

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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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

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* * * * *

20

DATE: November 15th, 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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(No Information Requested.)

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Court Reporter's Legend:

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

1 CHAIRMAN SMITH: He's been telling every
2 candidate, so far we're optimistic with our -- we're
3 optimistic with our executive sessions, and they never turn
4 out the way we are. So we appreciate the patience.

5 I see you got someone with you. Would you
6 like to introduce her to the Commission?

7 MR. BARROWCLOUGH: Yes, sir. This is my
8 wife Kristin Barrowclough.

9 CHAIRMAN SMITH: Kristin, welcome. Nice to
10 see you.

11 Mr. Barrowclough, will you please raise your
12 right hand for me.

13 BRYSON JOHN BARROWCLOUGH, being duly sworn
14 and cautioned to speak the truth, the whole truth and
15 nothing but the truth, testifies as follows:

16 CHAIRMAN SMITH: You have before you, Mr.
17 Barrowclough, a copy of the -- your personal data
18 questionnaire and the sworn statement that were submitted
19 to -- that were submitted to the Commission. Are those the
20 documents that you submitted to them -- to the Commission?

21 MR. BARROWCLOUGH: Yes, sir.

22 CHAIRMAN SMITH: Are they both correct?

23 MR. BARROWCLOUGH: Yes, sir.

24 CHAIRMAN SMITH: To the best of your
25 knowledge.

1 MR. BARROWCLOUGH: Yes, sir.

2 CHAIRMAN SMITH: Let me add that
3 qualification. And does anything need to be changed or
4 updated at this time?

5 MR. BARROWCLOUGH: No, sir.

6 CHAIRMAN SMITH: Do you have any objection
7 to those documents, and any amendments that may be there as
8 -- to be made a part of your sworn testimony today?

9 MR. BARROWCLOUGH: No objection.

10 CHAIRMAN SMITH: All right. Let me get a
11 copy of those. And we'll have those made a part of your --
12 of the record.

13 (EXHIBIT NO. 1 - JUDICIAL MERIT SELECTION
14 COMMISSION PERSONAL DATA QUESTIONNAIRE OF BRYSON
15 JOHN BARROWCLOUGH)

16 (EXHIBIT NO. 2 - JUDICIAL MERIT SELECTION
17 COMMISSION SWORN STATEMENT OF BRYSON JOHN
18 BARROWCLOUGH)

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

1 your name appears, a study of previous screenings, and
2 checks for economic conflicts of interest.

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

7 MR. BARROWCLOUGH: I would just wish to just
8 briefly say thank you to all of you. I recognize that
9 every single one of you is an important person, and that
10 you-all have a lot going on beyond this. And it is my
11 honor, and also I'm humbled to appear in front of you.

12 CHAIRMAN SMITH: Okay. Thank you very much.
13 And answer any questions that counsel may have for you.

14 MR. PEARCE: Mr. Chairman, first, and
15 members of the Commission, I note for the record that,
16 based on the testimony contained in Mr. Barrowclough's PDQ,
17 which has been included in the record, with the candidate's
18 consent at this point, that he meets the constitutional and
19 statutory requirements for this position regarding age,
20 residence, and years of practice.

21 EXAMINATION BY MR. PEARCE:

22 Q. Good morning, Mr. Barrowclough.

23 A. Good morning, Mr. Pearce.

24 CHAIRMAN SMITH: "Good afternoon," Mr.
25 Pearce.

1 MR. PEARCE: Well, you know what? It is
2 afternoon. Thank you, Mr. Chairman. And I'm going to
3 correct my watch.

4 BY MR. PEARCE:

5 Q. Good afternoon, Mr. Barrowclough.

6 A. Good afternoon, Mr. Pearce.

7 Q. Welcome back to Columbia. How do you feel your
8 legal and professional experience thus far renders you
9 qualified, and will assist you to become an effective
10 circuit court judge?

11 A. I believe that I do have the requisite
12 experience. I have been a trial lawyer for all of my 22-
13 plus years. I have worked mainly on the defense side of
14 the courtroom, but I've also worked on the prosecution side
15 of the courtroom. And I feel like I am extremely
16 knowledgeable about anything having to do in the realm of
17 criminal law.

18 I do acknowledge that I am not experienced in
19 civil law. However, I have spoken to sitting judges, Judge
20 John Hayes and Judge Dan Hall, up in the 16th Circuit, to
21 see if they thought that, that would be a hindrance that
22 would disqualify me.

23 They both assured me that my knowledge of the
24 rules and evidence to preside over trials, as well as the
25 ability to learn civil law, that they felt like in short

1 order I would be qualified on the civil side as well.

2 I did sit for three separate Bar exams, two of
3 which I studied for on my own. I passed them all on the
4 first try. I did graduate magna cum laude from law school,
5 so I do feel like I have the requisite intellect to climb
6 that learning curve quickly, should I become a circuit
7 court judge.

8 CHAIRMAN SMITH: Mr. Barrowclough, let me
9 interrupt you for a second. And I have not followed the
10 appropriate procedure, I guess. When we came out of
11 executive session -- and I know we came out, and I don't
12 think it was on the record. And when we came out of
13 executive session, when we finished the executive session,
14 Representative Rutherford made a motion to leave -- to lift
15 the veil and leave executive session. Everyone voted in
16 favor of that.

