered as an exhibit.

6 MS. SHULER: Ms. O'Neill, I would also note for  
7 the record that you previously filed a similar complaint,  
8 along with your husband, Mr. O'Neill, against Judge  
9 Garfinkle with the Commission on Judicial Conduct, and  
10 that complaint was dismissed on June 27, 2011.

11 Ms. O'Neill, I'm going to briefly summarize  
12 your complaint and take you through allegation by  
13 allegation, and have you address anything that I may have  
14 omitted. And then I'll recall Judge Garfinkle to respond  
15 allegation by allegation, and then you will have an  
16 opportunity to respond.

17 MS. O'NEILL: Yes, ma'am.

18 MS. SHULER: Ms. O'Neill, in your complaint you  
19 allege that Judge Garfinkle engaged in several counts of  
20 judicial misconduct while you served as counsel for the  
21 plaintiff, Kevin E. Burroughs, in a child custody case  
22 against Tracie A. Hale, who is a pro se defendant.

23 Mr. Burroughs and Ms. Hale were not married,  
24 although they had two children at issue in the custody  
25 case. Mr. Burroughs is African American, and he filed



1 this action in family court in the Ninth Judicial Circuit  
2 in 2010 against Ms. Hale, and he wanted to obtain custody  
3 of the two minor children.

4 The guardian ad litem appointed in this matter  
5 by Judge McMahon was Elizabeth Stringer. At the first  
6 temporary hearing held before Judge McMahon on July 12,  
7 2010, she ordered a second temporary hearing, which is  
8 the hearing that Judge Garfinkle presided over, and  
9 required that the defendant proceed by affidavit.

10 You contend -- the first issue that you raise  
11 is that the second temporary hearing conducted on August  
12 9, 2010, Judge Garfinkle showed favor to the pro se  
13 defendant because he allowed her to proceed outside  
14 procedural rules and excused her failure to file an  
15 affidavit without a showing of good cause as required by  
16 Rule 21 (b) of the family court rules.

17 Ms. O'Neill, does that fairly summarize your  
18 complaint regarding Judge Garfinkle and his treatment of  
19 the pro se litigant, and is there anything additional you  
20 would wish to add?

21 MS. O'NEILL: Yes, ma'am. Only with this  
22 particular issue. In Rule 21 it does state that the  
23 judge can allow one of the litigants to speak without an  
24 affidavit.

25 However, in the temporary hearing prior to

1 that, Judge McMahon had previously ruled that it was  
2 specifically to be done by affidavit only, and she  
3 drafted an order to that effect, and that was an exhibit  
4 in our documents as well.

5 MS. SHULER: I note that after the second  
6 temporary hearing, Judge Garfinkle requested that the  
7 guardian ad litem draft a temporary order, and that was  
8 to be circulated first for any comments or changes prior  
9 to submission to Judge Garfinkle.

10 Ms. O'Neill, your second allegation contends  
11 that the defendant engaged in impermissible ex parte  
12 communication with Judge Garfinkle. You base this  
13 allegation on the fact that the defendant contacted the  
14 court by e-mail August 17th and 18th, 2010.

15 And then you allege that Judge Garfinkle  
16 instructed the guardian ad litem to set up a conference  
17 call, which actually turned into a conference  
18 call/hearing between the parties during which you thought  
19 he was just going to reprimand the defendant for  
20 e-mailing him directly, but he also addressed issues  
21 brought to light by those e-mails, which your client was  
22 not made a part of that conference call hearing.

23 MS. O'NEILL: Correct. With communications  
24 that pro se litigants had with the court, my husband and  
25 I did research on it. We believe that the e-mails were

1 improper, which Judge Garfinkle did state; however, Judge  
2 Garfinkle gave me a timeline to read the e-mail.

3 And my reading of the statute and the judicial  
4 canon is that unless it is something that is scheduling,  
5 there is certain rules, scheduling and certain things  
6 that can be ex parte, but this was an e-mail.

7 And I had a prior experience with ex parte  
8 communications with the court. And what I know about  
9 that is, I was serving as the guardian ad litem on a  
10 case, and Cheryl -- an attorney, Cheryl Whipper Hamilton  
11 was the plaintiff's attorney, and there was a pro se  
12 defendant mother.

13 And apparently this litigant sent a letter or a  
14 couple letters to Judge Jocelyn Kate. And what happened  
15 in that instance was, Judge Kate got her secretary -- I  
16 forgot her name -- Valerie Brown to call me, as the  
17 guardian, and Ms. Hamilton and this pro se litigant got  
18 us all on the phone, and she admonished the pro se  
19 litigant from drafting letters directly to the court and  
20 told her this was unacceptable. She did not read them.  
21 She said she would not read them. She was returning  
22 them, and if she had anything to say to the court, that  
23 she was to provide that in the form of a motion and file  
24 it, just as our rules say that we follow.

25 And that happened prior to this incident with

1 Judge Garfinkle, so that was the difference that I, you  
2 know, I felt that the handling of what Judge Kate did was  
3 more appropriate and within the rules. She did not read  
4 it. She sent it back and told the pro se litigant to do  
5 it in the form a motion.

6 MS. SHULER: Let me clarify the e-mail  
7 situation. When Judge Garfinkle received the e-mails, it  
8 was his contention -- he'll testify that he did not read  
9 those. He saw the subject matter, the caption. He was  
10 out of town on a court conference, that he contacted the  
11 guardian ad litem to make sure that you had the e-mails.

12 When the guardian got in contact with you, you  
13 raised concerns about the e-mails and concerns about the  
14 guardian ad litem contacting you, and then Judge  
15 Garfinkle followed up with you to make sure that you had  
16 received the e-mails and reviewed them before he gave you  
17 a time deadline for those e-mails; is that correct?

18 MS. O'NEILL: Yes. That is correct. And at  
19 that point, you know, I did not know what to expect. I  
20 had never had, you know, something like this where the  
21 guardian is contacting, you know, me, as an attorney, to  
22 set up anything.

23 Usually what is done is that the judge's  
24 secretary, any conference calls, they set those up; you  
25 know, that has been my experience with the other judges

1 in Charleston County. I have not had any other judge use  
2 a guardian ad litem in that capacity to act as almost  
3 like an administrative assistant, in that fashion, to do  
4 that, and, you know, to have those kind of communications  
5 with her instead of having his secretary just schedule  
6 the conference call or whatever it was that he wanted to  
7 do.

8 MS. SHULER: Another allegation related to ex  
9 parte communications by the defendant with Judge  
10 Garfinkle is that you contend in Judge Garfinkle's March  
11 1, 2011, order, which was your tab 2 in your exhibit, he  
12 indicated that the defendant was informed that she would  
13 give sworn testimony at the conference call/hearing, and  
14 instructions were given as to how that would be arranged.

15 You allege that this was additional ex parte  
16 communication between the court and the defendant and  
17 that you were unaware that the defendant was to testify  
18 until the conference call/hearing began. What happened  
19 was the pro se defendant was in West Virginia calling in  
20 on her cell phone, with a notary there to notarize her,  
21 while the guardian ad litem, Judge Garfinkle, and  
22 yourself were actually in the courtroom for the  
23 conference call.

24 MS. O'NEILL: That's correct.

25 MS. SHULER: You further contend that the

1 defendant's concerns regarding the return of her children  
2 to start school, which was the subject of her e-mails,  
3 should have been raised in a properly filed motion,  
4 rather than through e-mails.

5           You, as well, contend that Judge Garfinkle  
6 admitted that he prepared four to five orders prior to  
7 the conference call/hearing.

8           Does that fairly summarize all your concerns  
9 and allegations that you allege related to Judge  
10 Garfinkle? The defendant's impermissible ex parte  
11 communications with Judge Garfinkle?

12           MS. O'NEILL: Yes. Those are the allegations  
13 regarding the ex parte communications. And to go back to  
14 what you stated regarding the set-up of the hearing, I  
15 was not aware that she was going to give testimony. The  
16 only thing Judge Garfinkle told me on the phone when he  
17 followed up, he asked me, I understand that you would  
18 like a record of what is said. I said, Yes, sir.

19           And really that was at the advice of my spouse,  
20 who is my law partner. I told him what was going on. It  
21 was very unusual for this sort of interaction to be going  
22 on. I haven't experienced it. He's been practicing for  
23 35 years, and we talked, and he told me, It's best,  
24 Elonda, that you get that on the record because I don't  
25 know what's going on here.

1           And at that point, I was not feeling  
2 comfortable about the communications back and forth with  
3 the pro se litigant, with the guardian, and with Judge  
4 Garfinkle, so that is why we did that. And as far as --  
5 I don't know whether conversation was had between them  
6 regarding her or who did -- that she was going to give  
7 sworn testimony. I didn't know that.

8           I don't know when that conversation took place,  
9 and I think that's exactly what ex parte communications,  
10 why we're cautioned from not having them. Those are  
11 things outside the courtroom, and it just seems not fair.

12           MS. SHULER: Just to clarify, your client was  
13 not at the conference call hearing.

14           MS. O'NEILL: Absolutely. He was not at the  
15 conference call. With most conference calls, it's  
16 usually done on the phone in your office, so your client  
17 is usually not there. It's usually the two attorneys or  
18 the attorney with the litigant and the judge, and if  
19 there's a guardian, the guardian on the phone.

20           So he didn't come. I told him he didn't have  
21 to be here because he didn't because those are the ways  
22 that we usually do that with the conference calls. And  
23 that was something that I found to be a very big problem  
24 during that hearing, that when it went into testimony,  
25 and I think that we have a copy of the transcript in our

1 filing, that after he admonished the pro se litigant  
2 about not sending any more ex parte communications, then  
3 he went onto the substance of what the e-mail said.

4 And that was beyond what I was told that this  
5 conference call was going to be about. I was never told  
6 he was going into the substance of the e-mail, only that  
7 the pro se litigant would be admonished from sending any  
8 more ex parte communication.

9 MS. SHULER: Ms. O'Neill, your third allegation  
10 contends that Judge Garfinkle engaged in ex parte  
11 communications with the guardian ad litem; that at the  
12 behest of Judge Garfinkle the guardian contacted you  
13 regarding the e-mails sent by the defendant and inquired  
14 whether you had read them.

15 On August 18th, 2010, you say that the guardian  
16 ad litem e-mailed the court that plaintiff's counsel was  
17 uncomfortable with any ex parte communications between  
18 the guardian ad litem and the court. You further allege  
19 that according to the March 1, 2010, order by Judge  
20 Garfinkle, the guardian ad litem and the court had a  
21 conversation which you assert went beyond the subject  
22 matter for such ex parte communications, including the  
23 guardian sharing with Judge Garfinkle that she thought  
24 you were, quote, somewhat rude and somewhat less than  
25 professional in your conversational tone, unquote, to her



1 when she contacted you about the e-mails.

2 Does that fairly summarize your complaint  
3 regarding Judge Garfinkle's ex parte communications with  
4 Ms. Stringer?

5 MS. O'NEILL: Yes, it does. And what I felt at  
6 this point, you know, I don't believe I was rude or less  
7 than professional in my tone with Ms. Stringer.

8 I simply told her that I didn't feel it was  
9 appropriate for me to be talking with her and discussing  
10 this because of all the conversations back and forth  
11 between her Judge Garfinkle and the pro se litigant. At  
12 that point, I felt everything was unfair. My client,  
13 when I was informing him of what was going on, he felt  
14 that these conversations were unfair as well.

15 And so when I told Ms. Stringer, You know, I'm  
16 not comfortable -- and I think that's what she quoted --  
17 I'm not comfortable with all these ex parte  
18 communications, and we're going to need this on the  
19 record so that we can all be on the same page. And what  
20 is even more disturbing to me is that Judge Garfinkle,  
21 based upon what Ms. Stringer said to him, he acted on  
22 that. He went ahead because there was supposed to be a  
23 conference call. Then there wasn't a conference call.  
24 Then there was -- you know, he wanted to schedule a  
25 conference call again.

1           And he put in his order that, based upon this  
2 Judge's concern about Ms. O'Neill's comments to the GAL,  
3 I took it upon myself to also send an e-mail to Ms.  
4 O'Neill, a copy of the defendant's e-mails. And I feel  
5 that he really, you know -- in my heart, I feel that he  
6 did read the e-mails and went into the substance of that  
7 and then based on that, went and took this action because  
8 he never -- he went on Ms. Stringer's word that I was --  
9 I acted a certain way towards her. And he never asked me  
10 what happened. He never said, What did she say to you?  
11 He never asked me if she was rude to me or anything like  
12 that.

13           And, you know, I just feel that a judge should  
14 be fair and unbiased, and that experience really did not  
15 feel fair or unbiased to me or my client.

16           MS. SHULER: Ms. O'Neill, your last allegation  
17 involved the court's order granting your 2010 motion for  
18 recusal. You allege that you filed your motion for  
19 recusal as the court was engaged in ex parte  
20 communications.

21           The court took the bench with an order  
22 previously drafted, and the court converted a procedural  
23 conference into an adversarial hearing without notice.

24           With respect to the court's March 1, 2011 order  
25 granting your motion, you contend that in one paragraph

1 in his order, it appeared that he's not recusing himself,  
2 and in a later paragraph, he subsequently recused himself  
3 for, quote, an additional, very personal reason, end  
4 quote.

5 The court further stated in the order, "This  
6 court feels this additional personal reason does not need  
7 to be placed on the record because placing this  
8 additional ground as part of the record will not serve  
9 the ends of justice or benefit the children who are of  
10 the most concern to this court".

11 As a result you interpreted Judge Garfinkle's  
12 explanation for recusal for a very personal reason as  
13 evidence that he harbored an impermissible animus against  
14 you, as well as an animus against your client, based upon  
15 the fact that he is African American. You say that you  
16 later learned that Judge Garfinkle's very personal reason  
17 for recusal was that a dear friend of your husband's was  
18 a caregiver for Judge Garfinkle's mother, and this fact  
19 is noted in Judge Garfinkle's April 5th, 2011 order.

20 Did that fairly summarize your allegations  
21 concerning Judge Garfinkle's personal bias against you  
22 and the bias against your client?

23 MS. O'NEILL: Yes. And with that there are a  
24 couple things that I would like to clarify.

25 The first part in which the motion for recusal.

1 I stated that he -- in one of his orders, he stated that  
2 he was not biased, that what he usually does is he -- I  
3 alleged that he predrafted the order prior to us coming  
4 to the hearing.

5 What Judge Garfinkle stated was that he  
6 predrafts four or five orders prior to the hearing. That  
7 in itself was a shock to me. I have not had any other  
8 family court judge in the three counties in which I  
9 practice, ever say that they take the time to draft four  
10 or five possible orders prior to hearing the parties.

11 That is unheard of. I have not heard of anyone  
12 else doing that. And that began to really reek of  
13 unfairness to me and my client, that he went ahead and  
14 predrafted orders prior to hearing, you know, the  
15 parties. And that was a big problem for me and my  
16 husband, who I practice with.

17 And also the part of the motion for recusal  
18 where you state that he recused himself based on very  
19 personal reasons. He said that in one order, and then he  
20 clarified himself in a second order. I think both orders  
21 are in your packet. The dear friend that was a caregiver  
22 for his mother, we had no idea that when he first  
23 initially said for the very personal reason.

24 As a matter of fact, when -- I don't know who  
25 the lady is at all because I'm a few years younger than

1 my spouse, but it was someone that he went to elementary  
2 school with. I wasn't even born then. But he says that,  
3 and my husband didn't even know that until quite  
4 recently, about the Saturday before the last day -- I  
5 think the date to turn in our packet for this was  
6 October 29th. The Saturday before that, at Judge  
7 Garfinkle's request, he asked to meet with me and my  
8 husband to see what he could do to rectify any issues  
9 that we had, and what, you know -- what it would take for  
10 me not to go ahead and submit my affidavit to this panel.

11           And at that meeting at Outback Steakhouse,  
12 that's where he told my husband exactly who this lady is.  
13 And he said -- my husband was like, I've seen her maybe  
14 once a year, and that's in passing. She is not a good  
15 friend. But in that meeting with Judge Garfinkle, you  
16 know, this whole process -- I'm very nervous, and this  
17 has taken a toll on me, and I don't feel comfortable even  
18 being here, but I do feel like I was treated very  
19 unfairly, and I have not had any problems with Judge  
20 Garfinkle in the past.

21           I have seen a lot that he's done in the  
22 courtroom, and he is not a fair judge. He has not been  
23 fair in this instance. I've seen him do other things in  
24 the courtroom, and I have never been someone that he's  
25 done that to, but I've seen him treat other litigants and

1 attorneys very poorly. And I've sat in here today and  
2 heard other judges say what is important to be a judge,  
3 that you're dignified and you treat lawyers with respect.

4 Judge Garfinkle does not do that. I have seen  
5 him yell at litigants. He's yelled at me in the  
6 courtroom. And his temperament over the years has been  
7 like this. This is nothing new for Judge Garfinkle, with  
8 his temperament, and he does look to see who the parties  
9 are or the litigants are, and he does play favorites.

10 That has been my experience, and I'm not -- I  
11 don't have anything personal against Judge Garfinkle.  
12 When I was an assistant solicitor -- when I moved back to  
13 Charleston almost 12 years ago, I was assistant solicitor  
14 in family court, and I appeared before Judge Garfinkle  
15 many, many, many times with full docket. And Judge  
16 Garfinkle is pro state, so he pretty much ruled with me  
17 most of the time. I didn't feel anything -- as a matter  
18 of fact, with my team, with my victims advocate, and my  
19 paralegal, I always prided myself that if we prepared our  
20 cases -- because we didn't know who the judge was going  
21 to be.

22 If we prepared for Judge Garfinkle, we would be  
23 prepared for any of the judges, and that's true what he  
24 said, that he expects you to be well-prepared. And I  
25 don't think that's ever been a complaint of his for me

1 because I am well-prepared. I come into the courtroom  
2 well-prepared; however, with Judge Garfinkle, it just  
3 depends on the day, what mood he's in, what you're going  
4 to get.

