

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF RICHLAND)

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JUDICIAL MERIT SELECTION COMMISSION

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TRANSCRIPT OF PUBLIC HEARINGS

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8

BEFORE: G. MURRELL SMITH, JR., CHAIRMAN

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SENATOR LUKE A. RANKIN

10

SENATOR RONNIE A. SABB

11

SENATOR TOM YOUNG, JR.

12

ROBERT W. HAYES, JR.

13

REPRESENTATIVE J. TODD RUTHERFORD

14

REPRESENTATIVE CHRIS MURPHY

15

MICHAEL HITCHCOCK

16

JOSHUA HOWARD

17

ANDREW N. SAFRAN

18

ERIN B. CRAWFORD, CHIEF COUNSEL

19

* * * * *

20

DATE: November 13th, 2017

21

TIME: 10:00 a.m.

22

LOCATION: Gressette Building

23

1101 Pendleton Street

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Columbia, South Carolina 29201

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REPORTED BY: PATRICIA G. BACHAND, COURT REPORTER

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Court Reporter's Legend:

- dashes [--] Intentional or purposeful interruption
- ... Indicates trailing off
- [ph] Denotes phonetically written
- [sic] Written as said

1 CHAIRMAN SMITH: Let's get started, if we
2 would, please. I'd like to welcome everybody. And it's
3 going to be a short week. We're going to have three days
4 this week, and so we'll try to move through and start the
5 week after Thanksgiving. So I appreciate everyone being
6 here.

7 And I understand that Representative
8 Rutherford is across the street, and he's been across the
9 street for about ten minutes, so I don't know what he's
10 doing. But they say he's on his way.

11 All right. With that being said, the
12 Judicial Merit Selection Commission is called pursuant to
13 Chapter 19, Title II of the South Carolina Code of Laws
14 requiring the review of candidates for judicial office.

15 The function of the Commission is not to
16 choose between the candidates, but rather declare whether
17 or not the candidates who offer for the positions on the
18 bench, in our judgement, are qualified to fill the
19 positions that they seek.

20 The inquiry we undertake is a thorough one,
21 and it is centered around the commission's nine evaluative
22 criteria, and it involves a complete personal and
23 professional background check on each candidate. Public
24 hearings are convened for the purpose of screening
25 candidates.

1 Today, we will screen the seat -- one seat for
2 the reelection of South Carolina Supreme Court, one seat
3 for reelection on the South Carolina Court of Appeals, ten
4 seats for reelection, and five open seats on the circuit
5 court, six open seats on the family court, one seat for
6 reelection on Administrative Law Court, two open seats for
7 Master in Equity, and eight retired judges.

8 While we get started, Representative Chris
9 Murphy is the new one on the -- the new kid on the block
10 over there. Chris, we welcome you to the commission. And
11 then I'm going to have Erin introduce the staff and
12 attorneys.

13 MS. CRAWFORD: For the benefit of all the
14 members, if y'all would stand up and wave. For the Senate
15 screening attorneys, we have Andy Fiffick, Paula Benson,
16 Heather Anderson, Bob Maldonado, Johanna Valenzuela, Brian
17 Cohl.

18 The House screening attorneys: Emma Dean,
19 Patrick Dennis, Haley Mottel, Steve Davidson, Roland
20 Franklin, Jimmy Hinson, Richard Pearce, Dustin Stimson.

21 Senate staff is Lindsey Knipp, who's a
22 proofreader -- she's not in here -- Michelle McGee, Kate
23 Maroney, Lindi Legare, Marie Waller.

24 House staff, Linda Anderson. And also we
25 have present, Michael Anzelmo with the House, and John

1 Hazzard with the Senate.

2 Mr. Chairman, at this time I'd like to
3 request a vote on the cover page for the draft report, that
4 shows that the report will be delivered on Thursday,
5 January 11th, 2018. The 48-hour -- the 48-hour period ends
6 at noon on Tuesday, January 16th. The election is
7 currently scheduled for noon, Wednesday, February 7th,
8 2018. The report cover page is -- should be in your
9 notebook under Tab B.

10 CHAIRMAN SMITH: All right. With that, Mr.
11 Murphy -- Representative Murphy moves that we adopt the
12 cover page. All in favor raise their hands, signifying
13 "aye."

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

15 CHAIRMAN SMITH: Let the record reflect the
16 vote was unanimous.

17 MS. CRAWFORD: Mr. Chairman, can we
18 distribute the signature page to the commission members at
19 this time for the draft report?

20 CHAIRMAN SMITH: Yes, ma'am.

21 MS. CRAWFORD: At this time, I would now
22 like to suggest that we move into executive session, to
23 discuss matters related to legal advice.

24 CHAIRMAN SMITH: Senator Rankin moves that
25 we move into executive session. All in favor, say "aye" or

1 raise their hands.

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

3 CHAIRMAN SMITH: All right. It's unanimous
4 we are in executive session.

5 (Executive session from 10:30 a.m. to 12:16 p.m.)

6 CHAIRMAN SMITH: We're coming out of
7 executive session. We'll lift the veil. And let me thank
8 everyone. The Judicial Merit Selection Commission is now
9 back on the record.

10 For the record, I'd like to state that we've
11 been in executive session. There have been no decisions
12 made. No votes were taken during executive session. So
13 from there we'll --

14 MS. CRAWFORD: Mr. Chairman, at this time
15 I'd like to present the Commission with the judicial seats
16 that we expect to screen next year, 2018. It should be
17 found in your notebook under Tab D. I'd also like to
18 offer, and have made exhibits to the record, the following:

19 The citizens committee reports from the Low
20 Country, Midlands, Pee Dee, Piedmont, Upstate for the fall
21 of 2017, as well as the South Carolina Bar's Judicial
22 Qualifications Committee report for the fall of 2017.

23 CHAIRMAN SMITH: Okay. All right. Are
24 there any objection to these reports?

25 (Hearing none.)

1 CHAIRMAN SMITH: Hearing none, I ask that at
2 this time that the citizen's committee reports for the fall
3 of 2017, and the South Carolina Bar report be marked as
4 exhibits and entered into the public hearing record.

5 (EXHIBIT NO. 1 - SC BAR JUDICIAL
6 QUALIFICATIONS COMMITTEE REPORTS)

7 CHAIRMAN SMITH: All right. That's all the
8 business of the Commission. We'll now proceed to the
9 candidate portion of the hearing.

10 MS. CRAWFORD: Justice Kittredge. I was
11 going to say "good morning." Good afternoon.

12 JUSTICE KITTREDGE: Good afternoon, ma'am.

13 CHAIRMAN SMITH: Justice Kittredge, good
14 afternoon. If you'll raise your right hand, please, sir.

15 THE HONORABLE JOHN W. KITTREDGE, being duly
16 sworn and cautioned to speak the truth, the whole truth and
17 nothing but the truth, testifies as follows:

18 CHAIRMAN SMITH: We welcome you here. I
19 appreciate you being with us today.

20 JUSTICE KITTREDGE: Thank you, Mr. Chairman.

21 CHAIRMAN SMITH: The personal data
22 questionnaire and the sworn statement before you, documents
23 that you submitted to the Commission, are they both
24 correct?

25 JUSTICE KITTREDGE: They're correct. There

1 may be some slight changes, but nothing of a material
2 nature.

3 CHAIRMAN SMITH: Nothing that needs to be
4 changed or updated at the time -- of a material nature
5 then.

6 JUSTICE KITTREDGE: No, sir.

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

10 JUSTICE KITTREDGE: No objection, Mr.
11 Chairman.

12 CHAIRMAN SMITH: All right. It will be done
13 at this point.

14 (EXHIBIT NO. 2 - UPSTATE CITIZENS COMMITTEE
15 REPORT OF JUSTICE JOHN W. KITTREDGE)

16 (EXHIBIT NO. 3 - JUDICIAL MERIT SELECTION
17 COMMISSION PERSONAL DATA QUESTIONNAIRE OF JUSTICE
18 JOHN W. KITTREDGE)

19 (EXHIBIT NO. 4 - JUDICIAL MERIT SELECTION
20 COMMISSION SWORN STATEMENT OF JUSTICE JOHN W.
21 KITTREDGE)

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

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

6 We have received no affidavits filed in
7 opposition to your election. No witnesses are here today
8 to testify. Do you have a brief opening statement that you
9 wish to make at this time?

10 JUSTICE KITTREDGE: I have set forth in the
11 application process, my more than a quarter of a century of
12 service on the state bench, on all the four major courts.
13 That is set forth in detail. I trust each member of the
14 Commission has reviewed it carefully. And beyond that, I
15 have nothing to offer, sir.

16 CHAIRMAN SMITH: Thank you, Justice
17 Kittredge. And, Ms. Crawford, I believe you are the
18 screening attorney.

19 MS. CRAWFORD: Yes, sir. Good morning -- or
20 afternoon.

21 JUSTICE KITTREDGE: Good afternoon.

22 MS. CRAWFORD: Justice Kittredge, as you
23 stated, you've been on the bench many years. You were
24 elected to the Supreme Court in 2008, after serving on the
25 Court of Appeals, the circuit court, and the family court.

1 I think it's the eighth time you've been before the
2 Commission?

3 JUSTICE KITTREDGE: I haven't kept up with
4 the number of --

5 MS. CRAWFORD: I guess I'm thinking it --

6 JUSTICE KITTREDGE: I have no reason to
7 doubt that figure.

8 EXAMINATION BY MS. CRAWFORD:

9 **Q. Okay. Can you tell the Commission why you want**
10 **to continue serving as a judge -- a justice on the Supreme**
11 **Court?**

12 A. I made the decision long ago to commit my life to
13 one of service in the state judiciary. And that desire and
14 passion has not diminished through the years. I have
15 thoroughly enjoyed my service on all the courts in which
16 I've served.

17 I have enjoyed very much, the last nine-plus
18 years on the Supreme Court, the challenges that we're
19 confronted with, being stretched mentally, working with
20 wonderful people, my colleagues on the court.

21 And I enjoy getting up every day and going to
22 work and continuing my service. So the passion and desire
23 I had more than 25 years ago remains undiminished today.

24 **Q. Judge, how many opinions do you guess that you've**
25 **authored during your time on the bench on the appellate --**

1 **yeah, on the appellate bench.**

2 A. I submitted a list of published opinions, it's in
3 the hundreds. There would be many more that are
4 unpublished. I'm more of a "looking forward" kind of
5 person than "looking back." I have not kept a tally. But
6 it's in the -- in the hundreds and hundreds, perhaps a
7 thousand of published opinions. Much more unpublished.

8 And opinions and order is just the tip of the
9 iceberg of the decisions a judge makes, in terms of we're
10 hearing petitions, cert-petitions, admissions to the Bar
11 via character and fitness concerns. The whole gamut.
12 Lawyer discipline, judicial discipline.

13 So resolving cases and controversies and discreet
14 cases is just a part of the function of service on the
15 state Supreme Court.

16 **Q. In that vein, what are some of your**
17 **accomplishments and activities that you've delved into**
18 **while you've been on the Supreme Court?**

19 A. Well, in my day job, I think I've worked hard.
20 And I'm not a stranger to hard work. And I enjoy the
21 substance of what we do. Beyond the discharge of my
22 official judicial duties, I would just -- there are many,
23 but I would just highlight one thing:

24 I have served on the Commission on the Profession
25 since approximately 2003. I was appointed chair of the

1 Commission on the Profession in 2008, when I was elected to
2 the state Supreme Court. And it's not me who deserves
3 credit. The commission is comprised of wonderful people,
4 talented people, committed to our legal profession, who
5 have a tremendous skill set in moving different ideas and
6 visionary ideas forward.

7 When I first came on the commission, we were
8 redoing the attorney's oath to include a civility
9 component. I was one of those that traveled around the
10 state to teach that course and to swear new attorneys in
11 under the new oath.

12 I would say, probably, the one key thing that the
13 Commission on Profession has done is the mentoring program,
14 which is now a permanent part of a court order. And I
15 think it's invaluable in terms of what it's done in helping
16 facilitate the transition of the law study from law school
17 to the actual practice of law. And we have gotten rave
18 reviews on that. And let me just give you one tidbit of
19 that, to show you how it really plays out on the ground:

20 One of the things that I did not appreciate when
21 I went to the court, is the administrative side of the
22 court; it's a tremendous aspect of the job. It just broke
23 my heart to see the number of young lawyers who got in
24 trouble, ethically. Not that they did anything of any ill
25 motive or intention, they simply were not familiar with the

1 rules. And a lot of our ethical rules are not intuitive.
2 You have to know them.

3 And what we were hoping to achieve by the
4 mentoring program is with the experienced lawyer guiding
5 the new lawyer, part of their component of training and
6 mentorship was on the ethical front.

7 And to fast-forward to my point, we have done
8 studies, now, that have shown that the number of
9 grievances/complaints against attorneys, from zero to five
10 years of practice, has fallen off the cliff. Very rare.
11 And I attribute that in large part to the mentoring
12 program.

13 Other aspects of the Commission on Profession is
14 we've had to re-tweak, several times, the Rule 403 Trial
15 Experience Rule and Requirement. Because there are fewer
16 jury trials now, so young lawyers trying to satisfy a rule
17 that was 20 years old, was simply outmoded and wasn't
18 working.

19 Another aspect is what -- it's 427, I believe, is
20 the "aging lawyer" rule. Another aspect of -- on the
21 Supreme Court is lawyers toward the end will see a
22 cognitive decline. There was no place to receive and treat
23 these individuals with compassion and grace. They were
24 simply thrown to the Office of Disciplinary Counsel, by
25 default, because we didn't know where to send them.

1 There was no real intentional wrong, it was
2 simply a cognitive decline. So we formulated a rule that's
3 been approved by the court, it's now in practice and now
4 working, where there's a vehicle to take lawyers toward the
5 end of their careers, that don't yet recognize it, but
6 everybody else does, to have them go through a process
7 that's not a disciplinary process, but it's a rule that's
8 designed to treat them with compassion and grace.

9 And if I may add just one more -- and there's so
10 many. One of the aspects of the Supreme Court is the
11 admission to fitness for the Bar. I was blown away when I
12 got in the trenches and saw the number of new admittees to
13 the Bar, coming for admission, who had all kinds of
14 character and fitness issues. And they run the gamut. It
15 could be a criminal arrest from college, or even during law
16 school.

17 There's a lot of pressure. So there -- there are
18 drinking issues, there's depression issues. And these
19 people are very bright. They're very capable. They're
20 very astute at masking their problem. But it came to the
21 surface during the Bar review and admission process.

22 And I went to the Chief Justice at the time,
23 Chief Justice Toal, and she approved my approach to see if
24 we could take the Bar service of Lawyers Helping Lawyers,
25 and overlay that and make it available in the law schools.

1 The Bar director, Bob Wells, thought it was a great idea.

2 In fact, the Bar hired another person to help the
3 leader of Lawyers Helping Lawyers, Robert Turnbull. That
4 individual is Beth Padgett. She had a regular presence in
5 the law schools. And we found that students were coming to
6 her in their first and second, and even third year,
7 admitting they had a problem. It could be with drinking,
8 it would be with depression, whatever it was, and she got
9 them with the right resource.

10 So when those folks started coming to us, two and
11 three years later, we saw that they were getting help. And
12 that gave us a tremendous comfort level in allowing these
13 people who were getting help and not masking a problem.

14 And the final word on that is: The Bar was so
15 impressed with that program, they sent it to the ABA. And
16 about five years ago, that program that we started in the
17 law schools received the ABA's top award in the nation for
18 wellness programs.

19 And there's so many other things the Commission
20 on Profession has done. And that's not all I have done as
21 a member of the court. But I know there are time
22 constraints, so I'll leave it at that unless there are any
23 other particular questions in that regard.

24 **Q. Thank you. Justice Kittredge, what do you think**
25 **your reputation is among attorneys that practice before you**

1 in court?

2 A. I hope it's good.

3 Q. Okay. Well --

4 A. I've worked hard to try to treat people with
5 respect. I believe in the Golden Rule. And for the most
6 part, most lawyers have reciprocated. And I think I have a
7 good relationship, working and personal, with members of
8 the Bar in my profession.

9 Q. Judge, the Commission received 957 ballot box
10 surveys regarding you, with 100 additional comments,
11 complementing you on your work ethic, knowledge, and
12 temperament. As an example, a comment states, and this is
13 a quote:

14 "One of the finest people I've ever met. South
15 Carolina's fortunate to have such an intelligent jurist on
16 its highest bench. He is a true asset to the judiciary.
17 His opinions are well reasoned. And he treats every person
18 he counters with the utmost respect and kindness."

19 Only two out of 100 comments expressed any sort
20 of concern. One comment suggested that in civil matters
21 you're pro business. We talked about this. What response
22 would you give to this one concern?

23 A. I'm surprised there are only two negative
24 responses. As long as I've done this, and you make
25 decisions, you have to rule for people and you have to rule

1 against people. And people, understandably, take it in a
2 negative way. So I understand that comes with the
3 territory, that there would be some negative perception.

4 I reject the notion that I am pro business, pro
5 plaintiff, pro anything other than the rule of law. There
6 is a number of times that I've written opinions through the
7 years -- and even if you go back to my service on the trial
8 bench for 12 years, you can cherry-pick cases and say,
9 "Well, gosh, John, he leans to the left because he's ruled
10 for the workers' comp claimants. He's voted to set aside
11 death penalty convictions. He's thrown out criminal
12 convictions. He's ruled in favor of a plaintiff against an
13 insurance company." And all of that's true.

14 But if you look at the whole body of my work, you
15 could look to the other side and see just the opposite.
16 And those decisions are not a function of me approaching a
17 case, trying to impose an agenda on the outcome. I
18 approach every case with the mind set that I want to know
19 what is the right answer under the law.

20 Even if I don't like the law, I try to put aside
21 my personal preferences and follow the law to the best of
22 my ability. That would be my response.

23 **Q. Thank you, Judge. Judge, what do you think are**
24 **the most pressing issues facing the court system in South**
25 **Carolina today?**

1 A. Respectfully, I don't think you folks have enough
2 time. Let me just mention two. And I'll just pick one
3 civil and one criminal.

4 The nature of the practice of law is in a major
5 transition. That transition has been ongoing for several
6 decades. The speed of it accelerated during the financial
7 crisis of '08 and '09. And this paradigm shift is
8 happening in the marketplace and in the real world, and the
9 court system is slow to catch up.

10 The example there, are jury trials. Jury trials
11 are diminishing. And that's not necessarily a good thing.
12 But the forces that bear, have brought alternative dispute
13 resolutions as the primary driver in resolving disputes.

14 A quick example: Just in Greenville County Court
15 of Common Pleas in 1993, 179 jury trials. Twenty years
16 later, 2013, the population of Greenville grown. Court
17 filings increased dramatically. Yet, twenty years later in
18 2013, only 35 jury trials.

19 What happened? Alternate dispute resolution.
20 Primarily, mediation. And it's a good thing. Thus far
21 this year, as I speak to you, there's only been sixteen
22 jury trials in Greenville County. That consistency, what
23 I'm sharing in the 13th Circuit in Greenville County Common
24 Pleas, is true across the board.

25 So taking judges and applying them, assigning him

1 or her to jury terms in the way it was done ten years ago,
2 doesn't cut it anymore.

3 We have to be smarter in how we assign court.
4 And I think Chief Justice Beatty's doing a very fine job in
5 that regard. And what that looks like is more use -- wise
6 use of judicial resources. The common pleas non-jury, so
7 the discovery track can continue so the case will be ready
8 for alternate dispute resolution, or a dispositive motion
9 under 12(b) or 56. Or, perhaps, it will be one of those
10 that goes to trial.

11 But the way we approach civil court has got --
12 has got to change, to respond to the reality of this
13 paradigm shift.

14 I also think the court needs to be more sensitive
15 in terms of the rules it produces. One quick example:
16 Years ago, someone came to us and says, "Well, gosh, in the
17 federal system you got to do a memo with every motion. So
18 we need to do what the federal system's doing. We need to
19 have a memo with every motion."

20 Ill advised. Simply, you cannot compare what
21 goes on in the federal district courts of this state to
22 what goes on in the various counties. What happens in
23 Abbeville and Sumter and Dillon and Colleton is not the
24 same as Greenville and Spartanburg and Chester and
25 Fairfield.

1 You have to accommodate the reality of the state
2 system. So we're sometimes a little too quick to pick up
3 on what someone else is doing, without studying it, to make
4 sure it fits within our system.

5 On the criminal side there's so much to say.
6 I'll choose one. And I will say it's my concern with the
7 public policy, not just in South Carolina, but across our
8 nation, of the criminalization of the mentally ill.

9 In 1950s -- in the mid '50s, we had a population
10 in this country of 165 million. There were 500,000 people
11 institutionalized in mental institutions in the mid '50s.
12 And that pretty much stayed true through the mid to late
13 '60s.

14 Today our population is more than double. It's
15 320 million, maybe a little bit more. There are less than
16 40,000 people housed in mental institutions. And where do
17 those people end up? On the streets and in our jails and
18 in our department of corrections.

19 And studies have shown anywhere from 25 to more
20 than 60 percent of individuals who are arrested in our
21 society have some form of a mental health issue. The
22 burden it puts financially on local jail facilities, the
23 burden it puts on the state with the department of
24 corrections. Our society has got to come to grips with
25 this.

1 Is this a judiciary problem? No. It's a
2 judiciary problem plus every other branch of government,
3 the legislative and the executive. And I think it's a
4 crisis, and one which warrants all branches and
5 stakeholders coming together to address it.

6 Until we get a grip on how we're going to treat
7 the mentally ill in this country, the general sessions
8 courts of this state are going to drown.

9 **Q. Thank you, Justice Kittredge. I just have a few**
10 **housekeeping matters. Since submitting your letter of**
11 **intent, have you contacted any members of this commission**
12 **regarding your candidacy?**

13 A. No, ma'am.

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

17 A. No, ma'am.

18 **Q. Have you asked any third parties to contact**
19 **members of the General Assembly on your behalf, or are you**
20 **aware of anyone doing that?**

21 A. I have not. And I'm not aware of anyone doing
22 that.

23 **Q. Have you reviewed, and do you understand, the**
24 **Commission's guidelines on pledging in South Carolina Code**
25 **Section 2-19-70(E)?**

1 A. I do.

2 MS. CRAWFORD: I would note that the Upstate
3 Citizens Committee found Justice Kittredge to be well
4 qualified in the evaluative criteria of ethical fitness,
5 professional and academic ability, character, reputation,
6 experience, and judicial temperament, and qualified in the
7 remaining evaluative criteria of constitutional
8 qualifications, physical health and mental stability.