17 And I just want place on the record that
18 there was no -- while we were in executive session, no
19 decisions were made, and there were no votes taken during
20 executive session. I apologize. We did all that off the
21 record, and I didn't place it on the record. So I
22 apologize for that. I'm sorry to interrupt you.

23 MR. BARROWCLOUGH: Yes, sir.

24 BY MR. PEARCE:

25 Q. The Commission received 94 ballot box surveys

1 regarding you. Eighteen of those had additional comments.

2 The ballot box contained the following positive comments:

3 "Would be a great circuit court judge. Fair and
4 honest. Such a benefit to the legal profession.
5 Extraordinary knowledge of the Constitution. Extremely
6 conscientious and hard-working attorney. A rare
7 combination of exceptional intellect and commitment to
8 justice. Smart, helpful, even-tempered, and a stellar
9 candidate for resident judge."

10 Five of the written additional comments expressed
11 concerns, or what could be considered qualified concerns
12 about you. A couple of these concerns or comments related
13 to your legal experience. The first: "I would be concerned
14 -- would be concerned about his lack of civil experience.
15 A talented criminal lawyer."

16 And an additional one: "This candidate has no
17 civil experience. He will certainly be biased against
18 solicitors in general sessions. He will not follow the
19 law, and lacks a sufficient basis to apply the law. He
20 does not believe in many of the criminal -- that is, drug
21 laws, habitual offender laws -- and will supplant the rule
22 of law with his personal beliefs. He treats law
23 enforcement and solicitor with contempt and does not
24 believe in the Oath of Civility. He may have the intellect
25 and ability to apply the law, but lacks the will to accept

1 the law as legislated, and certainly will not apply the law
2 as legislated."

3 What response do you have to offer to these
4 concerns?

5 A. Well, if I could categorize those concerns, and
6 address them one at a time, I think the first concern deals
7 with my lack of civil experience. Which again, I would
8 work hard to get up to speed on the civil side.

9 Although, I acknowledge that is a legitimate
10 concern. And, you know, I did again talk with Judge Hall
11 and Judge Hayes about that; they did not feel that, that
12 would be something that would preempt me from being a good
13 circuit court judge.

14 They did say that, in their experience, that the
15 job of a circuit court judge is 70 to 75 percent general
16 sessions, and only about 25 percent common pleas. So I
17 feel like I would be up to speed in handling that aspect of
18 the job immediately.

19 The second criticism seems to deal with the fact
20 that I would not be fair to the prosecution side. I heard
21 the comment about I have contempt for police officer or a
22 prosecutor, that I may not apply certain types of laws like
23 the drug laws or the habitual traffic offender laws. And I
24 will say that, that is absolutely false.

25 I know that if you see my application, you know

1 that I have also worked as a prosecutor, albeit in another
2 state. I was assistant district attorney in Luzerne
3 County, Pennsylvania. I prosecuted cases vigorously up
4 there. I had the -- I had the honor of being brought in on
5 a prosecution team on a double-murder case up there that
6 was a national case that was featured on American's Most
7 Wanted.

8 We ended up trying that case. And as a result of
9 that case, the prosecution team, myself included with two
10 other lawyers and the investigators, was awarded an award
11 by the attorney general of Pennsylvania, that they only
12 give out to one prosecution team in the entire state of
13 Pennsylvania for the year.

14 And so my thinking is, is that whoever wrote
15 those comments is just not aware of my experience on the
16 prosecution side.

17 I think that as an advocate, I've been a zealous
18 advocate for whichever side that I have been on. But I
19 understand that, you know, for people who are filling out
20 ballot box surveys, who only know me for my service in York
21 County public defender office, that they may think that I
22 was overly zealous.

23 I've always treated prosecutors and police
24 officers with respect. There certainly have been over 20-
25 plus years of adversarial proceedings in court, times when

1 I would get into a cross-examination with a police officer
2 which resulted in a situation where I did not feel that
3 person was telling me the truth, and perhaps things did get
4 heated.

5 But outside of the courtroom, I've always treated
6 the police officers with respect. I've always treated
7 solicitors with respect. It's ironic I think that, you
8 know, the vast majority of people who work where I work in
9 the Moss Justice Center, would tell you that I, of all the
10 public defenders, and probably most of the private Bar,
11 have better working relationships and friendships with the
12 attorneys in the solicitor's office than anybody.

13 Oftentimes attorneys will come to me and ask me
14 to intercede or negotiate a case with attorneys in the
15 solicitor's office, because they know that I have those --
16 developed those good personal relationships with those
17 people.

18 The third and final concern that I think is
19 encapsulated in those criticisms is whether or not I would
20 apply the law. And I will tell you, of course I'm under
21 oath, I would certainly apply the law. And I think that by
22 analogy, I would say that -- again, in trial there are
23 certain rules that govern what you're supposed to and what
24 you're not supposed to do.

25 And while I have the benefit of having tried a

1 lot of cases, and you have a case strategy and you have
2 points you want to make, and how you want to make them, I
3 think that there is no one who would ever say that I did
4 anything outside the bounds of the law to make those
5 points.