5 He's very inconsistent with how he treats  
6 people. And when you come into family court in  
7 Charleston, even the bailiffs or the deputy at the door,  
8 they will give the temperature. What's the temperature  
9 of him today? Oh, he's throwing them in jail. They  
10 know. They tell you, Oh, he's in a mood today. And that  
11 is not the proper temperament for a judge.

12 Until this case I was not one of those people  
13 that he did these things to. I've watched it and cringed  
14 in court, and that's not a comfortable feeling to do  
15 that, even when the litigants were not my clients. But  
16 this whole experience is one that I felt compelled to do,  
17 just based on what happened to me with Judge Garfinkle,  
18 but I definitely don't want to be here.

19 MS. SHULER: Thank you, Ms. O'Neill. I want to  
20 clarify one point regarding the meeting that you and your  
21 husband had with Judge Garfinkle the weekend prior to  
22 October 29th.

23 I understand that it was arranged by a third  
24 party. Is it your understanding that he specifically  
25 asked you not to file your complaint?

1 MS. O'NEILL: He said, What can we do to  
2 rectify these issues that we have between us? And then  
3 went on -- and I told him that night the problems, just  
4 like I'm telling you today, that I think that he is a  
5 poor judge and his temperament is bad. And I gave him  
6 examples of that, of how he treats litigants. And not  
7 only the litigants, he treats lawyers like that as well.

8 MS. SHULER: So he was asking you, What can I  
9 do to rectify the situation? What have I done wrong?  
10 Did he offer an apology to you?

11 MS. O'NEILL: No. He didn't. And the reason  
12 why I feel it was for me not to file my affidavit is  
13 because he's already recused from hearing any of my  
14 cases. I don't have to ever appear before him again. So  
15 this was the purpose, as we understood it, was so that we  
16 could maybe not file this affidavit.

17 And another thing, I did receive the letter  
18 that Judge Garfinkle submitted in response to my  
19 complaint, and I was very disheartened when I read some  
20 of the things that Judge Garfinkle said about me, that he  
21 should have reprimanded me or sanctioned me or sent me to  
22 the Commission on Lawyer Conduct.

23 In his opening, he stated that with attorneys  
24 that need help or are inexperienced, that he helps them,  
25 he pulls them aside. Not once has he ever said anything



1 to me about my courtroom behavior, not once has he  
2 reprimanded me, not once has he offered me any help if he  
3 thinks these things about me. Not once. And I appear in  
4 Dorchester County, Berkeley County, and Charleston  
5 County. No other judge has ever reprimanded me or  
6 complained of my behavior, and I've never been sent to  
7 the Commission on Lawyer Conduct for anything or my  
8 courtroom behavior either.

9 So these things that he's saying to me -- and  
10 he wrote this after we met with him -- you know, I felt  
11 very disheartened that he would do that, especially since  
12 I've been practicing before him since I moved back from  
13 California in 2000 for the last 12 years.

14 MS. SHULER: Thank you, Ms. O'Neill.

15 REPRESENTATIVE DELLENEY: Ms. O'Neill, how did  
16 this -- you say this meeting was at Outback?

17 MS. O'NEILL: Yes, sir.

18 REPRESENTATIVE DELLENEY: Had you already filed  
19 an affidavit?

20 MS. O'NEILL: No. I had not.

21 REPRESENTATIVE DELLENEY: Well, did the judge  
22 know that you were going to file an affidavit?

23 MS. O'NEILL: Well, I think he thought so  
24 because we filed a grievance, and the grievance was  
25 dismissed.

1 REPRESENTATIVE DELLENEY: Okay. But he didn't  
2 know whether or not you were going to file an affidavit  
3 with this Commission. Or he did know? Or you don't  
4 know?

5 MS. O'NEILL: I don't know but -- I don't know.  
6 I can't answer what he knew.

7 REPRESENTATIVE DELLENEY: Did he ask you not to  
8 file an affidavit with this Commission?

9 MS. O'NEILL: In those words -- please do not  
10 file an affidavit -- he did not say that.

11 SENATOR MARTIN: Did you get the impression  
12 that he was asking you not to file the affidavit?

13 MS. O'NEILL: Yes, I did. I felt that was the  
14 purpose of that meeting.

15 SENATOR MARTIN: Did a third party -- the third  
16 party hasn't been identified for the record. Would you  
17 care to identify the third party for the record?

18 MR. O'NEILL: I'm representing her. Can I  
19 confer?

20 SENATOR MARTIN: Sure.

21 We're going to pause for just a moment.

22 (A recess transpired.)

23 REPRESENTATIVE DELLENEY: Ms. O'Neill, if you  
24 would come back. Have you had time to communicate with  
25 your counsel?

1 MS. O'NEILL: Yes, sir.

2 REPRESENTATIVE DELLENEY: All right. Go ahead,  
3 Senator Martin.

4 SENATOR MARTIN: Would you care to respond to  
5 the question?

6 MS. O'NEILL: Well, when Judge Garfinkle was  
7 represented by Attorney Larry Richter, he and my husband  
8 had several conversations regarding the filing the  
9 grievance, and Mr. Richter even sent us a letter that  
10 says, Dear Tony, I think this is sufficient. This draft  
11 assumes that you are the sole complainant. If your wife  
12 is also a complainant --

13 REPRESENTATIVE DELLENEY: We don't need to talk  
14 about the grievance. Just about this meeting.

15 MS. O'NEILL: Okay. Well, they had a  
16 conversation about the grievance and filing with the  
17 Commission.

18 SENATOR MARTIN: So the third party --

19 MS. O'NEILL: Is not this person. That third  
20 party only got in contact -- and he didn't contact me.  
21 He got in contact with my spouse and said, Judge  
22 Garfinkle wants to meet with you to discuss these issues.

23 SENATOR MARTIN: So going back to my earlier  
24 question. You responded to Chairman Delleney, No, not in  
25 those words. I wasn't asked. But you responded to me,

1 you thought that the meeting was to talk you out of or to  
2 encourage you not to file; is that correct?

3 MS. O'NEILL: Absolutely correct, sir. He  
4 didn't say those words, but at that point, he had no  
5 other issue with me. I don't have to appear before him  
6 ever again, so I would not have to present any cases in  
7 front of him. So the only purpose for that meeting was  
8 when he said, Rectify the issues. The only issue left  
9 was to file an affidavit here today.

10 In fact, I felt a lot of stress and pressure  
11 from this. I got an unsolicited Facebook message from  
12 one of Judge Garfinkle's affiants here today that told me  
13 that I should not file, and that there might be some type  
14 of backlash if I do. And my husband sent a letter to  
15 that person.

16 I did not give you this, but I printed the  
17 Facebook message that says that. And it was from Melissa  
18 Brown, and she's my colleague, and I have to go back and  
19 practice. However, these are the sort of things that  
20 were pressuring me not to come and testify today. She  
21 sent me a message, "Hi, wanted to follow up about coffee.  
22 A powerful legislator contacted me because I was  
23 adamantly opposing a sitting judge a few hours from here.  
24 He let me know my testimony, while correct, because the  
25 judge I opposed does not know the law and has attacked me

1 personally on the record, will be reelected. He told me  
2 my testimony would backfire on me. I listened to him,  
3 and I have decided to heed his advice.

4           There are great judges, good judges, okay  
5 judges, and terrible judges. Terrible judges are  
6 difficult to tolerate, and some judges just don't like  
7 certain people because judges are human. Judge Garfinkle  
8 will be reelected, and he plans to retire in two years.  
9 I don't want you or Tony to take a stand that will likely  
10 backfire on you. That's my reason for coffee. I hoping  
11 I can do for you like the legislators did for me".

12           That in conjunction with the meeting, yes. The  
13 pressure was on me to not come and file this and testify.  
14 It was overwhelming.

15           SENATOR MARTIN: Thank you.

16           REPRESENTATIVE DELLENEY: Why didn't you turn  
17 that e-mail into the Commission?

18           MS. O'NEILL: Because I practice in Charleston  
19 with all these people staring me down. And --

20           REPRESENTATIVE DELLENEY: Who was the third  
21 party we've been talking about?

22           MS. O'NEILL: It was Judge Danny Martin.

23           REPRESENTATIVE DELLENEY: And you say the  
24 grievance was over at that point in time.

25           MS. O'NEILL: At which point in time?

1 REPRESENTATIVE DELLENEY: At the Outback  
2 meeting.

3 MS. O'NEILL: Yes.

4 REPRESENTATIVE DELLENEY: Mr. Sellers?

5 MR. SELLERS: Ms. O'Neill, I understand and  
6 appreciate that you're upset, and I'm trying to  
7 understand why you're here.

8 As I understand it, at some point during the  
9 course of your litigation with someone who was  
10 represented pro se -- he's there for himself -- you  
11 learned that the judge had received e-mails from the pro  
12 se litigant; is that correct?

13 MS. O'NEILL: Yes, sir.

14 MR. SELLERS: Now, the pro se litigant doesn't  
15 have the same ability that you do to know the rules, so  
16 the pro se litigant might send e-mails to the judge, not  
17 knowing that that was an improper act.

18 MS. O'NEILL: No, sir. That doesn't surprise  
19 me that they don't know the rules. However, in Judge  
20 Garfinkle's courtroom, he's always told pro se litigants  
21 when they represent themselves, that they should know the  
22 rules when they're representing themselves. He's always  
23 said that, and, you know, looking at the South Carolina  
24 statute, I guess that's something that they thought of,  
25 that when that happens that the judge is to admonish pro

1 se litigants from doing so from further ex parte  
2 communications.

3 MR. SELLERS: And I thought you told us that  
4 that's what happened in this case. That the judge had a  
5 teleconference, and during that teleconference told the  
6 pro se litigant, It's improper for you to contact me by  
7 e-mail or any other way. Isn't that what you told us?

8 MS. O'NEILL: Yes, sir. However, that's what  
9 the hearing was supposed to be, that he -- I was informed  
10 that that hearing would be. But it went on from just an  
11 admonishment into the substantive matters of the e-mail.  
12 It went into what happened, what was said, and the pro se  
13 litigant actually testified.

14 So that is the issue, that there was no  
15 procedural due process. I didn't get any notice that  
16 there was going to be a hearing.

17 MR. SELLERS: By that point in time, you did  
18 have copies of the e-mails, right?

19 MS. O'NEILL: I did after that point, yes. But  
20 looking at our rules, that does not take it out of the  
21 ambit of being ex parte communications. The rules that  
22 we have say that if it's a matter of scheduling -- and  
23 like I testified earlier, the other experience that I had  
24 with that was not only to admonish.

25 Well, in the example with Judge Kate, she

1 admonished the pro se defendant, and then she returned  
2 the correspondence and didn't read it. She said that the  
3 proper venue for you to do is to file a motion or file  
4 whatever you need to do before the court.

5 MR. SELLERS: She handled it different than  
6 this judge.

7 MS. O'NEILL: I think she followed the rules.

8 MR. SELLERS: So you're complaining that Judge  
9 Garfinkle didn't follow the rules.

10 MS. O'NEILL: That's correct.

11 MR. SELLERS: And in your view, the rule was  
12 that he should have returned the e-mails and said, You  
13 make a motion.

14 MS. O'NEILL: Yes, sir.

15 MR. SELLERS: And that didn't happen, and  
16 that's what your complaint is.

17 MS. O'NEILL: Yes, sir. And he went on, and I  
18 was not apprized that we were going to have a hearing. I  
19 did not know there would be a hearing. He went on into  
20 having a hearing. The pro se litigant testified. My  
21 client was not there because it was supposed to be a  
22 conference call.

23 MR. SELLERS: I'm not a legislator, but I've  
24 been practicing and trying cases for 39-plus years. And  
25 it surprises me that you don't have situations come up



1 when you go to a hearing, that things arise that you are  
2 not anticipating. That's the nature of what we do for a  
3 living, isn't it?

4 MS. O'NEILL: Yes, sir. However, for all the  
5 hearings that we have, I get notice of them. I get  
6 notice that I'm going to have a hearing, and if there's  
7 going to be testimony, you're going to take one party's  
8 testimony. Procedural due process is the core of what we  
9 do as lawyers.

10 I think that my client should have had notice  
11 that he needed to be there. He could have testified.  
12 And so that -- I felt ambushed at that conference call.  
13 It was supposed to be a conference call, not a hearing.

14 MR. SELLERS: But I understood you to say that  
15 you insisted there be a court reporter on the other end  
16 so that whatever that person said could be taken down and  
17 recorded.

18 MS. O'NEILL: It was a record because of all of  
19 the communications that were going on back and forth  
20 between the guardian, the pro se litigant -- I felt  
21 ambushed. All these things are going back and forth, not  
22 with me. So I needed a record just in case. And that  
23 was the advice of my spouse who's been practicing 35  
24 years. I've only been practicing 14 years.

25 MR. SELLERS: But the record exists because you

1 insisted on it; isn't that right? It wouldn't be sworn  
2 testimony. It would be nothing but a phone conversation  
3 had you not insisted that the other side be recorded.

4 MS. O'NEILL: I don't understand your question.

5 MR. SELLERS: The reason there's a transcript  
6 and the reason there's something that you call testimony  
7 is because you insisted on it; isn't that fair?

8 MS. O'NEILL: No, sir. It's not fair because I  
9 was not made aware that there would be sworn testimony  
10 where he would go into the substance of what the e-mails  
11 were. That's not what we were -- I was told was going to  
12 happen.

13 So the major problem that I have with that  
14 whole thing, that whole situation -- it became a hearing  
15 instead of a conference call. And my client was not  
16 afforded the same time and process that the pro se  
17 litigant got. And then he had predrafted orders already  
18 prepared for that.

19 MR. SELLERS: Did you ask Judge Garfinkle to  
20 recess this conference and reschedule it at a point in  
21 time when your client could be present?

22 MS. O'NEILL: Mr. Sellers, I think in the  
23 record you will see that I objected at beginning when  
24 this was happening. I talked about that there is no  
25 notice to my client. I objected again at the end about

1 it. I even -- I believe in the transcript, I objected  
2 because there was no notice.

3 And I believe Judge -- his words to me  
4 regarding that was that we're moving on with the hearing  
5 for the benefit of the children. I'm concerned about the  
6 benefit of the welfare of the children. Procedural  
7 matters comes second to the welfare of the children.

8 Nowhere in law school did I learn procedure  
9 comes second to anything like that. I always learned  
10 that you had notice to be heard to address the court.  
11 And the fact that an order came out of that is -- was,  
12 you know, was very unusual. In family court I've never  
13 had any situation like this happen to me before.

14 MR. SELLERS: I realize and I saw that you  
15 objected. My question to you is, did you ask the judge  
16 to schedule a hearing for your client to be present and  
17 to present anything that your client needed to present  
18 that you thought the judge needed to consider before  
19 entering an order?

20 MS. O'NEILL: Did I ask him to continue the  
21 case?

22 MR. SELLERS: Did you ask him to continue  
23 whatever this thing was that you called a hearing? Did  
24 you ask him to continue it so that it could be  
25 rescheduled at a point in time so your client could be

1 present and tell the judge anything that he needed to  
2 tell the judge about the welfare of the children?

3 MS. O'NEILL: No. At that time I did not.  
4 However, with his statement to me, procedural matters  
5 come second to the welfare of the children, at that  
6 point, he wasn't even listening to my objections. And  
7 he's saying procedural matters come second. He was going  
8 to do whatever he wanted to do at that point, and I  
9 objected, and after that, sir, I did file a motion for  
10 reconsideration. I filed motions after that.

11 MR. SELLERS: You filed a motion to recuse the  
12 judge, correct?

13 MS. O'NEILL: Yes, sir.

14 MR. SELLERS: And as I understand it, he did  
15 recuse himself.

16 MS. O'NEILL: Yes. He did.

17 MR. SELLERS: And you're here today  
18 complaining. I don't understand what you're complaint  
19 is. If you filed a motion for him to recuse himself and  
20 he granted your motion and recused himself, why are you  
21 complaining about that?

22 MS. O'NEILL: Well, I'm here today because this  
23 is for the reelection of a judge -- that's my  
24 understanding -- and his fitness to be a judge. And the  
25 things that occurred to me in this hearing are not

1 appropriate for a judge, the things that he did. He has  
2 been a judge for 17 years, as he stated, and these are  
3 things that a judge that's been on the bench 17 years  
4 should not do.

5 MR. SELLERS: And I understood that, and I  
6 understood what you told us in your statement was that  
7 over a period of years, you appeared before Judge  
8 Garfinkle.

9 MS. O'NEILL: Yes, sir.

10 MR. SELLERS: And you have been -- you were  
11 very happy with your experiences that you were having  
12 before him. And you told us that you saw examples of  
13 temperament issues while you were in the courtroom with  
14 other judges and other litigants, correct?

15 MS. O'NEILL: No. Not with other judges.

16 MR. SELLERS: With other lawyers.

17 MS. O'NEILL: Yes.

18 MR. SELLERS: And you didn't file any  
19 complaints or have concerns until the point in time,  
20 years later, when the focus turned on you; is that  
21 correct?

22 MS. O'NEILL: Absolutely. And I know a whole  
23 bunch of lawyers that have problems with Judge Garfinkle  
24 that aren't here, and they're scared to come because they  
25 don't want to feel -- or put themselves in a position to

1 testify against a judge.

2 So I don't know if you're saying that I  
3 shouldn't be here to voice my opinion about --

4 MR. SELLERS: I'm not saying that. I'm glad  
5 that you're here, and that's what the process is all  
6 about, and I appreciate you being here. I'm just trying  
7 to understand why you're here, and that's why I asked the  
8 question.

9 As I understand it, you're here because you  
10 felt like you were ambushed at a hearing, and that when  
11 you made a motion to recuse the judge, he recused  
12 himself.

13 MS. O'NEILL: Eventually. Yes, he did.

14 REPRESENTATIVE DELLENEY: Anyone else have  
15 questions? Thank you, Ms. O'Neill.

16 MS. O'NEILL: Thank you.

17 REPRESENTATIVE DELLENEY: Now, we'll bring  
18 Judge Garfinkle back up to the podium.

19 MS. SHULER: Ms. O'Neill's first allegation  
20 concerns your favorable treatment toward the defendant in  
21 this matter. Please explain your general procedure  
22 regarding how you handle matters regarding pro se and a  
23 litigant who is represented by counsel.