9 I would note for the record, that any
10 concerns raised during the investigation regarding Justice
11 Kittredge were incorporated into the questioning of the
12 candidate today. Mr. Chairman, I have no further
13 questions.

14 CHAIRMAN SMITH: All right. Thank you.
15 Thank you. Are there any questions for Justice Kittredge?

16 SENATOR RANKIN: I do.

17 CHAIRMAN SMITH: Senator Rankin.

18 EXAMINATION BY SENATOR RANKIN:

19 **Q. I appreciate you getting here early and waiting a**
20 **long time.**

21 A. No problem, sir.

22 **Q. I don't have to cite it, but perhaps in your**
23 **first election, long, long ago if I did my due diligence, I**
24 **would have written and sent with it a letter of**
25 **congratulations. But an article also published in the Wall**

1 Street Journal years ago -- not a article, but a letter
2 written by someone in the article -- or Op Ed piece was
3 entitled "On Judging Judges."

4 And it was written by a deceased lawyer, who's
5 son, also a lawyer, found it years after his death. And it
6 essentially made the point that we are to resist the public
7 will in how we elect judges, and it looked across the
8 country in terms of how their states do it.

9 And the wisdom of that letter was to again resist
10 the public will. And in it they invoke Pontius Pilate, who
11 was once deemed worthy of service, but upon reflection, the
12 Roman government recalled him, as he was no longer fit for
13 service. You are well aware of that, Biblically, I know,
14 and history -- from a historical standpoint.

15 My question is not what -- whether you think the
16 current system of the legislature appointing and electing,
17 but my question is in terms of how we judge you as a
18 Judicial Merit Selection Committee, the Bar, the anonymous
19 input of Bar members. Judge for me how we are judging you
20 and the bench. If you understand my question.

21 A. I think I do, Senator. If I had any constructive
22 comments or criticism, they would be around the edges at
23 best. And in answering that, it gives me an opportunity to
24 thank the staff, Ms. Crawford and the others. I saw a
25 minute ago, Lindi was here. But just everyone has been so

1 kind and thoughtful. And that means a lot when going
2 through this process.

3 I've been doing this quite a while. Been through
4 the process, as Ms. Crawford brought out, many times. It's
5 still a little anxiety-provoking. So being treated
6 professionally and with courtesy means a great deal. Never
7 give that up. So I don't really have any strong comments.

8 If I had to do one, and I don't want to offend
9 anybody, I would keep -- if there's going to be testing of
10 candidates, I would do the testing here and not delegate it
11 to the Bar or anyone else. And so I like the idea about an
12 incumbent judge not having to go through a test of taking
13 it so many times.

14 And I think Ms. Crawford reached out to Chief
15 Justice Beatty a few months ago, and we all at the court
16 weighed in, and my two cents was when a candidate comes for
17 the interview, well, that ought to be a time for some
18 informal questioning. And if it appears that, that
19 candidate seeking reelection has not answered substantive
20 questions, in a correct and thoughtful way, then I think
21 that ought to trigger further scrutiny of that candidate.

22 But I think that should be done by this committee
23 and not by a third party. I also think for new candidates
24 to the bench, the testing is very appropriate, and
25 warranted, to ensure that new members to the court, to the

1 bench, have a minimum level of knowledge. That is going to
2 be especially true, going forward. Because of the
3 decreasing number of jury trials, you're going to have
4 candidates for trial court level positions that have tried
5 very few, if any, cases. And measuring their knowledge of
6 trial court procedure is going to become increasingly more
7 critical. That's my two cents, Senator.

8 **Q. The ballot box surveys, you've got 957. And you**
9 **were surprised that you only got one -- I guess two. One**
10 **which was probably way afield, and the other one you've**
11 **already batted it out of the box as well. But do you think**
12 **that, that is a valuable tool?**

13 A. I don't feel strong, one way or the other. I see
14 nothing wrong with it. I think the law of averages,
15 whoever the candidate is, the truth is going to emerge.
16 But I do think it's healthy to come at that question from
17 multiple sources.

18 The anonymous ballot box survey is a tool.
19 Allowing people to come forward and file public complaints
20 is another tool. So it's not just one approach. But I
21 think continuing the "all of the above" approach is the
22 best way to separate the wheat from the chaff, and see who
23 that candidate is after the dust settles.

24 CHAIRMAN SMITH: Any other questions of
25 Justice Kittredge?

1 (Hearing none.)

2 EXAMINATION BY CHAIRMAN SMITH:

3 Q. Let me see just follow up. You talked about a
4 couple of things in your opening statement, I'm interested
5 in, and, you know, through questioning. And in one, you
6 mentioned mental health. And, obviously, we're moving in
7 towards mental health courts and veterans courts and other
8 drug courts.

9 And one thing that we have discussions on when we
10 deal with sentencing reform, is the lack of uniformity in
11 those courts, so to speak. They're kind of comprised by
12 circuits, or there's some circuits that have the courts,
13 where other circuits done. Is there a role that the court
14 has in trying to create some uniformity, and create the
15 availability for these alternative courts outside of where
16 they currently exist?

17 A. Absolutely. I think the role -- the court -- the
18 Supreme Court can play a leadership role by promoting
19 alternative courts. And I've got to admit to you, 20-plus
20 years ago, when I'd sit in CLEs and be told about
21 alternative courts, I was part of the large group that
22 says, "Well, I'm not a sociologist. I'm a judge. So I'm
23 not going to do that."

24 I've come full circle. Years and years ago, I
25 came to adapt the view that drug courts are so beneficial

1 and helpful. All the alternative courts. I serve on the
2 board of Upstate Lawyer Solutions, and part of my role
3 there is to help start veterans courts around. We have a
4 very successful one, up running in Greenville. We're on
5 the cusp of doing one in Anderson and Spartanburg. I hope
6 it takes off.

7 Mental health courts has got to be a focus of the
8 court, to promote it and to give sentencing flexibility for
9 those situations to work out.

10 Q. And, historically, they've been created via court
11 orders; that has been my -- been my experience with that.
12 And, obviously, I understand that the legislature plays a
13 role in that with having to fund. 'Cause I -- we can get
14 into a funding discussion. But I tend to agree with the
15 members of the court, that we have historically underfunded
16 the courts, and we need to do a better job at that.

17 But regardless, the blueprint has to be created
18 and, in my opinion, I guess, from the courts -- from the
19 Supreme Court. 'Cause ultimately, that they,
20 constitutionally, are the ones that administer the justice
21 system. And I think we've got a role in funding, and maybe
22 providing the outlines.

23 But at the end of the day, you know, what I'm a
24 little concerned about seeing now is -- is for drug courts,
25 for example, we just went through this discussion a few

1 weeks ago, is that there are courts where -- there are
2 pretrial diversion for drug courts, and then there's post-
3 trial after you have to first plead guilty.

4 Is that something that the Supreme Court needs to
5 look at? Or is that something that Legislature is going to
6 have to resolve and create some uniformity there?

7 A. I would think the Supreme Court can take a lead
8 in that. And there probably does need to be consistency.
9 I'm well aware, in some circuits you simply go to the
10 program, in others they want a notch on their belt for a
11 guilty plea, but the charge is discharged at the end of the
12 process if you successfully complete it.

13 But uniformity would be a good thing. And I see
14 the court, if not having an exclusive role, having a lead
15 role in that regard.

16 Q. And the other thing you mentioned and -- and --
17 you know, the committee on the professionalism and -- and
18 the practice of law. And I think Representative Rutherford
19 and I spend a lot of time with the last justice on these
20 questions, but, you know, the concern that I -- I think I
21 hear from the Bar, and I see, is that the court puts a lot
22 of emphasis on disposition of cases.

23 And you're talking about the rapidly changing and
24 evolving practice of law. And it's changed in my lifetime,
25 for those of who serve in the more rural areas, into --

1 into you have -- you're not in -- in your circuit anymore,
2 generally, and that you now have to take -- it's the volume
3 of cases. I think rates are going down instead of up. And
4 there's more demands on lawyers. And I hear and see
5 lawyers complain more and more about the amount of work,
6 the amount of pressure that they have on them.

7 And, you know, I guess I -- we ask every
8 candidate, but what is the court's -- are they doing
9 anything to help demand -- to help alleviate some of those
10 demands and take into account quality of life for
11 attorneys? And quality of life -- understand that we have
12 less alcoholism and less depression in doing that. Is the
13 court doing anything to help -- to help with that area?

14 A. I'm not sure what the court can do on the first
15 part of your question. And I say that, painfully aware
16 that all knowledge is not domicile between my ears. So I'm
17 always learning. I'm always open to suggestions. I'm not
18 sure what the court can do. There are market forces at
19 bear -- at play in changing the nature of the practice of
20 law, and I'm not sure what the court can do.

21 It's also impacting how we approach the
22 unauthorized practice of law issue in questions. And there
23 is going to be a slow transition in how we approach UPL
24 cases, because of the market forces.

25 One quick example -- and I won't give all the

1 background unless some of you are interested. A
2 partnership developed between eBay and PayPal, in order to
3 have returning customers, to resolve disputes. Someone
4 gets an item, it's not up to what they thought was
5 promised, who do they sue? Where do they go? PayPal and
6 eBay wanted return customers. So those two large companies
7 got together and formed their own mediation service within
8 the context of eBay.

9 It was so successful that the officers of eBay
10 and PayPal went out on their own and created their own
11 medication solution business. It's call Modria, M-o-d-r-i-
12 a. Google it. Last year they settled over 60 million
13 personal disputes. That's where the future's going.

14 And who is suffering during this transition
15 process? The legal profession. It's a very complicated
16 situation that cannot be viewed myopically. It needs a
17 holistic response. The time we have today is not going to
18 solve it. I'm aware of it. Is there a crystal-ball
19 answer? I don't think so.

20 Does that respond at all to your question?

21 **Q. It does. But, you know, along those same token -**
22 **- along those same lines is -- you know, some of the**
23 **issues, I think that we as attorneys have to face, are**
24 **there are more demands for disposition of cases when --**
25 **from the courts. And, you know, I think, you know, slowly,**

1 as the Supreme Court has probably recognized a little bit,
2 of the -- of the constraints that they're putting on
3 individual lawyers.

4 But for example, you know, this "one size fits
5 all" of we need -- want all your DUI cases resolve with 90
6 days, or, you know, you have one year from the date of
7 court -- date of the trial when it gets on the civil
8 roster.

9 To me -- and what the complaints I hear more in
10 the -- in the areas to which I practice and the counties in
11 which I practice is that, you know, it's still -- there's
12 some requirement, if you want to have a successful
13 practice, to practice in a number of courts.

14 And I think what happens is that when more
15 demands get placed upon attorneys for disposition of cases,
16 it's more difficult to practice in the family court or
17 practice in the court of common pleas or general sessions,
18 and by -- and that the court is, in a defacto way,
19 requiring specialization in that manner.

20 And, you know, I know I'm speaking for the rural
21 counties, but that's -- that's just one area of concern
22 that I see with the courts. And, you know, I think we are
23 -- we are starting to understand that, and maybe y'all are
24 hearing that some more and trying to approach that.

25 I certainly am not advocating taking three and

1 four years for the disposition of DUI cases, like they once
2 were, but when you put it in a bucket they must be disposed
3 of in 90 days or six months, or whatever that order says,
4 it also is difficult on those who practice that
5 exclusively, as well as other areas of law.

6 A. I can assure you, my nine-plus years on the court
7 I've never been part of any conversation or heard any grand
8 design that we want to force specialization. But I hear
9 you loud and clear. And the concerns you've shared with me
10 this afternoon, Mr. Chairman, I will relay to my colleagues
11 on the court.

12 Q. Well, thank you. And just a couple other issues.
13 I want to end this with some compliments. As, you know, we
14 look at these and we're looking at these -- at these
15 comments in the ballot box, and what Senator Rankin asked
16 you about -- about ballot box comments and -- you know, I
17 think that's a -- that's a good barometer of judges. And I
18 know you're not always going to have great -- you're not
19 going to have all the comments -- good comments you want,
20 and unfortunately, any negative comment helps. But I want
21 to -- I want to congratulate you on what I see with those
22 comments.

23 Some of these comments, they're ranging from the
24 point of "wish you were still on the trial bench" to "the
25 finest juror that -- jurist that we have" to "would make a

1 great chief justice one day." I guess somebody's already
2 trying to promote you on here. But, you know, those
3 comments are something you need to be proud of. That's a
4 lifetime of service that you have provided.

5 And when you look at comments that are that
6 glowing, I'm telling you it's something you ought to -- you
7 ought to be proud of, Justice Kittredge.

8 A. Thank you, Mr. Chairman. I appreciate it.

9 CHAIRMAN SMITH: All right. Any other
10 questions? Senator Young.

11 SENATOR YOUNG: Thank you, Mr. Chairman.

12 EXAMINATION BY SENATOR YOUNG:

13 Q. Justice Kittredge, just real briefly. I read the
14 writing sample that you provided to us, about your judicial
15 philosophy. And just for the record, if you could just
16 briefly summarize that for our -- for the record.

17 A. My judicial philosophy is tethered to Federalist
18 Paper 78. I think that's the best single source of the
19 appropriate and proper description of the role and function
20 of a judge. It was written by Alexander Hamilton,
21 Federalist Paper 78.

22 I believe that judges adjudicate legal cases that
23 come before them. I believe legislators legislate. And I
24 do not believe that judges should cross the line from
25 adjudication into legislation.

1 And just to sum it up: I believe the proper
2 limited role of a judge is one of restraint, to decide the
3 narrow case that's presented, based upon an unwavering,
4 uncompromising commitment to the rule of law. With no
5 other agenda. Period.

6 SENATOR YOUNG: Thank you.

7 CHAIRMAN SMITH: Representative Rutherford.

8 EXAMINATION BY REPRESENTATIVE RUTHERFORD:

9 Q. Justice Kittredge, I did want to follow up on
10 what Chairman Smith was asking you about. Because at some
11 point, given the way the court has historically gone, if
12 you do ascend to the chief justice position, seemingly,
13 this does emanate from the chief.

14 It came from Chief Justice Toal a little while
15 ago, but this imposition on the lower courts that they move
16 cases, move cases, move your docket, move cases, move
17 cases, move cases, to the impact that it is currently
18 having on lawyers and, as Chairman Smith said, the quality
19 of life, that there are a number of lower court judge --
20 lower court judges that won't sign orders of protection for
21 lawyers to go on vacation, that believe that service in the
22 General Assembly is great, right up until you have a court
23 -- you have a case in the courtroom, and then the
24 discussion needs to be, well, when is this going to get
25 handled?

1 And at some point, if we are -- if we continue to
2 go the way we're going, then everything's going to be 90
3 days, you have to -- you have to move the case in 90 days.
4 General sessions, move to 90 days.

5 But there seems to be very little -- very little
6 recognition from the Supreme Court, as a whole. And if it
7 doesn't come from the court as a whole, then only from the
8 chief justice, so I'll speak to you as if you're going to
9 be there in the future.

10 But at some point, if we are made to attend CLEs
11 about our mental health, and if we have to talk about
12 things that are distressing to us, the court also needs to
13 recognize what we are dealing with, as individual
14 practitioners, who are finding it harder and harder to make
15 a living doing what was a traditional practice of law.

16 You mentioned this upstart that's coming in, and
17 they're going to take away one aspect of what lawyers have
18 retired to. And as more and more people encroach on the
19 practice of law, yet inside that practice we're getting
20 more and more pressure, at what point does it boil over to
21 us just saying, "This ain't worth it"?

22 You know, I am sitting here now -- and I
23 apologize for not being here during your beginning, but I
24 had legislative oversight that started at 10:30. And I was
25 getting texts that I needed to come over there, so I had to

1 go over and do that. At the same time, I have a murder
2 bond setting in Richland County, and I was talking to a
3 lawyer that works with me and trying to help, and all of
4 these are things that we have to do.

5 And if we want lawyers to be involved in the
6 process, it's going to come. But if we're only paying lip
7 service to wanting them to be involved, what the court is
8 saying, "Well, yeah, we appreciate you being here, but that
9 case was over a year old, you should have been moving that
10 case," when does one spend time with their family? When
11 does one get vacation time?

12 It used to be that courts in Richland County shut
13 down for the month of August, 'cause it was too hot. In
14 Lexington County, we have court, either state, federal, or
15 magistrate, 52 weeks a year. Fifty-two weeks a year. So
16 there is no break.

17 And if it doesn't come from the top to say, "Hey,
18 guys, we get it. We know the cases need to move, but you
19 also need to take recognition that there's got be some
20 quality of life left for the profession," that we have
21 people that won't want to go into it, they won't want to
22 stay.

23 We had a magistrate come before us last year,
24 that was so proud of the fact that he made two lawyers come
25 in and try a case on the day of the Carolina-Clemson game.

1 And he told us that, that was a good thing. And he
2 wouldn't say that if he wasn't getting this belief from the
3 top, that, that's what he's supposed to do.

4 And I pushed back on that notion. And I just
5 encourage you as you move forward, if you haven't seen it,
6 to push back on that as well. Because we are assaulted on
7 every single front. And if we don't have any quality of
8 life left, then what is the point of doing it?

9 That's not a question, but just a comment.

10 A. And may I make a comment in response?

11 Q. Yes, sir.

12 A. I hear you. I think there is a tendency, not
13 just on the Supreme Court, but I think there's a
14 regrettable tendency among judges to forget what it was
15 like to practice law and be in the pit and be called to be
16 -- this deposition at two o'clock, probate court at three,
17 a common pleas non-jury at 4:30.

18 It's hard to be in the meat-grinder of the
19 practice of law. And it's not just the Supreme Court. I
20 think there are many judges who lose their sensitivity to
21 the pressures and the vagaries of the practice of law.

22 My final comment is this, and it's not just with
23 lawyer and legislators, but the practicing bar in general,
24 and it goes back to the Chief Justice's commission on the
25 profession. We've done many good things. One I didn't

1 share with you, I'm going to share now:

2 About seven or eight years ago, we sat around a
3 table, and some of the finest lawyers in the state started
4 talking about the practice of law is no longer fun.

5 They've got their iPhones, they're getting texted and e-
6 mailed at eleven o'clock at night. If they don't respond
7 before eight in the morning, they get threatened with a
8 grievance.

9 There is no time to be off. There's no time to
10 recharge the batteries. These weren't average attorneys.
11 These were some of the finest attorneys that you well know
12 in the state, and they were feeling the pressure and the
13 burden of the changing nature of the practice of law, and
14 being suffocated.

15 We said, "Let's go something about it." We went
16 to Bob Wells. A lot happened, but here's what happened:

17 We formed what's now called the Wellness
18 Committee. It was various iterations through the
19 Commission on Profession, the Bar then adopted it as its
20 own standalone -- standalone committee. It's the Wellness
21 Committee. And the mission of the Wellness Committee is to
22 reach out to the legal profession and try to reinstill
23 tools and mechanisms to get balance back in your lives, so
24 that the practice of law can once again be fun and
25 enjoyable, and not the pressure cooker where you're always

1 running and never have time to breath.

2 And I will tell you the Wellness Committee, year
3 before last, received the American Bar Association's award
4 for the top program in that area in the country. Mike
5 Ethridge -- kudos to him -- is the individual lawyer, he's
6 from Charleston, who leads that effort. He's done a superb
7 job. That committee is engaged in doing seminars across
8 the state, helping with coping mechanisms, helping with how
9 to deal with this.

10 I'll also tell you that the Supreme Court is very
11 sensitive to doing our best to tell the trial judges, "When
12 lawyers need protection, grant them protection." It's not
13 lawyer-legislators only. It's give them a break when they
14 have a vacation.

15 I can remember going to a judge and saying,
16 "Well, my family's going on vacation." As a lawyer, I
17 never wanted to go on vacation, because I could barely
18 tread water when I'm at the office. I'm going to go away
19 for a week, that's all I'm thinking about. I'm going to
20 drown when I get back to the office.

21 So a judge will say, "Yeah, you take that week.
22 Your medical mal is the first up Monday, John." I can't go
23 on vacation. That's not a break. So that type of approach
24 to protecting lawyers has got to change. I'm aware of it.
25 And I am -- I hear you loud and clear, sir.

1 CHAIRMAN SMITH: All right. Any other
2 questions? And that's a great answer, by the way. Mr.
3 Safran.

4 MR. SAFRAN: Can we broadcast that answer?

5 CHAIRMAN SMITH: It's transcribed now. Mr.
6 Safran?

7 MR. SAFRAN: Just briefly.

8 EXAMINATION BY MR. SAFRAN:

9 Q. I think you touched on something, that certainly
10 we're all sensitive to in terms of the lack of jury trials
11 that are happening, the opportunities for experience. Yet,
12 that phenomena is more or less the reality for a lot of the
13 people who are seeking positions through this committee.

14 And you and I are contemporaries. And I think,
15 basically, what I personally have seen as a source of
16 concern is the lack of experience for a lot of people, who
17 are now trying to ascend to the judgeship, that bring to
18 the table.

19 It appears, certainly, that the opportunities are
20 diminishing. And it does have an impact, obviously, on the
21 law -- the whole operation of the system when you bring
22 people in who may, through no fault of their own, be less
23 than fully equipped to be able to handle it.

24 What do we as a committee do when, effectively,
25 that's become the reality? It's hard to say, you know,

1 that we want those guys that we used to see who practiced
2 for 25 years or, you know, has been out there doing
3 something that garnered that type of experience.

4 I mean, how do we reconcile it now when we're
5 trying to more or less identify people to go on the bench,
6 who may not ever have had an opportunity, and it's going to
7 translate into some difficulty down the road? How do we
8 address that?

9 A. I don't have a crystal-ball answer. I have
10 wondered that, myself, many times. I've talked to my
11 colleagues about that. I was at the Defense Lawyers
12 retreat -- or conference, this past weekend and I was part
13 of a panel, we addressed that very issue: What do we do
14 about the trial judges of tomorrow, who've never tried a
15 case?

16 It's just different than it was 25, 35 years ago,
17 when you were just given one file after another, "Go to
18 this court, try this, try this." I don't know what the
19 answer is.

20 But this committee is going to have a very
21 difficult job doing the best it can to evaluate other
22 characteristics of a candidate when the experience level is
23 not where you'd want it to be. You're going to have a
24 tough job measuring if Candidate A is really up there in
25 terms of intellect, integrity, and character.