6 And whatever views I have about the law, I would
7 never go outside the bounds of what the law says to do in
8 governing any type of case or any type of situation. I'd
9 always follow the law, because I'm a lawyer and that's what
10 we're supposed to do. So I think that, that criticism is
11 unfair and untrue.

12 **Q. An additional concern stated, "Mr. Barrowclough**
13 **does a fine job advocating for his clients. But I am**
14 **concerned that his ideological commitments will find their**
15 **way into his rulings as a judge."**

16 **What response would you offer to that statement**
17 **concern?**

18 A. Well, I would say similar to what I just said. A
19 judge has to follow the law, whether they agree with it or
20 not, at a circuit court level. And I think that, you know,
21 most certainly, I would always follow the law.

22 I do have political beliefs, like anyone else.
23 And I do enjoy discussing those. And it's, I think, the
24 nature of lawyers in a courthouse during down time, that
25 people do discuss things. And sometimes even argue about

1 things in a congenial fashion.

2 But I would never let anything that was a
3 personal belief or a political belief govern what I
4 decided, in such a way that it would contravene what the
5 law said. I mean, I would never do that.

6 **Q. Another concern stated, "He opposes prosecuting**
7 **most drug crimes and believes most traffic offenses --**
8 **excuse me -- most traffic offenses, minus DUI, are**
9 **pointless and does not feel they should be prosecuted.**
10 **Very strong views that I don't think he could set aside and**
11 **be impartial. Also very passionate to the point where his**
12 **proper judgement may go out the window in certain cases."**

13 **How would you respond to this stated concern?**

14 A. Well, with regards to the traffic offenses, I
15 mean, certainly that's false. I understand why we have the
16 traffic code and the reason for it. With regards to the
17 drug offenses I think that, that comes about in a larger
18 context of, again, practicing most of my career in York
19 County, where I believe the sentencing structure of York
20 County was a little bit more draconian and out of step with
21 the rest of the state.

22 I certainly understand the need for the drug laws
23 and I believe in the prosecution of drug crimes. But I do
24 know that over the years, I did have numerous arguments, if
25 you will, or more vehement opposition to the way that drug

1 crimes were prosecuted in York County as being out of step
2 with the rest of the state.

3 And I think that, that criticism originates in
4 those types of arguments. I don't -- I mean, certainly, I
5 do believe that drug crimes need to be prosecuted. But,
6 you know, in more recent times in York County, things have
7 moved away from that. So it's not as relevant a criticism
8 as it would have been, say, three, four, five years ago.

9 But certainly, I think whoever fill -- whoever
10 said that about me, there have been disagreements I've had
11 with the way that drug crimes are prosecuted in York County
12 over the years.

13 **Q. You indicated in your PDQ, that a pro se lawsuit**
14 **was filed against you on February 5th, 2009, in the**
15 **Richland County Common Pleas court, as case number 2009-CP-**
16 **40-01048 by a former defendant-client of yours who was then**
17 **an inmate, who had been sentenced in 2002. I believe in**
18 **2002, you indicated he had 28 charges made against him,**
19 **that included burglaries and armed robberies.**

20 A. That's correct.

21 **Q. This lawsuit was based on allegations of**
22 **malpractice and fraud. Could you explain the nature and**
23 **disposition of this suit, please?**

24 A. Yes, sir. I received a written letter from the
25 prison from Mr. Cook -- it was Mr. Jerrod Cook, about --

1 about the fact that he had filed a suit. I contacted the
2 attorney for York County, who referred it to another
3 attorney who practices in Richland. And I spoke briefly to
4 that attorney on the telephone, and he told me, "Don't
5 worry about this."

6 And some seven months later it was dismissed.
7 Mr. Cook did have numerous armed robberies and burglaries,
8 he did enter a plea and received a 21-year sentence. And
9 it was about seven years after he'd been in court, that the
10 lawsuit was filed and dismissed.

11 **Q. You also noted, and you've spoken this morning,**
12 **that you worked as a prosecutor. What do you see from your**
13 **work as a public defender and prosecutor that you believe**
14 **helps you as you work to learn more about the civil law**
15 **practice area?**

16 A. Well, two things that would jump out right away
17 are -- as far as being a judge the rules of evidence are
18 extremely similar, so I think that presiding over a
19 criminal trial and presiding over a civil trial would be
20 pretty easily translatable.

21 But the other thing is that, you know, being a
22 prosecutor and dealing with victims and witnesses, and
23 being a public defender and dealing with defendants and
24 witnesses, I feel like I've developed very good people
25 skills to not only to be able to read people, but also the

1 ability to communicate with people. I think it is an
2 extremely important job skill of a judge.

3 And of course I've been in front very many
4 judges, over 22 years. For a judge to be able to
5 communicate both with -- with the lawyers involved, so the
6 expectations are made known and met, but also with the
7 parties involved so that they feel like the person
8 adjudicating their case understands them and understands
9 the issue.

10 And even if the judge does not go their way, at
11 least that person feels like they got a fair hearing from a
12 person who understands and cares about whatever concern
13 brought them to that court in the first place.

14 So I think that my ability to relate to people
15 and communicate with people has been developed and fine-
16 tuned over many years of lawyering on both sides of the
17 criminal court. And I think that would be another skill
18 that would help me as a judge in the court of common pleas.