24 I would note in Judge Garfinkle's materials  
25 that he's furnished the Judicial Conduct Commission,

1     which you have before you, he has some articles dealing  
2     with pro se litigants, including one, The Toughest Nut,  
3     Handling Cases Pitting Unrepresented Litigants Against  
4     Represented Ones.

5             JUDGE GARFINKLE: As the articles that I  
6     submitted point out, dealing with pro se litigants is a  
7     very, very tough balancing act for a judge to do. It's  
8     especially tough, I believe, in family court because in  
9     family court, what these hearings, and the hearing in  
10    particular that Ms. O'Neill is here discussing, we're  
11    dealing with the interest of children.

12            And I believe that the important thing is to  
13    find out and deal with what is best for the children. If  
14    I had proceeded as Ms. O'Neill says I should have  
15    proceeded, I would have cut off a mother's right to tell  
16    me what's best for her own children, and I don't believe  
17    that would be right.

18            I believe a parent -- a mother or father --  
19    ought to be able to tell a judge, who has to decide  
20    what's best for their children. She was representing the  
21    father who said, I want to have custody of these children  
22    because I'm the caregiver and I've done all of these  
23    things for the children.

24            And I thought the mother ought to be able to  
25    respond to that, and so I gave her an opportunity to

1 respond. And I did that. That was the initial hearing.  
2 Later on I received these e-mails, and as Ms. O'Neill  
3 clearly said, I did not read them. I contacted the  
4 guardian ad litem who, to me, is the neutral party. My  
5 assistant is an extension of me. Your secretaries are --  
6 whoever your administrative assistants, whatever you want  
7 to call them, are an extension of you.

8           So I view that as someone in my office  
9 contacting the person. The guardian ad litem is the  
10 neutral party and is charged with looking after the  
11 interest of the children. So I had asked her to set up  
12 the conference call. I didn't want to call Ms. O'Neill  
13 to set up the conference call. That may be ex parter  
14 communication that's viewed by the pro se party. I  
15 couldn't call the pro se party to set it up because then  
16 Ms. O'Neill would view that as ex parte.

17           The person representing the children was the  
18 neutral party, the logical party to set up the conference  
19 call. If you read the affidavit carefully, you'll see  
20 the affidavit of the guardian said that the discussion of  
21 the e-mails was going to be discussed and other matters.  
22 But I had personally sent an e-mail to Ms. O'Neill,  
23 saying, please read these. Make sure you read these. If  
24 I don't hear back from you, I'll assume that you read  
25 them.



1           And she had read them. There's no question.  
2           And then the matters dealt with the matters concerning  
3           the children, and if you want me to, I'll be glad to go  
4           into that.

5           MS. SHULER: Judge Garfinkle, I think you  
6           answered this, but what response specifically would you  
7           offer to Ms. O'Neill's allegation that you showed  
8           favoritism to the pro se defendant in this matter?

9           JUDGE GARFINKLE: No, ma'am. I have lawyers  
10          here, people in the courtroom. I have deputies,  
11          ex-deputies that came, and if you want to hear from them,  
12          I'm sure they'll be glad to tell that I do not show  
13          favoritism. I have never, ever in any other case, ever  
14          been accused of showing favoritism to any lawyer or  
15          litigant.

16          By now I've presided over -- if court  
17          administration records are correct -- close to 90,000  
18          hearings in my career. And this is the only time I've  
19          ever been accused of any type of favoritism.

20          My favorites are the children. Those are the  
21          only favorites that I have, and I'm going to do what I  
22          think is the best for the children. I take the statutes  
23          and the laws of this state very seriously, and I try to  
24          always rule through the best interest of the children.

25          MS. SHULER: Judge Garfinkle, what do you

1 believe is the duty of a judge when a pro se litigant  
2 attempts to directly contact the court?

3 JUDGE GARFINKLE: Not to read that  
4 communication, which I did not, and I think Ms. O'Neill  
5 testified that she believed I did not read it. So I  
6 wanted to make sure that she had read it, so that when we  
7 had this conference call, hearing, whatever -- it turned  
8 into a hearing because at her request there was a record  
9 made of it.

10 Every judge will tell you, after every hearing  
11 an order must be issued. That's why an order is issued.  
12 And, yes, I do prepare what I call form orders in  
13 advance. Our Chairman may recall, I get to court by  
14 eight in the morning. I was holding court in the  
15 chairman's hometown, and he commented, I have never seen  
16 a judge at eight o'clock in the morning. I don't know if  
17 you remember that. I said, No, I come and I read the  
18 files. I prepare things in advance so that I know what's  
19 going on. I can rule after having read. I don't have to  
20 delay the matters for weeks and months or whatever it  
21 takes, again, because children can't wait.

22 And so I'm at the court by eight o'clock  
23 preparing form order, blank orders, whatever you want to  
24 call them, so that I can rule from the bench and have  
25 some peace and settlement for the children.

1 MS. SHULER: Judge Garfinkle, Ms. O'Neill  
2 alleged that you engaged in ex parte conversations with  
3 the guardian ad litem. Please explain to the Commission  
4 what you believe the law provides for in terms of the  
5 rule for providing the guardian ad litem in a custody  
6 ruling, and you have provided us with two cases, which  
7 Commission members have in their notebook.

8 JUDGE GARFINKLE: Well, I believe the guardian  
9 ad litem is the person appointed by the court to assist  
10 the court in ferreting out what is best for the children.  
11 The guardian makes an investigation and gives the court a  
12 report as to the factors that are going on in a child's  
13 life. Mom views the case one way. Dad views it the  
14 exact opposite. But the judge needs to get a perspective  
15 of what's really going on in that child's life.

16 And the legislature in this state, and in all  
17 states for that matter, came up with guardians ad litem,  
18 and the guardian ad litem is to be the advocate and  
19 person that reports to the court and gives the court the  
20 information. So when I call that guardian ad litem, I  
21 appointed that guardian ad litem. I direct the work of  
22 that guardian ad litem, and in a case where there's an  
23 uneven balance -- pro se on one side and a lawyer on the  
24 other side -- that guardian does become the person that I  
25 look to to help facilitate communication that's necessary

1 between the two sides because that guardian's only role  
2 is to protect the children.

3 MS. SHULER: Judge Garfield, Ms. O'Neill's last  
4 allegation deals with the recusal and allegation of  
5 personal bias against her client because of his race.  
6 First, please explain the general procedures you follow  
7 in the judicial canons for determining whether or not you  
8 should recuse yourself from hearing a matter before you.

9 JUDGE GARFINKLE: I should recuse myself in a  
10 matter before me if, for any reason, I cannot be fair to  
11 the litigants or the lawyers or it is perceived that I  
12 cannot be fair. And I have done that. I have done that  
13 in many, many cases. If there are any conflicts that  
14 come up, I tell the lawyers right up front, or the  
15 litigants, whoever is involved, I may have a conflict, or  
16 I do have a conflict.

17 And many times, for those of you who know how  
18 the court system works, I pick up a file, and I see  
19 there's a case on my docket in which I know the parties  
20 or I have some social interaction with them. I'll be the  
21 first one to run down hall and tell the judge in the next  
22 courtroom, let's swap files. I can't be the judge, I  
23 know this person.

24 I've recused myself in cases wherein my wife  
25 sells real estate. She works for a company that has 850

1 agents, and I'll look and see one of the parties is an  
2 agent. And I'll say, I don't think my wife knows this  
3 agent. They work on different parts of the county in  
4 Charleston, but I think you ought to know this. If you  
5 want me to recuse myself, I will. I've recused myself  
6 and did what I described. I swapped cases and made sure  
7 that that case was heard that day because we have to  
8 dispose of it.

9           And that's what we're dealing with in the  
10 e-mails that Ms. O'Neill is referring to, matters where  
11 time couldn't wait. They were time sensitive and had to  
12 deal with the children, and that was important. So it's  
13 not about the client, and if there's anybody that feels  
14 I've prejudiced -- one of the people that you'll hear  
15 from today is Reverend Joe Darby, who is the president of  
16 the state NAACP. He'll talk about his knowledge of me  
17 and any prejudice that I may have in that direction.  
18 I've been accused of a lot of things in my life, but  
19 prejudice is never, ever one.

20           MS. SHULER: Judge Garfinkle, please explain  
21 why you recused yourself and the procedure that you  
22 followed to make that decision.

23           JUDGE GARFINKLE: I recused myself -- I had  
24 been considering recusing myself in the matter, and by  
25 way of background, if a judge has an ethical question,

1 before it becomes an issue, there is a commission called  
2 the Judicial Advisory Commission. An attorney in  
3 Columbia, Cam Lewis, and I called Cam Lewis and laid the  
4 scenario to him. At the age of 95, my mother had a fall.  
5 My brother, who is a doctor, flew down from Connecticut.  
6 We had to get a CNA to assist my mother. He interviewed  
7 many, many CNAs, and the one we pretty much settled on --  
8 then he brought me into it, and said, I want you to meet  
9 my brother. You'll be dealing with him, since my brother  
10 is in Connecticut. He introduced me as Judge Garfinkle.  
11 I always tell him not to do that, but he did that. Oh,  
12 you're a judge. You must know my dear friend Tony  
13 O'Neill, who is the husband of Mrs. O'Neill. I said,  
14 Yes, I do but that's not important. What's important is  
15 your credentials to take care of my mother.

16 Well, she kept going on and on about her  
17 friendship, and every time she came back, she kept  
18 referring to her friendship with Mr. O'Neill. Finally I  
19 said, We're not going to discuss that anymore. She is  
20 still to this day taking care of my mother, who is 97,  
21 and I have never discussed with her any aspect of  
22 Mr. O'Neill.

23 I felt it was important later on at this  
24 meeting, and I'll talk about that in a minute, that they  
25 should know what the personal reason was. When I called

1 Cam Lewis and said, I ought to get out of hearing the  
2 cases involving the O'Neills, because of this, his  
3 statement to me was, Absolutely, you should recuse  
4 yourself, Judge Garfinkle. And you put in the order that  
5 you are recusing yourself for personal reasons. Do not  
6 put your mother's health on the public record. And the  
7 reason that I tell that you that is, that order will  
8 somehow be circulated, and you will get calls from  
9 lawyers inquiring about your mother's health. And let me  
10 tell you, they don't really care. So just put personal  
11 reasons. Don't put your mother's medical history on the  
12 record. It's nobody's business, and you'll save yourself  
13 a lot of phone calls. So I followed his advise.

14 MS. SHULER: Judge Garfinkle, what response  
15 would you offer to Ms. O'Neill's allegation that you had  
16 a personal bias towards her and her client because of his  
17 race?

18 JUDGE GARFINKLE: Again, I have zero bias. And  
19 you will hear testimony regarding that. Race has never  
20 been a factor with me. Race, religious, gender,  
21 ethnicity, none of that has ever been a factor in my  
22 courtroom. I judge the case based on the facts and  
23 evidence presented to me. I have no biases. I judge  
24 cases before me on the basis of what is before me. I  
25 think she said prior to this, she had no problem with me.

1           Yes, I've had some problems with her regarding  
2 her demeanor. I chose to overlook that because I didn't  
3 feel it rose to the level of having to do something about  
4 that. And when she said I've never called her in for a  
5 conference, I don't call lawyers in unless they're  
6 constant repeat offenders. These are lawyers who called  
7 me out and asked me to come in; you know, Judge  
8 Garfinkle, can I talk about how family court matters are  
9 handled?

10           I understand that you're the go-to judge, and I  
11 take pride in that. These young lawyers come and ask me  
12 how to handle a family court case, and I thought it was  
13 interesting that she said she prepared her cases as if  
14 any judge was going to hear it because she knew that if  
15 she was prepared for Judge Garfinkle, she was prepared  
16 for any judge. I take that as a compliment. That was  
17 one of the few things that she said that I take as a  
18 compliment.

19           MS. SHULER: Judge Garfinkle, please explain  
20 the purpose of the meeting arranged by a third party and  
21 confirm that third party identity at a local restaurant  
22 prior to Ms. O'Neill filing the complaint on October  
23 29th.

24           JUDGE GARFINKLE: First, let me identify the  
25 third party. She said it was Danny Martin Junior. There



1 are two judges that are Danny Martin. Judge Martin  
2 Senior, who retired, and Judge Martin Junior, who joined  
3 us on the family court bench. He and I had been talking.  
4 He was aware that Mr. and Mrs O'Neill had filed a  
5 grievance against me. I knew that he was a close  
6 personal friend of theirs. Mr. O'Neill even participated  
7 in Judge Martin's investiture and swearing-in ceremony,  
8 so I wanted him to know that they had filed this  
9 complaint against me and that I was recusing myself, and  
10 I felt that him coming on as a judge, he ought to know  
11 that background.

12 And as it became closer, I guess, he had heard  
13 comments that they were still unsatisfied with me, and he  
14 said, Paul, if I arrange a meeting, maybe we can yell,  
15 shake hands, and let bygones be bygones. You're not  
16 going to be hearing their cases, but would you be willing  
17 to have a family sit-down with them and see if you can  
18 resolve your differences? I said, Yes. I don't want  
19 anybody mad at me, and I'm not mad at them.

20 This was before any grievance had been filed  
21 here with this Commission, and I said, I just want to be  
22 friends and get along with everybody. That's the right  
23 thing to do. So I agreed to a meeting. It was his  
24 suggestion. We met at Outback. He was kind enough to  
25 pick up the tab. He had car trouble; he was late getting

1 to the meeting. I drove him home.

2 On the way home, we discussed everything but  
3 that, and we said, Hopefully we've cleared the air.  
4 Let's see what happens. That was it. As far as the  
5 grievance, that they shouldn't file a grievance, none of  
6 that came up. I explained to them about this background  
7 about my mother's nurse. I felt that they had a right to  
8 know that now that the original judicial grievance ended  
9 and this process had not started. And, of course, I had  
10 no idea whether they were going to file a grievance.  
11 They didn't call me up to ask me if they could file a  
12 grievance, so, again, it was in that interim period. I  
13 just wanted to clear the air and not have people angry  
14 with me.

15 MS. SHULER: Judge Garfinkle, you have several  
16 attorneys here today supporting your candidacy. Can you  
17 act impartially to any attorney who appears before your  
18 family court that did not attend this public hearing in  
19 support of your candidacy today and have on the other  
20 side one or more of the attorneys who appear in your  
21 courtroom?

22 JUDGE GARFINKLE: Yes. I believe I can act  
23 fairly and impartially. These attorneys who are kind  
24 enough to be here today -- and I want to thank them for  
25 coming -- that they'll be one of the ones when they

1 appear in court, I'll have to inform the other side that  
2 they were here in Columbia to support my candidacy, or if  
3 they feel I'm not fair to them. They may ask me to  
4 recuse myself, and I have had that on one occasion when  
5 some attorney said, I think our friendship -- maybe  
6 you're going to help the other side. So I think that I  
7 can be fair to any attorney, any litigant that appears in  
8 front of me.

9 I have two attorneys here with me also. I am  
10 permanently recused from hearing their cases. I will not  
11 hear any of their cases in the future. They're two  
12 excellent lawyers, but I think that's the fair thing to  
13 do. And when I ask them to represent me, I told them  
14 that was part of the condition, that they no longer could  
15 appear in front of me, so it would not appear there was  
16 favoritism.

17 MS. SHULER: Judge Garfinkle, I think you've  
18 covered everything, but is there anything additional that  
19 you would like to offer?

20 JUDGE GARFINKLE: Yeah. There are a few things  
21 that I want to say. I think, you know, what has been  
22 left out of the comments, certainly by Ms. O'Neill. I  
23 was struck by the fact there was no reference to what the  
24 hearing was all about. This hearing -- the hearing, the  
25 conference, whatever you want to call it -- was about

1 children. That's what it was all about. That's what it  
2 was about to me. Looking after the welfare of the  
3 children.

4 And in case you have a lingering impression in  
5 your mind about what was the substance of the e-mail, the  
6 substance of the e-mail was that the original hearing I  
7 had ruled that the mother would have temporary custody of  
8 the children.

9 Those of you that are lawyers know there's a  
10 rule in South Carolina that an order is not final until  
11 it's signed and filed. I had insisted that the proposed  
12 order be sent to Mrs. O'Neill for her review and comment.  
13 The order giving mom temporary custody had not been  
14 filed. The children were due to be in school in two days  
15 in West Virginia.

16 The e-mails said that the father,  
17 Mrs. O'Neill's client, was refusing to turn over the  
18 children that he had physically kept in Charleston  
19 because there was not a signed filed order, and he was  
20 not going to turn over those children until he had to  
21 turn them over. I felt it was important to get those  
22 children enrolled in school, get on with their life in  
23 West Virginia, and that was what was important to me,  
24 what was going to happen to those children.

25 And dad was insisting to know we were going to

1 wait a few days and make the children miss enrolling in  
2 their new school in West Virginia, then, yes. I say,  
3 sometimes the rule is never to be broken, but when it  
4 comes to children, we have a specific case in South  
5 Carolina that talks about procedural strictures should  
6 take second place to the welfare of the children. And I  
7 will do that. I will see that our children are looked  
8 after, and I will see, if necessary, those children  
9 reenrolled in school when they should be. They're going  
10 to a new school in a new state, and for them to miss the  
11 first few days of school, that was important. Not  
12 whether or not there was sworn testimony or unsworn  
13 testimony.

14 Any time pro se appears in front of me, I make  
15 them give sworn testimony so it is part of the record.  
16 Their statements are always sworn statements, so that  
17 later on they can be examined or cross-examined, and  
18 that's important. And Mrs. O'Neill was correct in asking  
19 for a record to be made, and it turned out to be  
20 fortunate for the children that there was a record made.

21 The children were able to get to school on  
22 time, and to me that is what this is all about. Nothing  
23 else is important. It's not about the lawyers or about  
24 the litigant. And I appreciate the lawyers coming here  
25 and the deputies, whoever is here. If you want to hear

1 from them, they'll tell you that I'm strict. I think one  
2 of the lawyers on the panel knows I'm strict because  
3 that's the fair way to do it.