1 You may think, Well, they haven't tried many
2 cases, but they've got the capacity and the passion and the
3 drive to compensate for that, and in short order will up to
4 speed. But that is going to be a very difficult balancing
5 act.

6 And I venture to say, not all the decisions made
7 by the Committee are going to be right ones. 'Cause it is
8 a quandary. Judges talk about this all the time: What are
9 we going to do about the trial judges of tomorrow who have
10 no trial experience?

11 JUSTICE KITTREDGE: Thank you, Mr. Safran.

12 CHAIRMAN SMITH: Senator Rutherford.

13 REEXAMINATION BY SENATOR RUTHERFORD:

14 **Q. One of the things just is -- following along on**
15 **that, I tried a case to a verdict in York, maybe three**
16 **weeks ago, and I thought about the fact that -- there was a**
17 **young lady in there getting her CLE, and she was able to**
18 **see a case tried from beginning to end. Which you don't**
19 **usually see. But there -- maybe lawyers ought to start**
20 **notifying the court or the Bar to say, Hey, why don't we**
21 **videotape these things to show them, so that not only can**
22 **you get to watch a trial, but you watch a good trial? Not**
23 **just one where you're trying to get it over with.**

24 But that's something that I think we could do
25 using modern technology, it wouldn't interfere in the

1 process, and have our judges -- have our circuit court
2 judges say, "This one's going to the end. Why don't we
3 record this and see where it goes and show it to people?"

4 A. I'm go glad you brought that up. That gives me a
5 chance to brag a little bit more about the commission on
6 the profession. We have a Rule 403 called Trial
7 Experiences. I don't know why we call it "trial
8 experiences." Years ago, the template was you "X" number
9 of jury trials. Well, through the years, there are fewer
10 jury trials. Now, there's still some in general sessions,
11 but there are very few in common pleas.

12 So through the Commission on Profession, we made
13 recommendations to the Supreme Court, and we've amended the
14 rule many times. About two years ago we decided we need to
15 rewrite this rule from scratch. And I went to the folks at
16 ABODA, the American Board of Trial Advocates, and I said,
17 "Will you help us film a trial?"

18 Because so many young lawyers are going to see a
19 trial, and it's continued, it's settled, whatever, it
20 doesn't happen. It settles halfway through, so they don't
21 get the 403 credit. The rule was not written for the
22 modern-day practice.

23 So ABODA agreed to work with the South Carolina
24 Bar and the Commission on Profession, two years ago -- and
25 we -- and we prevailed upon my friend Cliff Newman to

1 preside. We had the trial in Greenville. It took a week.
2 It's an eight-hour trial. That now is part of the 403
3 Trial Experience. You don't have to worry about going to
4 court and getting it continued, you're going to see a
5 trial. And not with average lawyers, but some of the best
6 lawyers around.

7 We also reduced the number of trial experience,
8 and changed the quality of it. We had something come up --
9 and this was the suggestion of Bob Wells, the Bar director.
10 He said, "Let's come up with something called 'A Day in the
11 Court Experience.'"

12 So that's now a part of Rule 403. You don't have
13 to worry about a case being continued or settled, you go
14 sit in that courtroom for six hours and you're going to get
15 a 403 credit. And you're seeing guilty pleas, probation
16 revocations and all kinds of criminal matters. On the
17 civil side, common pleas non-jury, different motions.
18 Maybe a part of a trial, but not the whole thing. Just one
19 day. Family court, temporary hearings, non-support cases,
20 abuse and neglect, juveniles. The whole gamut.

21 But if you sit in court, you get a Day in the
22 Court Experience that checks off. So the whole concept of
23 403 has been changed. Yes, we have a video. It's
24 available. Yes, we have these other ways to achieve it so
25 the idea of a lawyer to have to spend month after month

1 after month going to court, looking for a trial that didn't
2 exist, we now have a mechanism and a rule in place that
3 allows a young lawyer to satisfy the trial experience
4 requirement easily and with quality experiences.

5 Q. Judge, I would just encourage the court to try
6 and record more and different -- just so that they get to
7 see not only the good, but some of the bad too. Because
8 there are bad trials out there, bad lawyers. And they get
9 to learn from that as well.

10 A. Exactly.

11 Q. So I thank you for all that you're doing.

12 A. We're doing a -- with family law we just did a
13 mediation -- excuse me. The mediation is now available for
14 young lawyers. We could not get a mediation 'cause they're
15 private by nature, so we got some lawyers together and they
16 agreed to tape it. We've done that. We're also going to
17 do a civil trial -- I mean, a criminal trial in addition to
18 the civil. So those are in the pipeline. Yes, sir.

19 CHAIRMAN SMITH: I'd just mention, I noticed
20 that the South Carolina Association of Criminal Defense
21 Lawyers just did a similar mock trial, that the ABODA
22 people did not too long ago. And so I heard you talk to
23 them about it, 'cause I heard it was very successful. I
24 don't know who did it.

25 REPRESENTATIVE RUTHERFORD: I heard the jury

1 just went ahead and found the guy guilty, 'cause half of
2 them said he was guilty.

3 CHAIRMAN SMITH: Yeah. So it was
4 interesting, 'cause what they did do was they went inside
5 the jury room, they got a mock jury, and watched them
6 deliberate after they tried the case. So that was a new
7 component of it.

8 Justice Kittredge -- any further questions
9 for Justice Kittredge?

10 (Hearing none.)

11 CHAIRMAN SMITH: Thank you so much for your
12 time today. This concludes your portion -- this portion of
13 our screening process.

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

21 On that note, and as you know, the record
22 will remain open until the formal release of the report of
23 qualifications, and you may be called back at such time if
24 the need arises. I thank you for offering. And I thank
25 you for your service to the state of South Carolina.

1 JUSTICE KITTREDGE: Thank you, Mr. Chairman,
2 and other member of the Commission.

3 (Candidate excused.)

4 CHAIRMAN SMITH: Judge Huff, will you raise
5 your right hand, please, sir.

6 THE HONORABLE THOMAS ELLIS HUFF, being duly
7 sworn and cautioned to speak the truth, the whole truth and
8 nothing but the truth, testifies as follows:

9 CHAIRMAN SMITH: Your personal data
10 questionnaire and the sworn statement before you are
11 documents that you submitted to the Commission?

12 JUDGE HUFF: Yes.

13 CHAIRMAN SMITH: And are both of them
14 correct?

15 JUDGE HUFF: Yes.

16 CHAIRMAN SMITH: And does anything need to
17 be changed or updated at this time?

18 JUDGE HUFF: No, I do not believe so. I had
19 a -- I added an amendment, I believe, and forwarded that --

20 CHAIRMAN SMITH: Yes, sir we have it.

21 JUDGE HUFF: -- to the committee.

22 CHAIRMAN SMITH: Do you object to making
23 these documents and any amendments, if applicable, a part
24 of the record of your sworn testimony?

25 JUDGE HUFF: No, I do not.

1 CHAIRMAN SMITH: All right. It will be done
2 at this point in the transcript.

3 (EXHIBIT NO. 5 - JUDICIAL MERIT SELECTION
4 COMMISSION PERSONAL DATA QUESTIONNAIRE OF THE
5 HONORABLE THOMAS ELLIS HUFF)

6 (EXHIBIT NO. 6 - JUDICIAL MERIT SELECTION
7 COMMISSION AMENDMENT TO THE PERSONAL DATA
8 QUESTIONNAIRE OF THE HONORABLE THOMAS W. COOPER)

9 (EXHIBIT NO. 7 - JUDICIAL MERIT SELECTION
10 COMMISSION SWORN STATEMENT OF THE HONORABLE
11 THOMAS ELLIS HUFF)

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

21 We have received no affidavits filed in
22 opposition to your election. No witnesses are here today
23 to testify. Do you have a brief opening statement that
24 you'd like to make at this time?

25 JUDGE HUFF: No, just other than this will

1 be the last one for me. I think I become certifiable
2 unqualified at 72. So this will be the last one.

3 CHAIRMAN SMITH: We won't say "unqualified."
4 We will say "certifiable."

5 JUDGE HUFF: You need to talk to my wife at
6 that point.

7 CHAIRMAN SMITH: All right. Thank you.
8 Please answer any questions that Ms. Dean may have.

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

10 EXAMINATION BY MS. DEAN:

11 **Q. Judge Huff, you have served on the Court of**
12 **Appeals since 1996. Why do you want to continue serving as**
13 **Court of Appeals judge?**

14 A. Well, frankly, I enjoy it. I enjoy the challenge
15 of the factual situations that come before us. I certainly
16 enjoy the banter of questioning and answering. The people
17 that I work with are -- are just unreal. They are the most
18 qualified, imminently prepared, intellectual people that
19 you could find in our state, quite frankly. And it's -- it
20 makes me proud to be a part of that process.

21 **Q. Thank you, Judge. Judge Huff, if you could**
22 **please explain one or two brief accomplishments that you**
23 **feel you have completed during your tenure at the court,**
24 **and then a goal that you'd like to accomplish if reelected.**

25 A. Well, one of the things that I've accomplished

1 has just occurred recently, and that is when they have
2 questions about procedure, and what we did in the past,
3 they seem to be looking at me. And I think it's based upon
4 length of service more than it is ability sometimes.

5 But as several of the judges have said is, I've
6 aided them in cutting through the fog, sometimes, of what
7 we did in the past, why we did it, and how could we do it
8 better. So from the standpoint of process and procedure of
9 the court, I think I've been able to aid our court a lot in
10 that respect.

11 We are doing a review of our policies and
12 procedures, right now, as a result of those inquiries. And
13 I think I have one of the oldest notebooks there, besides
14 the clerk. So from the standpoint of giving a historical
15 view of the court, where it had been, where it is going,
16 and how we are operating -- hopefully, very efficiently --
17 I think I've been an asset in that regard.

18 Another accomplishment is in the changes in the
19 process. We have over the -- my tenure there, changed how
20 we've treated cases on assignment and on certifications, on
21 oral argument and things of that nature. And so from the
22 standpoint of just making the court run more efficient, I
23 think I've been a tremendous aid in doing that.

24 And then I just feel like I've aided in the
25 development of our law in this state. I remember an

1 interview that I had, through one of the screening
2 processes several years ago, and the panel asked me, you
3 know, "How do you think you can be an asset to the court?"
4 And I analogized our court to, quite frankly, a diamond:
5 Each one of us on that court had a certain innate ability,
6 a learned intellectual ability; and in some respects, the
7 light may be dim, but in other respects it may add a lot.

8 And so as I told them at that time, I think the
9 facet that I represent in that diamond has contributed
10 uniformly, I think, to a bright court itself.

11 **Q. Thank you, Judge. Judge Huff, what do you think**
12 **your reputation is among the attorneys that practice before**
13 **you, and the court personnel?**

14 A. That reminds me of a joke I was asked on that
15 question, one time before. But I'm not going to say it.
16 But I think -- I would hope, and I believe, that any
17 litigant that has appeared before me, has walked away
18 saying, "He's listened to my case. He's prepared for my
19 case. And whatever he does, I will have faith in what he
20 does because he was prepared, because he was listening."

21 I've tried not be combative. There are times
22 when you have to be stern, no doubt about that, and you
23 have to probe. And some people don't like that. They
24 particularly don't line yes-or-no questions. But I think
25 most attorneys would feel like that I am intellectually

1 prepared, procedurally prepared, fair and deliberative, and
2 honest in my evaluation of the cases and not swayed by
3 politics or prejudice.

4 Q. Thank you, Judge. The Commission received 469
5 ballot box surveys regarding you, with 14 additional
6 comments. A ballot box survey, for example, contained the
7 following positive comments:

8 "Terrific judge. Outstanding jurist. Excellent
9 judicial temperament."

10 Two had small concerns in -- excuse me -- two had
11 concerns, and one questioned your courage in writing
12 opinions. What would you say to that concern?

13 A. Well, if that comment related to the fact that I
14 may jump into the foray of something that's politically
15 hot, and choose -- and use that as an opportunity to
16 express something that might draw attention to me, I don't
17 do that.

18 I've operated on a principle, since I've been on
19 the bench, which a lot of you may be familiar with, the
20 KISS -- the KISS principle: Keep is Simple, Stupid. And
21 it's not my intent to fill up West Law or anything else.
22 My intent is to go concisely to the issue that is before
23 me, answer the question, and make it clear and concise in
24 that answer.

25 I also have what I call The 18-Mile Rule, which

1 my law office was 18 miles from the front door of the
2 courtroom, and I wanted an opinion that may have come out
3 on a Monday, when they were going to court. And they would
4 have the ability to read it, understand it, and apply it
5 the minute they walked into the courtroom.

6 I didn't want -- I did not want to write a thesis
7 or a law review article. And I don't perceive that to be
8 my intention, as a judge on the court, but to be as concise
9 as I can and to be as precise as I can.

10 The pride of authorship on the panels that I
11 serve, is not the first and foremost consideration. We
12 operate as a panel. We operate as three judges. And it is
13 my intent to see that whatever opinion is issued is well
14 analyzed, intellectually secure, and strong in its
15 analysis. And sometimes that doesn't lend itself to be
16 lyrical, or to provide high and erudite quotes to attract
17 attention.

18 We're there to write a body of law. And I don't
19 publish a lot. If it doesn't add to the body of law, if it
20 doesn't further explain an issue, then I generally will not
21 publish.

22 **Q. Thank you, Judge. I just have some housekeeping**
23 **issues at this time. Judge Huff, since submitting your**
24 **letter of intent, have you contacted any members of the**
25 **Commission about your candidacy?**

1 A. No, I have not.

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

6 A. No, I have not.

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

11 A. I have not. And I'm not aware of any that have.

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

15 A. Absolutely. Yes.

16 MS. DEAN: I noted that the Midlands
17 Citizens Committee reported that Judge Huff is qualified in
18 the criteria of constitutional qualifications, physical
19 health and mental stability. The committee found him well
20 qualified in the remaining categories of ethical fitness,
21 professional and academic ability, character and
22 reputation, experience, and judicial temperament.

23 The committee commented that Judge Huff has
24 served with distinction on the court -- on the South
25 Carolina Court of Appeals bench, and has been a stalwart of

1 the court. The committee has said in sum, that Judge Huff
2 is an exceptional jurist.

3 I would just note for the record that any
4 concerns raised during the investigation evaluating the
5 candidate, were incorporated into today's questioning. Mr.
6 Chairman, I have no further questions.

7 CHAIRMAN SMITH: Thank you. Any questions
8 for Judge Huff?

9 (Hearing none.)

10 CHAIRMAN SMITH: Judge Huff, let me just
11 thank you for being here. And let me tell you, your
12 comments -- and I mentioned this to Justice Kittredge
13 before, you can tell a lot about a judge when you have
14 anonymous comments. 'Cause people, not knowing who's going
15 to make it, but some of your comments are just -- are
16 outstanding. And I just wanted to tell you a couple of
17 them, what you had mentioned earlier, "An excellent example
18 of a judge, perfect judicial temperament, listens to both
19 sides and not quick to make a judgement. Cordial, kind,
20 thoughtful and gracious to lawyers."

21 That's what all judges should strive to be.

22 JUDGE HUFF: I do want to say this, 'cause I
23 told my brother I was going to say this, who is likewise a
24 lawyer: One of the screenings I went through, they said,
25 "We got some additional questions, would you come back and

1 answer them?"

2 And so I said, "Yes." And so I went back.

3 And they said, "We don't know how to pose
4 the question to you. It's a bit ticklish."

5 And I said, "Well, just say it out loud."

6 And they said, "Well, some people say you're
7 kind of stupid."

8 And I said, "Well, I'd have to know the
9 context and from which that comment came. Can you tell me
10 that?"

11 "Oh, no. Everything is private."

12 And I said, "Well, I have a response, and
13 I'm sure that it's quite accurate."

14 And they said, "What's that?"

15 And I said, "I think you got me confused
16 with my brother."

17 CHAIRMAN SMITH: Now that you mentioned your
18 brother, I wasn't going to mention that 'cause I know that
19 would be a negative. We all love Jim. And we love it when
20 he comes up here and testifies on DUI legislation. He is
21 not wrong on anything --

22 JUDGE HUFF: No.

23 CHAIRMAN SMITH: -- that he testifies to.

24 JUDGE HUFF: I told him he's never met
25 anybody that wasn't innocent, and I've never met anybody

1 that wasn't guilty. 'Cause the jury's already found them,
2 generally, by the time they get to me on appeal.

3 CHAIRMAN SMITH: That's exactly right. All
4 right. Judge Huff -- Senator Rankin.

5 EXAMINATION BY SENATOR RANKIN:

6 Q. We were given an article that I invoked a little
7 while ago with Justice Kittredge, and I will give this -- a
8 copy of this to you as well.

9 SENATOR RANKIN: Ma'am, if you'll give the
10 judge one of those.

11 Q. Or I'll give you mine before it's over. You
12 don't need it now.

13 A. Okay.

14 Q. The theme of this is my invitation to you to
15 judge how we --

16 A. Oh, Lord.

17 Q. -- judge you.

18 A. Okay.

19 Q. And so things that you see that we're doing
20 correctly, things that you suggest are off base. And this
21 is not a loaded question, so --

22 A. This is discussed within our ranks as well. And
23 having been there as long as I have, I've seen a lot of
24 evolution in that process. As a matter of fact, my first
25 election was when the Bar was invited to participate. And

1 it brought its own rancor and concerns. And it has evolved
2 and developed since then.

3 But if the question is what do I think about the
4 process in how we judge us as judges in this review
5 process? It is hard to find a perfect process. It's going
6 to be very difficult. We are asked as judges to be
7 separated from some of the concepts that we have as
8 individuals, and to judge fairly and impartially. And it
9 is not something that is innate within us.

10 We all have our own prejudice and our own biases,
11 from the first day our mother takes our hand, to the first
12 time my father touches our bottom. We change and we
13 develop and we in that process have concepts and views that
14 may be right, but also may be wrong. And the difficult
15 thing is learning to know which is the difference, and to
16 correct that which is wrong.

17 I think as far as the composition of the
18 Commission, it's pretty right. It's pretty good. It's
19 varied. It has more than just lawyers on it. And I think
20 that's good. It has long-serving members of the
21 legislature and it has new members, or at least it should.
22 It should.

23 If you want the candor of a person who can't run
24 again, I'll be glad to give that to you. But in that
25 process, I would say this: I've always felt that the more

1 competition you can have, the better. Even within judicial
2 recommendations who are qualified and who can run. This
3 committee and the legislature decided that, that number
4 would be three. I don't know how objective that was, or
5 even subjective, but that's the decision made.

6 I would recommend that y'all look at that. And
7 depending on the number that actually file, that number may
8 be able to go up or down a little bit. If you've got five
9 people that are qualified, and you can select three, what's
10 the harm of adding the other two and having all five go
11 out? But then you may reach a point to where that's not
12 practical.

13 I also know this, as having served as a
14 politician, that even though you go through screening, you
15 know what the legitimate opportunity is that you might have
16 to be successful. Clearing the screening process is only
17 the first part of the process.

18 The second process is getting the favorable
19 review of the Joint Session in your efforts. And so I
20 think the number that you report out maybe could be
21 modified to give more people an opportunity.

22 The other thing that I would recommend that you
23 try to do as much as you can is to eliminate the politics
24 as much as you can. It's going to be hard. You can't walk
25 up a floor into a committee room and not have some

1 influence still in there. But the more you can do that,
2 the more that you can eliminate that.

3 And I don't know that it's actual politics. But
4 at least -- and I haven't read this yet, but the perception
5 can creep in. And anything you can do to keep and to
6 lessen the perception that, that may be affecting what you
7 do, the better it will be.

8 **Q. Two quick questions. Testing. Don't go there.**

9 A. I'm not going there.

10 **Q. The second, though, is in terms of the objective**
11 **-- and I hate the term "metrics." But the objective**
12 **criteria in terms of the bench bar --**

13 A. I know.

14 **Q. -- et cetera.**

15 A. I will say this: I've not sat down and looked at
16 the age of our bench, but you have on the horizon a lot who
17 are getting near retirement. There's going to be a wave
18 coming. As to those judges, I think deference should be
19 given to experience, involvement, if they have a body of
20 work through opinions. And their efforts can express their
21 qualifications.

22 As to the new ones coming on, I don't know what
23 the metrics should be there. But I know that as we
24 approach each one of our screenings every six years, maybe
25 there ought to be a contact with the bench, halfway through

1 that, and maybe looking and seeing how they're doing. Are
2 there any problems that are arising quicker than waiting
3 for six years, and having the surveys go out and having the
4 Bar review?

5 I mean, it would have helped me as a judge,
6 particularly when I was a new judge on the Court of
7 Appeals, 'cause I -- I didn't have the experience of
8 sitting on the bench. Which at that time, I still think is
9 a -- is an advantage as well.

10 Because those that come from the bench tend to
11 think as a trial judge, when in fact what we're looking at
12 is more the compliance with the rules: Did you preserve an
13 issue? Did you raise an objection and then follow up --
14 particularly if it was a -- some pretrial motion, did you
15 follow up and then raise the objection during the trial?

16 We don't act as trial judges. And I would guess,
17 over the years that I've been on the bench seeing that come
18 in, that might be something to talk with, with the trial
19 bench as well; when they moved to the appellate level, have
20 some experience for them, or have some suggestions for
21 them.

22 You to us on the bench, when we go through a
23 screening, I'm telling you it's -- it's like, you know,
24 going to Olympus. Our fates are in your hands, so to
25 speak. There is a lot of unknowns about the process, in

1 our respects, that are formed by what we hear from our
2 brothers.

3 I think there ought to be some more involvement
4 in those that are involved in the process of reviewing us
5 and looking at us and analyzing us, to let us know ahead of
6 time, you know, from what we're hearing, generally, "This
7 is a strong trait that you have. Continue to develop it.
8 This is a weakness that we're seeing. You know, here's
9 some suggestions, some articles, some people that, you
10 know, you need to talk to," or whatever.

11 You could make us better judges than just looking
12 at us every six years, I think. That's just my opinion.
13 And to me that might be a better use of some of the retired
14 appellate judges, just sit down with the new ones that come
15 on, and explain to them what they can expect.

16 Now, they will learn from their body, itself, or
17 members of the Supreme Court. Members of the Court of
18 Appeals will take others under their wings and they'll talk
19 with them. But it might be a pre sitting on the bench
20 opportunity for a panel that has served there before, to
21 say, you know, "This is what you're probably going to see.
22 This is probably what's going to happen. You know, we'd
23 like to offer you our opinions as to what you need to be
24 concentrating on."