19 **Q. Thank you, Mr. Barrowclough. We do have some**
20 **housekeeping issues. Are you aware that as a judicial**
21 **candidate, you are bound by the Code of Judicial Conduct**
22 **found in Rule 501 of the South Carolina Appellate Court**
23 **Rules?**

24 A. Yes, sir.

25 **Q. Since submitting your letter of intent, have you**

1 contacted any members of this Commission about your
2 candidacy?

3 A. I have not.

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

7 A. No, sir.

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

12 A. I have not. And I'm not aware of that either.

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

16 A. Yes, sir.

17 MR. PEARCE: Mr. Chairman, and Commission
18 members, I would note that the Piedmont Citizens Committee
19 found Mr. Barrowclough to be well qualified in the
20 evaluative criteria of ethical fitness, professional and
21 academic ability, character, reputation, and judicial
22 temperament. They also found him to be qualified in the
23 remaining criteria of constitutional qualifications,
24 physical health, mental stability and experience.

25 They also reported, "The Committee is

1 impressed by Mr. Barrowclough's energy, thoughtfulness, and
2 clear knowledge and ability in the area of his practice."

3 They further reported the Committee's only
4 concern is that "Mr. Barrowclough, like other candidates
5 vying for the 16th Circuit seat, has practiced exclusively
6 in the area of criminal law. The Committee is confident,
7 however, that he could acquire the necessary civil
8 experience on the job."

9 Mr. Chairman, and members of the Commission,
10 I would note for the record that any concerns raised during
11 the investigation by staff regarding this candidate were
12 incorporated into the questioning of him today. Mr.
13 Chairman, I have no further questions.

14 CHAIRMAN SMITH: Thank you. Any questions?
15 Senator Hayes.

16 MR. HAYES: Thank you.

17 EXAMINATION BY MR. HAYES:

18 **Q. I appreciate your willingness to serve people in**
19 **our area, up there as a circuit judge. Just a couple of**
20 **housekeeping. I was just looking at your resume, and you**
21 **took the North Carolina and South Carolina Bar in '95, and**
22 **you took the Pennsylvania Bar in 2000. Where did you work**
23 **between '95 and 2000?**

24 **A. I worked at the York County Public Defender**
25 **Office from 1995 to 2000.**

1 **Q. Then you went to work in Pennsylvania for a**
2 **while?**

3 A. Yes, sir. Our first child was born in July of
4 1999. And at that time, my wife wanted to relocate closer
5 to her family. So I studied for the Bar after work, took
6 the Bar, passed the Bar, got a job up there working at the
7 district attorney's office.

8 We moved up there. We lived up there about 18
9 months. And then it was actually the cold weather, my wife
10 had gotten used to the South, and wanted to return. I
11 called up Harry Dent, my old boss, and asked if there was a
12 position available and could I have my old job back. And
13 he said, "Yes." And so then we returned.

14 **Q. Very good. I know we've talked -- or you have**
15 **mentioned already, about your experience on the criminal**
16 **side, the lack of experience on the civil side. Putting**
17 **that aside, what do you see, as far as your background,**
18 **that you feel would make you a good judge? And what**
19 **possible weaknesses in your background may make -- may be a**
20 **hindrance to being a good judge?**

21 A. I think that one of my strengths as a judge is --
22 as I -- as I already touched upon, is my people skills. I
23 have, as I said, developed relationships with numerous
24 lawyers. Both lawyers on the defense side who I've
25 mentored, or whether it was on prosecution side who I've

1 worked against.

2 And not just in the context of a single case.
3 But as the deputy public defender in York County, whenever
4 there are problems that come up in the York County criminal
5 justice system, whether they be scheduling problems,
6 whether they be problems with juries, whether they be
7 problems with -- one of the issues now, currently, is
8 whether or not a motion's practice is going to start.

9 I have developed the relationships to act on
10 behalf of the office in dealing with lawyers with the
11 solicitor's office, with Kevin Brackett and with Betty
12 Miller, with the leadership of the Probation and Parole
13 Department, with the Clerk of Courts office, with the jail.

14
15 I think that in that capacity, my communication
16 skills and my ability to relate to people has helped to
17 move the ball forward to solve problems. And I think that
18 in the context of being a circuit court judge, that, that
19 would also be a valuable skill, especially since in a -- in
20 a local criminal justice system, as you know, the judge has
21 more power than anybody.

22 And having a problem-solving judge who can
23 communicate with and has good personal relationships with
24 all the different parties in the system, I think that would
25 be strength that I would have.

1 As far as a weakness? I think that my
2 inexperience in civil court has been the one glaring thing
3 that I've focused on as I've made my way through this
4 process. But I know you said beyond that. Probably, I
5 would say, the fact that -- you know, in addition to having
6 practiced, you know, mainly as a -- as a defense attorney,
7 my practice also has been mainly in York County.

8 So while a -- while a strength is that strong
9 relationships with all the stakeholders in the York County
10 criminal justice system, I really don't know that many
11 people around the state. And I think that, obviously,
12 circuit court judges also have to travel, so again, that
13 would be an inexperience issue that I could address as I
14 moved around.

15 But I think that my ability, you know, to
16 effectively communicate, and maybe solve problems in other
17 circuits, you know, it would take a while to get up to
18 speed in that regard.