4 REPRESENTATIVE DELLENEY: Judge Garfinkle, I've  
5 just got a couple questions. This e-mail or Facebook or  
6 whatever this was from Attorney Melissa Brown, did you  
7 ask her --

8 JUDGE GARFINKLE: This is the first time I've  
9 ever heard about it sitting in this room.

10 REPRESENTATIVE DELLENEY: Did you ever ask  
11 anybody to contact Ms. O'Neill or her husband?

12 JUDGE GARFINKLE: Absolutely not. When  
13 Mrs. O'Neill referred to an attorney contacting her  
14 husband -- that he was representing me -- absolutely not.  
15 The two lawyers that represented me throughout this  
16 process are in the room today, I believe, and I want to  
17 make sure that everybody understands. I was having a  
18 conversation with a lawyer slash friend of mine who  
19 doesn't appear in front of me and told him, Oh, I have a  
20 grievance filed against me with judicial standards, and  
21 he said, Oh, really, what happened? So I told him. He  
22 said, Oh, that's Tony O'Neill. I've known Tony 35 years.

23 So obviously he took it upon himself to contact  
24 Tony as a mutual friend of both of ours. But I've never,  
25 nor will I ever ask. That's a rule that I know and

1 insist be followed. No, I would never do that, and  
2 that's the first I heard about it today.

3 REPRESENTATIVE DELLENEY: And when you had this  
4 meeting at the Outback, was that before you filed for  
5 reelection?

6 JUDGE GARFINKLE: No. The deadline for filing  
7 had already passed. That was -- I forget the exact date.  
8 I think it was August 9th, if I remember correctly, the  
9 day before my birthday. And I had to have it in, and  
10 this meeting took place two and a half months after that.

11 And again, it was Judge Martin arranged it. He  
12 wanted to be the peacemaker between the two sides having  
13 the disagreement, and I thought it would be a nice thing  
14 to do.

15 REPRESENTATIVE DELLENEY: Was it your idea?

16 JUDGE GARFINKLE: No. It was his idea. He  
17 cooked it up sitting in his office. He said, Well,  
18 suppose I try to make peace with you all and set up a  
19 meeting. And I said, Fine. And that's when he said,  
20 Let's not meet at the courthouse. Let's make it at a  
21 neutral place. And he said, I'll even buy dinner.

22 REPRESENTATIVE DELLENEY: Any other people have  
23 questions?

24 MR. SELLERS: Judge Garfinkle, that meeting  
25 does concern me some, and I want to be sure that I

1 understand. Was it your purpose, either spoken or as an  
2 unspoken agenda item, to in any way influence Ms. O'Neill  
3 or her husband to not file a complaint with this  
4 Commission?

5 JUDGE GARFINKLE: No, sir. It was to try to  
6 make peace. They had asked me to recuse myself, which I  
7 had done. But I don't like the idea when I know someone  
8 in the legal community is upset.

9 Charleston is a relatively small bar. I don't  
10 like people being upset with me because I think that  
11 might have an effect on how other people might view my  
12 courtroom. Oh, he can't be fair. I thought if we can  
13 put aside our differences, we can go on and have an  
14 excellent work relationship.

15 At one time Mr. O'Neill and I were friendly.  
16 We would swap books. We were both interested in American  
17 history. We would swap books to read, Oh, this is a  
18 great book. We would do those sorts of things. I wanted  
19 to get back to that type of relationship with certainly  
20 Mr. O'Neill. I was not as close to Mrs. O'Neill. She's  
21 only been with the bar since I became a judge, but I've  
22 known Mr. O'Neill for years, and we found out that we had  
23 this common interest, and we would talk on the phone and  
24 occasionally discuss matters, and I wanted to get back to  
25 a friendly, cordial, warm relationship that I had in the



1 past.

2 MR. SELLERS: Thank you.

3 MS. SHULER: Judge Garfinkle, back to the  
4 Outback meeting. When you were discussing this meeting  
5 with Judge Martin, Junior -- not the father -- at some  
6 point did you ever say to the son, Judge Martin, the  
7 family court judge, that perhaps maybe his father should  
8 be the one to set up the meeting?

9 JUDGE GARFINKLE: Well, I had suggested to him,  
10 I said, It may be an awkward situation for him as a  
11 judge. If somebody wanted to be a peacemaker, I said, I  
12 don't want you to violate any ethics. He said, No, I  
13 don't think I would be violating it. I said, Well, I'd  
14 like to be friendly. Maybe your father -- he's retired,  
15 in his 80s now -- maybe he could be the one. I was  
16 concerned.

17 I didn't want a fellow judge to do anything  
18 that could reflect badly on them. So I said, If you  
19 think it would be a good idea, and you think they would  
20 be receptive, I would be glad to have your daddy there.  
21 He said, No, no, I'm comfortable with it. I'm fine.  
22 It's not a violation of any ethics. I wouldn't do that,  
23 and I don't believe he would, so he said, Let me do that.  
24 I'm the one that's friendly them.

25 And it was only a suggestion to prevent him

1 from facing a complaint from somebody when he's up for  
2 reelection. And I tried to spare him that embarrassment.  
3 And maybe when the time comes, it'll be up for you to  
4 decide. He was comfortable with it, and I went back and  
5 checked the judicial ethics, and I couldn't find any  
6 reason because, again, there was no pending complaint.

7 The other complaint had been dismissed. He was  
8 just trying to be the peacemaker between the two sides  
9 that had a falling out with each other.

10 REPRESENTATIVE DELLENEY: Anyone else have any  
11 questions of Judge Garfinkle? All right. We'll bring  
12 Ms. O'Neill back, and we'll give you an opportunity to  
13 respond to anything that would you like to respond to.

14 MS. O'NEILL: Just a couple of things. The  
15 whole thing about the meeting at Outback -- it was my  
16 understanding that Judge Garfinkle asked Judge Martin to  
17 set that up. It was not Judge Martin's idea.

18 As a matter of fact, he was recused from our  
19 cases back in March 2011. If he thought there was bad  
20 blood or anything, he's had over a year and a half to  
21 rectify, or as he stated, but he did not. He waited  
22 until the Saturday before it was time for me to file.  
23 The last day was Tuesday, October 29th, and the Saturday  
24 before that is when we met. So to say that it was not  
25 over this, I just don't agree with that. And why this

1 meeting was at this particular time, that's exactly why I  
2 thought it was, so that I would reconsider filing an  
3 affidavit before this Commission.

4           And from my understanding from my husband, this  
5 was not Judge Martin's idea. It was Judge Garfinkle's  
6 idea to do this. And Judge Martin is not here, but if it  
7 was for me, I was Judge Martin Senior's last law clerk.  
8 I have a relationship with his father. I was his last  
9 judicial law clerk before he got off the bench, so I'm  
10 his protege. And I think Judge Garfinkle knows that as  
11 well.

12           One thing that Judge Garfinkle stated about the  
13 basis of the e-mails, he said that I didn't state that  
14 this was the forum to do that, but since he went into  
15 that, the basis of the e-mail is why I think that he had  
16 the hearing and went ahead and had a hearing with  
17 testimony because I think he read it.

18           And the problem with that that I have with not  
19 having my client there was because he only got one side  
20 of the story. If my client was there to testify, he  
21 would have known the mother never attempted to come. The  
22 mother had to work. She was not coming until after  
23 school had started in West Virginia. Those things were  
24 not brought out because we didn't get notice.

25           That goes back to procedure and things that

1 should have been done. Yes, we want to all believe that  
2 the welfare of the children is of utmost importance.  
3 However, from the record, we already had a hearing. The  
4 guardian already provided a report. There was nothing to  
5 show any danger or harm to the children, and there was no  
6 reason that procedure could not have been followed at  
7 that point. Absolutely nothing. And we do have a  
8 procedure for that to file.

9           You can do ex parte hearings, give notice, and  
10 emergency hearings. All those things are available to  
11 everyone in the family court. And Judge Garfinkle stated  
12 that, no -- just going back to what he said about no, he  
13 only contacted lawyers that are constant problems, but in  
14 his letter, he says, I had a bad demeanor from the time I  
15 was a solicitor. That was over -- I got back to  
16 Charleston 12 years ago.

17           And he says that I recall instances when I was  
18 in the solicitor's office and that he thought I would  
19 grow out of it, but I continued. So from his letter, he  
20 says that I'm a constant problem. Today he said he  
21 didn't call me because I was not a constant problem.

22           And I submit to you, in that letter he talks  
23 only about me. He doesn't talk about the allegations in  
24 his response to my affidavit. And the part about -- I  
25 think you asked him has he ever asked us not to file.

1 Now, we have a letter on letterhead from Larry Richter to  
2 my husband, and they had a discussion, and he informed my  
3 husband that he represented Judge Garfinkle and even did  
4 a draft for us to withdraw from the letter of complaint  
5 from the grievance committee.

6 So that was an issue then, and, yes, he has  
7 done that. So I just -- some of this is just very  
8 overwhelming to me, of all of the things that have gone  
9 on in this case. And I haven't appeared before Judge  
10 Garfinkle since, I think, January or February of 2011, so  
11 I harbor no -- I don't hate him. I don't have to think  
12 about him anymore actually. I don't have to appear  
13 before him, so to say he doesn't want anyone in  
14 Charleston to feel bad about him, I don't. I don't feel  
15 bad about him.

16 I feel bad about this situation and felt that I  
17 should bring it to your attention because this is the  
18 kind of issue that I think you're looking for people to  
19 disclose to you. So I don't have anything further.

20 REPRESENTATIVE DELLENEY: Thank you, ma'am.

21 MS. SHULER: I would just note that Elizabeth  
22 Stringer's affidavit has been made part of the record,  
23 and you have it in the notebook today.

24 Reverend Darby, would you come forward for  
25 three short questions?

1           REPRESENTATIVE DELLENEY: Raise your right hand  
2 to be sworn.

3           (Reverend Darby was duly sworn, after which  
4 testimony commenced.)

5           MS. SHULER: Reverend Darby, you submitted a  
6 letter of recommendation, dated July 17, 2012, on behalf  
7 of Judge Garfinkle for his judicial application package.  
8 Please explain how long you've known Judge Garfinkle and  
9 in what capacity.

10           REVEREND DARBY: I've known him really as a  
11 friend and as a community advocate. I met him not long  
12 after moving to Charleston almost 15 years ago. He came  
13 to worship at the church with one of the members, a  
14 bailiff, another who was instrumental in making drug  
15 court go. Since then we've had a very cordial  
16 relationship, very positive relationship. I have been to  
17 drug court graduations. I've known him in that community  
18 capacity.

19           MS. SHULER: Reverend Darby, in all your  
20 dealings with Judge Garfinkle, have you ever seen him  
21 exhibit prejudice against someone from a different  
22 culture, gender, or race?

23           REVEREND DARBY: None whatsoever.

24           MS. SHULER: And Reverend Darby, do you have  
25 anything additional you wish to briefly add regarding

1 Judge Garfinkle?

2 REVEREND DARBY: I appreciate the judge's  
3 spirit. I spent part of my life as a probation counselor  
4 before the Lord freed me from state employment. In that  
5 capacity I got to work with some very good judges. Two  
6 of them stand out because they were mentors for me. One  
7 was J. McNary and the other was Harold Bull, and both  
8 were tough as nails and imminently fair. I found Judge  
9 Garfinkle to have those same traits. He's been an asset  
10 to the community. Most recent contact I had with him  
11 outside of this was, I got a couple tickets from him to  
12 the NCAA. It's not a cheap ticket, and he could not make  
13 it. His interest was to make sure that I gave it to two  
14 of the young people in the congregation. I appreciate  
15 the relationship. I consider him to be a friend. I  
16 don't know him to be a prejudiced person.

17 REPRESENTATIVE DELLENEY: Anybody on the  
18 Commission have any questions?

19 MS. SHULER: Judge Garfinkle, briefly, you're  
20 aware of the Commission guidelines on pledging?

21 JUDGE GARFINKLE: Yes, ma'am.

22 MS. SHULER: Have you tried to contact any  
23 parties, either members of the General Assembly or anyone  
24 on your behalf?

25 JUDGE GARFINKLE: No, ma'am.

1 MS. SHULER: I would note that the Lowcountry  
2 Citizens Committee found Judge Garfinkle qualified in the  
3 evaluative criteria of constitutional qualifications,  
4 physical health and mental stability. The committee  
5 found him well-qualified in evaluative criteria for  
6 ethical fitness, professional and academic ability,  
7 character, reputation, experience, and judicial  
8 temperament.

9 I will note for the record that any concerns  
10 that I had regarding Judge Garfinkle's candidacy were  
11 raised in my questioning of the candidate today, and I  
12 have no further questions.

13 REPRESENTATIVE DELLENEY: Judge Garfinkle, this  
14 ends this portion of the screening process. As you know,  
15 we issue a report, which is initially a draft report, and  
16 after the expiration of the 48-hour rule, which you're  
17 very familiar with, the screening process is over.

18 But prior to that time, at any time, we might  
19 be of such a mind we could reopen public hearings and  
20 recall you back, or anyone else back, to ask questions we  
21 might have issues about.

22 Having said that, I thank you for serving. I  
23 thank you for your service, and thank you for offering to  
24 continue to serve. And I hope you have a safe trip back  
25 to Charleston.



1 JUDGE GARFINKLE: Thank you for allowing this  
2 process to go forward.

3 REPRESENTATIVE DELLENEY: And Mrs. O'Neill,  
4 thank you for appearing. We know this took a lot of  
5 courage to do what you did. This is part of the process,  
6 and we appreciate your participation in the process.

7 All right. We have before us the Honorable  
8 Deborah Neese, who seeks reelection on the Family Court,  
9 11th Circuit, Seat Number 2.

10 If you would, Judge Neese, please raise your  
11 right hand to be sworn.

12 (Judge Deborah Neese was duly sworn, after  
13 which testimony commenced at 3:45 p.m.)

14 REPRESENTATIVE DELLENEY: Thank you, ma'am.

15 Have you had an opportunity to review your  
16 Personal Data Questionnaire?

17 JUDGE NEESE: Yes, sir.

18 REPRESENTATIVE DELLENEY: Is it correct?

19 JUDGE NEESE: Yes, sir.

20 REPRESENTATIVE DELLENEY: I assume there are no  
21 changes that need to be made.

22 JUDGE NEESE: No, sir.

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

1 JUDGE NEESE: I do not.

2 REPRESENTATIVE DELLENEY: It will be made as  
3 part of the record of your sworn testimony without  
4 objection.

5 (EXH. 8, Personal Data Questionnaire of Judge  
6 Deborah Neese, marked for identification.)

7 REPRESENTATIVE DELLENEY: Thank you, ma'am.

8 The Judicial Merit Selection Commission has  
9 thoroughly investigated your qualifications for service  
10 on the bench. Our inquiry has primarily focused on nine  
11 evaluative criteria, which include a survey of the bench  
12 and bar, a thorough study of your application materials,  
13 verification of your compliance with state ethics laws, a  
14 search of any newspaper articles in which your name may  
15 have appeared, a study of previous screenings, and a  
16 check for economic conflicts of interest.

17 There are no affidavits filed in opposition to  
18 your election. There are no witnesses here to testify.  
19 Do you have a brief opening statement that you would like  
20 to make?

21 JUDGE NEESE: No, sir.

22 REPRESENTATIVE DELLENEY: Please answer any  
23 questions our able counsel has for you.

24 MR. DENNIS: Thank you, Mr. Chairman.

25 Judge Neese, you also have before you your

1 sworn statement that you provided with detailed answers  
2 to over 30 questions regarding judicial conduct,  
3 statutory qualifications, office administration, and  
4 temperament.

5 Do you have any amendments that you would like  
6 to make to this document?

7 JUDGE NEESE: No.

8 MR. DENNIS: Mr. Chairman, at this time I would  
9 ask that Judge Neese's sworn statement be entered into  
10 the exhibit for the hearing record.

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

13 (EXH. 8A, Sworn Statement of Judge Deborah  
14 Neese, marked for identification.)

15 MR. DENNIS: Judge Neese, why would you like to  
16 continue serving as a family court judge?

17 JUDGE NEESE: I think mainly because I enjoy  
18 the job, and I think probably more than any other  
19 position I've held, I feel like I'm making a  
20 contribution. Just in general, it's not often --  
21 sometimes in family court you don't necessarily see the  
22 results immediately of your decisions, but occasionally  
23 you do. Things come back around.

24 It's not the kind of job that every day you  
25 leave uplifted, but overall, you do. And I think the

1 good days certainly outweigh the bad. You know, there  
2 are days when you go home and you're exhausted just like  
3 any other job. It's not a job that you would describe as  
4 having fun on a daily basis, but it's interesting. It's  
5 a challenge. I don't think there's a day that goes by  
6 that you think you've heard everything, and someone walks  
7 in the courtroom, and a new issue comes up, and you learn  
8 something.

9           And oftentimes it's not from attorneys.  
10 Sometimes it's from pro se litigants. Sometimes it's  
11 from attorneys who are appointed to represent people in  
12 DSS cases who don't really practice in family law, and  
13 they'll say, This is not my area. I've never been in a  
14 family court courtroom. And then they proceed to examine  
15 a witness and do a monumental job. Maybe not the most  
16 articulate, smooth presentation, but they zero in on the  
17 points that need to be addressed. So to me it's just a  
18 constant learning.

19           MR. DENNIS: Thank you, ma'am.

20           Judge Neese, could you briefly describe one or  
21 two things that you would consider accomplishments during  
22 your tenure on the bench and maybe a goal still left  
23 outstanding.

24           JUDGE NEESE: I think this past year I've  
25 served as chief administrative judge, and I think we've

1 made some inroads in the backlog in Lexington County  
2 dealing with the docket. You have to work closely with  
3 the clerk staff in doing that and handling administrative  
4 issues. Sometimes there are issues that come up in  
5 certain counties that create backlogs, and you have to  
6 identify what you think some of the problems are, and you  
7 try to address those.