25 The biggest word that I relied upon is

1 "fairness." 'Cause I don't care what judge you sit at, the
2 first complaint you tend to hear is, "They weren't fair.
3 They didn't listen to me. They had already had their mind
4 made up. They were of this political party," whatever.

5 And I worked very hard to try to remove that when
6 I sat on the bench. And apparently from some of your
7 comments, you know, as I enter my waning period of time,
8 I've been successful in doing that. And that makes me feel
9 good.

10 **Q. You're looking good.**

11 A. Talk to my wife.

12 **Q. We're not talking about that look.**

13 A. No, I was playing golf this week and the guy -- a
14 younger guy than me walked up and put his hand on my
15 shoulder, and he said, "Sir" -- and that got me right then
16 -- he said, "How old are you?"

17 And I said, "Why?"

18 And he said, "Well, you hit the ball pretty
19 good."

20 And I said, "Well, the first thing is, stop
21 calling me 'sir.'" But, you know, I have learned very
22 quickly -- and I thank the time I had in the -- in the
23 Legislature. I learned this, that you never quit learning.
24 You never quit learning.

25 And, you know, I don't care what suit you wear or

1 what color are you or what stripe you are politically,
2 we're all people. We're all people. We all have the same
3 problems: not enough money, a child that's causing
4 problems, whatever. And when you think of it in that
5 respect, it makes the job a whole lot easier.

6 And one of the policies I had when I was in
7 politics is, they called me "iron butt." 'Cause when I sat
8 down, if a tax payer was in front of me, he deserved to be
9 heard. I don't care if he drove ten miles or a hundred
10 miles, if he's standing in front of you, it's important to
11 him. And you're paid to listen.

12 SENATOR RANKIN: Judge, thank you.

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

15 (Hearing none.)

16 CHAIRMAN SMITH: Judge Huff, thank you so
17 much for your time today, and for appearing in front of us.
18 This concludes this portion of our screening process.

19 I want to take this opportunity to remind
20 you that, pursuant to the Commission's evaluative criteria,
21 the Commission expects candidates to follow the spirit as
22 well as the letter of the ethics laws. And we will view
23 violations or the appearance of impropriety as a serious
24 and potentially deserving of heavy weight and screening
25 deliberations.

1 On that note, and as you know, the record
2 will remain open till the formal release of the report of
3 qualifications, and you may be called back at such time if
4 the need arises. I thank you for offering, and I thank you
5 for your service to the state of South Carolina.

6 JUDGE HUFF: Thank you, Chairman. Thank
7 you, Committee.

8 (Candidate excused.)

9 THE HONORABLE THOMAS W. COOPER, JR., being
10 duly sworn and cautioned to speak the truth, the whole
11 truth and nothing but the truth, testifies as follows:

12 CHAIRMAN SMITH: Are the personal data
13 questionnaire and the sworn statement before you, the
14 documents that you submitted to the Commission?

15 JUDGE COOPER: They appear to be, yes.

16 CHAIRMAN SMITH: Are they both correct?

17 JUDGE COOPER: Yes, sir. They were the
18 documents I submitted. And they appear to be correct.

19 CHAIRMAN SMITH: Is there anything that
20 needs to be changed or updated at this time?

21 JUDGE COOPER: No, sir.

22 CHAIRMAN SMITH: Do you object to making
23 these documents and any amendments, if applicable, a part
24 of the record of your sworn testimony?

25 JUDGE COOPER: I do not object.

1 CHAIRMAN SMITH: It will be done at this
2 point.

3 JUDGE COOPER: Yes, sir.

4 CHAIRMAN SMITH: If you'll hand that to
5 Lindi for me, please.

6 (EXHIBIT NO. 8 - JUDICIAL MERIT SELECTION
7 COMMISSION PERSONAL DATA QUESTIONNAIRE OF THE
8 HONORABLE THOMAS W. COOPER)

9 (EXHIBIT NO. 9 - JUDICIAL MERIT SELECTION
10 COMMISSION SWORN STATEMENT OF THE HONORABLE
11 THOMAS W. COOPER)

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

21 We have no affidavits filed in opposition to
22 your election, and no witnesses are present to testify. Do
23 you wish to make a brief opening statement?

24 JUDGE COOPER: No, sir. I recognize that
25 you are running behind, and I don't want to belabor the

1 record any more. I am glad to yield to your questions and
2 get right on with it.

3 CHAIRMAN SMITH: Thank you very much.

4 JUDGE COOPER: Yes, sir.

5 CHAIRMAN SMITH: You understand you're
6 standing between us and lunch.

7 JUDGE COOPER: Yes, sir. And I left five
8 colleagues up there in the room upstairs, who will probably
9 not forgive me if I took any more of your time than I have
10 to.

11 CHAIRMAN SMITH: Ms. Anderson is going to
12 ask you some questions, please, sir.

13 MS. ANDERSON: Good afternoon, Judge Cooper.

14 JUDGE COOPER: Ms. Anderson.

15 EXAMINATION BY MS. ANDERSON:

16 **Q. You're being screened for reappointment as a**
17 **retired judge on the circuit court bench. Why do you want**
18 **to continue serving as a retired circuit court judge?**

19 A. For the same reason that I had wanted to serve
20 for the last 25 years. I have -- my service on the circuit
21 bench has been the highlight of my professional life in
22 many respects. It has given me a small chance to make a
23 difference, I think, in the lives of others. I hope for
24 the better.

25 It has more -- more than that, allowed me to

1 continue association with lawyers that I enjoyed when I was
2 a practicing lawyer, and that I've enjoyed on another level
3 now as a -- as a trial judge.

4 It has exposed me to a larger audience, in that I
5 -- I have a chance to meet jurors every Monday morning. I
6 would be doing that this morning in Lexington, except I
7 yielded to Judge Keesley who's doing that.

8 I see that role, frankly, as a -- as a circuit
9 judge, a trial judge, and dealing with jurors as a -- as
10 giving a trial judge an opportunity to be an ambassador for
11 the court system to the public as large.

12 Most of the folks who come before us as jurors
13 and as litigants, their only experience with the court
14 system will be the experience that they have before us.
15 And if we appear to be proficient and considerate and
16 punctual and -- and fair in all of those things, then
17 hopefully that will be the exposure that carries over to
18 the balance of the judiciary as well. And so I see that as
19 an opportunity as well.

20 The whole of the -- the whole of my experience as
21 a trial judge has been -- has been pleasant and uplifting.
22 And sometimes it's difficult. Sometimes it's tiring. But
23 at the end of the day, I have never yet in my 25 years come
24 to work on any day that I -- that I did not look forward to
25 the day's work ahead of me.

1 **Q. Judge Cooper, how much time do you spend, per**
2 **month, in your capacity as a retired judge?**

3 A. I hold court one week a month, each month.
4 Except December. And beyond that, my courtroom experience
5 -- because it's limited to general sessions court/criminal
6 court, I have very little contact with the court, outside
7 of that one-week service.

8 I have chosen to serve as a criminal court judge
9 by -- rather than -- common pleas as well, because I found
10 that without a law clerk and without a secretary I had
11 difficulty keeping up with the docket in common pleas,
12 because of pretrial motions and orders that have to be
13 done, post-trial motions and orders that have to be done.

14 Those are the sorts of things that make it
15 difficult for someone without a staff to type up those
16 orders, and to do that sort of thing almost impossible.
17 Criminal court on the other hand, it's Monday to Friday,
18 and with some before and some work after. But not -- not
19 very much.

20 In addition, however, to the actual work in the
21 courtroom, I serve as chair of the Commission on Judicial
22 Conduct. And that takes a little bit of time. Although
23 it's not directly related to the trial work, it's certainly
24 related to my -- to my function as a circuit judge.

25 **Q. If you were reappointed as a retired judge, would**

1 **you wish to alter your workload?**

2 A. No, not really. I would do more if they needed
3 for me to do more. Sometimes, however, they have
4 difficulty in keeping all of us retired active judges busy.
5 A couple of years ago, in spite of my willingness to work
6 every -- every month for one week, for the first four
7 months of the year there was no court available for me.

8 And so -- and so that might still be the case.
9 If I saw -- if I saw backlogs, or something that needed
10 attention by judges, certainly I would -- I would make
11 myself available to that. But voluntarily, I would not go
12 beyond what I'm doing now.

13 I enjoy the flexibility of the one week in court;
14 it keeps me relatively involved in the process. I also
15 teach a class at the law school every other week, and that
16 gets me involved in some other things that -- and I do some
17 mediations from time to time as well.

18 So I'm happy with my schedule, now, if the court
19 administration is happy with it.

20 **Q. What do you think your reputation is among**
21 **attorneys that practice before you?**

22 A. Well, you know, if I -- if I go by what they tell
23 me, I'm the greatest thing in the world. So I'm not sure,
24 quite frankly, how to -- how to evaluate that. I have
25 tried, my entire time on the bench, to be fair. I don't

1 have the ability to be great, but I do have the ability to
2 be fair. And I tried to be fair throughout. And I hope
3 that if I were to ask them, if I had met that
4 qualification, that they would say yes. And if they did,
5 then that would be all of -- all of the praise that I would
6 need.

7 **Q. Do you think court personnel would also concur?**

8 A. I hope so. I try to -- I try to get along with
9 all my court personnel. They hold my future in their
10 hands, you know. They're the most important people around.
11 'Cause court reporters, especially, can make us look real
12 good or real bad.

13 And it's a collaborative effort. Obviously,
14 we're all part of the same team, just doing different
15 things. And being cordial to the folks that you work with,
16 being personable, being concerned -- I mean, genuinely
17 concerned, not just giving lip service to it -- I think
18 that's probably what we ought to do whether we're judges or
19 not. And I have found that has always been reciprocated by
20 the -- by the personnel that I work with. I hope that they
21 would share that. But I have no way of knowing.

22 **Q. Judge Cooper, the Commission received 583 ballot**
23 **box surveys regarding you, with 64 additional comments.**
24 **Some of the positive comments are, and I quote:**

25 **"A mentor to all attorneys, and a phenomenal**

1 jurist. Truly acts as a ideal judge should act. One of
2 the best we've ever had in South Carolina, and the epitome
3 of what a judge's judicial temperament and demeanor should
4 be."

5 Out of all those comments, only one of the
6 written comments expressed concern, and that regards the
7 length of time that it can take to issue an order. And I
8 will quote this, the comment:

9 "Judge Cooper tried a case and waited eight years
10 to issue a ruling in one case, and almost three years in
11 another." What response would you offer to this concern?

12 A. That's true. I'm not sure that it's -- if the
13 eight years, I'll take their word for it. It was a civil
14 case that I tried as a specific referee here in Richland
15 County, several years ago, obviously. It involved the sale
16 of a truck stop on I-20. I was appointed to try the case,
17 but I took it on voluntarily -- and got paid for it, as a
18 matter of fact.

19 The trial lasted about 12 or 13 days. It was
20 spread out over a period of time. The main issues that
21 were confronting me were not legal issues, as I found out
22 after the fact, they were accounting issues. The purchaser
23 of the truck stop sued the seller of the truck stop, and
24 alleged that he had received bad information -- financial
25 information, false information, in fact, regarding the

1 workings of the truck stop before he had gotten involved.

2 I tried the case. The buyer, the plaintiff in
3 the case, had expert witnesses to testify that the
4 bookkeeping that had been done was improperly done, that
5 the tax returns that had been done were false, and he had
6 an expert on truck stop operation that testified for him.

7 The seller presented his experts -- two, I think,
8 in fact, on the issue of the accounting, that the
9 accounting was done properly, that -- that the operations
10 were -- of the truck stop were properly reflected in the
11 records and so forth.

12 At the end of the day, the main issue between the
13 two of them was whether or not the actions of the seller,
14 in presenting the records that he had presented, were false
15 and had misled the buyer into paying more than the thing
16 was worth.

17 The seller of the truck stop was a family
18 operation. He had been in the truck stop business all of
19 his life, his family had been in it before. He had ran it
20 hands-on.

21 The buyer was a very intelligent man who was
22 looking for an investment. He was looking for a return on
23 his income. His wife had been a practicing physician. And
24 she had, had some health problem that had cut into her
25 ability to practice, and so they -- he was looking for some

1 other form of income. And he looked at the books of the
2 truck stop, he had it evaluated by real estate people and
3 the bank, and it looked like a pretty good deal for him.
4 And so he bought it.

5 And immediately, he began to change the
6 operations. He put a relative in there, in charge, who had
7 never -- who's background was teaching English, and had
8 never been involved in that.

9 He immediately, dramatically, changed the
10 operations of the truck stop, by closing some of the --
11 some of the parts of it. The truck stop had about five
12 centers of income: A restaurant, the gas pump, the service
13 pump, a gift shop -- and there was one other, but I can't
14 remember.

15 Most of those were dramatically changed, almost
16 at the outset. And so his income began to fall. And
17 ultimately, that's what I found was the reason for the
18 truck stop's failure.

19 By the time I got involved, the truck stop had
20 been sold, now, to a third party. And the doctor and his
21 wife were separated at that time, as well as I recall.

22 When I took that under advisement, and began to
23 look at it, it occurred to me that I was -- I was struck
24 with competing experts who looked at the same material and
25 found exactly the opposite conclusion. And of course

1 that's not unusual, quite frankly. That happens quite
2 often.

3 But as a result of that, I found that I had to do
4 more than just look at the legal issues. I had to actually
5 become a quasi-accountant. I had to look at the accounting
6 figures that had been accumulated, to find out whether
7 one's -- one's expert was supported by those figures, or
8 whether the other's was done like that.

9 It was a monumental task. There were -- there
10 were tax returns, from both the buyer and the seller, over
11 a period of time. There were daily accountings; that is,
12 every dime that would come in would be tabulated every day,
13 and formulated into multiple incomes that was generated to
14 annual income statements.

15 And, quite frankly, I was overwhelmed by that. I
16 am not an accountant by -- as a matter of fact, I spent six
17 weeks in business administration school at the Carolina --
18 University of South Carolina, before I realized that I was
19 a liberal arts guy.

20 And so I would take that up and I would look at
21 it. And I would get through and I would start drafting and
22 order, and then something else would happen, I would have
23 to term -- go to a term of court, or other interruptions,
24 and I'd have to put it aside. I was having to do all the
25 typing myself.

1 And it was the sort of thing that would -- it
2 would ebb and flow, and it got harder and harder as the
3 time went by. If I'd had six weeks of uninterrupted time
4 with no -- with no other demands on my time, I could have
5 done it in far less time. It wouldn't have taken six years
6 or eight years, or whatever he said. It would still have
7 taken a couple of years, I think, for me to do all of that.

8 But I didn't have that time. And I didn't give
9 the time to it -- that it required in an uninterrupted
10 fashion, 'cause I simply didn't have it.

11 I don't have a good excuse for that. As a matter
12 of fact, I -- part of what I learned in that -- or re-
13 learned, I should say from my -- from my experience in the
14 past, that all too often the perfect is the enemy of the
15 good. I was looking for the perfect. And I couldn't find
16 the perfect.

17 And I was for a long time unwilling to sign off
18 on anything less than that. I finally realized that I was
19 never going to find the perfect in that, after I had tried
20 to go behind and find that the income tax statements were
21 correct or if it -- the financial statements were correct.
22 I arrived at a -- at a decision which I felt was fair. And
23 I -- and I ruled on it.

24 There's no way I can undo the facts of that
25 particular circumstance. As I say, when I got into it the

1 business had been sold. Thankfully, there was no ongoing
2 business that was -- I was being concerned with; it was all
3 after the fact. But it was still a delay.

4 The only thing I can say is, that I will never
5 repeat that. Because since that experience, I have learned
6 that I'm not equipped to deal with those sorts of things as
7 a mediator or as an arbitrator or as a special referee.
8 And I have, in fact, since that time, turned down several
9 similar cases, rather than to repeat those errors of the
10 past, or take a chance on repeating those errors of the
11 past.

12 And so I have no explanation other than that.
13 I'll be glad to answer any additional questions about that,
14 but I gave you an outline of what happened in that case.

15 **Q. Thank you, Judge Cooper.**

16 MS. ANDERSON: I would note that the Pee Dee
17 Citizens Committee found Judge Cooper qualified in the
18 evaluative criteria of constitutional qualifications,
19 physical health and mental stability. The Committee found
20 him well qualified in the evaluative criteria of ethical
21 fitness, professional and academic ability, character,
22 reputation, experience, and judicial temperament.

23 I would note for the record that any
24 concerns raised during the investigation, regarding Judge
25 Cooper, were incorporated into this questioning today.

1 Mr. Chairman, I have no further questions.

2 CHAIRMAN SMITH: Thank you. Any questions
3 for Judge Cooper? Mr. Hitchcock.

4 MR. HITCHCOCK: Thank you, Mr. Chairman. I
5 really don't have a question, just more of a statement.

6 Judge Cooper, I just wanted to take a minute
7 to personally thank you for your service -- your active
8 service on the bench, and also for your continued
9 willingness to serve.

10 I had the pleasure of appearing before you
11 on several different occasions, when I was a young,
12 impassioned public defender. I just want you to know that
13 you really did set the example for me of what a judge
14 should be. I also had the opportunity -- I can't say it
15 was a much of a pleasure, but coming down during the
16 Abbeville case, and watching you have to try that case for
17 over a year.

18 JUDGE COOPER: Bless you.

19 MR. HITCHCOCK: But I can tell you that -- I
20 just want to echo the comments that we heard in the ballot
21 box, that we are -- you really -- I hold you up as one of
22 the most outstanding jurists that our state's ever had. So
23 I just wanted to make that comment.

24 JUDGE COOPER: Mr. Hitchcock, I appreciate
25 that. I recall your service as a young solicitor, and you

1 were fervent in your -- in your carrying of your duties.
2 And I'm delighted to see that you continue the public
3 service as you have. Thank you so much for those comments.

4 SENATOR RANKIN: Any other questions of --
5 Senator Sabb.

6 SENATOR SABB: Mr. Chairman, not a question.
7 But I, too, feel compelled to express my appreciation to
8 Judge Cooper. He was in the 3rd Circuit, and of course I
9 was a prosecutor and a civil lawyer in front of him. And
10 as I listened to your explanation about the case that took
11 so long, I'm reminded of the number of times when many of
12 us, as lawyers and practitioners, marveled at your ability
13 to get the perfect out of what we all considered to be
14 extremely difficult situations.

15 And so to the extent that you view that as a
16 fault, just know that you hit the mark so many times for so
17 many of us. And I think that's why your ratings from the
18 lawyers were always the best in the state. And so I do
19 want to take the opportunity to express my appreciation for
20 your service.

21 JUDGE COOPER: I thank you for that,
22 Senator. And I thank you for your friendship.

23 SENATOR RANKIN: On a lighter note, Judge,
24 if you will, since you've gone into such great detail about
25 this accounting morass, I want you to offer to the

1 Commission one of your lighter tales, with not -- nowhere
2 near as much detail, but an individual -- I think it was a
3 criminal trial, and it involved eye-witnessing and some
4 type of a car. Do you recall what I'm talking about, by
5 chance? If you could give us that, if you know what I'm
6 talking about.

7 JUDGE COOPER: I do. I'm not sure how it's
8 going to add to the storehouse of knowledge, but I will --
9 it was a Union County case. And I learned a new vocabulary
10 in Union County, that I had not learned anywhere else.

11 It involved a dispute in the Walmart parking
12 lot, which obviously is a social event in Union County, in
13 the City of Union. And a young man was out there,
14 apparently, displaying his used Kawasaki motorbike that he
15 had just received. And he was -- he took great delight in
16 it. And somebody else was trying to get him to let the
17 other person drive the cycle.

18 And the owner was reluctant, for obvious
19 reasons, to let him have it. But eventually, the owner
20 gave up the motorcycle to this young person, who got on
21 there and promptly ran it into a truck out there, and
22 caused some damage.

23 And after that, there was a question about what
24 happened and -- and the eyewitnesses, one of them was
25 testifying and said, "Well, the new guy who was on it tried

1 to get out of there," and said, "he tried to crank it up,
2 and he kept trying to crank it up, but it would not stay
3 crunk."

4 And so -- and so I learned that in Union
5 County, "crunk" is a past tense of "crank." And you might
6 -- you might want to add that to your -- to your
7 vocabulary, in case you're ever are up that way.

8 REPRESENTATIVE RUTHERFORD: It is in
9 Columbia too.

10 JUDGE COOPER: I hate to take that time, but
11 since the senator asked, I'm obligated to go into that.

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

14 (Hearing none.)

15 CHAIRMAN SMITH: Judge Cooper, thank you so
16 much. This concludes our -- this portion of the screening
17 process.

18 I want to take this opportunity to remind
19 you that pursuant to the Commission's evaluative criteria,
20 the Commission expects candidates to follow the spirit as
21 well as the letter of the ethics laws. And we will view
22 violations, or the appearance of impropriety, as serious
23 and potentially deserving of heavy weight and screening
24 deliberations.

25 On that note, and as you know the record

1 will remain open till the formal release of the report of
2 qualifications, and you may be called back as such time if
3 the need arises. I thank you for offering. And I thank
4 you for your service to the State of South Carolina.

5 JUDGE COOPER: Thank you, Mr. Chairman, and
6 to the members of this Commission. You-all are the
7 guardians of the profession, so I appreciate -- we-all
8 appreciate what you do. Thank you. Have a good day.

9 CHAIRMAN SMITH: Judge Cooper, let me just
10 bring you back and let you know that your screening does
11 not -- your screening closes upon a vote today. So I'm
12 reading to you the wrong thing. Retired judges are -- you
13 don't -- you don't stay open until the report's released.

14 JUDGE COOPER: All right. Well, thank you.
15 That's some relief. I appreciate that.

16 CHAIRMAN SMITH: I just want to make sure --
17 I just want to make sure Judge King doesn't hear the same
18 spiel. How about that?

19 JUDGE COOPER: Thank you.

20 (Candidate excused.)

21 CHAIRMAN SMITH: Judge Couch, will you raise
22 your right hand, please, sir.

23 JUDGE COUCH: I will.

24 WHEREUPON:

25 THE HONORABLE ROGER L. COUCH, being duly

1 sworn and cautioned to speak the truth, the whole truth and
2 nothing but the truth, testifies as follows:

3 CHAIRMAN SMITH: Is the personal data
4 questionnaire and the sworn statement before you, the
5 documents that you have submitted to the Commission?