19 MR. HAYES: Thank you.

20 CHAIRMAN SMITH: Any other -- Mr. Hitchcock,
21 you got questions?

22 MR. HITCHCOCK: Thank you, Mr. Chairman.

23 EXAMINATION BY MR. HITCHCOCK:

24 **Q. Mr. Barrowclough, certainly, you know, you've**
25 **been an advocate for 22 years. And as you look to make**

1 that -- you know, if you were found qualified, nominated,
2 and ultimately elected by the General Assembly, as you look
3 to make that transition from being an advocate for so long,
4 and thinking about transitioning to much more of a -- you
5 know, a neutral party as a judge -- and, you know, also in
6 regards to some of the points that have been brought out
7 about your -- you know, somewhat of a lack of civil
8 experience, who would look to as -- as far as a judge that
9 you hold in high esteem at the -- you know, to go to as one
10 that would serve as an example to you, and two, that you
11 may look to, to serve as a mentor to help you make that
12 transition?

13 A. Well, the most immediate answer that I would have
14 would be, of course, Judge Dan Hall. Both because he would
15 be readily available as the other sitting circuit court
16 judge, but also because he and I have had a friendship that
17 goes back some 15 years at least.

18 When he was an assistant solicitor, I was
19 assigned to his case load, where we had cases against each
20 other for a good seven or eight years. And we developed a
21 mutual respect. And I know him to be a man of the highest
22 integrity, so that would be one person.

23 I did -- when I met with the Bar Committee, they
24 asked me a similar question. And I did also talk about the
25 fact that Judge Michael Nettles is a person who just

1 carries himself with so much class in the courtroom, and
2 treats all the parties, as I was alluding to earlier, in a
3 way that makes everyone feel as if they've been heard and
4 been respected and had their points of view taken into
5 account.

6 Also, I thought about a case that I did with
7 Harry Dent. A woman named Janice Clark Smith, who had
8 killed her father, who had abused her his whole life, and
9 abused the whole family -- even the grandchildren. And the
10 last straw for Ms. Smith was that her mother had cancer,
11 and the father, just out of meanness, disposed of her
12 cancer medication.

13 And we went to court in that case. It got
14 national media attention. And Mr. Dent was on Larry King
15 and Oprah and other shows. But that whole case going in
16 front of Judge King, he treated it with so much
17 deliberation. And, you know, there were so many people in
18 court. And I think to myself, if I was in his shoes, there
19 seemed to be so much pressure on him to make a decision.

20 And actually, there was a lot of pressure on him
21 to give her probation or something like that. There was
22 not one person who came to court, who asked for her to get
23 any time, even though she took a life. And what Judge King
24 did was, Judge King did not rule at that time. Judge King
25 said, you know, "I really need time to absorb all of this

1 and ruminates on it."

2 And so he did not decide. He went home that
3 night and thought about. And the next day, he came back
4 and he sentenced her to seven years. And I can tell you
5 most of the people in the courtroom thought that, that was
6 too much. But there was nobody in that courtroom who could
7 ever say that Judge King did not give that thoughtful
8 consideration and the appropriate deliberation.

9 So who would I probably go to for advice the
10 most, would be Judge Hall. But an example of a way that a
11 judge is supposed to handle things and be deliberate in
12 consideration and conscientious, I always think back to
13 that case with Judge King.

14 CHAIRMAN SMITH: Representative Murphy.

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

17 EXAMINATION BY REPRESENTATIVE MURPHY:

18 **Q. Mr. Barrowclough, you had mentioned that you were**
19 **a -- received an award as a district attorney in**
20 **Pennsylvania, correct?**

21 A. Yes, sir.

22 **Q. And I also note that you also received the award**
23 **for Public Defender of the Year, correct?**

24 A. Yes, sir.

25 **Q. And that was selected by your peers?**

1 A. Yes, sir. That was awarded by the Public
2 Defenders Association.

3 Q. And you had mentioned -- then there was a
4 question about, could you set aside your political beliefs
5 or -- to rule fairly, follow the law. And you can assure,
6 based on your work experience, whatever political beliefs
7 you have, that you could follow the law and to be fair and
8 impartial to both sides, the state, the defense, plaintiff,
9 defendant in a court of law, correct?

10 A. Absolutely. I would be fair to both sides.

11 Q. And you grew up in Glen Ridge?

12 A. I grew up in Morristown, New Jersey. I was born
13 in a hospital in Glen Ridge, New Jersey.

14 Q. Okay. How far is Morristown from Glen Ridge?

15 A. Maybe 40 minutes.

16 Q. The reason I ask is, my roommate from college
17 grew up in Glen Ridge. So I didn't know if you would -- if
18 you would know him. Do you know a -- I mean, a Captain
19 Scott Sill, or Colonel Sill? What year did you graduate
20 from high school up there?

21 A. 1988.

22 REPRESENTATIVE MURPHY: All right. Thank
23 you.

24 MR. BARROWCLOUGH: Thank you.

25 CHAIRMAN SMITH: Mr. Safran.

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

2 EXAMINATION BY REPRESENTATIVE SAFRAN:

3 Q. Just a couple quick questions.

4 A. Yes, sir.

5 Q. Obviously, looking at the resume, listening to
6 you, you've got a passion for what you've been doing. And
7 I know people who have had, you know, the occasional
8 thought, but when did you start seriously considering the -
9 - I guess, running for a judgeship?