8           As far as goals that I would like to attain  
9 that I haven't, in this position, there are little  
10 practical things. I've thought of having an adoption day  
11 and certain things that I would like to see the court  
12 focus on and provide to constituents. We've focused on  
13 trying to get the pro se litigants taken care of in the  
14 past year to see that their uncontested one-year divorces  
15 get enough time on the docket. And I think we've  
16 improved in that regard. We've improved in pre-trying  
17 the cases and getting them ready for trial.

18           But I give credit to Judge Allen on that. In  
19 the year before me, he did a fantastic job on pre-trying.  
20 I think overall, as far as goals, I would like probably  
21 to broaden, I guess, my area of expertise, and that's  
22 really just dealing with new issues as they come up and  
23 just learning more. As I said, it's a constant learning  
24 experience. You take your dockets every day and try to  
25 run as smoothly as you can in family court because from

1 the time you sit down in the morning to the time you  
2 leave in the evening, it's a constant docket that you're  
3 moving.

4 MR. DENNIS: Thank you, ma'am.

5 Can you please describe what you believe the  
6 ideal temperament would be for a family court judge.

7 JUDGE NEESE: Well, I think the ideal  
8 temperament would be a demeanor that comes across to the  
9 litigants as making an effort to render a fair judgment.

10 I think you have to be open to listening to  
11 both sides and getting as much information as you can  
12 from which you can base an opinion. Sometimes that's not  
13 the easiest thing to do in family court when our dockets  
14 for temporary hearings are every 15 minutes. And our  
15 docket is very time-compelled, time-confined, so I think  
16 you try to draw in as much information as you can, so  
17 that both sides feel like you're interested in what they  
18 have to provide.

19 But at the same time, you have to reach a  
20 decision because one of the things that you're charged  
21 with doing is making decisions expeditiously, getting  
22 everything that's on the docket that day heard, so that  
23 litigants don't have to come back.

24 MR. DENNIS: Thank you, ma'am.

25 You and I spoke at length during our time

1 together about the ballot box survey, and as I discussed  
2 with you, there were a significant number of negative  
3 comments that were written about you, and they seemed to  
4 break down into two areas.

5           Number one, several responses call into  
6 question your judicial temperament. Understanding that  
7 they don't offer specific instances, and there aren't any  
8 specific instances for you to rebut, but can you please  
9 offer a response to the Commission concerning your  
10 temperament.

11           JUDGE NEESE: Well, we did discuss it in  
12 detail, and I've given it some thought since our  
13 discussions. And I think my basic response, as we  
14 discussed together -- this is the first input I've gotten  
15 since elected to the bench. I think, in my position,  
16 what I should do and what I have to do is, try to put the  
17 comments in a constructive framework and then take a look  
18 at them. Take a look at what I do on a daily basis, and  
19 try to treat the comments as valid, and see if there are  
20 changes that I need to make.

21           And it may not be so much -- you know, I've  
22 thought about some of the comments as what I do, as  
23 possibly how I do it, and see if there are some changes  
24 in that regard, and also some procedural changes on how  
25 to handle things. That's a possibility.

1 MR. DENNIS: Thank you.

2 The second category that the ballot box survey  
3 addressed was your level of ability. And by "ability," I  
4 think they all make it very clear that your experience  
5 prior to taking the bench may hamper your performance as  
6 a family court judge. Can you respond to that as well.

7 JUDGE NEESE: Well, in my first election, my  
8 experience, from what I can remember, was a slight issue,  
9 because it was -- other than my initial training out of  
10 law school, which was at the appellate level, and a brief  
11 period of time at the attorney general's office, and in  
12 private practice, before I took the bench, I was with  
13 child support enforcement, Title 4-D, which is, by its  
14 very nature, a confined, limited area.

15 I think the level of expertise I had in that  
16 probably was one of the factors considered during my  
17 first election. I don't think it prohibits me in any way  
18 from developing or having a knowledge of other areas in  
19 family law.

20 I'd like to think of myself as being  
21 intellectually stimulated by domestic law, staying  
22 advised of the Advance Sheets. Quite often I'm raising  
23 law during the course of a hearing. In family court we  
24 don't always get law handed up to us by attorneys, but I  
25 enjoy an intellectual discussion with attorneys about



1 case law and what applies in a case and what does not.

2 I think my abilities in that area are as long  
3 as they were in the child support area. You can't really  
4 discount focusing on child support or one area of family  
5 law because when you get orders, when you hear cases -- I  
6 can't tell you how many cases I have that address child  
7 support issues. And the orders that I get from attorneys  
8 don't accurately reflect what needs to be in the order in  
9 order for the clerk's office to work with the child  
10 support issue.

11 So it's helpful in that regard, but it may not  
12 carry over into other areas, but that's where it becomes  
13 my obligation to know what the law is in other areas.

14 MR. DENNIS: Judge, thank you.

15 I'm going run through some housekeeping matters  
16 with you real quick. These are simple "yes" and "no"  
17 questions.

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

20 JUDGE NEESE: No, sir.

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

24 JUDGE NEESE: No, sir.

25 MR. DENNIS: Have you asked any third parties

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

3 JUDGE NEESE: I have not.

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

6 JUDGE NEESE: No, sir.

7 MR. DENNIS: Have you contacted any members of  
8 this Commission?

9 JUDGE NEESE: I have not.

10 MR. DENNIS: 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 JUDGE NEESE: Yes, sir.

15 MR. DENNIS: Have you reviewed the Commission's  
16 guidelines on pledging?

17 JUDGE NEESE: Yes.

18 MR. DENNIS: As a follow-up, are you aware that  
19 the penalties for violating the pledging rules are  
20 misdemeanor, and, upon conviction, the violator must be  
21 fined not more than \$1,000 or imprisoned not more than 90  
22 days?

23 JUDGE NEESE: Yes, sir.

24 MR. DENNIS: I would like to note that the  
25 Midlands Citizens Committee found Judge Neese to be

1 well-qualified in each of the criteria for which that  
2 designation is available and qualified for the remaining.  
3 They noted that she is most eminently qualified to  
4 continue serving the state on the family court.

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

9 REPRESENTATIVE DELLENEY: Do any members of the  
10 Commission have questions for Judge Neese?

11 There being none, I thank you, Judge Neese, for  
12 your service and willingness to continue to serve, and  
13 this concludes this portion of the screening process.

14 As you know, the record remains open until the  
15 report is published and until it becomes a final report  
16 of the Commission, and 48 hours after that, you can seek  
17 pledges, but prior to the time that it becomes a report  
18 of the Commission, we could reopen your public hearing  
19 and bring you back and ask you questions. That's very  
20 unlikely, but I want to remind you. You are well aware  
21 of the 48-hour rule.

22 I'd like to thank you for offering and thank  
23 you for your service and have a safe trip back home.

24 JUDGE NEESE: Thank you.

25 REPRESENTATIVE DELLENEY: Good evening, Judge

1 Pogue. We have before us the Honorable Timothy Hick  
2 Pogue, who seeks reelection to the Family Court, 12th  
3 Circuit, Seat Number 1.

4 If you would, please, raise your right hand to  
5 be sworn.

6 (Judge Timothy Hick Pogue was duly sworn, after  
7 which testimony commenced at 4:00 p.m.)

8 REPRESENTATIVE DELLENEY: Thank you, sir.

9 Have you had an opportunity to review your  
10 Personal Data Questionnaire?

11 JUDGE POGUE: Yes, sir.

12 REPRESENTATIVE DELLENEY: Is it correct?

13 JUDGE POGUE: Yes, sir.

14 REPRESENTATIVE DELLENEY: I assume there are no  
15 changes that need to be made.

16 JUDGE POGUE: No, sir.

17 REPRESENTATIVE DELLENEY: Do you object to our  
18 making that summary part of the record of your sworn  
19 testimony?

20 JUDGE POGUE: No, sir.

21 REPRESENTATIVE DELLENEY: It will be made as  
22 part of the record of your sworn testimony without  
23 objection.

24 (EXH. 9, Personal Data Questionnaire of Judge  
25 Timothy Hick Pogue, marked for identification.)

1 REPRESENTATIVE DELLENEY: Thank you.

2 The Judicial Merit Selection Commission has  
3 thoroughly investigated your qualifications for service  
4 on the bench. Our inquiry has primarily focused on nine  
5 evaluative criteria, which include a survey of the bench  
6 and bar, a thorough study of your application materials,  
7 verification of your compliance with state ethics laws, a  
8 search of any newspaper articles in which your name may  
9 have appeared, a study of previous screenings, and a  
10 check for economic conflicts of interest.

11 We have one affidavit filed in opposition to  
12 your election and one witness present to testify. Do you  
13 have a brief opening statement that you'd like to make?

14 JUDGE POGUE: No, sir. I know you've been here  
15 for a long time today, and I'll just respond at the  
16 appropriate time.

17 REPRESENTATIVE DELLENEY: Thank you, sir.

18 Answer any questions that our able counsel may  
19 have for you.

20 MS. BENSON: Judge Pogue, you also have before  
21 you a sworn statement that you provided with detailed  
22 answers to 30 questions regarding judicial conduct,  
23 statutory qualifications, office administration, and  
24 temperament.

25 Are there any amendments that you would like to

1 make at this time to that sworn statement?

2 JUDGE POGUE: No, ma'am.

3 MS. BENSON: Thank you.

4 Mr. Chairman, at this time, I would ask that  
5 Judge Pogue's sworn statement be entered as an exhibit to  
6 the record.

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

9 (EXH. 9A, Sworn Statement of Judge Timothy Hick  
10 Pogue, marked for identification.)

11 MS. BENSON: Judge Pogue, why do you want to  
12 continue serving as a family court judge?

13 JUDGE POGUE: Well, first of all, I enjoy my  
14 job. I've practiced law for over 30 years before I got  
15 on the bench. I still feel that I have a lot to offer to  
16 the bench to the family court system. I served as an  
17 assistant public defender for juveniles for 20 years or  
18 so. I also was a contract attorney for DSS for abuse and  
19 neglect cases. I did that for another 15 years. I have  
20 a solo practice of law for the last 25 years. I enjoy  
21 going to work every morning. I still feel like I have a  
22 lot to offer. I'm in good health. I have good energy.  
23 I would like to continuing do so. If there's one thing  
24 I've found out in these last five or six weeks, also, is,  
25 the support and comments from my colleagues has been

1     overwhelming to me, and I value those friendships that I  
2     have on the bench.

3             MS. BENSON:   Judge Pogue, you have mentioned  
4     some of the reasons that you would like to continue to  
5     serve.  Are there two brief accomplishments that you feel  
6     you have achieved on the bench and a goal that you have  
7     yet to accomplish?

8             JUDGE POGUE:  Well, you know, I have spoken  
9     the last couple years -- I've been asked to speak at just  
10    about every bench bar and some other seminars.  I think  
11    that is important.  Once again, I hope that the other  
12    attorneys throughout the state and my colleagues have  
13    recognized that I have something to offer.

14            What was the other part of the question?

15            MS. BENSON:  And a goal that you would like to  
16    achieve.

17            JUDGE POGUE:  My goal is just to continue to  
18    serve and hopefully provide valuable service to this  
19    state as a family court judge.  That's what my niche is,  
20    and that is what I have always desired to do.

21            MS. BENSON:  Judge Pogue, you've answered this  
22    in your sworn affidavit, but in your opinion, what is the  
23    proper demeanor for a judge in court?

24            JUDGE POGUE:  A judge should conduct himself  
25    with dignity with the oath that we took.  Patience,

1 dignity, civility. Sometimes I have to remind the  
2 attorneys that are before me of the civility oath. I  
3 think it's -- especially with, you know -- to have  
4 control of your courtroom, number one, but to do so in a  
5 way that is not demeaning for anyone else.

6 MS. BENSON: Judge Pogue, are there any changes  
7 that you would recommend to the Family Court docket? Are  
8 there any that you've assisted in implementing for the  
9 12th Circuit to help clear the docket? And what would  
10 the nature of those changes be?

11 JUDGE POGUE: Well, I'm supposed to start off  
12 as the new chief administrative judge in January. As you  
13 all know, the Supreme Court, Wednesday, came out with a  
14 lot of new rules, regulations, decisions that impact what  
15 we do. They come out with the new A, B, C docket, which  
16 I think will certainly help.

17 In Marion County we don't have a docket problem  
18 at all. Florence County, very good. We don't have the  
19 backlog that a lot of other places have, but I think by  
20 these new things that have come out -- the parenting  
21 class that the legislature came out with last year. Now  
22 with the new eight-page affidavits, I think that will  
23 help move cases along a lot quicker.

24 So I'll use my energy in the next six months,  
25 as chief administrative judge, to implement those.



1 MS. BENSON: Judge Pogue, the Commission  
2 received 202 ballot box surveys regarding you, many of  
3 them with favorable comments. Twenty-one had additional  
4 comments. Two of those surveys indicated some concerns.  
5 The first indicated, Appears to lack full understanding  
6 of family court law and appears to show partiality to  
7 some attorneys.

8 Would you like to address that comment?

9 JUDGE POGUE: You know, I feel that I do have a  
10 very good understanding of both the statutory law and  
11 case law. As I said, I practiced for 30-some-odd years.  
12 I have had a lot of experience in the DSS area, the  
13 agency areas, DSS and DJJ.

14 I don't know where that came from. As far as  
15 playing favorites, if you talk to most of the attorneys  
16 that I am with in Horry County, I'm there a lot of times.  
17 I don't play favorites at all. No, ma'am. I don't agree  
18 with that comment. I truly think that I judge each case  
19 on the facts presented to me and apply the law  
20 appropriately.

21 MS. BENSON: Judge Pogue, the other negative  
22 comment was that Judge Pogue likes to pass the buck to  
23 guardian ad litem instead of making the tough decisions  
24 necessary in family court, creates unnecessary work, and  
25 runs up fees for the litigants.

1           JUDGE POGUE: Once again, I have a standard  
2 policy in any temporary hearing where custody is  
3 contested that a guardian ad litem is appointed. I will  
4 make my initial ruling based on the affidavit and the  
5 evidence before me at the temporary hearing, but I always  
6 appoint a guardian ad litem and require the parties pay  
7 certain amount of fees up front. I always put in my  
8 order that the trial judge can reallocate those fees at  
9 any subsequent hearing, and I put in there that if the  
10 guardian ad litem, after their initial investigation,  
11 feels that there needs to be a change in my custody  
12 visitation order, and if the parties can't agree, they  
13 can come back before the court on a second temporary  
14 hearing to do that.

15           So I make my decision based on what is there  
16 before me and what the guardian -- I mean, we have to  
17 rely on our guardian's opinions to assist us, and we have  
18 to take that into account.

19           MS. BENSON: Judge Pogue, our information from  
20 the Commission on Judicial Conduct indicated no negative  
21 information about you, but you disclosed in your own  
22 document that you have been the subject three formal  
23 complaints and each them had been dismissed.

24           JUDGE POGUE: Yes, ma'am.

25           MS. BENSON: Two concerning unprofessional

1 conduct, one concerning rudeness. You also disclosed on  
2 your own accord an informal complaint that was dropped by  
3 the complainant, and you also included in your packet a  
4 letter of apology from the complainant.

5 Is there any other information that you would  
6 like to provide to the Commission about those?

7 JUDGE POGUE: Once again, I think as a family  
8 court judge, we have a very intense situation there. No  
9 matter what decision you make, someone is going to be  
10 upset. Once again, the complaints I got were grievances,  
11 and I answered them promptly. All the correspondence --  
12 one that dealt with rudeness, I basically said, Here's  
13 the tape. If I've done something wrong, please tell me.  
14 I sent the committee the tape, and they did not see where  
15 I had done anything wrong. I haven't had anything at all  
16 in the last two years.

17 The other one dealt with -- the informal  
18 complaint was a gentleman from Horry County that was  
19 upset about child support -- alimony that he was having  
20 to pay. He was before me for about the fifth or sixth  
21 hearing. He never did file anything against me. I think  
22 he was getting ready to file a federal lawsuit. He had a  
23 complaint with his previous lawyer. I didn't even know  
24 what was going on, but he wrote a letter saying, I made a  
25 mistake, Judge. I had you confused with somebody else.

1 I apologize.

2 MS. BENSON: Mr. Chairman, a complaint has been  
3 filed against Judge Pogue for this family court seat. At  
4 this time I would ask that Mr. James L. Guy please come  
5 to the podium so that we may address these issues.

6 REPRESENTATIVE DELLENEY: Mr. Guy, if you will  
7 please raise your right hand to be sworn.

8 (Mr. James L. Guy was duly sworn, after which  
9 testimony commenced.)

10 REPRESENTATIVE DELLENEY: Thank you. Please  
11 answer any questions counsel may have for you.

12 MS. BENSON: Mr. Guy, would you please state  
13 your name and address for the record.

14 MR. GUY: James L. Guy, II. I live in  
15 Greenville, South Carolina.

16 MS. BENSON: Mr. Guy, in your complaint you  
17 state, in your answer to question number three, "In  
18 presiding over a family court private case, Judge Pogue  
19 acted in an unprofessional way that was not becoming as  
20 an officer of the court". You further stated that this  
21 incident took place in December 2010, and that you were  
22 not questioning Judge Pogue's qualification, only his  
23 behavior in the courtroom. Could you describe how you  
24 are involved in the family court.

25 MR. GUY: Yes, ma'am.

1 I've been a volunteer guardian ad litem for  
2 about 12 years. I did not ask for the recognition, but  
3 two years ago, the state legislature passed a joint  
4 concurrent resolution commending me for my service in  
5 Kershaw County and also for me being named Guardian Of  
6 The Year. I had a case, DSS case, and lasted there about  
7 three and a half years. This case was a young baby that  
8 was taken away from her mother and put in custody with  
9 DSS. These parents, grandparents, aunts, and uncles  
10 didn't like each other a bit. They continued to fight  
11 each other, so they went to a private action.

12 The DSS case ran parallel to the private  
13 action. When there was a private action hearing, I would  
14 try to attend, sit in the back of the courtroom, and just  
15 observe and see what was going on and make sure there  
16 wasn't any information that I might need for my report.