6 JUDGE COUCH: Yes, they appear to be. Yes,
7 sir.

8 CHAIRMAN SMITH: Are they both correct?

9 JUDGE COUCH: Yes, sir.

10 CHAIRMAN SMITH: And does anything need to
11 be changed or updated at this time?

12 JUDGE COUCH: No, sir.

13 CHAIRMAN SMITH: Do you object to making
14 these documents or any amendments, if applicable, a part of
15 the record of your sworn testimony?

16 JUDGE COUCH: I do not object.

17 CHAIRMAN SMITH: Has someone would give them
18 to the court reporter?

19 (Off-the-record discussion.)

20 (EXHIBIT NO. 10 - JUDICIAL MERIT SELECTION
21 COMMISSION PERSONAL DATA QUESTIONNAIRE OF THE
22 HONORABLE ROGER L. COUCH)

23 (EXHIBIT NO. 11 - JUDICIAL MERIT SELECTION
24 COMMISSION SWORN STATEMENT OF THE HONORABLE ROGER
25 L. COUCH)

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

10 We have received no affidavits filed in
11 opposition to your election. There are no witnesses that
12 are here to testify today. Do you have a brief opening
13 statement that you would like to make at this time?

14 JUDGE COUCH: Well, other than to thank you
15 for your time and your efforts involved in this. I
16 appreciate what you do, and then look forward to working
17 with you today.

18 CHAIRMAN SMITH: All right. Judge Couch,
19 you mentioned -- I meant to tell you this earlier, sorry
20 for the delay. We always become real optimistic of our
21 tell me. We're meeting over at the senate this time, and
22 so we're on what we call senate time.

23 JUDGE COUCH: I understand. That's quite
24 all right.

25 CHAIRMAN SMITH: Mr. Davidson, will you ask

1 him questions, please, sir?

2 MR. DAVIDSON: Good afternoon, Judge Couch.

3 JUDGE COUCH: Good afternoon.

4 EXAMINATION BY MR. DAVIDSON:

5 **Q. You're being screened for reappointment as a**
6 **retired judge on the circuit court bench. Why do you want**
7 **to continue to serve as a retired circuit court judge?**

8 A. Well, I've enjoyed my service. This happens to
9 be my twentieth year on the bench. Of course, I was a town
10 judge before that, and I guess I'm more than twenty years
11 into it. But I've enjoyed being part of the process.

12 I think I could still be of service and I look
13 forward to serving the state. So I feel like I'm young
14 enough, still, to do that. And so I'd like to continue.

15 **Q. Thank you. Could you explain to the Commission,**
16 **please, how much time you spend per month in your capacity**
17 **as a retired judge?**

18 A. Well, since my retirement in February -- let's
19 see, the Chief Justice asked me to go to Charleston and be
20 of assistance to Judge Dennis there, in implementing a
21 judge-run general sessions docket. So I've been down there
22 two weeks per month since then. That will end in December.
23 Judge Dennis is fully able to get that running, so it's up
24 and running and going. And so I'm going to be about one
25 week a month, thereafter.

1 **Q. Thank you. Would you wish to alter, that**
2 **specific arrangement notwithstanding, your general workload**
3 **if you're reappointed?**

4 A. No, I've enjoyed the two weeks a month. Going to
5 Charleston away from Spartanburg has been a little bit
6 difficult, in not having an office and a law clerk and a
7 secretary. But no, I've enjoyed the work. And I would
8 look forward to continuing that.

9 **Q. Thank you, Judge Couch. The Commission received**
10 **325 ballot box surveys regarding your candidacy, with 20**
11 **additional comments. The ballot box surveys, for example,**
12 **contained the following positive comments:**

13 **"Judge Couch is one of the best judicial**
14 **temperaments as a trial judge that I have ever seen in over**
15 **40 years of practice." Another stated, "One of the most**
16 **level-headed -- neutral judges I've witnessed. Very**
17 **methodical and reflective and deliberative. A pleasure to**
18 **appear before on any side."**

19 **Three of the written comments, however, expressed**
20 **concerns. One comment stated that, "Judge Couch can come**
21 **across harshly in his courtroom."**

22 **What response would you offer to this concern?**

23 A. Well, not knowing the context in which that
24 person made that comment, I can -- I can assure you that I
25 try not to be harsh in the courtroom. But if I feel that

1 someone is not complying with the rules, someone's not
2 following my rulings, I also try to maintain control of the
3 courtroom. And I suppose someone may take that as being
4 harsh. I would take that as maintaining control of my
5 courtroom.

6 So I don't know the context in which that comment
7 was made, but I try not to be harsh. But I'm sure if I
8 feel someone has stepped out of bounds, I could be.

9 **Q. Thank you. The other two negative comments**
10 **generally questioned your ability to be impartial in**
11 **deciding a case. What response would you offer to those**
12 **comments?**

13 A. I have tried to and do feel that I have
14 maintained impartiality in all the cases that I've handled.
15 I make litigants aware of any potential conflicts that I
16 feel that I might have. Again, not knowing the context of
17 the case in which that comment's being made, it's difficult
18 for me to respond directly.

19 I have found in my -- quite often, I can't tell
20 you who the lawyers are or the litigants names. I could
21 tell you the issues and what's going on, because that's
22 what's important to me. So I don't -- I don't know the --
23 what's that's referring to. But I can assure I make every
24 effort to be impartial, and not be influenced by the
25 litigants.

1 **Q. Thank you, Judge Couch.**

2 MR. DAVIDSON: Lastly, I note that the
3 Upstate Citizens Committee found Judge Couch to be
4 qualified in the evaluative criteria of constitutional
5 qualifications, physical health and mental stability, and
6 well qualified in the remaining evaluative criteria of
7 ethical fitness, professional and academic ability,
8 character, reputation, experience, and judicial
9 temperament.

10 I note for the record that any concerns
11 raised during my investigation were incorporated into the
12 questioning today. No further questions, Mr. Chairman.

13 CHAIRMAN SMITH: All right. Thank you. Any
14 questions for Judge Couch?

15 (Hearing none.)

16 EXAMINATION BY CHAIRMAN SMITH:

17 **Q. Judge Couch, I have one question for you. And I**
18 **reviewed your comments, and I want you to explain to me one**
19 **of the comments, what this means. It says, "A judge's**
20 **judge."**

21 A. I'm not sure --

22 **Q. I think a lawyer's judge is a more apt**
23 **description --**

24 A. I would think so.

25 **Q. -- than a judge's judge.**

1 A. Well, maybe they feel that I would be an example
2 for other judges. I don't know. I don't know.

3 **Q. Well, I thought that was interesting.**

4 CHAIRMAN SMITH: All right. Judge Couch, I
5 appreciate your service to the State of South Carolina. I
6 appreciate what you do. And this will conclude the
7 hearing. And we have a long admonishment to the
8 candidates, but since you're a retired judge it doesn't
9 apply to you. So we appreciate --

10 JUDGE COUCH: I understand.

11 CHAIRMAN SMITH: -- your coming forward.
12 And thank you for the great job that you do.

13 JUDGE COUCH: And, again, thank you for your
14 efforts in this regard. Good afternoon.

15 (Candidate excused.)

16 CHAIRMAN SMITH: Judge King, welcome. How
17 are you doing today?

18 JUDGE KING: Thank you, sir. Good
19 afternoon.

20 CHAIRMAN SMITH: Judge King, please raise
21 your right hand.

22 THE HONORABLE HOWARD P. KING, being duly
23 sworn and cautioned to speak the truth, the whole truth and
24 nothing but the truth, testifies as follows:

25 CHAIRMAN SMITH: Judge King, the personal

1 data questionnaire and the sworn statement before you, are
2 those documents that you've submitted to the Commission?

3 JUDGE KING: Yes.

4 CHAIRMAN SMITH: And are both of them
5 correct?

6 JUDGE KING: Yes.

7 CHAIRMAN SMITH: And does anything need to
8 be changed or updated at the time -- at this time?

9 JUDGE KING: No, I don't believe so.

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

13 JUDGE KING: I have no objection.

14 CHAIRMAN SMITH: At this point, if you'll
15 hand the -- those two, we'll make those a part of the
16 record.

17 (EXHIBIT NO. 12 - JUDICIAL MERIT SELECTION
18 COMMISSION PERSONAL DATA QUESTIONNAIRE OF THE
19 HONORABLE HOWARD P. KING)

20 (EXHIBIT NO. 13 - JUDICIAL MERIT SELECTION
21 COMMISSION SWORN STATEMENT OF THE HONORABLE
22 HOWARD P. KING)

23 CHAIRMAN SMITH: Judge King, the Judicial
24 Merit Selection Commission has thoroughly investigated your
25 qualifications for the bench. Our inquiry has focused on

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

7 We have received no affidavits filed in
8 opposition of your election, and no witnesses are here
9 today to testify. Do you have a brief opening statement
10 that you wish to make before us?

11 JUDGE KING: The only statement I would make
12 is, that I've enjoyed my 21 years on the bench. And I
13 would look forward to continue to serve.

14 CHAIRMAN SMITH: Great. Nice statement.
15 All right. Ms. Anderson's going to ask you some questions.
16 Judge, also let me apologize for making y'all wait. I tell
17 everyone we were optimistic with our time -- our start time
18 over there. So we appreciate your patience.

19 JUDGE KING: Well, I think the judiciary
20 sometimes has the same problem.

21 MS. ANDERSON: Good afternoon, Judge King.

22 JUDGE KING: Good afternoon.

23 EXAMINATION BY MS. ANDERSON:

24 **Q. You're being screened for reappointment as a**
25 **retired judge on the circuit court bench. Why do you want**

1 **to continue serving as a retired court judge?**

2 A. Well, for the same reasons I ran to start with:
3 One, is to serve. And I've enjoyed -- when I -- when I
4 first was elected 21 years ago, and served 11 years active,
5 and then continued -- wanted to continue serving
6 afterwards.

7 And I just enjoy the work. I enjoy what I do.
8 And I enjoy helping the people that -- of the state -- the
9 citizens of the state of South Carolina. I feel like my
10 health is still good, and that I can continue to be of
11 service to the state.

12 **Q. Judge King, how much time do you spend per month**
13 **in your capacity as a retired judge?**

14 A. Well, a lot depends on how much I'm assigned to
15 court. And that's about -- I guess if you broke it down,
16 the first -- my first four or five years as a retired
17 judge, I served the equivalent of full time, which was
18 three out of four weeks year-round. And then I dropped to
19 three out of four, for three consecutive months. And now
20 I've dropped down as far as -- actually, holding court to
21 one week a month. And I think the next -- the next
22 schedule, I'm only on for about four weeks.

23 And so that's probably about all I do, except for
24 the CLEs and things I attend to. And, of course, writing
25 any orders that I have to write, or do anything like that.

1 So when you ask how much time, it all depends on
2 how much time I'm assigned to court. But normally right
3 now, it's averaging out to be about four to eight weeks a
4 year as far as court time is concerned.

5 **Q. And if you were reappointed as a retired judge,**
6 **would you like to alter your workload?**

7 A. No, that's about right.

8 **Q. Judge King, what do you think your reputation is**
9 **among attorneys that practice before you?**

10 A. Well, I don't know what my reputation is. I hope
11 they would say, and I always felt like that this was my
12 philosophy from the start, was that "he listens and rules
13 according to the way he perceives the law and perceives the
14 issues in the case, regardless of who the parties are."

15 I've always felt like -- and one of the things I
16 felt like was that -- in this business somebody's going to
17 lose, so almost all the time you're going to have 50
18 percent as -- they're going to be unhappy with it.

19 But I've always felt like the lawyers, and
20 litigants for that matter, but lawyers especially, are not
21 unhappy with the result if they feel like that they -- they
22 may be unhappy with the result, but they're not unhappy
23 with the judge if they feel like he listened to him and
24 they got a fair chance to be heard.

25 And I think that's what I would hope that my

1 reputation is, that I do allow everybody a fair chance to
2 be heard, and then rule according to what I think is right.

3 Q. The Commission received 186 ballot box surveys
4 regarding you, with 12 additional comments. And you did a
5 lead-in for me, unexpectedly, for one of the comments that
6 was made, and I quote: "Although my client lost, I
7 commented to a colleague after the verdict, that Judge King
8 was a good man. Fair and sensible."

9 Other comments were, "Outstanding judge. He has
10 consistently proven himself to be a knowledgeable, fair,
11 and unbiased jurist during his years on the bench. South
12 Carolina citizens are fortunate that Judge King is willing
13 to continue his long history of service, even in his
14 retirement."

15 Three of the written comments expressed concerns,
16 and two of those comments regarded a perceived lack of
17 stamina to preside over cases. Do you have a comment? How
18 would like to respond to that?

19 A. I think I have more stamina than a lot of people
20 lot younger than I am. I don't -- I don't -- it's very
21 difficult to comment on something where you don't know the
22 source. And I've always thought that I worked long hours -
23 - not unreasonable hours, because I think that jurors and
24 witnesses and everybody else have the right to make sure
25 that court starts at a reasonable time and stops at a

1 reasonable time. But I've always been willing to stay and
2 work as long as necessary, and have -- I really don't have
3 a -- I can't imagine where that comment came from, because
4 I don't perceive any lack of stamina.

5 **Q. The third comment described you as rude on the**
6 **bench. And I will quote the end part of the comment: "He**
7 **makes condescending remarks, and his tone and demeanor**
8 **leave a lot to be desired." What response would you offer**
9 **to this concern?**

10 A. Again, it's kind of hard to respond to a comment
11 that you don't know where it came from. I don't know that
12 I have ever been rude or condescending to a party or a
13 witness or a victim or anybody like that. The only thing
14 that I can think of, there may be some impatience with a
15 lawyer if the lawyer is not prepared.

16 I try to -- I work on this all the time. It's
17 something that I try to be patient with. But if there is
18 any -- I don't think I'm rude. But if there's any
19 impatience or anything on it, I would think that it would
20 be because I think that the lawyer is wasting the time of
21 the court or is not prepared or is not doing the things
22 that they should do. And I will tell them to move on, or
23 "let's go on to something else."

24 But I don't perceive that to be -- I don't think
25 it's rude. I think it's just being in charge of the

1 courtroom.

2 Q. Thank you, Judge King. The SLED report indicated
3 there has been a lawsuit filed against you, since your last
4 screening, and it was filed by Mr. Shaheen Cabbagestalk, an
5 inmate. Can you please explain the nature and disposition
6 of the lawsuit?

7 A. I have no idea of the nature of the lawsuit. The
8 pleading came in, and if anybody can decipher those
9 pleadings then I would welcome their comments, because I
10 have no idea what it was about.

11 It was served on me by mail. And I turned it
12 over to the AG's office, and didn't hear anything else from
13 them -- from it. I disclosed it on here on the -- on the --
14 -- before this committee, because we were asked if -- we had
15 to.

16 And then I -- in fact, I had to go to the AG and
17 find out what the disposition of it was. And they
18 furnished to me, the documents that showed it had been
19 dismissed by the court. And I furnished those dismissal
20 documents to the court -- I mean, to the committee.

21 I have no idea what the lawsuit was all about.
22 It was a rule of mandamus and why -- I was named, probably
23 along with eight or nine other people. And I challenge
24 anybody to read it and find out and tell me what it was
25 about.

1 **Q. Thank you, Judge King.**

2 MS. ANDERSON: I would note that the Pee Dee
3 Citizens Committee found Judge King qualified in the
4 evaluative criteria of constitutional qualifications,
5 physical health and mental stability. The Committee found
6 him well qualified for ethical fitness, professional and
7 academic ability, character, reputation, experience, and
8 judicial temperament.

9 I would note for the record, that any
10 concerns raised during the investigation regarding Judge
11 King, were incorporated into his questioning today. Mr.
12 Chairman, I have no further questions.

13 CHAIRMAN SMITH: Thank you. Is there any
14 questions of Judge King?

15 (Hearing none.)

16 CHAIRMAN SMITH: All right. Judge King, I
17 appreciate your service. This will conclude your process
18 today. But I also want to thank you for your service to
19 the state of South Carolina. You have served as law
20 president of the South Carolina Bar and as an active judge
21 and a retired judge over a number of years. And we thank
22 you for your service.

23 JUDGE KING: Thank you. Thank you for
24 listening to me. Thank you.

25 (Candidate excused.)

1 CHAIRMAN SMITH: Judge Macaulay, I
2 personally apologize to you for the delay. We were a
3 little optimistic in our start time, so we're running
4 behind. We appreciate your patience.

5 Judge Macaulay, will you raise your right
6 hand, please, sir.

7 THE HONORABLE ALEXANDER STEPHENS MACAULAY,
8 being duly sworn and cautioned to speak the truth, the
9 whole truth and nothing but the truth, testifies as
10 follows:

11 CHAIRMAN SMITH: Judge Macaulay, the
12 personal data questionnaire and the sworn statement that's
13 before you, are those documents that you have submitted to
14 the Commission?

15 JUDGE MACAULAY: I'm sure they are. I
16 haven't -- I haven't seen -- seen anything else.

17 CHAIRMAN SMITH: And are they both correct
18 to the best of your knowledge?

19 MR. SAFRAN: Best of my knowledge, yes.

20 CHAIRMAN SMITH: All right. And does
21 anything need to be changed or updated at this time?

22 JUDGE MACAULAY: Well, let me look real
23 quick. I don't think so.

24 CHAIRMAN SMITH: All right.

25 JUDGE MACAULAY: Well, let me see. I think

1 all the ethical questions, I signed -- I signed pretty much
2 -- yeah, I gave the answer about my building in Walhalla.
3 All right. Yes.

4 CHAIRMAN SMITH: Do you have any objection
5 to us making it a part of your --

6 JUDGE MACAULAY: Oh, no. Not at all.

7 CHAIRMAN SMITH: All right. If you'll hand
8 that, so we can mark it --

9 JUDGE MACAULAY: Certainly.

10 CHAIRMAN SMITH: -- as an exhibit to your
11 screening process.

12 (EXHIBIT NO. 14 - JUDICIAL MERIT SELECTION
13 COMMISSION PERSONAL DATA QUESTIONNAIRE OF THE
14 HONORABLE ALEXANDER STEPHENS MACAULAY)

15 (EXHIBIT NO. 15 - JUDICIAL MERIT SELECTION
16 COMMISSION SWORN STATEMENT OF THE HONORABLE
17 ALEXANDER STEPHENS MACAULAY)

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

1 interest.

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

5 JUDGE MACAULAY: Not really.

6 CHAIRMAN SMITH: All right. Thank you very
7 much. Ms. Dean will ask you some questions.

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

9 EXAMINATION BY MS. DEAN:

10 **Q. Judge, you're being screened for reappointment as**
11 **a retired judge on the circuit court bench. Why do you**
12 **want to continue serving on the circuit -- as a retired**
13 **judge on the circuit court bench?**

14 A. Well, I'm sort of used to it now. It's been 22
15 years, I think. And 25 years almost before that in
16 practice of law. I'm not exactly sure if I'd be ready to
17 make the transition back to the real world. No, I mean, it
18 really is -- it's a -- I'd rather do something than not.

19 **Q. Thank you, Judge. How much time do you spend per**
20 **month in your capacity as a retired judge? And do you wish**
21 **to alter this workload if you're reappointed as a retired**
22 **judge?**

23 A. Well, one of the nice things about Oconee County,
24 is that they are very hospitable. And when I retired, they
25 moved me down the hall from my old chambers to a new

1 office, so I have a place to go and place to put my laptop
2 and I get to see a lot of nice people. And they take care
3 of me. And do I want to change that? No. And I don't
4 plan to. I think one or two weeks a month is about fine
5 for me. And so, no, I have no plans to.

6 **Q. Thank you, Judge. What do you think your**
7 **reputation is among attorneys that practice before you, and**
8 **court personnel?**

9 A. I would -- I would leave that to them. I
10 sometimes have problem getting along with my wife as well
11 as my children, so I'm not sure exactly what their response
12 would be if I asked them.

13 **Q. Thank you, Judge. The Commission received 345**
14 **ballot box surveys regarding you, with 28 additional**
15 **comments. The ballot box survey, for example, contained**
16 **the following positive comments:**

17 "Calm. Experienced. Abundance of good
18 judgement, and brilliant jurist."

19 **Some expressed concerns regarding your judicial**
20 **temperament. What response would you offer to the concern?**

21 A. I am not exactly sure what judicial temperament
22 means. I'd like to be able to say that what we do is
23 important, and it's serious. And it should be treated as
24 that. And I would -- if I've offended anybody, of course I
25 would apologize to them. But if it had something to do

1 with the progress in a court, or the progress of a case,
2 then I might not have said something that they would --
3 wanted to hear at the time. And maybe that's something
4 that they need to consider.

5 **Q. Thank you, Judge.**

6 MS. DEAN: I would note that the Upstate
7 Citizens Committee found Judge Macaulay qualified in the
8 evaluative criteria of constitutional qualifications,
9 physical health and mental stability. The Committee found
10 him well qualified in the criteria of ethical fitness,
11 professional and academic ability, character and
12 reputation, experience, and judicial temperament.

13 I'd just note for the record, that any
14 concerns raised during the investigation were incorporated
15 into today's questioning. Mr. Chairman, I have no further
16 questions.

17 CHAIRMAN SMITH: Thank you. Any questions
18 for Judge Macaulay?

19 (Hearing none.)

20 CHAIRMAN SMITH: Judge Macaulay, it's a
21 lucky day, we don't have many questions. And so I
22 appreciate you being here. This will conclude your portion
23 of the screening process. Let me thank you for your
24 service to the state of South Carolina, both as a former
25 member of this body, I believe, and for your service on the

1 bench for a number of years. We thank you so much.

2 JUDGE MACAULAY: I look around and I see
3 some familiar faces. Some of them were not here when I was
4 here. Some were here in a different capacity. But they've
5 come back, big time. Thank y'all so much. And I do
6 appreciate y'all's work. Thank you very much.

7 (Candidate excused.)

8 CHAIRMAN SMITH: Good afternoon, Judge
9 Spruill.

10 JUDGE SPRUILL: How do you do?

11 CHAIRMAN SMITH: Will you raise your right
12 hand for me, please, sir.

13 THE HONORABLE JAMES A. SPRUILL, being duly
14 sworn and cautioned to speak the truth, the whole truth and
15 nothing but the truth, testifies as follows:

16 CHAIRMAN SMITH: Judge Spruill, before you
17 is the personal data questionnaire and your sworn
18 statement. Are these documents that you have submitted to
19 the Commission?