10 A. Well, when Judge Hayes', you know, retirement was
11 becoming imminent as he approached his 72nd birthday, it
12 was something that other people approached me, and said,
13 you know, "Why don't you think about running for this?"

14 And to be honest I had not really thought about
15 it. When I graduated from law school, my goal was to be a
16 trial lawyer. And I was blessed to be able to pursue that
17 goal. Now having done it for 22 years, I feel like I have
18 basically fulfilled that dream.

19 And so when other people approached me about it,
20 and I started giving it some thought, you know, there are
21 things that deal with the quality of justice that I have,
22 you know, believed in and advocated for as a lawyer, but I
23 also feel like those are things that would also be
24 something I could do as a judge.

25 I know that, for example, there are legislative

1 committees studying various issues in the criminal justice
2 system, that judges sit on those committees and make
3 recommendations and help, basically, put together -- be it
4 bills or rules of court or anything like that. And I'm
5 extremely interested in that.

6 And a few years back, as probably some of the
7 legislators know, there were proposed changes to the rules.
8 And Harry Dent, my boss, was a part of the that committee,
9 and he was on a subcommittee that dealt with the rules of
10 discovery. And he came back to our office and he and I and
11 another two lawyers studied the rules of -- not the rules
12 of evidence -- the rules of discovery in other states, like
13 North Carolina and Georgia and Tennessee, I believe.

14 And so we put in a lot of work and drafted up --
15 all of us worked together to draft up some proposed new
16 discovery rules, which were adopted as a part of the larger
17 proposal to amend the rules of criminal procedure. I know
18 that, ultimately, that did not pass the legislature. But
19 just that whole process, and being able to be a part of
20 that process, even though I wasn't on the committee, was
21 very interesting to me.

22 And it's something I care about. And I think
23 there are a lot of things -- although, we do have,
24 obviously, a great system, but I do think there are a lot
25 of things that, you know, could be improved upon.

1 And I think that, you know, I would be a good --
2 I would a hardworking, I would be a conscientious judge on
3 a case-by-case basis. But also, you know, I want be
4 involved in this as a stakeholder in the system who really
5 cares about making it better. And it's really more of
6 that, that drove me to listen to these people who
7 approached me, and say, "I think I will -- I think I will
8 try to do this."

9 I mean, I have not done this before. I have not
10 been reported out before. I recognize that a lot of the
11 people in this race have, but the reason why I decided to
12 pursue this was out of the desire to try to make the system
13 better.

14 **Q. Just quickly, to kind of followup with what**
15 **Senator Hayes asked you about. Was there ever any desire**
16 **to get into a -- more like civil practice? Go into private**
17 **practice, maybe do criminal and do civil at the same time?**

18 A. The short answer is no, and I'll tell you why.
19 Because -- well, two reasons. One, is because what I have
20 always liked best about being a public defender was the
21 ability to help individual people.

22 And I think that all the people I know -- and I
23 have a lot friends in private practice, you know, their
24 case loads are smaller, they help fewer people. But also,
25 they can only help the people who can afford them.

1 Whereas, I'm able to help anybody who comes in the door.
2 Which I do like. I mean, that may sound corny but it's
3 true.

4 And the other thing is, quite frankly, you know,
5 I like being a lawyer doing lawyer things. I'm not a
6 business person. You know, the idea of the business side
7 of a private practice was never attractive to me, so that
8 was another thing that kind of kept me away from it.

9 Q. Do you recognize that, even though we've heard
10 during the course of this week, that obviously the trials
11 on the civil side are decreasing, the volume of cases
12 remains pretty constant, and that the judge maintains a
13 pretty substantial role in making those things shepherd
14 through the system, and ultimately getting them to point
15 where --

16 A. Right.

17 Q. And I can tell that, you know, you'd be right
18 there on the criminal stuff. But do you have any
19 apprehension about being able to kind of be the kind of
20 judge that a substantial portion of the Bar would look to
21 in order to be able to facilitate keeping the civil dockets
22 moving?

23 A. Well, I mean, I do, again, recognize there will
24 be a learning curve. But I would accept that challenge, as
25 I think some people in my comments said I do have a good

1 work ethic to learn these things quickly.

2 When I was meeting with the Bar Committee --
3 because I had asked Judge Hayes and Judge Hall, you know,
4 to try to get some knowledge, what do -- what are the
5 perceived problems in the common pleas court or the civil
6 justice? What are the problems? I don't know. And they
7 both told me that there really aren't any pressing issues
8 or big problems.

9 And I met with a local attorney in Rock Hill,
10 named Jim Boyd, who has a civil practice. And I asked him,
11 trying to educate myself, "What do you perceive to be the
12 problems in common pleas and civil practice?"

13 And he said, "There really aren't any problems."

14 And then when I was meeting with the Bar
15 Committee, and we were discussing these same issues, there
16 was a lawyer who was a part of that committee who said,
17 "Well, I'll tell you what problem I have" -- and he was in
18 civil practice, he said, "There are some judges who won't
19 decide on motions. The judges will just simply let
20 everything go to the jury out of an abundance of caution."