17 In December of 2010, I continued such a private  
18 action. The presiding judge was Judge Timothy Pogue. I  
19 had -- in the 12 years I've been doing this, I've never  
20 seen Judge Pogue, and I haven't seen him since. Perhaps  
21 his demeanor is normal demeanor, I don't know, but it was  
22 extremely upsetting to me to see what was going on. What  
23 happened was the one side of the contention an aunt who  
24 had temporary custody at the time. She was represented  
25 by adequate counsel. The other side was the mother and

1 the father, who didn't live together, and the mother's  
2 father, so that would be the grandfather of this child.  
3 They said they couldn't afford counsel, so they were  
4 representing themselves. Judge Pogue, in my opinion, was  
5 extremely condescending. He was patronizing,  
6 disrespectful, and rude to those folks that didn't have  
7 an attorney. It was demeaning and belittling to those  
8 people.

9 This is what I observed from the back of the  
10 courtroom. I was not introduced in the courtroom. I was  
11 simply there to take notes, and that was what I observed.

12 MS. BENSON: And what was your impression? Was  
13 there anything in particular that you remember that gave  
14 you the impression?

15 MR. GUY: Well, you had sent me a copy of the  
16 transcript and also the audio of it, and I went back and  
17 reviewed it. And I made several marks on it and reported  
18 it to you because there were six or eight instances I  
19 marked out and said, These are examples of what I heard.

20 MS. BENSON: Mr. Chairman, we have, at this  
21 time, the audio tape, if the Commission would like to  
22 hear anything from the audiotape, and we have some of the  
23 portions that Mr. Guy has marked.

24 REPRESENTATIVE DELLENEY: Sure, if you have it  
25 ready. We'll make the transcript part of the record.

1 (Audio recording played.)

2 REPRESENTATIVE DELLENEY: Okay. We'll make the  
3 portions of the transcript referenced by Mr. Guy, which  
4 include the oral portion that we just heard, we'll make  
5 all of these pages, which are pages 8, 12, 14, 15, 19,  
6 25, 26, 34, 46, and 47, those appropriate lines on each  
7 of the pages part of record.

8 MS. BENSON: Mr. Chairman, we also have for the  
9 record a complete transcript of that particular hearing.  
10 May I offer it for the record at this time?

11 REPRESENTATIVE DELLENEY: And we'll accept a  
12 complete transcript of this hearing in the record also,  
13 as well as the excerpts.

14 MS. BENSON: Mr. Chairman, just to make certain  
15 that all material is in the record, also Mr. Guy's  
16 complaint, as well as Judge Pogue's response.

17 Mr. Guy, how did you determine that you would  
18 attend this hearing today?

19 MR. GUY: When this hearing was over, I went to  
20 my resident senator, Vincent Sheheen, and explained that  
21 to him, and he said If I wanted to make a complaint, we  
22 view judges every few years. I said, Do you know when  
23 Judge Pogue comes up? He said he did not, but that he  
24 would check it out. He called me later and said it was  
25 two more years. I thanked him, and I contacted him

1 probably this summer some time and said, What's the  
2 procedure? And he got me in touch with your office.

3 MS. BENSON: Mr. Guy, is there anything else  
4 that you would like to tell the Commission about this  
5 situation?

6 MR. GUY: No, ma'am. I just think that this is  
7 important stuff that's going on in the family court, and  
8 we have a lot of problems from the guardian standpoint.  
9 We have problems -- from the guardian's standpoint, we  
10 have problems with DSS, with the attorneys, with the  
11 parents, and sometimes, if the children are old enough.  
12 We just don't need problems with the judges.

13 MS. BENSON: Mr. Chairman, I have no more  
14 questions.

15 REPRESENTATIVE DELLENEY: Thank you, sir. If  
16 you would please have a seat, and we'll recall Judge  
17 Pogue for any reply he may have.

18 JUDGE POGUE: Mr. Chairman and members of the  
19 Commission, as I put in my letter to you all, I did that  
20 letter October 31st, a few days after I received notice  
21 of the complaint. That was before I had listened to the  
22 transcript or looked at the transcript.

23 First of all, as I said in my letter, and I'm  
24 not going to go over it again because I know you all are  
25 pressed for time. This was my first day in Kershaw



1 County. This was over two years ago. I had nine or ten  
2 15-minute temporary hearings that ran from 9:30 to 12:00  
3 o'clock. This thing was scheduled from 12 to 1:00  
4 o'clock. It involved clients who were represented by DSS  
5 and aunts who had the trust of the three pro se clients.  
6 There were seven or eight cross-contempt actions brought  
7 by each one of these against the other, plus the guardian  
8 in the private case filed a motion for temporary hearing  
9 to reinstitute visitation for the mother.

10 I had to deal with all that. We were supposed  
11 to break for lunch from one to two. You can see from the  
12 transcript -- and that's one thing I want to point out.  
13 It's easy to pick out one or two things here and there,  
14 and it doesn't give you the whole picture of what  
15 something is. I appreciate you taking in the whole  
16 transcript. If you look at the whole transcript and  
17 listen to the whole tape -- I just want you to look at  
18 the whole picture to get the true picture.

19 If I said anything to offend Mr. Guy that day,  
20 I certainly apologize because I know the importance of  
21 the guardian ad litem. I was a contract attorney for DSS  
22 doing abuse and neglect cases for 15 years. I know the  
23 importance of a guardian ad litem. I may have been  
24 impatient. I may have raised my tone. I don't believe  
25 that I was degrading. Time and time again in that

1 transcript it's, Yes, ma'am; no, ma'am; yes, sir; no,  
2 sir. I explained everything to the litigants. I even  
3 gave this woman her supervised visitation back.

4 We were told when I was going through judge  
5 school, you got a pro se client, they're representing  
6 themselves. And the father, Mr. Green, was attempting at  
7 times to assist his daughter as far as questioning  
8 things. And one or two of the excerpts, you know, she's  
9 representing herself. You can't represent her; you're  
10 not a lawyer.

11 Once again, I ask that you look at the whole  
12 picture. If I said anything to offend Mr. Guy, I  
13 apologize. That is not my normal demeanor. We didn't  
14 start that case until almost 12:30, quarter to one. We  
15 got done like about 1:30, and we had to start up at two.  
16 I worked through lunch to work on my ruling to give my  
17 ruling after we got back from lunch.

18 So I ask this Commission to look at the whole  
19 picture. Look at all the comments that people said  
20 things about my demeanor, and that's not me.

21 MS. BENSON: Judge Pogue, was there any other  
22 circumstance that had occurred in your life during that  
23 time?

24 JUDGE POGUE: Yes, ma'am.

25 My mother had -- my 89-year-old mother had

1 passed away a couple months before that. Once again, I  
2 give all these things not as an excuse but as an  
3 explanation.

4 MS. BENSON: Thank you, Judge Pogue.

5 Mr. Chairman, on this matter, I have no further  
6 questions.

7 REPRESENTATIVE DELLENEY: If you would have a  
8 seat, Judge Pogue, and Mr. Guy, we'll give you an  
9 opportunity to respond to anything the judge has said.

10 MR. GUY: I don't have anything personally  
11 against this gentleman. I don't know him. I didn't have  
12 any dog in the fight, sitting back there listening to  
13 this private case. One thing I would point out to you in  
14 this letter that he wrote in response to you on the  
15 second page. It says, Prior to the hearing, some of the  
16 court personnel, who were familiar with the case before  
17 me, informed me that parties had previously been before  
18 the court numerous times. They further informed me that  
19 Mr. Green would, at times, attempt to speak or act as a  
20 legal representative for his daughter. The mother,  
21 Mrs. Green, had been married to another man and had a  
22 child, and that child was taken away from Mrs. Green.  
23 That man's wife worked in the family court office in  
24 Kershaw County, and she was probably the one that --  
25 maybe he can tell or maybe he doesn't remember -- that

1 gave him information about this case prior to him hearing  
2 it.

3 So I think that might have reflected some of  
4 where he treated those that didn't have attorneys. I  
5 appreciate you all's time and your courtesy here, and I  
6 thank you.

7 REPRESENTATIVE DELLENEY: Thank you, Mr. Guy.  
8 Anybody have any questions to Judge Pogue or Mr. Guy?

9 All right. There being none, do you have any  
10 further questions of Judge Pogue?

11 MS. BENSON: Just some housekeeping issues.

12 Have you sought or received the pledge of any  
13 legislator prior to this date?

14 JUDGE POGUE: No, ma'am.

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

18 JUDGE POGUE: No, ma'am.

19 MS. BENSON: Have you asked any third parties  
20 to contact members of the General Assembly on your  
21 behalf?

22 JUDGE POGUE: No, ma'am.

23 MS. BENSON: Are you aware of anyone attempting  
24 to intervene in any part of the process on your behalf?

25 JUDGE POGUE: No, ma'am.

1 MS. BENSON: Have you contacted any members of  
2 this Commission?

3 JUDGE POGUE: No, ma'am.

4 MS. BENSON: 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 JUDGE POGUE: Yes, ma'am.

9 MS. BENSON: Have you reviewed the Commission's  
10 guidelines on pledging?

11 JUDGE POGUE: Yes, ma'am.

12 MS. BENSON: As a follow-up, are you aware that  
13 the penalties for violating the pledging rules are  
14 misdemeanor, and, upon conviction, the violator must be  
15 fined not more than \$1,000 or imprisoned not more than 90  
16 days?

17 JUDGE POGUE: Yes, ma'am.

18 MS. BENSON: I would note for the record that  
19 the Pee Dee Citizens Committee found Judge Pogue  
20 well-qualified in the areas of ethical fitness,  
21 reputation, experience, and judicial temperament. The  
22 Committee found Judge Pogue qualified in the evaluative  
23 criteria of constitutional qualifications, physical  
24 health and mental stability.

25 In summary the Committee stated, Judge Pogue is

1 fair-minded, intelligent, and very likeable. I would  
2 also note for the record that any concerns have been  
3 incorporated in the questions that I had.

4 Mr. Chairman, I have no further questions.

5 REPRESENTATIVE DELLENEY: Thank you, Mr. Guy,  
6 for participating in the process. Thank you, Judge  
7 Pogue, for your service.

8 This concludes this portion of the screening.  
9 As you know, we'll issue a report, and up until the  
10 report matures into the final report of the Commission,  
11 we could call you back if there were other issues that we  
12 need clarification on. After the report becomes the  
13 final report of the Commission, of course, the screening  
14 process is over with, and we can't be reconvened.

15 Thank you for offering, and I hope both of you  
16 have a safe trip back home.

17 JUDGE POGUE: Thank you.

18 REPRESENTATIVE DELLENEY: We have before us the  
19 Honorable Jan Benature Bromell Holmes, who seeks  
20 re-election to the Family Court, 15th Circuit, Seat  
21 Number 1.

22 If you would, please, raise your right hand to  
23 be sworn.

24 (Judge Jan Benature Bromell Holmes was duly  
25 sworn, after which testimony commenced at 4:30 p.m.)

1 REPRESENTATIVE DELLENEY: Thank you.

2 Have you had an opportunity to review your  
3 Personal Data Questionnaire?

4 JUDGE HOLMES: Yes, sir.

5 REPRESENTATIVE DELLENEY: Is it correct?

6 JUDGE HOLMES: Yes, sir.

7 REPRESENTATIVE DELLENEY: I assume there are no  
8 changes that need to be made.

9 JUDGE HOLMES: No, sir.

10 REPRESENTATIVE DELLENEY: Do you object to our  
11 making that summary part of the record of your sworn  
12 testimony?

13 JUDGE HOLMES: No, sir.

14 REPRESENTATIVE DELLENEY: It will be made as  
15 part of the record of your sworn testimony without  
16 objection.

17 (EXH. 10, Personal Data Questionnaire of Judge  
18 Jan Benature Bromell Holmes, marked for identification.)

19 REPRESENTATIVE DELLENEY: Thank you.

20 The Judicial Merit Selection Commission has  
21 thoroughly investigated your qualifications for service  
22 on the bench. Our inquiry has primarily focused on nine  
23 evaluative criteria, which include a survey of the bench  
24 and bar, a thorough study of your application materials,  
25 verification of your compliance with state ethics laws, a

1 search of any newspaper articles in which your name may  
2 have appeared, a study of previous screenings, and a  
3 check for economic conflicts of interest.

4 There are no affidavits filed in opposition to  
5 your election and no one present to testify. Do you have  
6 a brief opening statement that you'd like to make?

7 JUDGE HOLMES: I would like to thank the  
8 Chairman, as well as all members of Judicial Merit  
9 Selection Commission, for the time and the work that you  
10 put into the screening process. And I would appreciate  
11 the opportunity to continue to serve as a family court  
12 judge.

13 REPRESENTATIVE DELLENEY: Thank you, ma'am.  
14 Answer any questions our able counsel may have for you.

15 MR. DAVIDSON: Good afternoon, Judge Holmes.

16 You have before you the sworn statement and  
17 amendment that you provided with detailed answers to over  
18 30 questions regarding judicial conduct, statutory  
19 qualifications, office administration, and temperament.

20 Are there any additional amendments that you  
21 would like to make at this time to your sworn statement?

22 JUDGE HOLMES: No. There are not.

23 MR. DAVIDSON: At this time, Mr. Chairman, I  
24 would like to ask that Judge Holmes' sworn statement be  
25 entered into the record.



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

3           (EXH. 10A, Sworn Statement of Judge Jan  
4 Benature Bromell Holmes, marked for identification.)

5           MR. DAVIDSON: Judge Holmes, would you please  
6 explain to the Commission why you would like to continue  
7 serving as a family court judge?

8           JUDGE HOLMES: Because I love what I do. It's  
9 not just a job that I go to, it's a commitment that I've  
10 made, and every day is a new experience for me, and I  
11 would enjoy the privilege to continue.

12          MR. DAVIDSON: Thank you. Could you explain  
13 one or two brief accomplishments that you've completed  
14 during your tenure and a goal you would like to  
15 accomplish if reelected.

16          JUDGE HOLMES: I believe, with my election, we  
17 have certainly handled any docketing problems  
18 effectively, and I believe that I have been an asset to  
19 the family court bench.

20          MR. DAVIDSON: Could you also please explain to  
21 the members what you think is the appropriate demeanor  
22 for a judge.

23          JUDGE HOLMES: I believe the judge, at all  
24 times, should be patient, attentive, diligent, courteous,  
25 fair-minded, and respectful to all parties and litigants

1 and attorneys that appear before the judge.

2 MR. DAVIDSON: Are there any changes to the  
3 family court docket you have assisted in implementing in  
4 order to improve the docket, and, if so, could you  
5 explain the nature of those.

6 JUDGE HOLMES: In terms of our pro se  
7 litigants, a lot of times when they come into court,  
8 they're really not prepared. And what I have actually  
9 done -- we cannot give advice, but I certainly have  
10 assisted in making sure that they understand what the  
11 rules require of them, and if there is an opportunity  
12 when they don't have all needed documents before me, what  
13 I would do is continue the hearing and have them back  
14 before me.

15 For instance, if a litigant has failed to  
16 provide a 10-day notice for a divorce hearing, what I've  
17 done is, I've actually informed them when they leave that  
18 they can send the notice by certified mail to the last  
19 known address, and I'll schedule a hearing to come back  
20 before me. That certainly has assisted to clear up the  
21 docket. I'm really willing to overwork my docket just to  
22 make sure the cases move.

23 MR. DAVIDSON: Thank you.

24 The Commission received 133 anonymous ballot  
25 box surveys regarding your candidacy with 19 additional

1 comments, the majority of which say you are an  
2 exceptional judge, and you possess the temperament,  
3 knowledge, and experience to continue serving as a judge.

4           However, as we discussed, four of those  
5 comments indicated concerns. These concerns were  
6 regarding showing favoritism, judicial temperament, and  
7 professional and academic ability.

8           Understanding that these are anonymous and void  
9 of specific facts, with regard to showing favoritism  
10 towards certain attorneys and being biased against female  
11 attorneys, could you please offer a response to the  
12 Commission.

13           JUDGE HOLMES: Biased against female attorneys?

14           MR. DAVIDSON: Specifically it says that she  
15 comes to the bench with a noticeable chip on her shoulder  
16 particularly, it seems, with female attorneys.

17           JUDGE HOLMES: I was not aware of that comment,  
18 and I don't believe that I have, but it's something that  
19 I would certainly pay close attention to in the future.

20           MR. DAVIDSON: Also with regard to your  
21 temperament, would you offer any response to the comment  
22 saying you lack temperament with experienced attorneys  
23 and frequently raise your voice.

24           JUDGE HOLMES: With experienced attorneys?

25           MR. DAVIDSON: That's correct.

1           JUDGE HOLMES: I do not raise my voice. I  
2 treat others as I expect them to treat me in all  
3 settings, and I certainly treat everyone with respect,  
4 and I expect them to treat me with respect as well. And  
5 I think some of this may be coming from the fact that  
6 I've been told that I look younger than I actually am,  
7 and I think some of the comments may be geared towards  
8 that.

9           MR. DAVIDSON: With regard to the comment about  
10 professional and academic ability, alleging difficulty  
11 dealing with the Rules of Civil Procedure or Rules of  
12 Evidence, would you offer a comment to the Commission on  
13 those concerns.

14           JUDGE HOLMES: I consider myself to be very  
15 much abreast of the Rules of Civil Procedure, as well as,  
16 the Rules of Evidence, but certainly I desire to become a  
17 better me, and I will certainly seek to do better, if  
18 it's a problem.

19           MR. DAVIDSON: Thank you.

20           Again, I would note the remaining 15 comments  
21 were complimentary comments. One in particular said you  
22 have a wonderful temperament, she treats everyone with  
23 dignity and respect, and she is knowledgeable and very  
24 meticulous in following the law.

25           Judge Holmes, have you sought or have you been

1 offered a conditional pledge of support of any legislator  
2 pending the outcome of your screening?