20 JUDGE SPRUILL: They certainly appear to be.
21 Yes, sir.

22 CHAIRMAN SMITH: Are they both correct?

23 JUDGE SPRUILL: I believed them to be when I
24 submitted them.

25 CHAIRMAN SMITH: Yes, sir.

1 JUDGE SPRUILL: And I still do, if they --
2 if they're what I submitted.

3 CHAIRMAN SMITH: Is there anything you need
4 to change or need to be updated at this time?

5 JUDGE SPRUILL: I wouldn't think so. If
6 there's any question you have about any of it, if you could
7 ask me. It will take my longer than -- than my...

8 CHAIRMAN SMITH: No, sir. These are routine
9 questions. You don't --

10 JUDGE SPRUILL: A lot of time to read them.

11 CHAIRMAN SMITH: Do you have any objection
12 to us making documents -- making these documents and any
13 amendments a part of the record of your sworn testimony?

14 JUDGE SPRUILL: No, sir.

15 CHAIRMAN SMITH: All right. If you'll
16 please let her get those and mark them as an exhibit.

17 (EXHIBIT NO. 16 - JUDICIAL MERIT SELECTION
18 COMMISSION PERSONAL DATA QUESTIONNAIRE OF THE
19 HONORABLE JAMES A. SPRUILL)

20 (EXHIBIT NO. 17 - JUDICIAL MERIT SELECTION
21 COMMISSION SWORN STATEMENT OF THE HONORABLE JAMES
22 A. SPRUILL)

23 (EXHIBIT NO. 18 - JUDICIAL MERIT SELECTION
24 COMMISSION AMENDMENT OF HONORABLE JAMES A.
25 SPRUILL)

1 CHAIRMAN SMITH: Judge Spruill, the Judicial
2 Merit Selection Commission has thoroughly investigated your
3 qualifications for the bench. Our inquiry has focused on
4 nine evaluative criteria, and has included the following:

5 A ballot box survey, a thorough study of
6 your application materials, verification of your compliance
7 with state ethics laws, a search of newspaper articles in
8 which your name appears, a study of previous screenings,
9 and a check for economic conflicts of interest.

10 We have received no affidavits filed in
11 opposition to your election, and there are no witnesses
12 here today to testify. Do you wish to make any opening
13 statements?

14 JUDGE SPRUILL: No, sir.

15 CHAIRMAN SMITH: All right. Thank you,
16 Judge Spruill. Ms. Crawford will ask you some questions.

17 JUDGE SPRUILL: Maybe she'll represent me.

18 MS. CRAWFORD: Yes, sir. How are you doing
19 this afternoon.

20 JUDGE SPRUILL: Fine, thank you, Mrs.
21 Crawford.

22 EXAMINATION BY MS. CRAWFORD:

23 **Q. Judge, you're being screened for reappointment as**
24 **a retired judge on the family court bench. Why do you want**
25 **to continue to serve as a family -- retired family court**

1 judge?

2 A. I've been doing it for eight years, I guess, or
3 close to it. And I've enjoyed it. And it's a -- if
4 somebody stops you on the street and says, you know,
5 "You're certainly too young and handsome to be retired,"
6 and I say, "Oh, I fill in from time to time."

7 **Q. How much time do you currently spend per month as**
8 **your -- on the bench?**

9 A. I had told Tiffany that I would like to do three
10 weeks every six months. Since I told her that, I've gotten
11 two or three times, four weeks, and two or three times, two
12 weeks. So about three weeks is what I would like.

13 And in addition -- that's scheduled time. In
14 addition to that, when there is something wrong in our
15 neighborhood, and somebody needs to go someplace to take
16 the baby to the doctor or something, maybe -- but they do
17 have babies.

18 **Q. Yes, sir**

19 A. -- to the doctor or something like that, I'm glad
20 to do it. And I do. But scheduled time to about three
21 weeks every six months is what I would like.

22 **Q. Judge Spruill, what do you think your reputation**
23 **is among the attorneys that practice before you, and court**
24 **personnel?**

25 A. I don't know. A lot of them, I like. So I would

1 hope that some of them like me.

2 **Q. Personnel as well?**

3 A. Yes.

4 **Q. Judge, the Commission received 224 ballot box**
5 **surveys regarding you, with ten additional comments. The**
6 **ballot box survey, for example, contained the following**
7 **positive comments:**

8 "A brilliant mind. A very compassionate judge.
9 And the bench and the Bar is so very lucky that Judge
10 Spruill wants to work."

11 Two of the written comments expressed concern
12 with your work ethic and energy level now that you're in
13 retired status. What response would you offer to that
14 comment?

15 A. I don't know exactly what the comments were. But
16 I don't know that -- I am there when the time comes to be
17 there. And I stay as long as the -- there is work to be
18 done. And I call it the best I can. I may -- I may make -
19 - I make mistakes, I'm sure. Everybody would.

20 **Q. Yes, sir. Thank you, Judge.**

21 MS. CRAWFORD: I note that the Piedmont
22 Citizens Committee found Judge Spruill qualified in the
23 evaluative criteria of constitutional qualifications,
24 physical health and mental stability. And the Committee
25 found you well qualified in the evaluative criteria of

1 ethical fitness, professional and academic ability,
2 character, reputation, experience, and judicial
3 temperament.

4 JUDGE SPRUILL: They're very perceptive.

5 MS. CRAWFORD: Yes, sir. Mr. Chairman, I
6 would note for the record, that any concerns raised during
7 the investigation regarding Judge Spruill, were
8 incorporated into the questioning of the candidate today.

9 CHAIRMAN SMITH: All right. Any questions
10 for Judge Spruill?

11 (Hearing none.)

12 CHAIRMAN SMITH: One question I have is, how
13 do you put up with Representative Jay Lucas in your
14 circuit?

15 JUDGE SPRUILL: I hope you won't ask him
16 about me. Please don't.

17 CHAIRMAN SMITH: I won't. All right. Judge
18 Spruill, we appreciate you being here. This will conclude
19 this portion of your screening process. We thank you for
20 your long service to the state of South Carolina.

21 JUDGE SPRUILL: Thank you-all very much.

22 (Candidate excused.)

23 SENATOR RANKIN: Welcome, Judge Strom.

24 JUDGE STROM: Thank you.

25 SENATOR RANKIN: We're going to start here.

1 Please raise your right hand.

2 THE HONORABLE DONNA SAVOCA STROM, being duly
3 sworn and cautioned to speak the truth, the whole truth and
4 nothing but the truth, testifies as follows:

5 SENATOR RANKIN: Did Lindi, the assistant to
6 your right -- we've got your PDQ, your personal data
7 questionnaire and sworn statement for you. You got those
8 there, correct?

9 JUDGE STROM: I do.

10 SENATOR RANKIN: And are these -- are both
11 of these correct?

12 JUDGE STROM: I had a couple of amendments.
13 I inadvertently forgot to answer one question, it was an
14 easy yes or no. And then another one was a lawsuit that I
15 didn't realized was filed against me by an inmate, who also
16 filed the same lawsuit about ten years ago.

17 SENATOR RANKIN: And so that is -- no other
18 changes need to be made?

19 JUDGE STROM: And then there was a question
20 about a tax lien which has been satisfied.

21 SENATOR RANKIN: Okay. All right. And do
22 you object if these -- so nothing else needs to be
23 corrected.

24 JUDGE STROM: No, sir.

25 SENATOR RANKIN: Do you object to our making

1 these documents a part of the record?

2 JUDGE STROM: Not at all.

3 SENATOR RANKIN: And that will be put into
4 the record now.

5 (EXHIBIT NO. 19 - JUDICIAL MERIT SELECTION
6 COMMISSION PERSONAL DATA QUESTIONNAIRE OF THE
7 HONORABLE DONNA SAVOA STROM)

8 (EXHIBIT NO. 20 - JUDICIAL MERIT SELECTION
9 COMMISSION SWORN STATEMENT OF THE HONORABLE DONNA
10 SAVOA STROM)

11 (EXHIBIT NO. 21 - JUDICIAL MERIT SELECTION
12 COMMISSION AMENDMENT OF HONORABLE DONNA SAVOA
13 STROM)

14 SENATOR RANKIN: So we have thoroughly
15 investigated your qualifications for the bench. We were
16 focused on nine evaluative criteria that has included a
17 ballot box survey, a thorough study of your application
18 materials, verification of your compliance with state
19 ethics laws, a search of newspaper articles in which your
20 name appears, a study of previous screenings, and a check
21 for economic conflicts of interest.

22 We received no affidavits filed in
23 opposition of your election. No witnesses are present to
24 testify. And you have the opportunity to make a brief
25 opening statement, if you would like to. It is not

1 requested or required.

2 JUDGE STROM: I think I'm the last one
3 standing between you and lunch, so I'll let my record stand
4 as it is.

5 SENATOR RANKIN: Perfect. Perfect. All
6 right. Now questions that will be asked of you.

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

8 EXAMINATION BY MS. DEAN:

9 **Q. Judge Strom, you're being screened for**
10 **reappointment as a retired judge on the family court bench.**
11 **Why do you want to continue serving as a retired judge on**
12 **the family court?**

13 A. I miss it, in some ways. I particularly miss
14 trying cases. That's an unusual answer, I know, for some
15 people. But I miss -- I miss that. I love being up there
16 with the -- you know, with the folks and litigants and
17 lawyers. And it kind of keeps me on my toes, keeps me
18 abreast of, you know, what -- what's changed and, you know,
19 what's happening with DSS or who -- juveniles, whatever.

20 Plus, you know, as y'all know, we're not paid to
21 do it. But I do -- I've been so blessed, I feel like, to
22 have had this job for as long as I did, that it's nice to
23 feel like I'm giving back a little bit. So they know they
24 can call on me, you know, if -- I mediate a lot as well.
25 And they know they can call on me if they have a last-

1 minute problem with a judge being sick, or etc. And if I'm
2 not mediating, I'll be there.

3 **Q. Thank you, Judge. How much time do you spend per**
4 **month in your capacity as a retired judge? And do you wish**
5 **to alter that workload if reappointed?**

6 A. How much time do I spend --

7 **Q. -- in your capacity as a retired judge, a month.**

8 A. Oh. Well, it -- I'll be honest with you, I
9 probably only hold court five or ten percent of the time.
10 And it's usually here in Richland County or Lexington.

11 **Q. Thank you, Judge. What do you think your**
12 **reputation is among attorneys that practice before you, and**
13 **court personnel?**

14 A. Gosh, you hate to talk about yourself. I think I
15 have a good reputation with -- there's always someone
16 that's not going to be happy with you. It's not a
17 personality contest, that's for sure.

18 But I think I have a good reputation with the
19 court staff, as well as attorneys, for the most part. I've
20 not had anyone say anything different.

21 **Q. Thank you, Judge. The Commission received 303**
22 **ballot box surveys regarding you, with 27 additional**
23 **comments. The ballot box survey, for example, contained**
24 **the following positive comments:**

25 **"Asset to the judiciary. Excellent judge.**

1 **Reliable and thoughtful."**

2 **Some expressed concerns regarding your**
3 **professionalism. What response would you give to that**
4 **concern?**

5 A. I don't really know what they're referring to by
6 "professionalism." I don't -- I don't know what that
7 means. I mean, I -- I'm at work. There's one thing I do
8 not like to do, and that is embarrass a lawyer in front of
9 their litigant, in front of their client. You know, I
10 don't know. I don't have a further answer to that. I'm
11 sorry.

12 **Q. Thank you, Judge. And, Judge, a tax lien was**
13 **filed against you in January of 2017, and you were --**
14 **reported that this lien has been satisfied --**

15 A. Yes, it has.

16 **Q. -- is that correct? Okay.**

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

24 The committee commented, "Judge Strom is a
25 very experienced and well liked judge. She possesses all

1 the qualities to be an outstanding judge." The committee
2 stated in summary, "Judge Strom is an outstanding jurist."

3 I'd just note for the record, that any
4 concerns raised during the investigation regarding the
5 candidate, were incorporated into today's questionings --
6 questions. Mr. Chairman, I have no further questions.

7 SENATOR RANKIN: Okay. Any questions of the
8 other commission members?

9 (Hearing none.)

10 SENATOR RANKIN: Judge, I'm sure you agree
11 with those comments by the bench Bar results, correct?

12 JUDGE STROM: I do.

13 SENATOR RANKIN: There you go. Very good.
14 All right. With no further questions, and nothing further
15 required of you hereafter, as you experienced in your prior
16 non-retired days, make good work of this and continue to
17 serve. And thank you for --

18 JUDGE STROM: Thank you.

19 SENATOR RANKIN: -- your willingness to --

20 JUDGE STROM: It has been a blessing. It
21 really has. And I'm grateful for it.

22 SENATOR RANKIN: Very good. Thank you.

23 JUDGE STROM: Thank you.

24 SENATOR RANKIN: We are right on time. It's
25 1:45. And need to be back at -- shortly. We'll be back

1 here in 15 minutes. We start back at three, y'all, so
2 let's try to be as quick as you can.

3 (OFF THE RECORD AT 1:45 P.M.)
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CERTIFICATE OF REPORTER

I, PATRICIA G. BACHAND, COURT REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT CONSISTING OF 119 PAGES IS A TRUE, ACCURATE, AND COMPLETE RECORD TO THE BEST OF MY SKILL AND ABILITY.

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

IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS 21ST DAY OF NOVEMBER 2017.

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

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF RICHLAND)

3 * * * * *

4 JUDICIAL MERIT SELECTION COMMISSION

5 TRANSCRIPT OF PUBLIC HEARINGS

6 * * * * *

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

8 ERIN B. CRAWFORD, CHIEF COUNSEL

9 SENATOR LUKE A. RANKIN, VICE-CHAIRMAN

10 REPRESENTATIVE CHRIS MURPHY

11 REPRESENTATIVE J. TODD RUTHERFORD

12 MR. ANDREW N. SAFRAN

13 MR. JOSHUA L. HOWARD

14 SENATOR RONNIE A. SABB

15 SENATOR TOM YOUNG, JR.

16 MR. MICHAEL HITCHCOCK

17 MR. ROBERT W. HAYES, JR.

18 * * * * *

19 DATE: November 13th, 2017

20 TIME: 3:00 P.M.

21 LOCATION: Gressette Building, Room 105

22 1101 Pendleton Street

23 Columbia, South Carolina 29201

24

25 REPORTED BY: LISA F. HUFFMAN, COURT REPORTER

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(No Information Requested.)

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EXHIBIT NO. 24 9
- Amended Judicial Merit Selection Commission Sworn
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EXHIBIT NO. 25 18
- Judicial Merit Selection Commission Personal Data
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Court Reporter's Legend:

dashes [--]	Intentional or purposeful interruption
[ph]	Denotes phonetically written
[sic]	Written as said

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P R O C E E D I N G S

CHAIRMAN SMITH: Everyone will take their seats. And so at this point right now Senator Young moves that we go into executive session. All in favor raise their hand.

(The Commission members comply.)

CHAIRMAN SMITH: All right. We're going into executive session.

(Off-the-record executive session.)

CHAIRMAN SMITH: We're back in public session. And no action was taken nor were any votes taken in public session. And Mr. Safran moves to lift the veil to come out of executive session. All in favor say, "Aye."

(The Commission members comply.)

CHAIRMAN SMITH: All opposed?

(No response.)

CHAIRMAN SMITH: Ayes have it. It's unanimous. We've got to take votes on all of these candidates that we just finished screening, so you'll read the names and then we will receive any motions or discussions in that regard.

MS. CRAWFORD: Mr. Chairman, Justice John W. Kittredge, Re-election Supreme Court, Seat

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CHAIRMAN SMITH: Okay. Any discussion on that motion?

(No response.)

CHAIRMAN SMITH: All in favor of finding Justice Kittredge qualified and nominated please your hand.

(The Commission members comply.)

CHAIRMAN SMITH: Let the record reflect it's unanimous. Next, please.

MS. CRAWFORD: The Honorable Thomas E. Huff, Re-election, Court of Appeals, Seat 8.

SENATOR HAYES: He's qualified by me.

CHAIRMAN SMITH: Mr. Hayes moves to find Judge Huff qualified and nominated. Any discussion?

(No response.)

CHAIRMAN SMITH: All in favoring of finding Judge Huff qualified and nominated raise your hand.

(The Commission members comply.)

CHAIRMAN SMITH: Let the record reflect the vote is unanimous.

MS. CRAWFORD: Do you want me to do these in --

1 CHAIRMAN SMITH: Yeah, we can just do all
2 those together.

3 MS. CRAWFORD: Mr. Chairman, we screened
4 several retired judges: The Honorable Thomas
5 W. Cooper, Honorable Roger L. Couch, Honorable
6 Howard King, Honorable Alexander Macaulay,
7 Honorable James Spruill and the Honorable
8 Donna Strom.

9 CHAIRMAN SMITH: Any motions on those
10 individuals?

11 MR. HITCHCOCK: Move to find them all
12 qualified.

13 CHAIRMAN SMITH: Mr. Hitchcock moves to
14 find them all qualified. We don't nominate
15 them, that's right. So any discussion on
16 that?

17 (No response.)

18 CHAIRMAN SMITH: All in favor of finding
19 them qualified raise your right your hand.

20 MR. SAFRAN: I'm just going to second it.

21 (The Commission members comply.)

22 CHAIRMAN SMITH: In the House we don't do
23 seconds, so I don't -- I'm not used to that.
24 We'll move to the next candidate, Judge
25 Henderson. Judge Henderson, how are you doing

1 today?

2 JUDGE HENDERSON: Representative Smith,
3 how are you, sir?

4 CHAIRMAN SMITH: I'm doing well.

5 JUDGE HENDERSON: Good.

6 CHAIRMAN SMITH: Judge Henderson, will you
7 raise your right, please, sir.

8 (The judge is sworn in.)

9 CHAIRMAN SMITH: Judge Henderson, before
10 you, you have your personal data questionnaire
11 and your sworn statement. Are those the
12 documents that you have submitted to the
13 Commission?

14 JUDGE HENDERSON: Yes, sir, they are.

15 CHAIRMAN SMITH: And are they both
16 correct?

17 JUDGE HENDERSON: They are.

18 CHAIRMAN SMITH: And do you need to make
19 any changes or updates at this time?

20 JUDGE HENDERSON: No, not at this time.

21 CHAIRMAN SMITH: Do you have any objection
22 to us making those documents and any
23 amendments, if applicable, as a part of the
24 record of your sworn testimony?

25 JUDGE HENDERSON: No problem.

1 CHAIRMAN SMITH: So you'll give those to
2 Lindi and she'll make those as exhibits to the
3 transcript.

4 [EXHIBIT NO. 22, JUDICIAL MERIT
5 SELECTION COMMISSION PERSONAL DATA
6 QUESTIONNAIRE FOR THE HONORABLE ROGER E.
7 HENDERSON, ADMITTED.]

8 [EXHIBIT NO. 23, SWORN STATEMENT FOR
9 THE HONORABLE ROGER E. HENDERSON, ADMITTED.]

10 [EXHIBIT NO. 24, AMENDED SWORN STATEMENT
11 FOR THE HONORABLE ROGER E. HENDERSON,
12 ADMITTED.]

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

24 We have received no affidavits filed in
25 opposition to your election and no witnesses

1 are here today to testify. Do you wish to
2 make a brief opening statement?

3 JUDGE HENDERSON: Not unless you need for
4 me to.

5 CHAIRMAN SMITH: No, sir, we don't. Thank
6 you for very much.

7 JUDGE HENDERSON: Thank you.

8 CHAIRMAN SMITH: Ms. Mottel will ask you
9 some questions.

10 MS. MOTTEL: Thank you, Mr. Chairman.

11 EXAMINATION

12 (By Ms. Mottel)

13 **Q. Good afternoon, Judge Henderson. You have served**
14 **on the Circuit Court since March 2015. Why do you**
15 **want to continue serving as a Circuit Court judge?**

16 A. Well, I've been a judge now since 1995, so I have
17 basically devoted the major part of my life to, you
18 know, public service and I wish to continue with
19 that. I went from the Family Court to the Circuit
20 Court, and I would like to continue to do that.
21 I've enjoyed, you know, working in a different type
22 of court than the Family Court for the last three
23 years. So I've enjoyed the criminal and the civil
24 aspect as opposed to the Family Court, and would
25 just like to continue to do that, so.

1 **Q. Thank you. Judge Henderson, can you please explain**
2 **one or two brief accomplishments that you feel you**
3 **have completed during your tenure?**

4 A. My goodness. Well, I served on a number of
5 committees. I served on the Advisory Committee for
6 the Family Court for a number of years and tried to
7 implement just new policies and procedures with
8 regards to that. I consider that to be an
9 accomplishment. I've tried, you know, several
10 cases that had been, you know, multi-week cases and
11 managed to survive those. And I feel like, you
12 know, if you're a judge and the lawyer you realize
13 to get through those multi-week cases that's quite
14 an accomplishment to get through those and see the
15 end result, so.

16 **Q. Judge Henderson, your SLED report indicated that**
17 **there was a lawsuit filed against you since your**
18 **last screening. It was filed on August 17, 2017 in**
19 **U.S. District Court regarding civil rights**
20 **violations. Could you explain the nature and**
21 **disposition of this lawsuit?**

22 A. Never been served with the papers yet, so I really
23 don't know what the suit's about. I assume that
24 some criminal defendant has not been happy with not
25 only me, but I think they're about 15 or 16 other

1 defendants in the case, the Attorney General
2 included. But, again, I've never been served. I
3 haven't even seen the pleadings yet at this point
4 in time. So other than I know it's a civil rights
5 violation claim that's all I know about it, quite
6 frankly. And like as you said, it was in August,
7 after I had filed my initial application, so.

8 **Q. Thank you. Judge Henderson, what do you think your**
9 **reputation is among attorneys that practice before**
10 **you?**

11 A. I think, based on what they tell me, is that they
12 find me to be fair and impartial, and that I'm good
13 about listening, you know, hearing both sides and
14 just being, you know, deliberate before I make any
15 decisions.

16 **Q. What do you think your reputation is among**
17 **court personnel?**

18 A. I think it's -- I hate to talk about myself. But,
19 I mean, I think, you know, that I've gotten along
20 with everybody as far as court personnel. I've
21 never had any problems with any clerks, any
22 bailiffs, anybody else, any of that, anything.
23 They all seem to like me, you know. And I try to,
24 you know, engage everybody that I come into contact
25 with, and I think that helps. I consider everybody

1 that's in the court system to be a major part of
2 it, and I'll let them know that their job is
3 important. And I think they appreciate that.