21 And I said, "If I were to become a judge, I would
22 not be that judge. I would do the work it required to
23 understand the law, the issue in they case, and I would
24 make a decision. I'm not the type person who's afraid to
25 make a decision."

1 So I did tell him that. But beyond that, you
2 know, I would just have to get in there and see what other
3 issues there are. But I would work hard to first of all
4 acquire the knowledge, and secondly to solve those
5 problems.

6 MR. SAFRAN: Thank you very much.

7 CHAIRMAN SMITH: Senator Sabb.

8 SENATOR SABB: Thank you, Mr. Chairman. I
9 really don't have questions, believe it or not, I just have
10 a comment. And the comment would be, that as I listened --
11 and of course we've read some of the comments that have
12 been submitted by your peers. And the ones that were
13 actually negative, I just want to compliment you for the
14 fact that they gave those negative comments about you.

15 Because to me that suggested that you believe in
16 right, you believe in wrong, you see it through your own
17 eyes, you see it through the eyes of your clients, and
18 you've advocated for those things.

19 Because as I look at some of the manner in which
20 -- and I prosecuted for 20 years. We carry out our jobs, a
21 lot of things that we do in my mind, we probably should not
22 have been doing. A lot of the laws and the way that
23 they're written and how they impact people ought to be
24 applied differently.

25 And so I just wanted you to know, I have an

1 appreciation for the fact that they would view those
2 comments as being negative. But for me it sounds more like
3 zealous advocacy. And so I think you are to be commended
4 by that.

5 MR. BARROWCLOUGH: Thank you, Senator.

6 CHAIRMAN SMITH: Senator Young.

7 SENATOR YOUNG: Thank you. Thank you, Mr.
8 Chairman.

9 EXAMINATION BY SENATOR YOUNG:

10 Q. Mr. Barrowclough, thank you for your interest in
11 serving on the circuit court. And thank you for your 20
12 years of service in the -- as a public defender in South
13 Carolina.

14 One of the questions that I have is: How would
15 you describe your judicial philosophy, in terms of how
16 would you apply the law to the facts if you are elected to
17 the circuit court?

18 A. The first thing I would do would be make sure
19 that I have a firm understanding of the law that would
20 govern the set of facts. As we discussed, if it were a
21 criminal matter, I feel like I would have that grasp
22 instantaneously.

23 I think that if it were a civil matter,
24 especially initially, that I would have to put in work,
25 studying not just the law, but the case law that might

1 surround that law to give it more context.

2 And I may have to consult with, you know, other
3 judges, such as Judge Hall or Judge Hayes -- who I
4 understand will back from retired status -- or anyone else
5 to get a firm grasp of not only what it says on paper, but
6 its applicability in various situations.

7 But I would -- you know, I wouldn't say as a
8 philosophical matter. I would always try to apply the law
9 to the facts right down the middle. Not on edges, not try
10 to shoehorn things and to make things fit to achieve a
11 desired result or anything like that.

12 My philosophy would be to try to put it right
13 down the middle, so that anybody who was observing a
14 particular hearing, or after the fact heard about a
15 particular result, would know exactly why I did what I did.

16 **Q. So it sounds like that last explanation that you**
17 **provided, it sounds like you would avoid judicial activism.**

18 A. Oh, yeah. I think that judicial activism in the
19 -- in the arena of a particular case in court, particularly
20 for a circuit court judge, it has no place. You know, like
21 I said, I would like to serve on committees that might work
22 to change the law outside of court, you know, in certain
23 ways that I think that it could be improved upon.

24 But as far as handling a particular case,
25 presiding over a case? No, there would be no judicial

1 activism.

2 Q. Let me ask you another question, and that is: How
3 familiar are you with challenges that face lawyers in
4 private practice, who have a litigation practice,
5 especially lawyers who are in smaller firms? Are you -- I
6 know you haven't practiced in private practice at all, so
7 I'm just trying to get how sensitive and familiar you are
8 with the challenges that face lawyers in smaller practice
9 who -- practices, who appear regularly in trial courts.

10 A. Well, if you're talking about challenges with
11 regards to scheduling, and the pulls on their time with
12 regards to all the different venues that they might need to
13 go to as part of their practice, I'm familiar with that
14 from just having friends who do that.

15 But if you're referring to something else with
16 regards to billing or, I don't know, then I'm probably not
17 familiar with it.

18 Q. Well, the scheduling and, you know, handling
19 multiple cases in multiple courts and --

20 A. I'm very familiar with that. I have a daughter
21 who -- she's in college, but she has worked with an intern
22 with different law firms in Rock Hill, for friends of mine
23 like Attorney Twana Burris and the Elrod Pope firm, and
24 she's constantly telling me about -- whether it's a larger
25 practice or a smaller practice, that the attorneys there

1 are constantly being called to different venues, be it, you
2 know, common pleas court, be it a magistrate's matter, be
3 it an employment matter before a board. I mean, all kinds
4 of different things.

5 So I do know and I do recognize that, that is
6 something that private practice attorneys have to deal
7 with, that I've never had to deal with.