3 JUDGE HOLMES: No, sir.

4 MR. DAVIDSON: Have you asked any third parties  
5 to contact members of the General Assembly on your  
6 behalf?

7 JUDGE HOLMES: I have not.

8 MR. DAVIDSON: Are you aware of anyone  
9 attempting to intervene in any part of the process on  
10 your behalf?

11 JUDGE HOLMES: No, sir.

12 MR. DAVIDSON: Have you contacted any members  
13 of this Commission?

14 JUDGE HOLMES: I have not.

15 MR. DAVIDSON: Do you understand that you are  
16 prohibited from seeking a pledge or commitment until 48  
17 hours after the formal release of the Commission's  
18 report?

19 JUDGE HOLMES: Yes, sir.

20 MR. DAVIDSON: Have you reviewed the  
21 Commission's guidelines on pledging?

22 JUDGE HOLMES: Yes, sir.

23 MR. DAVIDSON: As a follow-up, are you aware  
24 that the penalties for violating the pledging rules are  
25 misdemeanor, and, upon conviction, the violator must be

1 fined not more than \$1,000 or imprisoned not more than 90  
2 days?

3 JUDGE HOLMES: Yes, sir.

4 MR. DAVIDSON: I would note for the record that  
5 the Pee Dee Citizens Committee found Judge Holmes well  
6 qualified in the areas of ethical fitness, reputation,  
7 experience, and judicial temperament. The Committee  
8 found Judge Holmes qualified in the evaluative criteria  
9 of constitutional qualifications, physical health, and  
10 mental stability.

11 In summary the Committee stated, Judge Holmes  
12 is fair-minded, intelligent, and very likeable. I would  
13 also note for the record that any concerns have been  
14 incorporated in the questions that I had.

15 Mr. Chairman, I have no further questions.

16 REPRESENTATIVE DELLENEY: Thank you, Judge  
17 Holmes, for your service.

18 This concludes this portion of the screening.  
19 As you know we'll issue a report, and up until the report  
20 matures into the final report of the Commission, we could  
21 call you back if there were other issues that we need  
22 clarification on. After the report becomes the final  
23 report of the Commission, of course, the screening  
24 process is over with and we can't be reconvened.

25 I just remind you of the 48-hour rule, and,

1 with that, I thank you for offering, and I hope you have  
2 a safe trip back home.

3 JUDGE HOLMES: Thank you.

4 REPRESENTATIVE DELLENEY: All right. We have  
5 with us the Honorable J. Ernest Kinard Junior, Circuit  
6 Court, Retired.

7 Judge Kinard, if you would, please, raise your  
8 right hand to be sworn.

9 (Judge J. Ernest Kinard Jr. was duly sworn,  
10 after which testimony commenced at 4:45 p.m.)

11 REPRESENTATIVE DELLENEY: Thank you.

12 Have you had an opportunity to review your  
13 Personal Data Questionnaire?

14 JUDGE KINARD: Yes, sir.

15 REPRESENTATIVE DELLENEY: Is it correct?

16 JUDGE KINARD: Yes, sir.

17 REPRESENTATIVE DELLENEY: I assume there are no  
18 changes that need to be made.

19 JUDGE KINARD: No, sir.

20 REPRESENTATIVE DELLENEY: Do you object to our  
21 making that summary part of the record of your sworn  
22 testimony?

23 JUDGE KINARD: No, sir.

24 REPRESENTATIVE DELLENEY: It will be made as  
25 part of the record of your sworn testimony without

1 objection.

2 (EXH. 13, Personal Data Questionnaire of Judge  
3 J. Ernest Kinard Jr., marked for identification.)

4 REPRESENTATIVE DELLENEY: Thank you.

5 The Judicial Merit Selection Commission has  
6 thoroughly investigated your qualifications for service  
7 on the bench. Our inquiry has primarily focused on nine  
8 evaluative criteria, which include a survey of the bench  
9 and bar, a thorough study of your application materials,  
10 verification of your compliance with state ethics laws, a  
11 search of any newspaper articles in which your name may  
12 have appeared, a study of previous screenings, and a  
13 check for economic conflicts of interest.

14 One affidavit was filed in opposition to your  
15 service; however, the Commission has dismissed that  
16 complaint. Do you have a brief opening statement that  
17 you'd like to make?

18 JUDGE KINARD: I've been doing it a long time,  
19 24 years. I've kind of enjoyed being a judge. I hope I  
20 get passed. I like practicing law actually better, but  
21 judge has certain benefits. I'm currently the only one  
22 who has been in all 46 counties. I had to make a special  
23 effort to do that as the legislature cut travel.

24 Active retired is kind of a misnomer. They  
25 should call it something else because I'm chief judge of



1 the 6th Circuit for the next six months. They called me  
2 today and asked me if I would do it again the next six  
3 months. I said, Sure, since I know all the lawyers up  
4 there and they know me. Helps to move things, and that's  
5 basically it.

6 REPRESENTATIVE DELLENEY: We appreciate it,  
7 Judge.

8 Please answer any questions Mr. Dennis may have  
9 for you.

10 MR. DENNIS: Thank you, Judge Kinard.

11 You've also got in front of you the sworn  
12 statement. Do you have any amendments to make at this  
13 time?

14 JUDGE KINARD: No.

15 MR. DENNIS: Mr. Chairman, I'd ask that that be  
16 made part of the record at this time.

17 REPRESENTATIVE DELLENEY: Without objection.

18 (EXH. 13A, Sworn Statement of Judge J. Ernest  
19 Kinard Jr., marked for identification.)

20 MR. DENNIS: As you know, Judge, you're being  
21 screened for active retired status. Would you briefly  
22 describe for the Commission why you wish to serve in this  
23 capacity.

24 JUDGE KINARD: Well, I spent a lifetime -- I  
25 was a managing partner of a 10-man law firm in Camden,

1 and then I became a judge almost 25 years ago. I have  
2 not missed a day in court. Thankfully I'm still healthy  
3 enough, and I like the interaction with people and the  
4 use of my acquired skills. Plus I'm a speed reader. I  
5 get tired of James Patterson novels. I'd just as soon  
6 read some of those briefs. So I like to do that. I  
7 don't mind. I never turn down anything that they ask me  
8 to hear. And I've been right. You all might not agree  
9 with me; many people don't. The newspaper, a couple  
10 weeks ago, said I was wrong in ruling with Strom  
11 Thurmond's son -- was permitted to run again. Of course,  
12 the Supreme Court said that was right. I didn't get an  
13 apology in the paper.

14 MR. DENNIS: Thank you.

15 Would you mind sharing your thoughts on what  
16 the appropriate demeanor for a circuit court judge is.

17 JUDGE KINARD: Well, you just have to be fair  
18 and impartial, and you have to treat all litigants,  
19 plaintiffs, defendants, attorneys -- that's it. Like I  
20 do a disproportionately large number of nonjury. Well,  
21 there's a reason for it. Active retired, you have to  
22 work at least three weeks out of the month, unless you do  
23 nonjury, and then it counts as two. And I don't mind  
24 nonjury because it doesn't take me long to read the  
25 briefs, and I've been practicing long enough that I've

1 seen it.

2           It's hard to have good friends practicing law,  
3 but I've been doing it a long time, so I do. And a  
4 couple terms ago, one of my good friends said, You know,  
5 Judge, that's three straight times you ruled against me  
6 actually. No, I just rule on the issue. I don't rule on  
7 the personality.

8           MR. DENNIS: Would you tell the Commission how  
9 much time per month you spend in your capacity as a  
10 judge, and if you wish to alter that time in the next go  
11 round.

12           JUDGE KINARD: I spend as much time as any  
13 circuit judge. This week I've been in the office all  
14 week. I go in. I don't always do legal research. I  
15 might read something in the news relative to  
16 Freakonomics, but I'm there.

17           MR. DENNIS: As you know, we solicit electronic  
18 comments on all the judicial candidates through the  
19 ballot box program, and you received a myriad of replies.  
20 There was one in particular that I'd like to share and  
21 have you respond if you don't mind.

22           And I'm going to quote directly, "Judge Kinard  
23 is a grumpy old bastard but perhaps the best trial judge  
24 we have".

25           JUDGE KINARD: Well, there you go.

1           It's not a popularity contest. I can't  
2 apologize because often times I do this: You lose.  
3 Nothing personal. And some attorneys take that the wrong  
4 way. Plus a lot of them don't believe I've read the  
5 stuff, but I have.

6           MR. DENNIS: Thank you, Judge.

7           I would note that Judge Kinard was found  
8 well-qualified by the Midlands Citizens Committee for all  
9 available criteria and qualified for all others. They  
10 also noted that he is most eminently qualified to  
11 continue his legacy of outstanding service on the circuit  
12 court bench.

13           I would note that any concerns raised during  
14 the investigation regarding Judge Kinard were  
15 incorporated into my questioning today, and, Mr.  
16 Chairman, I have nothing further.

17           REPRESENTATIVE DELLENEY: Thank you, Judge.

18           We appreciate your willingness to serve. Hope  
19 you have a safe trip home.

20           JUDGE KINARD: Thank you.

21           REPRESENTATIVE DELLENEY: Good evening. We  
22 have before us the Honorable Shirley Canty Robinson, who  
23 seeks reelection to the Administrative Law Court, Seat  
24 Number 5.

25           If you would, please, raise your right hand to

1 be sworn.

2 (Judge Shirley Canty Robinson was duly sworn,  
3 after which testimony commenced at 5:00 p.m.)

4 REPRESENTATIVE DELLENEY: Thank you.

5 Have you had an opportunity to review your  
6 Personal Data Questionnaire?

7 JUDGE ROBINSON: Yes, sir.

8 REPRESENTATIVE DELLENEY: Is it correct?

9 JUDGE ROBINSON: Yes, sir.

10 REPRESENTATIVE DELLENEY: I assume there are no  
11 changes that need to be made.

12 JUDGE ROBINSON: No, sir.

13 REPRESENTATIVE DELLENEY: Do you object to our  
14 making that summary part of the record of your sworn  
15 testimony?

16 JUDGE ROBINSON: No, sir.

17 REPRESENTATIVE DELLENEY: It will be made as  
18 part of the record of your sworn testimony without  
19 objection.

20 (EXH. 11, Personal Data Questionnaire of Judge  
21 Shirley Canty Robinson, marked for identification.)

22 REPRESENTATIVE DELLENEY: Thank you.

23 The Judicial Merit Selection Commission has  
24 thoroughly investigated your qualifications for service  
25 on the bench. Our inquiry has primarily focused on nine

1 evaluative criteria, which include a survey of the bench  
2 and bar, a thorough study of your application materials,  
3 verification of your compliance with state ethics laws, a  
4 search of any newspaper articles in which your name may  
5 have appeared, a study of previous screenings, and a  
6 check for economic conflicts of interest.

7           One affidavit was filed in opposition to your  
8 service; however, the Commission has dismissed that  
9 complaint. Do you have a brief opening statement that  
10 you'd like to make?

11           JUDGE ROBINSON: The only thing that I would  
12 like to do is really, first off, thank the Commission for  
13 taking the time to conduct this hearing with me, and also  
14 for the time that you took to review the complaint that  
15 was filed by Mr. Norris, and I also thank you for  
16 dismissing it.

17           And I won't go into the complaint, since the  
18 complaint has been dismissed, but simply to thank you for  
19 all the hard work and especially during this cycle.

20           REPRESENTATIVE DELLENEY: Thank you, Judge.  
21 Answer any questions counsel may have for you.

22           MR. DENNIS: Judge, you have before you your  
23 sworn statement that you have provided answers to 30  
24 questions concerning various matters. Are there any  
25 amendments that you would like to make to that?

1 JUDGE ROBINSON: No.

2 MR. DENNIS: Mr. Chairman, I'd like to make  
3 Judge Robinson's sworn statement part of the record.

4 REPRESENTATIVE DELLENEY: It will be done  
5 without objection.

6 (EXH. 11A, Sworn Statement of Judge Shirley  
7 Canty Robinson, marked for identification.)

8 MR. DENNIS: Judge, would you explain to the  
9 Commission why you would like to continue to serve as  
10 Administrative Law Court Judge.

11 JUDGE ROBINSON: Well, it was something that I,  
12 a lot of -- you don't know that I've really worked hard  
13 and long to get there. And during the time that I've  
14 been there, I must say that sometimes, if I had known it  
15 was so much work, I might not have done it.

16 But I do enjoy it, and I do feel like I make a  
17 contribution to the state and to the citizens of the  
18 state. And what I find really rewarding is that we do  
19 have a lot of folks that come before us that are pro se  
20 and who don't have attorneys representing them. And  
21 there are people that just cannot afford an attorney, and  
22 I like to think that I provide them with -- sometimes I  
23 don't rule in their favor, but I do think I give them a  
24 fair hearing and an opportunity to be heard.

25 And I get a sense of personal satisfaction from

1 that, and I would love to continue that at least for  
2 another term, and I like to think that I do a relatively  
3 good job at it.

4 MR. DENNIS: Thank you.

5 Could you offer to the Commission one or two  
6 brief accomplishments that you have completed and a goal  
7 that you would like to accomplish if reelected.

8 JUDGE ROBINSON: I think some of the things  
9 that I have accomplished is that, you know, I had always  
10 said when I was running, before that I worked at LLR, and  
11 I was one of the hearing attorneys there, and I felt like  
12 a lot of what we did there was comparable to what was  
13 done on the administrative law court. Since I got to the  
14 administrative law court, I found that I was not nearly  
15 as prepared as I thought I was because it's one of the  
16 things that -- one of the differences between being where  
17 I was and where I am now is the fact that the  
18 administrative law court -- we deal with a lot of cases  
19 that are very complex environmental cases. They're very  
20 complex cases, and when I was at LLR, we did have complex  
21 cases, but because we're dealing with boards, and the  
22 persons serving on those boards were trained in that  
23 area, and I could look to them to advise me. But with  
24 the administrative law court, it's up to you.

25 If you don't get it from the evidence presented



1 to you and you aren't able to filter through the evidence  
2 and really get what you need, you don't have anyone to  
3 turn to. You don't have a board member sitting there  
4 that you can look at and say, I just really don't  
5 understand that. And I think that's something that --  
6 I've achieved that. Right now I'm conducting a CON  
7 hearing that will probably go for another week and a  
8 half, and I'm able to sit there and filter through the  
9 evidence that's been given to me.

10 And I think that I've mastered that learning  
11 curve. What I'd like to do in the future, as a member of  
12 the court, is just to build on what I've learned so far,  
13 what I've accomplished so far; just to build on that.

14 MR. DENNIS: Thank you, ma'am.

15 You've addressed this briefly in your sworn  
16 statement that's been made part of the record, but would  
17 you describe what you consider to be the appropriate  
18 demeanor for a judge.

19 JUDGE ROBINSON: I think to always treat people  
20 coming before you with respect, regardless of whether  
21 they're an attorney or a citizen who comes before you in  
22 a pro se capacity. Whether that person is someone --  
23 regardless of the socioeconomic standing -- or just to  
24 treat everybody with respect and to always -- a demeanor  
25 where you display dignity in the way that you carry

1 yourself.

2 I don't think that's something that you should  
3 do only when you're sitting on the bench or in the  
4 courtroom. I think it's something that you should do  
5 seven days a week, 24/7. And I always like to think that  
6 I do conduct myself in a very dignified manner. I would  
7 not want to bring any type of negativity -- anyone to  
8 view the court in a negative manner. Actually any form  
9 of judicial office or judicial branch in the state, I  
10 don't want citizens of the state to view in a negative  
11 manner, and I would like to think that's something that I  
12 do hold that in a very positive way.

13 MR. DENNIS: Thank you, ma'am.

14 I just have a few housekeeping issues. These  
15 are simple "yes" or "no" questions.

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

18 JUDGE ROBINSON: No, sir.

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

22 JUDGE ROBINSON: No, sir.

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

1 JUDGE ROBINSON: No, sir.

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

4 JUDGE ROBINSON: No, sir.

5 MR. DENNIS: Have you contacted any members of  
6 this Commission?

7 JUDGE ROBINSON: No, sir.

8 MR. DENNIS: 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 JUDGE ROBINSON: Yes, sir.

13 MR. DENNIS: Have you reviewed the Commission's  
14 guidelines on pledging?

15 JUDGE ROBINSON: Yes, sir.

16 MR. DENNIS: As a follow-up, are you aware that  
17 the penalties for violating the pledging rules are  
18 misdemeanor, and, upon conviction, the violator must be  
19 fined not more than \$1,000 or imprisoned not more than 90  
20 days?

21 JUDGE ROBINSON: Yes, sir.

22 MR. DENNIS: I would note that the Midlands  
23 Citizens Committee found Judge Robinson to be  
24 well-qualified for each of the criteria in which that  
25 designation was available and qualified -- the highest

1 designation possible for all others. They also noted  
2 Judge Robinson is most highly qualified to continue her  
3 outstanding service on the administrative law court.

4 And, Mr. Chairman, that's all I have at this  
5 time.

6 REPRESENTATIVE DELLENEY: Thank you, Judge  
7 Robinson, for your service.

8 This concludes this portion of the screening.  
9 As you know, we'll issue a report, and up until the  
10 report matures into the final report of the Commission,  
11 we could call you back if there were other issues that we  
12 need clarification on. After the report becomes the  
13 final report of the Commission, of course, the screening  
14 process is over with, and we can't be reconvened.

15 Thank you for offering and I hope you have a  
16 safe trip back home.

17 JUDGE ROBINSON: Thank you.

18 REPRESENTATIVE DELLENEY: We have before us the  
19 Honorable Curtis G. Clark, who currently serves as  
20 Master-in-Equity for Abbeville County.

21 Would you, please, raise your right hand to be  
22 sworn.

23 (Judge Curtis G. Clark was duly sworn, after  
24 which testimony commenced at 5:10 p.m.)

25 REPRESENTATIVE DELLENEY: Thank you.

1           Have you had an opportunity to review your  
2 Personal Data Questionnaire?

3           JUDGE CLARK: Yes, sir.

4           REPRESENTATIVE DELLENEY: Is it correct?

5           JUDGE CLARK: Yes, sir.

6           REPRESENTATIVE DELLENEY: I assume there are no  
7 changes that need to be made.

8           JUDGE CLARK: No, sir.

9           REPRESENTATIVE DELLENEY: Do you object to our  
10 making that summary part of the record of your sworn  
11 testimony?