4 **Q. Judge Henderson, the Commission received 399 ballot**
5 **box surveys regarding you with 31 additional**
6 **comments. The ballot box survey, for example,**
7 **contained the following positive comments.**
8 **"Outstanding judge who is impartial and fair.**
9 **There is no finer example of what a judge should**
10 **be. Fair, unbiased, patient, compassionate, yet**
11 **decisive and insightful. A pleasure to appear**
12 **before him for any attorney or litigant." Of the**
13 **comments there were a few concerns raised. One of**
14 **which was that you appear to lean too heavily**
15 **towards state agencies. What would be a response**
16 **you'd like to offer to the Commission?**

17 **A.** The only thing I can think is that came from
18 somebody back when I was practicing in the Family
19 Court -- not practicing, serving in the Family
20 Court when I had a lot of DSS/DJJ type cases. I
21 haven't dealt with that many state agency cases
22 since I've been on the Circuit bench. I mean, it's
23 just the nature of the case. The facts always fell
24 that, you know, a child maybe needed to be removed
25 or the parents needed to go through treatment

1 plans. And I just called it like I saw it. I
2 mean, if something thinks I was heavy-handed toward
3 a state agency, that's their right to feel that
4 way. But I called it like I saw it, so. And I
5 didn't feel that I was leaning toward one person or
6 the other. I treated state agencies like I do
7 other litigants, as far as trying to be fair and
8 impartial.

9 **Q. Thank you. Judge Henderson, what is a goal**
10 **you would like to accomplish if re-elected?**

11 A. I would like to serve out my term, and I would like
12 to do it with sort of an unblemished record. I'd
13 like to maintain the reputation that I've had for
14 being fair and impartial and continue to do that.
15 And just continue to serve the citizens of South
16 Carolina.

17 **Q. Thank you, Judge Henderson. I have a few**
18 **housekeeping questions for you. Judge Henderson,**
19 **since submitting your letter of intent, have you**
20 **contacted any members of the Commission about your**
21 **candidacy?**

22 A. No, I haven't.

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

1 **your screening?**

2 A. No, I haven't.

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

7 A. I've not had anybody contact anybody on my behalf.

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

11 A. I've reviewed. I'm familiar with it, yes.

12 MS. MOTTEL: I would note that the Pee
13 Dee Citizens Committee found Judge Henderson
14 to be well qualified in evaluative criteria
15 of ethical fitness, professional and academic
16 ability, character, reputation, experience,
17 and judicial temperament. And qualified
18 in the evaluative criteria of constitutional
19 qualification, physical health, and mental
20 stability. I would just note for the record
21 that any concerns raised during the
22 investigations regarding Judge Henderson were
23 incorporated into the questioning of the
24 candidate today. Mr. Chairman, I have no
25 further questions.

1 CHAIRMAN SMITH: Thank you very much. Any
2 questions for Judge Henderson?

3 SENATOR RANKIN: Very quick.

4 CHAIRMAN SMITH: Senator Rankin.

5 SENATOR RANKIN: Judge Henderson, this is
6 somewhat a light question. I know you moved
7 from the Family Court bench to the Circuit
8 Court bench. Would you ever recommend someone
9 running from the Circuit Court to go back to
10 the Family Court?

11 JUDGE HENDERSON: No. No, I wouldn't. Not
12 unless they're a real glutton for punishment.

13 CHAIRMAN SMITH: Any further questions?

14 (No response.)

15 CHAIRMAN SMITH: Judge Henderson, thank
16 you so much for this, for coming up here
17 before us today. This concludes or portion of
18 our screening process. We'll take this
19 opportunity to remind you that pursuant to the
20 Commission's evaluative criteria the
21 Commission expects candidates to follow the
22 spirit as well as the letter of the ethics
23 law. And we will view violations or the
24 appearance of impropriety as serious
25 and potentially deserving of heavy weight and

1 screen and deliberations. On that note, and
2 as you know, the record will remain open until
3 the formal release of the report of
4 qualifications and you may be called back at
5 such time if the need arises. I thank you for
6 offering and I thank you for your service to
7 the State of South Carolina.

8 JUDGE HENDERSON: Thank you,
9 Representative Smith, Senator Rankin. Thank
10 you ladies and gentlemen.

11 (The candidate is excused.)

12 CHAIRMAN SMITH: Judge Knie, I appreciate
13 you being here. I see you have somebody here
14 with you. Would you like to introduce him?

15 JUDGE KNIE: Certainly. My spouse is
16 here, Patrick E. Knie.

17 CHAIRMAN SMITH: Okay. Welcome, Pat.
18 Good to see you. Long time no see. I haven't
19 seen you since this weekend. Judge Knie, will
20 you please raise your right hand?

21 (The judge is sworn in.)

22 CHAIRMAN SMITH: Judge Knie, you have
23 before you your personal data questionnaire
24 and your sworn statement. Are those the
25 documents that you submitted to the

1 Commission?

2 JUDGE KNIE: Yes, sir.

3 CHAIRMAN SMITH: And both of them appear
4 to be correct to you?

5 JUDGE KNIE: Yes, sir. It's actually four
6 exhibits, Exhibit Numbers 25, 26, 27 and 28.

7 CHAIRMAN SMITH: And do you have anything
8 that needs to be changed or updated at this
9 time?

10 JUDGE KNIE: Yes, sir. I brought one
11 supplemental document with me.

12 CHAIRMAN SMITH: Okay. If you'll hand
13 those documents to Lindi for me, as your
14 supplemental document and we'll mark those as
15 exhibits to your testimony. Do you have any
16 objection to us making these documents and any
17 amendments a part of the record of your sworn
18 testimony?

19 JUDGE KNIE: No, sir.

20 [EXHIBIT NO. 25, JUDICIAL MERIT SELECTION
21 COMMISSION PERSONAL DATA QUESTIONNAIRE FOR THE
22 HONORABLE GRACE GILCHRIST KNIE, ADMITTED.]

23 [EXHIBIT NO. 26, SWORN STATEMENT FOR
24 THE HONORABLE GRACE GILCHRIST KNIE, ADMITTED.]

25 [EXHIBIT NO. 27, AMENDED JUDICIAL MERIT

1 SELECTION COMMISSION PERSONAL DATA
2 QUESTIONNAIRE FOR THE HONORABLE GRACE
3 GILCHRIST KNIE, ADMITTED.]

4 [EXHIBIT NO. 28, AMENDED SWORN STATEMENT
5 FOR THE HONORABLE GRACE GILCHRIST KNIE,
6 ADMITTED.]

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

18 We have received no affidavits filed in
19 opposition to your election today and there
20 are no witnesses present to testify. Do you
21 wish to make an opening statement?

22 JUDGE KNIE: Yes, sir. Thank you. Very
23 briefly. First of all, thank you all for your
24 service on this Commission. I'm certain that
25 it takes a lot of time other than your being

1 here. And, secondly, I'm extremely proud and
2 humbled to be before you as an incumbent
3 Circuit Court judge seeking re-election.
4 Thank you.

5 CHAIRMAN SMITH: Thank you. Ms. Crawford
6 is going to ask you some questions. Ms.
7 Crawford.

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

9 EXAMINATION

10 (By Ms. Crawford)

11 **Q. Judge Knie, you were elected to the Circuit Court,**
12 **February 1st of this year.**

13 A. Yes, ma'am.

14 **Q. What are your thoughts about the last nine months,**
15 **and do you like being a Circuit Court judge?**

16 A. Well, I'll answer that in reverse order.
17 Absolutely. This is the best job. This is a
18 wonderful job. I love this. And over the last
19 nine months -- I was elected on February 1st and
20 our Chief Justice contacted me and said, "Take all
21 the time you need, but, you know, can you be sworn
22 in by the last week in February?" And so I
23 actually took the oath on February 24th and then
24 sat with wonderful judges for four weeks and was
25 mentored. And then I believe there was a chambers

1 week and then I started holding court myself. And
2 so for six-and-a-half months I have traveled to
3 twelve different counties and have met the most
4 interesting people, not the least of which are the
5 bailiffs in each county. They are delightful.
6 But our state has wonderful Clerks of Court. To a
7 person, the solicitors, the public defenders, the
8 probation representatives are all, you know, the
9 defense lawyers, the plaintiff's lawyers, everybody
10 seems to be very hardworking and enthusiastic about
11 democracy in our state. And so I have enjoyed it
12 very, very much. I hope I answered your question.
13 I may have gotten off on a tangent, but.

14 **Q. Well, since you said you traveled a good bit and**
15 **you haven't been in your circuit much at all, have**
16 **you thought about any goals or identified any goals**
17 **that you would like to accomplish for your first**
18 **term on the bench?**

19 A. In my circuit?

20 **Q. Yes.**

21 A. Okay. I will tell you that whether it is real or
22 perceived, there is -- the public has an image of
23 the judicial system and of a huge backlog of cases
24 throughout the state. You know, you talk to folks
25 about criminal court or about civil court and they

1 just think, oh, my case will never be reached. And
2 in Spartanburg County that's absolutely untrue.
3 That's not due to my efforts, but because of
4 Mark Hayes and Keith Kelly and Derham Cole. Our
5 county is -- the State Bar Association requires or
6 would like to require that 80 percent of a docket
7 annually be met, like there would not be a case --
8 like 20 percent of your roster of criminal and
9 civil cases being met or not be more than a year
10 old. I hope I said that right. In Spartanburg
11 County our civil roster right now has about 2900
12 cases pending, and 85 percent of those cases are
13 less than a year old. In our civil docket we have
14 5800 cases pending -- I mean criminal docket we
15 have 5800 cases pending right now, and of those I
16 think it's 86 percent of those cases are less than
17 a year old. We are second to the top in the state.
18 The 16th Circuit would be the best. And so
19 as far as -- I think that I would love to make it
20 well known that at least in our circuit there
21 doesn't see to be a problem with backlog, but I
22 would also like to increase education to the
23 public, school children and just members of our
24 community on the Bar Association and on the
25 judicial system by inviting school children to

1 come and observe court. When I sat with Letitia
2 Verdin for a week she had school children in and
3 out so many times it was -- I mean, it was amazing.
4 And they really enjoyed themselves and found it
5 very educational. And so I would like to increase
6 or help the public perceive the judiciary and
7 lawyers in a more positive light.

8 **Q. Thank you, Judge. Judge, how would you describe an**
9 **ideal courtroom environment?**

10 A. An ideal courtroom environment?

11 **Q. What do you expect in your courtroom?**

12 A. Okay. I know different judges handle this a little
13 differently. I am not as stern as some of
14 my contemporaries in Spartanburg about cell phones
15 coming into the courtroom. I think for a while
16 some of the young solicitors had Derham Cole
17 insurance on their cell phones in case he took
18 their phone. But that's -- I use my cell phone a
19 lot. And so I believe that the courtroom is a
20 place of honor and that it should be taken
21 extremely seriously when one is in the courtroom.
22 But at the same time it is inefficient to think
23 that during a guilty plea week that the solicitors
24 can't -- and the public defenders and the probation
25 representatives aren't allowed to have a cell phone

1 turned on in their courtroom. I think that that is
2 unrealistic. They need to be able to contact
3 witnesses, victims, their office to keep everything
4 moving. However, well, I had an incident last week
5 where a lawyer that was before me for a guilty
6 plea, and I know he didn't mean for his phone to go
7 off, and it's a lawyer that I promise you if I said
8 his name you all know this person throughout the
9 state; he's very well known, a very well known
10 trial lawyer. And directions for lunch started
11 coming out of his cell phone, and I just said, "If
12 you don't mind I know you didn't mean to do that,
13 just please turn that off." I've tried to be very
14 understanding, but yet firm. And so I think that
15 the courtroom should be a place of honor and
16 respect. And I think it should be secure. And in
17 some of the courthouses that I've visited that
18 seems to be a problem due to architecture and
19 staffing, but I think our state is working towards
20 remedying those problems. In Spartanburg, we're
21 going to get a new courthouse. That was
22 just approved -- that was voted on this past
23 Tuesday. And so we're very excited and a big goal
24 with that will be making it very secure.

25 **Q. Okay. Judge, what do you think your reputation is**

1 **among attorneys that practice before you?**

2 A. Oh, I wish I knew more about that. In knowing that
3 I had to go through process again when I was sworn
4 in February I knew I would be going through it, you
5 know, starting the process less than a year
6 after completing it, I was excited about one thing,
7 and that would be having those questionnaires
8 completed about me by the Bar. And I know that
9 lots of people aren't excited about that, but I
10 really -- I think it's very important to know how
11 you're perceived. And I think that once you take
12 the bench people are sometimes not very honest and
13 forthcoming about how they perceive you or what
14 you're doing wrong. And so I have reached out a
15 lot and asked questions of lawyers at the
16 completion of a term if they could give me positive
17 or any feedback, any feedback at all to help. And
18 so I would like to think that I would perceived as
19 hardworking, sincere, approachable and
20 compassionate. I don't know that that is true, but
21 I certainly would like to think that.

22 **Q. Judge, the Commission -- going into those ballot**
23 **box surveys. I think you may be the only person**
24 **that's ever said they like those. The Commission**
25 **received 395 ballot box surveys regarding you with**

1 21 additional comments. The ballot box survey, for
2 example, contained the following positive comments:
3 "Capable jurist, humble and eager to learn, very
4 pleasant to appear before, and she has put in a
5 tremendous amount of work to learn the ropes and
6 always strives to do what is best in each case."
7 And only one of the written comments expressed any
8 concerns noting that you tend to rely on the
9 solicitor's opinions. The same person said that
10 you go "really, really slowly", that's a quote, on
11 the bench. What response would you offer to this
12 concern?

13 A. Thank you. When we met and you told me about that,
14 I had a lot of time to think about that. And, you
15 know, gosh, you just hate to think that somebody
16 has perceived you as being unfair or biased one way
17 or the other. And, first of all, as much as I do
18 respect that person's opinion, I think that if they
19 had followed me around the state and seen the weeks
20 of criminal court that I held, they would have
21 found that I was extremely fair. And that maybe
22 perceived that I was listening to a solicitor more
23 than the defense in a certain situation, but I
24 really believe that if that is like looking at one
25 line of a transcript or one line of a medical

1 record without taking in the whole document. I
2 would take issue with that. But that person is
3 entitled to their opinion. And I'm assuming they
4 didn't list their name. And I wish I knew because
5 I'd really like to discuss it with them. With
6 regard to that, again, I strive to be very fair.
7 And each term of court when I have traveled or even
8 been in Spartanburg, on Monday mornings I have made
9 a point of meeting with -- the solicitor always
10 wants to meet if you're going somewhere for a jury
11 term. But I also said, "No, I want to meet with
12 the public defender with you and the probation
13 representative. And if they cannot be present, we
14 will wait and I will meet with you when they are
15 present." And any conferences that I had with
16 counsel, I always made sure that if it was not the
17 public defender assigned to the case, a public
18 defender was in with me and a probation
19 representative was in with me. And that gives me a
20 lot more guidance on whatever issue they had as
21 well. And so, again, I would take issue with that.
22 With regard to my being deliberate or slow, I think
23 that in the first couple of weeks I was being
24 extremely careful and I had everything written down
25 that I was saying, and I would repeat it several

1 times. And now I think that I am a lot more
2 efficient, but, again, I made it clear and make it
3 clear each term of court that anyone that wants to
4 address me with regard to a guilty plea or as to
5 sentencing, whether it's a victim, members of the
6 defendant's family and, of course, always the
7 defendant, I let the defendant know at the
8 beginning of a plea or beginning of sentencing that
9 I am going to allow them to address me before I
10 issue the sentence and not to be concerned that I
11 won't, because I found that they were very nervous
12 and wanted to keep interrupting me. And so I
13 always say first we're going to hear from this
14 person, then this person and then from you before I
15 issue my sentence. And, again, I have improved
16 with my speed. Thank you.

17 **Q. Thank you, Judge. I have a few housekeeping**
18 **issues. Since submitting your letter of intent,**
19 **have you contacted any members of this Commission**
20 **about your candidacy?**

21 A. No, ma'am.

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

1 A. No, ma'am.

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

6 A. No, ma'am.

7 **Q. Have you reviewed and do you understand the**
8 **Commission's guidelines and the code on pledging?**

9 A. Yes, ma'am.

10 MS. CRAWFORD: I would note that the
11 Upstate's Citizens Committee reported that
12 Judge Knie is well qualified in the evaluative
13 criteria of ethical fitness, professional and
14 academic ability, character, reputation,
15 experience, and judicial temperament. And
16 qualified in the remaining evaluative criteria
17 of constitutional qualification, physical
18 health, and mental stability. Further, I
19 would note for the record that any concerns
20 raised during the investigation regarding the
21 candidate were incorporated into the
22 questioning of the Judge Knie today. Mr.
23 Chairman, I have no further questions.

24 CHAIRMAN SMITH: Thank you. Any questions
25 for Judge Knie? Representative Rutherford.

1 REPRESENTATIVE RUTHERFORD: Judge Knie,
2 thank you for your cell phone comments. I
3 think they are well warranted. Having been a
4 traveling attorney in Spartanburg, I never
5 understood how someone that travels to the
6 county can't then use their phone to figure
7 out what's going on with their clients and
8 their office. So thank you for not adopting a
9 policy that seemed to be rampant in
10 Spartanburg. Let me ask you this. As it
11 relates to the criminal docket, and this is
12 just a vague question. I just ran into it.
13 If someone changes their plea from a plea to a
14 trial, is a bench warrant issued in
15 Spartanburg County because they've done that?
16 A solicitor just told me that if you change
17 your plea then the judge would issue a bench
18 warrant or would call you in and lock you up
19 --

20 JUDGE KNIE: In Spartanburg?

21 REPRESENTATIVE RUTHERFORD: -- if you
22 don't plea to a trial. That's what I was just
23 told.

24 JUDGE KNIE: Not that I'm aware of. And I
25 certainly have never had that happen. If

1 somebody decides to withdraw their plea based
2 on comments that are now -- I'm trying to
3 think if anything like that has happened. No.
4 If somebody decides to withdraw their plea
5 during the middle of the plea and they want to
6 then have a trial -- now, the way that it
7 happens in Spartanburg each -- the roster is
8 set the week -- you know, on the week before
9 and everyone knows what's coming up. And this
10 morning when we had our roster meeting before
11 I qualified the jury, I went through the trial
12 roster and everybody indicated whether they
13 were going to be a plea or a trial. And so
14 the goal is to have all of those matters
15 resolved by the end of the week. And so I
16 don't know if in that instance if -- what
17 you're referring to if possibly the person
18 that changed their plea to a trial if then his
19 bond was revoked. I don't know.

20 REPRESENTATIVE RUTHERFORD: We just had
21 before it even was -- before the person would
22 be scheduled for that week if they had changed
23 their plea from a plea to wanting a trial or
24 from wanting a plea to wanting a trial that
25 they would be called in and -- all right.

1 JUDGE KNIE: Not that I'm aware of, no,
2 sir.

3 REPRESENTATIVE RUTHERFORD: And I just
4 want to make sure that we are being extra
5 careful in Spartanburg to not put moving cases
6 ahead of lawyers and lawyer vacation time and
7 making sure that this is not putting lawyers
8 on a treadmill to try and get things done as
9 opposed -- and I'm not saying that it is, but,
10 you know, when we create these dockets in
11 Spartanburg, it is one of those places, before
12 you got there, because obviously you've only
13 been there for nine months, but to make sure
14 that we're not creating this treadmill where
15 we've got to get stuff done, got to get stuff
16 done at the expense of giving lawyers enough
17 time to prepare for their cases and to get
18 ready for what's coming up. And for those
19 lawyers that may be particularly busy to not -
20 - to understand that when they come in and ask
21 for a continuance and ask for more time,
22 because a lot of counties that set their goal
23 as to how many cases we're moving, in my
24 opinion, simply lose track of the quality of
25 what they're expecting from especially the

1 defense bar, so.

2 JUDGE KNIE: Right. I will say that I
3 have not yet had a complaint from any -- now,
4 there is a -- in one of our Municipal Courts
5 in Spartanburg our judge is very zealous, and
6 it seems like the biggest complaint with some
7 of those defense lawyers were they can't even
8 get a retainer fee paid before they're trying
9 their cases. You know, it might be two or
10 three months and that, you know, you're up,
11 your case is going to be resolved by a jury
12 trial. I don't -- I haven't heard anything
13 like that from the defense bar. And if there
14 were a -- like I said, I'm very approachable,
15 you know, I meet with lawyers all the time.
16 And I have not yet heard that things are being
17 rushed and they aren't having an opportunity
18 to prepare.

19 REPRESENTATIVE RUTHERFORD: That's good to
20 hear, and I appreciate you meeting with the
21 defense bar with someone from the Public
22 Defender's Office when the solicitor requests
23 a meeting. And, you know, just want to make
24 sure that we are not rushing things at the
25 expense of justice. As I told this Committee

1 earlier, I tried one two weeks ago in York
2 County to a verdict, and the case was three
3 years old and there was still stuff that was
4 not done on the prosecution side. You know,
5 they had been pushing me, pushing me. We
6 finally did it and they hadn't done stuff. In
7 the middle of a murder case in Lexington and
8 three years later there's still stuff that is
9 popping up. And so this notion that we just
10 have to keep pushing and make everything less
11 than a year doesn't seem to bear out when you
12 get into the meat of some of these cases. So
13 I'm happy to see that you are not trampling on
14 justice in order to get that done. So thank
15 you.

16 JUDGE KNIE: Yes, sir.

17 CHAIRMAN SMITH: Judge Knie, let me just
18 follow up with what he's saying, because I too
19 am very, very concerned about putting the
20 court and a docket ahead of lawyers and their
21 personal needs, their family, their peace of
22 mind and things of that effect. So in
23 Spartanburg when you mentioned -- and I
24 commend Spartanburg for having such good
25 resolution of their cases, but is that being

1 done because the lawyers are in civil court
2 and/or criminal court? Are they working their
3 cases out ahead of time? Is ADR working or
4 are they having judges that are putting their
5 thumbs on attorneys and saying request for
6 continuance denied?

7 JUDGE KNIE: From what I have gathered, on
8 the civil side the big turn in the backlog of
9 the civil docket came when -- well, just after
10 I was president of our Bar. And I had been
11 contacted by Bill Howard about implementing
12 ADR in Spartanburg County, and it was
13 implemented in Spartanburg County shortly
14 thereafter. But it was implemented throughout
15 the state at that time, okay. And so
16 apparently ADR has really helped in the
17 backlog of cases, curtailed the backlog. And
18 then we now have a motions clerk in civil
19 court, and she is wonderful about scheduling
20 any pretrial motions and keeping the cases
21 moving so that there's not a backlog. And
22 then after a certain period of time after --
23 well, it's 210 days the cases are referred to
24 ADR or you get a notice of ADR, 300 days
25 you're supposed to have completed ADR. And

1 that's not unique to Spartanburg.

2 CHAIRMAN SMITH: It's statewide.

3 JUDGE KNIE: But then in Spartanburg
4 after 365 days you go on a status roster and
5 where the case will be statused every 60 days.
6 And so it's not that you're being pushed to
7 resolve as much as they're someone keeping up
8 with -- the clerk takes notes at each term to
9 see if discovery is being complied with, to
10 see if a motion hearing is being heard. Now,
11 on the criminal side, you know, our docket in
12 Spartanburg is not a solicitor controlled
13 docket, and it hasn't been since 2005. And
14 that predates Langford by about eight years.
15 And Trey Gowdy turned over the docket to Mark
16 Hayes. And Justice Toal agreed for that to
17 happen. And since that time our -- the
18 backlog of cases has really diminished. And
19 so I don't think that this is a matter -- I
20 know that this morning -- and Judge Mark Hayes
21 is our Administrative Judge in Spartanburg
22 right now on criminal on General Sessions.
23 And several cases on my docket this morning
24 had been continued by Judge Hayes last week.
25 And so I think that everyone is reasonable. I

1 just think that there has been a great effort,
2 though, to keep cases moving.

3 CHAIRMAN SMITH: And I think that's unique
4 to your circuit is having the status
5 conferences. Because I think what's unnerving
6 the attorneys is it just pops up without
7 warning on a trial roster and then you've got
8 to do deal with that. And having status
9 conferences is probably a good way to start
10 trying to get a feel where you are with case
11 when you need it. What my practice is -- what
12 we end up running into is all of a sudden
13 everyone is scrambling to get a scheduling
14 order when you end up on the trial roster.
15 And some counties give you, if you're lucky,
16 three weeks notice. So, you know, we --
17 that's not here or there for the judges, but
18 that's what the clerks do sometimes. So, you
19 know, that's what I'm interested in. All
20 right. Any further questions for Judge Knie?

21 (No response.)

22 CHAIRMAN SMITH: All right. Judge Knie,
23 thank you so much for your appearing today.
24 This concludes our portion of the screening
25 process. I want to take this opportunity to

1 remind you that pursuant to the Commission's
2 evaluative criteria the Commission expects
3 candidates to follow the spirit as well as the
4 letter of the ethics laws. And we will view
5 any violations or the appearance of
6 impropriety as serious and potentially
7 deserving of heavy weight and screening
8 deliberations. On that note, and as you know,
9 the record will remain open until the formal
10 release of the report of qualifications and
11 you may be called back at such time if the
12 need arises. I thank you for offering and I
13 thank you for your service to the State of
14 South Carolina.

15 JUDGE KNIE: Thank you. Thank you all.

16 (The candidate is excused.)

17 CHAIRMAN SMITH: Judge Manning, how are
18 you doing today?

19 JUDGE MANNING: I'm fine, I think.

20 CHAIRMAN SMITH: Judge Manning, will you
21 raise your right hand, please.

22 (The judge is sworn in.)

23 CHAIRMAN SMITH: Thank you, Judge Manning.
24 Before you, you have your personal data
25 questionnaire and your sworn statement. Are

1 those the documents that you have submitted to
2 the Commission?

3 JUDGE MANNING: Yes, sir. Yes, sir.

4 CHAIRMAN SMITH: And are they both
5 correct?

6 JUDGE MANNING: Well, they were correct
7 when I sent them in, I think.

8 CHAIRMAN SMITH: And do you need to change
9 anything or update anything at this time?

10 JUDGE MANNING: No. I looked at them a
11 couple of days ago. I stand by what I have
12 in front of you.

13 CHAIRMAN SMITH: Do you objection to
14 making these documents and any amendments, if
15 applicable, as a part of the record of your
16 sworn testimony?

17 JUDGE MANNING: No, sir.

18 CHAIRMAN SMITH: Lindi, if you'll grab
19 those, please.

20 [EXHIBIT NO. 29, JUDICIAL MERIT SELECTION
21 COMMISSION PERSONAL DATA QUESTIONNAIRE FOR THE
22 HONORABLE L. CASEY MANNING, ADMITTED.]

23 [EXHIBIT NO. 30, SWORN STATEMENT FOR
24 THE HONORABLE L. CASEY MANNING, ADMITTED.]

25 CHAIRMAN SMITH: Judge Manning, the

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

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

16 JUDGE MANNING: No, sir.

17 CHAIRMAN SMITH: Thank you. Answer any
18 questions of counsel.

19 JUDGE MANNING: Yes, sir.

20 EXAMINATION

21 (By Mr. Stimson)

22 **Q. Judge Manning, after serving 23 years on the bench**
23 **why do you want to continue serving as a Circuit**
24 **Court judge?**

25 A. I can't do anything else after 23 years.

1 **Q. Judge Manning, please explain one or two brief**
2 **accomplishments that you feel you've completed**
3 **during your tenure and then perhaps a goal**
4 **you would like to accomplish if re-elected or re-**
5 **appointed.**

6 A. That's kind of difficult. You know, basically, you
7 try to do the best you can every time you do
8 something every day you can. And that's been a
9 philosophy I've tried to live by. And I think
10 overall I've been successful in that goal that I
11 aim. And, really, I mean, it doesn't matter what
12 it is, what day it is, what time it is, everything
13 you do that is in front of you, you're trying to do
14 the best you can with that particular situation at
15 that particular time. And, I mean, that's my
16 philosophy of life. That's what I've always tried
17 to do. Now, whether I've accomplished anything,
18 it's, you know, it's subject to debate. I think I
19 have, but I can't think of anything specific I'd
20 like to make note to it.

21 **Q. Judge Manning, what do you think your reputation is**
22 **among attorneys that practice before you and your**
23 **court personnel?**

24 A. I hope it's very good. There's always somebody
25 that has something to say. You please all the

1 people some of the time, some of the people all the
2 time, and never all the people all the time.

3 **Q. Judge Manning, the Commission received 903 ballot**
4 **box surveys regarding you with 64 additional**
5 **comments. The ballot box survey, for example,**
6 **contained the following positive comments: "A great**
7 **judge and a great person, very personal and helpful**
8 **to all, the Bar needs more like him." And "Judge**
9 **Manning gets it, he sees the big picture. He's a**
10 **gentleman who happens to be a judge. We're**
11 **fortunate to have him on the bench." Ten of the**
12 **written comments expressed concerns. Seven**
13 **comments indicated that your courtroom demeanor may**
14 **be lacking for the bench. What response would you**
15 **offer for this concern?**

16 **A.** Well, depends on who is responding to that survey.
17 Once again, I'll -- somebody is always asking me,
18 well, what's your philosophy on sentencing this or
19 that criminal. You know, my response has always
20 been my philosophy is I have no philosophy. All
21 you can do is take one case, one situation at a
22 time and do the very best you can with that. I can
23 see how some people may feel that way, but I have
24 never gone out of my way to hurt anybody's feelings
25 and belittle anybody or anything. I've always

1 tried to do the best I can with everybody in front
2 of me at the time that they presented themselves.

3 **Q. Judge Manning, a second concern comes from a few**
4 **other comments. And it suggests that your role as**
5 **a color analyst for USC basketball can conflict**
6 **often with your courtroom schedule.**

7 A. Well, I've never had anybody to file any specific
8 complaint, write me a letter of complaint or
9 voice a complaint to me personally about it except
10 for I think it was Tom Riser, former Representative
11 from Lexington years ago. He always said to me,
12 when I first ran 20 something years ago, you know,
13 it just don't seem right for a judge to do that
14 sort of thing. Now, he was one that specifically
15 philosophically has always thought that you
16 shouldn't do that as a judge. And, yet, I've heard
17 more positive comments over the years where people
18 say, you know, it's pretty good because it
19 humanizes judges, it makes everybody feel as if
20 you're just a regular person. And I think that can
21 be of some positive benefit.

22 **Q. Judge Manning, the third and final concern raised**
23 **in a few comments that suggested at times you do**
24 **not base your decision solely on the law, rather on**
25 **the individuals or entities that might be before**

1 **you. What response would you offer that?**

2 A. Well, it was April 20, 2011 I performed a wedding
3 ceremony for a guy name -- a friend of my name Dan
4 Goldberg. I've known him since he was eleven. So
5 I'm standing under the chuppah with Jack Swerling
6 and Jerry Garfield (ph.). And Jack Swerling turned
7 to me and said, you know, Judge, Casey we've been
8 friends for over 30 years, you know, yet every time
9 I appear in front of you I never know exactly what
10 you're going to do. And I said, "Jack, neither do
11 I."

12 **Q. Judge, since the last time you came before this**
13 **screening Commission what changes have you seen in**
14 **the Circuit Court, be they positive or negative?**

15 A. You know, it's kind of hard to say. I think mostly
16 positive. There's a reason why several years ago
17 they added the civility oath to the part of being
18 sworn in as a lawyer or as a judge. I think
19 sometimes people get, I guess, a little anxious
20 and, you know, -- let me give you a prime example.
21 I tried a case last week. There was a young
22 lawyer. I'm in chambers going over the charge. We
23 had a charge conference. And he handed me a
24 statute he wanted me to read as part of the charge,
25 and I reached to get it and the other lawyer said,

1 "Well, I object." I said, "Will you please let me
2 read it first?" So I think people sometimes -- and
3 I've been a young lawyer, I understand these
4 things. They get so wrapped up in what they're
5 doing that they feel like they've got to have
6 something here and now. I don't see as much
7 patience I think as there should be. And,
8 understanding that, I try to be more patient with
9 those that are impatient, I guess. And so it is
10 part of growing up. I'll tell you a true story,
11 can I have time?

12 **Q. Sure.**

13 A. I was talking to Barry George this morning, and
14 everybody knows Barry George. He's been around
15 forever. And I mentioned Judge Bristow. And a lot
16 of people ask me why do I always ask the question,
17 "What do you want?" And I was explaining how it
18 was years ago out at PCR in Lexington, and I know
19 Judge Bristow. We lived in the same neighborhood.
20 And he said, "Good morning, Mr. Manning, how are
21 you doing? What do you want?" I said, "Well,
22 Judge, my client's grandmother." He said, "Stop.
23 Mr. Manning, I'm a simple person, just tell me what
24 you want." And I said, "A continuance." He looked
25 at Singleton who was the AG, and he says, "Are you

1 opposed? He said, "No." He said, "Granted." So
2 I've used that as a guide for me to help people,
3 not to cut them off, but, you know, just tell
4 me what it is you want. If I can give it, I will.
5 Barry George tells the story how he was a young
6 lawyer, he was in front of Judge Bristow. And he
7 says, "Well, you know, Judge, I think he comes in
8 res gestae. And Judge Bristow said, "Well, Mr.
9 George, it's res gestae." And Barry said he sat
10 down for a moment and thought. Said a wait a
11 minute. And before he knew it, he stood up and
12 said, you know, Judge, I went to the University of
13 South Carolina, I didn't go to Harvard. If I had
14 gone to Harvard I guess I could have said the right
15 thing. And he realized that's one of the biggest
16 mistakes he could have made in his life. Young
17 lawyers make mistakes like that. I made mistakes
18 like that. So you try to bear that in mind as a
19 judge. Young people make mistakes like that. They
20 say things they wish they could take back. You try
21 to bear that in mind and you ignore a lot of things
22 as a judge. So I think people become a little bit
23 more anxious and, you know, -- but you understand
24 that as a guy that's been around as long as I have
25 sometimes you ignore it, don't pay it

1 any attention, but try to do something to help them
2 not make that same mistake again in front of
3 somebody else.

4 **Q. Judge Manning, what have been some of the**
5 **challenges you faced as the Chief Judge for Common**
6 **Pleas in the Fifth Circuit?**

7 A. Signing default orders. You have to sign them
8 twice. And in Richland County, let's face it, you
9 could get -- rarely do you get less than 20,
10 sometimes you get 100. But you have to sign them
11 over and over again. But it becomes something that
12 you just get used to. You try to stay on top of
13 it. The challenge is to stay even or ahead, which
14 is difficult because you have so many things you're
15 doing. So you go in during a break, you know, it's
16 like you're in a trial, you stop, you sign things
17 on a break. If it's a trial you might sign
18 something on the bench. But you always try to stay
19 even or ahead, which is difficult to do because of
20 the volume of things. And like, for example, this
21 morning we were at a roster meeting. I probably
22 had I would say at least 15 to 20 status
23 conferences after the roster meeting. That's the
24 best time to have them. Everybody comes there.
25 Nine times out of ten they want more time. How old

1 is the case? How much time you need? What do you
2 want? And you cut them off by saying, well, just
3 like somebody started this morning, well, my -- you
4 know, my client is a single mom and her kid plays
5 ball. I said, "No, no, no, please just tell me
6 what you want." He wanted a 45 day continuance or
7 something like that. I gave it to him. But he
8 didn't need to tell me about the mother and all
9 this. And the challenge is just to help as many
10 people as you can as quickly as you can, as
11 thoroughly as you can. And they don't need to tell
12 me the whole story. I get the idea. I've been
13 around a long time. It's like Judge Bristow, the
14 example, just tell me what it is you want. And
15 sometimes it's more difficult to get people just to
16 say this is what I want instead of they don't have
17 to whine and beg. You know, they just need to say
18 what they want. It's very helpful to me and it
19 helps them by just saying if you want 30 days you
20 got 30 days, you don't have 30 days, I give 20
21 days, you have 45 days, if that makes sense.

22 REPRESENTATIVE RUTHERFORD: Judge, I'm
23 sorry, I think you're talking too fast for the
24 court reporter. I don't want to be rude and
25 say slow down, but the court reporter is

1 trying to catch it.

2 JUDGE MANNING: I do apologize. I will
3 slow down. I'm sorry.

4 **Q. Thank you, Judge Manning. I just have a few**
5 **housekeeping issues remaining.**

6 A. Yes, sir.

7 **Q. Judge Manning, since submitting your letter of**
8 **intent, have you contacted any members of the**
9 **Commission about your candidacy?**

10 A. No. In fact, if I see them I walk the other way,
11 honestly. Well, not always. No, of course not.

12 **Q. Judge Manning, since submitting your letter of**
13 **intent, have you sought or received the pledge of**
14 **any legislator, either prior to this date**
15 **or pending the outcome of your screening?**

16 A. No, sir.

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

21 A. The answer is no. No.

22 **Q. Have you received and do you understand the**
23 **Commission's guidelines on pledging in South**
24 **Carolina Code Section 2-19-70(E)?**

25 A. Yes, sir.

1 MR. STIMSON: I would note that the
2 Midlands Citizens Committee reported that
3 Judge Manning is well qualified in evaluative
4 criteria of ethical fitness, professional and
5 academic ability, character, reputation,
6 experience, and judicial temperament. And
7 Judge Manning was reported qualified in the
8 evaluative criteria of constitutional
9 qualifications, physical health and mental
10 stability. The Midlands Citizens Committee
11 stated, "We feel that Judge Manning to be
12 extremely well qualified in every respects.
13 He has great experience and knowledge of the
14 law. He has commendable personal skills." I
15 would just note for the record that any
16 concern that were raised in the investigation
17 regarding Judge Manning were incorporated into
18 the questioning of him today. Mr. Chairman, I
19 have no further questions.

20 CHAIRMAN SMITH: Thank you Mr. Stimson.
21 Judge Manning, I'll start off as I was
22 reviewing your comments and I found one
23 particularly disturbing, and it says that you
24 can no longer make a free throw. Is that so?

25 JUDGE MANNING: No, sir, that's not true.

1 I can't slam dunk anymore. I can hit 80
2 percent.

3 CHAIRMAN SMITH: Any questions for Judge
4 Manning? Senator Rankin.

5 SENATOR RANKIN: I do. Beauty in the eye
6 of the beholder. Perhaps, the sense of humor
7 in the eye or ear of the beholder. Two
8 comments. One, caustic sense of humour, which
9 may be misunderstood at times.

10 JUDGE MANNING: No, it's not --

11 SENATOR RANKIN: Hold on. The other is he
12 is very funny and personable. Now, do you
13 think perhaps one of those folks was a Clemson
14 fan and the other one was a South Carolina
15 fan?

16 JUDGE MANNING: I think they went to
17 college at Clemson and law school at Carolina.
18 That's what I think.

19 SENATOR RANKIN: The other one, and this
20 in kind of a selfish vein, the son of a fellow
21 who smoked for too long, someone wrote that
22 they wished you would stop smoking.

23 JUDGE MANNING: I did. I did.

24 SENATOR RANKIN: Good for you. The
25 anonymous bench bar comments work. How about

1 that?

2 JUDGE MANNING: Yeah, I wonder who told
3 you that, but I don't smoke. I really did,
4 and, you know, I enjoyed smoking for a number
5 of years. It's not anything that's
6 particularly good for you. And what happened,
7 my doctor, he's prescribed Chantix, what do
8 you call it? I took a couple of those, I
9 said, look, this is worse than smoking, so I
10 stopped smoking so I didn't have to take the
11 medication, to be honest with you. I'm not
12 making this up. But, yeah, I have and I think
13 I feel better. And I used to tell people,
14 Senator Rankin, you know, I used to be six-ten
15 before I got this job, and, I don't know, it
16 wears on you over the years, so.

17 CHAIRMAN SMITH: Any further questions?

18 (No response.)

19 CHAIRMAN SMITH: Judge Manning, I
20 appreciate you enlightening me because I've
21 been attending a couple of status conferences
22 with you, and now I know the story behind you
23 just saying quit whining, just tell me what --

24 JUDGE MANNING: Yeah, yeah. It's just
25 Judge Bristow. And really I think is a fair

1 thing to do. And somebody whispered and they
2 said, you know, you're just like Thomas W.
3 Cooper. And we started the same way, as you
4 know. Started with the same circuit. He'll
5 just say, you know, you don't have to whine
6 with me, just tell me what it is you want.
7 And it's difficult for lawyers to ask that
8 sometimes and you do that to help them, make
9 it easier for them actually.

10 CHAIRMAN SMITH: And you do. And you're
11 very accommodating. Thank you. Judge
12 Manning, I appreciate you being here today.
13 This concludes this portion of our screening
14 process. I want to take this opportunity to
15 remind you that pursuant to the Commission's
16 evaluative criteria the Commission expects
17 candidates to follow the spirit as well as the
18 letter of the ethics law. And we will view
19 violations or the appearance of impropriety as
20 a serious and potentially deserving of heavy
21 weight in screening and deliberations. On
22 that note, and as you know, the record will
23 remain open until the formal release of the
24 report of qualifications and you may be called
25 back at such time if the need arises. I thank

1 you for offering and I thank you for your
2 service to the State of South Carolina.

3 JUDGE MANNING: Thank you, sir. And thank
4 you gentlemen and ladies.

5 (The candidate is excused.)

6 CHAIRMAN SMITH: Senator Sabb makes the
7 motion to go into executive session. All in
8 favor say, "Aye."

9 (The Commission members comply.)

10 CHAIRMAN SMITH: Are there any opposed?

11 (No response.)

12 CHAIRMAN SMITH: It's unanimous we go into
13 executive session.

14 (Off-the-record executive session.)

15 CHAIRMAN SMITH: Representative Rutherford
16 moves we lift the veil and come out of
17 executive session. All in favor say, "Aye."

18 (The Commission members comply.)

19 CHAIRMAN SMITH: All right. The "ayes"
20 have it. I want to thank everyone. The
21 Judicial Merit Selection Commission is now
22 back on the record. For the record, I'd like
23 to state that while we've been in executive
24 session there have been no decisions made and
25 no votes were taken. With that, we're going

1 to go ahead and vote on the Circuit Court
2 judges that we've heard thus far. And go
3 ahead, Erin, if you'll read out the ones for
4 our consideration.

5 MS. CRAWFORD: Judge Henderson.

6 CHAIRMAN SMITH: Judge Henderson.

7 MS. CRAWFORD: Roger Henderson, re-
8 election Circuit Court, Fourth Circuit.

9 CHAIRMAN SMITH: All right. And
10 Representative Murphy moves to qualify and to
11 nominate. Is there a second?

12 REPRESENTATIVE RUTHERFORD: Second.

13 CHAIRMAN SMITH: Representative Rutherford
14 seconds it. All in favor raise their hands by
15 saying, "Aye."

16 (The Commission members comply.)

17 CHAIRMAN SMITH: All opposed?

18 (No response.)

19 CHAIRMAN SMITH: It was unanimous. Judge
20 Henderson is qualified and nominated. Next.

21 MS. CRAWFORD: Judge Casey Manning, re-
22 election Circuit Court, Fifth Circuit, Seat 2.

23 CHAIRMAN SMITH: All right. Senator Hayes
24 moves that we find him qualified and
25 nominated. Is there a second?

1 SENATOR RANKIN: Second.

2 CHAIRMAN SMITH: Senator Rankin seconds
3 it. Any discussion?

4 (No response.)

5 CHAIRMAN SMITH: All in favor decision by
6 raising your hands.

7 (The Commission members comply.)

8 CHAIRMAN SMITH: All opposed?

9 (No response.)

10 CHAIRMAN SMITH: Let the record reflect
11 that's unanimous.

12 MS. CRAWFORD: Judge Grace Gilchrist Knie.

13 CHAIRMAN SMITH: All right. And Judge
14 Knie. Mr. Safran moves that we find Judge
15 Knie qualified and nominated.

16 MR. HOWARD: Second.

17 CHAIRMAN SMITH: Seconded by Mr. Howard.
18 Any discussion?

19 (No response.)

20 CHAIRMAN SMITH: All in favor raise their
21 right hands.

22 (The Commission members comply.)

23 CHAIRMAN SMITH: All opposed?

24 (No response.)

25 CHAIRMAN SMITH: Let the record reflect

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that's a unanimous vote. Tomorrow we are convening at 9:30 a.m. So Mr. Safran moves that we adjourn to reconvene at 9:30 a.m. All in favor say, "Aye."

(The Commission members comply.)

CHAIRMAN SMITH: All opposed?

(No response.)

CHAIRMAN SMITH: Ayes, have it. We stand adjourned.

(Off the record.)

(There being no further questions, the proceedings adjourned at 7:34 p.m.)