12          JUDGE CLARK: No, sir.

13          REPRESENTATIVE DELLENEY: It will be made as  
14 part of the record of your sworn testimony without  
15 objection.

16                 (EXH. 12, Personal Data Questionnaire of Judge  
17 Curtis G. Clark, marked for identification.)

18          REPRESENTATIVE DELLENEY: Thank you.

19                 The Judicial Merit Selection Commission has  
20 thoroughly investigated your qualifications for service  
21 on the bench. Our inquiry has primarily focused on nine  
22 evaluative criteria, which include a survey of the bench  
23 and bar, a thorough study of your application materials,  
24 verification of your compliance with state ethics laws, a  
25 search of any newspaper articles in which your name may

1 have appeared, a study of previous screenings, and a  
2 check for economic conflicts of interest.

3           There were no affidavits filed in opposition to  
4 your service, and there are no witnesses present to  
5 testify. Do you have a brief opening statement that  
6 you'd like to make?

7           JUDGE CLARK: No, sir, due to the lateness in  
8 the day.

9           REPRESENTATIVE DELLENEY: Thank you, sir. If  
10 you would answer any questions Ms. Shuler may have for  
11 you.

12           MS. SHULER: Judge Clark, you have before you  
13 your sworn statement. Do you have additional amendments  
14 to your sworn statement?

15           JUDGE CLARK: No.

16           MS. SHULER: Mr. Chairman, I'd like to offer  
17 Judge Clark's sworn statement as an exhibit to the public  
18 hearing record.

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

21           (EXH. 12A, Sworn Statement of Judge Curtis G.  
22 Clark, marked for identification.)

23           MS. SHULER: Judge Clark, you serve as a  
24 part-time Master-in-Equity. Why do you want to continue  
25 that service?

1           JUDGE CLARK: From a personal standpoint, I  
2 need a few more years to be able to reach my state  
3 retirement level, but even today, at 59, and having  
4 practiced 35 years, I'm still relatively young and not  
5 ready to stop practicing law and contribute to the  
6 public, and this is a way that I can contribute to the  
7 public.

8           MS. SHULER: What is the appropriate demeanor  
9 for a judge?

10           JUDGE CLARK: The appropriate demeanor is to be  
11 knowledgeable of the law, be patient to all parties,  
12 respectful of the parties and attorneys that appear  
13 before the court, and to listen and give them deference  
14 to their time, particularly being a master. You hear a  
15 lot of mortgage foreclosure cases having individuals come  
16 who are not represented by attorneys.

17           In my experience, it is giving the individual  
18 an opportunity to come speak and have their say-so,  
19 particularly some of the programs that we've had lately,  
20 such as the South Carolina Help Program to help people  
21 with their home loans. And we can even suggest with the  
22 attorneys representing the other parties, prevention.  
23 That might be an option to look at. So it gives us a  
24 chance to help the individuals without representing them.  
25 I'm not their attorney, but if there are programs out

1 there that they can take advantage of, I can make sure  
2 that they're aware of those programs and opportunities.

3 MS. SHULER: Do you currently carry malpractice  
4 insurance in your law practice, and, if so, how long have  
5 you carried malpractice insurance?

6 JUDGE CLARK: I've carried malpractice  
7 insurance since 1999, and for over 12 years prior to  
8 1999, I was a full-time probate judge, so I didn't  
9 practice law. But when I practiced law prior to that,  
10 before becoming a probate judge, I had malpractice. All  
11 the time I've practiced law, I've had malpractice  
12 insurance.

13 MS. SHULER: Your SLED report indicated, since  
14 your last screening, your were sued twice. The first  
15 suit was filed against you in 2008. Can you briefly  
16 explain the circumstances surrounding that case and the  
17 status.

18 JUDGE CLARK: To be honest with you, I can't  
19 because I actually heard that case. I think there had to  
20 be something that was misindexed or misfiled in the case  
21 management system. I was actually the referee that heard  
22 that case, so I was not a party to that case.

23 MS. SHULER: The second case was filed against  
24 you and several other defendants by Robert Roach in 2012.  
25 Can you explain the circumstances and the current



1 disposition of that case.

2 JUDGE CLARK: Not too long ago we had a hearing  
3 to finalize that in another case. That comes out of a  
4 partition suit on a piece of property. How do I explain  
5 this without getting into extremely lengthy means because  
6 it got somewhat convoluted?

7 Basically one of the parties to the partition  
8 action used it to try and take some family land.  
9 Actually wound up selling more family land than that  
10 individual was entitled to, and Mr. Roach was involved in  
11 buying some of the land. I bought some of the land, or  
12 contracted to buy some of the land -- never actually  
13 purchased the land -- and got out of it.

14 But that was the circumstances because of the  
15 fact that there were a number of things that occurred.  
16 Like I said, one of the individuals actually sold more  
17 property than they were entitled to. It was a dispute  
18 among some of the people who had contracts as to whose  
19 contract was valid and whose wasn't going to be valid.

20 And we had a hearing not too long ago, and that  
21 was resolved by agreement between the parties  
22 effectively. And it has not been reduced to order  
23 because certain things that had to be done as part of  
24 that agreement have not had a chance to occur.

25 MS. SHULER: Thank you.

1           The Commission received 82 ballot box surveys  
2 with anonymous comments. Two of the comments were  
3 negative, with one indicating a concern that you take too  
4 long to submit orders to parties. What response would  
5 you offer to those concerns?

6           JUDGE CLARK: There may have been a time or two  
7 in the past that due to other circumstances -- first of  
8 all I am a part-time master. I have no staff. I do  
9 strive to get orders out, but there have been some events  
10 in my life that have caused sometimes where I've had  
11 some delay.

12           In 2008, I had a grandson born with problems  
13 and eventually passed away, but for several months that  
14 dominated my life. In 2010, my father passed away. I  
15 spent time taking care of him. Some things like that in  
16 the past that have caused delays. We strive to get  
17 orders out, but I think at least one of these may have  
18 come from one of those periods of time in which there  
19 were extenuating circumstances that caused some delay  
20 getting an order out.

21           Unfortunately I have no staff, and that makes  
22 it difficult, and it falls upon me to do that.

23           MS. SHULER: The other concern indicates that  
24 your wife bids on judicial sales over which you preside.  
25 What response would you offer to this concern?

1           JUDGE CLARK: There's a company that does most  
2 of the bidding called ERV, and in the past, at times,  
3 they've made calls to my office, saying, Can we help get  
4 them a bidder? This is mostly for cases that I've heard  
5 as special referee outside of my primary area of  
6 Abbeville and Greenwood. And we've told them, Yes, we  
7 would try to get them.

8           My wife has come and bid. I think this came  
9 from a circumstance several years ago in which a local  
10 attorney who does most of that bidding for them saw her  
11 there and found out that was my wife. I think we met in  
12 a meeting somewhere, but she was there as the bank's  
13 representative for ERV, and, of course, when a bid is  
14 made, it's Plaintiff bids whatever. She had written  
15 instructions that she followed.

16           I felt that nobody would know that she was my  
17 wife or that times when I've used staff members -- not  
18 just my wife -- whoever we could get to help fill that  
19 need for ERV.

20           MS. SHULER: Judge Clark, would you please  
21 explain the circumstances that gave rise to a letter of  
22 caution that you received May 24, 2010, and what you've  
23 learned from receiving a letter of caution.

24           And it says that you need to be more careful to  
25 adhere to the guidelines set out in the Rules of Conduct.

1           JUDGE CLARK: The actual lawsuit that you  
2 mentioned earlier stems from the same set of  
3 circumstances. I represented an individual in a  
4 partition action. It really got to be a really  
5 convoluted set of circumstances. The family owned a  
6 deed. The grandparents were the last owners of record.  
7 It was for 120 acres. The grandparent's will had it for  
8 130 acres. We had no plats. My client, who filed the  
9 grievance, put the funds up to do a plat because he was a  
10 plaintiff in the action. He actually sold -- turned out  
11 his interest was to be able to make money off the family  
12 property. He sold more property than he obtained out of  
13 the sale. I tried to advise him that he was not acting  
14 properly, and because of the delay in the plats and being  
15 able to get some final closing to the case, he was not  
16 happy with me.

17           He claimed that I got involved and tried to  
18 delay the case. And I didn't delay the case. We wrote  
19 him regularly; had a meeting, status conference, between  
20 the surveyor and myself and tried to find out what was  
21 the holdup. As it turned out, the gentleman's wife  
22 called me. It was after this grievance was filed and  
23 pretty much resolved, and gave me a lot of information.  
24 There was some maneuvering between the gentleman and a  
25 neighbor who was trying to purchase some of the property.

1 The neighbor had brought the surveyor in, and the  
2 neighbor was using the surveyor, and the fact that the  
3 surveyor wasn't producing a plat to see if he could  
4 obtain more land and also change the boundaries on some  
5 of the land.

6 So to be honest with you, I got caught between  
7 those two circumstances. My client eventually sold the  
8 land. He cut trees. Trees got cut off the land. I  
9 can't swear he was the one that cut them, but trees got  
10 cut off part of the land. He wound up being incarcerated  
11 since that time, four different occasions, for totally  
12 unrelated charges. Had a host of problems. I can go on  
13 for another 20 minutes, and I'm not going to bore this  
14 Commission.

15 MS. SHULER: What have you learned about Rule  
16 1.8(a)?

17 JUDGE CLARK: That was a little surprising.  
18 1.8(a) deals with contracts between attorneys and the  
19 person they represent. A contract was drawn for me to  
20 buy a piece of property, which later on I didn't follow  
21 up on. I sold it to someone else. When that contract  
22 was drawn up, we specifically filed 1.8(a), and the  
23 complaint that the client made -- he never complained  
24 about the contract, the amount, or anything that was  
25 directly related to the contract.

1           So I'm not quite sure why that reference is  
2     made to 1.8(a), but that was what came out from the  
3     letter of caution. Basically I got duped by a person who  
4     didn't -- there's a term for someone with very little  
5     morals and very little conscience, and I think that was  
6     the kind of client that I got caught up in representing.  
7     And I learned that I need to back off from those.

8           I will say in my own defense, there were some  
9     other family members that took their money to use toward  
10    paying for some of the case costs, particularly getting  
11    the plat. He pocketed the money and took off. I  
12    actually paid out of my own pocket to get a plat made so  
13    the other family members could get their land. Also he  
14    was telling them, Go see my lawyer, and I felt like I had  
15    a responsibility, even though I didn't represent these  
16    individuals, to be able to put this case to a position  
17    where everybody could try to get the property that they  
18    were supposed to obtain and were promised through the  
19    original court order.

20           MS. SHULER: Thank you, Judge Clark.

21           Some housekeeping issues to cover with you.

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

24           JUDGE CLARK: No, ma'am.

25           MS. SHULER: Have you sought or have you been

1 offered a conditional pledge of support of any legislator  
2 pending the outcome of your screening?

3 JUDGE CLARK: No, ma'am.

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

7 JUDGE CLARK: No, ma'am.

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

10 JUDGE CLARK: No, ma'am.

11 MS. SHULER: Have you contacted any members of  
12 this Commission?

13 JUDGE CLARK: No, ma'am.

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

18 JUDGE CLARK: Yes, ma'am.

19 MS. SHULER: Have you reviewed the Commission's  
20 guidelines on pledging?

21 JUDGE CLARK: Yes, ma'am.

22 MS. SHULER: Are you aware that the penalties  
23 for violating the pledging rules are misdemeanor, and,  
24 upon conviction, the violator must be fined not more than  
25 \$1,000 or imprisoned not more than 90 days?

1 JUDGE CLARK: Yes, ma'am.

2 MS. SHULER: I would note that the Piedmont  
3 Citizens Committee found Judge Clark qualified in  
4 evaluative criteria of constitutional qualification,  
5 physical health, and mental stability. The committee  
6 found him well-qualified in the evaluative criteria of  
7 ethical fitness, character, professional and academic  
8 ability, reputation, experience, and judicial  
9 temperament.

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

14 Mr. Chairman, I have no other questions for  
15 Judge Clark.

16 REPRESENTATIVE DELLENEY: Does any member of  
17 the Commission have any questions for Judge Clark?

18 There being no questions, thank you, Judge  
19 Clark, for your willingness to continue to serve. This  
20 concludes this portion of the screening process. As you  
21 know, the record remains open until the report is  
22 published and until it becomes a final report of the  
23 Commission; and 48 hours after that, you can seek  
24 pledges, but prior to the time that it becomes a report  
25 of the Commission, we could reopen your public hearing



1 and bring you back and ask you questions. That's very  
2 unlikely, but I want to remind you.

3 I'd like to thank you for offering and thank  
4 you for your service, and have a safe trip back to  
5 Charleston.

6 JUDGE CLARK: Thank you.

7 REPRESENTATIVE DELLENEY: Okay. We need to go  
8 into executive session.

9 Do I have a motion for executive session?

10 MR. SELLERS: Yes.

11 REPRESENTATIVE CLEMMONS: Second.

12 REPRESENTATIVE DELLENEY: All in favor say,  
13 "Aye".

14 (Multiple speakers respond, "Aye.")

15 REPRESENTATIVE DELLENEY: All right. We're now  
16 in executive session.

17 (The Committee went into executive session from  
18 5:17 p.m. to 5:45 p.m.)

19 REPRESENTATIVE DELLENEY: All right. The veil  
20 is lifted.

21 Anybody have any problem with all of the these  
22 candidates? All in favor of finding all the candidates  
23 -- Benjamin, Cole, Jefferson, Goldstein, Jenkinson,  
24 Creech, Neese, Pogue, Holmes, Robinson, Clark, and  
25 Kinard -- qualified and nominated, raise your right hand.

1 (All members raise right hand.)

2 PROFESSOR FREEMAN: On behalf of Senator  
3 Nicholson, vote yes as to everybody. On behalf of  
4 myself, I abstain as to Jefferson, Goldstein, and  
5 Garfinkel.

6 And I want the record to reflect that I wasn't  
7 present while any of these people met with the  
8 Commission, and I did not participate in any discussions  
9 about any of the three. But otherwise, I vote for  
10 everybody else.

11 REPRESENTATIVE DELLENEY: And Senator Campsen  
12 recused himself on Jenkinson; and Representative Mack  
13 also recused himself on Garfinkel.

14 All right. Does that conclude our business?

15 MS. SHULER: And you, Senator Martin, voted  
16 Senator Campsen's proxy except for Judge Jenkinson.

17 Does anybody else have proxies?

18 And Ms. McLester has Representative Mack's  
19 proxy.

20 REPRESENTATIVE DELLENEY: You don't need  
21 ballots, do you?

22 MS. SHULER: No. There's nobody found  
23 unqualified. Can I just say a thank you to all the  
24 screening attorneys, law clerks, and staff. It took a  
25 team to do all this, and I really appreciate them, and to

1 the court reporters too.

2 REPRESENTATIVE DELLENEY: I thank the staff.  
3 This will be my last hearing. It's been an honor and  
4 privilege to serve with you all, and I'll be seeing you  
5 around.

6 (The hearings were adjourned at 6:00 p.m.)

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CERTIFICATE OF REPORTER

I, Lisa A. Garson, Court 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 the 1st page of this transcript; that all statements made on the record at the time of the 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 3rd day of January, 2013, at Greenville, Greenville County, South Carolina.

\_\_\_\_\_

Lisa A. Garson  
Court Reporter  
Notary Public  
State of South Carolina  
My Commission Expires:  
December 19, 2019

1

## I N D E X

2

PAGE

3

## CANDIDATE:

4		JUDGE DeANDREA GIST BENJAMIN	3
5		JUDGE JOSEPH DERHAM COLE	10
6		THOMAS R. GOLDSTEIN	22
7		JUDGE DEADRA L. JEFFERSON	44
8		JUDGE GORDON B. JENKINSON	69
9		JUDGE WAYNE MORRIS CREECH	108
10		JUDGE PAUL WARREN GARFINKEL	127
11		JUDGE DEBORAH NEESE	201
12		JUDGE TIMOTHY HICK POGUE	212
13		JUDGE JAN BENATURE BROMELL HOLMES	231
14		JUDGE J. EARNEST KINARD JR	239
15		JUDGE SHIRLEY CANTY ROBINSON	245
16		JUDGE CURTIS G. CLARK	253
17		E X H I B I T S	
18	1	Judge Benjamin Personal Data Questionnaire	5
19	1A	Judge Benjamin Sworn Statement	5
20	2	Judge Cole Personal Data Questionnaire	11
21	2A	Judge Cole Sworn Statement	12
22	3	Thomas Goldstein Personal Data Questionnaire	24
23	3A	Thomas Goldstein Sworn Statement	26
24	4	Judge Jefferson Personal Data Questionnaire	44
25	4A	Judge Jefferson Sworn Statement	46

1	(Index continued)		
2	5	Judge Jenkinson Personal Data Questionnaire	70
3	5A	Judge Jenkinson Sworn Statement	72
4	6	Judge Creech Personal Data Questionnaire	109
5	6A	Judge Creech Sworn Statement	110
6	7	Judge Garfinkel Personal Data Questionnaire	127
7	7A	Judge Garfinkel Sworn Statement	129
8	8	Judge Neese Personal Data Questionnaire	202
9	8A	Judge Neese Sworn Statement	203
10	9	Judge Pogue Personal Data Questionnaire	213
11	9A	Judge Pogue Sworn Statement	214
12	10	Judge Holmes Personal Data Questionnaire	231
13	10A	Judge Holmes Sworn Statement	233
14	11	Judge Kinard Personal Data Questionnaire	240
15	11A	Judge Kinard Sworn Statement	241
16	12	Judge Robinson Personal Data Questionnaire	245
17	12A	Judge Robinson Sworn Statement	247
18	13	Judge Clark Personal Data Questionnaire	253
19	13A	Judge Clark Sworn Statement	254
20			
21			
22			
23			
24			
25			