8 **Q. Some of the comments did say that they thought**
9 **that you were obviously slanted -- I shouldn't say**
10 **"obviously." There were some people who perceive you to be**
11 **slanted toward the defense side, obviously, because of your**
12 **background in being a public defender.**

13 **But I've gathered from your answers today, so**
14 **far, that you would be -- you would apply the law and you**
15 **will be fair to all sides. Is that --**

16 A. That's exactly right, yes. I said to Mr. Pearce,
17 when I met with him, that I have, you know, 20 and a half
18 years as a public defender, and one and a half years as a
19 prosecutor. So if you look at the quantity, then obviously
20 it's well slanted towards the defense.

21 But like I said, I was blessed when I worked in
22 Pennsylvania as a prosecutor, I was blessed to win Public
23 Defender of the Year in 2014, so for -- I would ask people
24 to look at more of the quality of the work that I did for
25 each side, as it would apply to my fairness, as opposed to

1 the quantity.

2 CHAIRMAN SMITH: Thank you. Representative
3 Rutherford.

4 REPRESENTATIVE RUTHERFORD: Thank you, Mr.
5 Chairman.

6 EXAMINATION BY REPRESENTATIVE RUTHERFORD:

7 Q. The chairman is making me be brief. So I'll be
8 very brief, and just say do you think that some of the
9 negative comments had something to do with what I would
10 consider not a hyper-partisan, but certainly an environment
11 in York County that lends itself to people -- 'cause I
12 practice law up there, and I find that it is a very
13 abrasive place to practice law.

14 And if you are defending yourself -- simply
15 defending yourself and your clients, that some people may
16 look at it as you being overzealous on the defense side,
17 when really you're just advocating for the Constitution and
18 the right of law. Do you find that to be case?

19 A. I think that is one hundred percent true. And
20 like I said, I have developed very good relationships with
21 most of the lawyers who work on the other side in the
22 solicitor's office. Good personal relationships. They
23 like me. They trust me. I like them and trust them.

24 But when I say "most," that's not all. There are
25 one or two, or maybe three, who I know just do not like me

1 for just those reasons.

2 Q. I commend you for only having one or two or
3 three. I think my list is probably about ten long and
4 growing. Which I'm okay with. Well, maybe longer than
5 that. There's only two or three, so I didn't want to list
6 them all out.

7 But I mean, I think it's the nature of what we
8 do. I commend you. I think that your personal statement
9 is strong. Everything that we've seen is much stronger
10 than I thought. I've known you for years, but you come
11 across very well. So thank you.

12 A. Thank you.

13 CHAIRMAN SMITH: Senator Rankin.

14 EXAMINATION BY SENATOR RANKIN:

15 Q. I want to commend you for marrying well.

16 A. Thank you.

17 Q. And I want to commend you for having four
18 children.

19 SENATOR RANKIN: Is it Kristin? Christine?

20 MS. BARROWCLOUGH: Kristin.

21 SENATOR RANKIN: Kristin. I'm the last of
22 four children in my family, and I particularly appreciate
23 big families.

24 BY SENATOR RANKIN:

25 Q. So I do also want to comment about your

1 involvement with charity, and particularly the less
2 fortunate. The Catholic Church, you-all and your family
3 are members of, and that committee which you fund-raised
4 for. That's highly commendable --

5 A. Thank you.

6 Q. -- in terms of your well-rounded qualifications
7 here, beyond which we've heard. And to kind of echo what
8 we've heard, the rap on you, kind of right out of the gate
9 we heard it in terms of no civil experience, you, in fact,
10 don't mince any words: "I have no civil experience."

11 But anybody who's a magna cum laude has certainly
12 got some educability, and you probably could be trained on
13 that. So anyway, for those -- just those comments. No
14 hard questions to you. Thank you for your willingness to
15 get in this business.

16 A. Thank you, Senator.

17 CHAIRMAN SMITH: Mr. Barrowclough, I wanted
18 to ask you some questions, that's why I was trying to hurry
19 Senator Rankin up. He's my vice chairman and I have to be
20 respectful.

21 EXAMINATION BY CHAIRMAN SMITH:

22 Q. Let me ask you a couple of questions. And I want
23 to start off with an observation, too, is -- is -- you
24 know, I see the lack of civil experience. But I think what
25 you lack in civil experience you make up in a wealth of

1 criminal experience from what I can see and what I can
2 hear. And I can tell, by listening to your presentation,
3 that you're someone that understands the law, knows the
4 law, and knows application of the law.

5 And in civil -- and I think part of what we have
6 to do is make determinations if someone's able and has
7 ability to apply criminal law and civil law. It's not that
8 you have to walk in here and be an expert, but do you have
9 the ability to learn it quickly.

10 And I practiced with someone who's now on the
11 Supreme Court, and he did nothing but civil court work, and
12 never been in the criminal court and he turned out to be
13 one of the finest general sessions judges that we ever had.
14 And the worst thing we had, was to lose him to go to the
15 Supreme Court, and we don't have in the trial bench
16 anymore.

17 So, you know, I would presume that you would work
18 just as hard as he, and others, who had no experience to
19 make sure that you were accommodated and learned the civil
20 law and were able to handle that docket if you were
21 elected. Is that right?

22 A. Yes, sir.

23 Q. I want to follow up on something Senator Young
24 said. And, you know, this is always a concern of mine when
25 someone is -- had a career in one particular area and not a

1 career in private practice. And I think you told Senator
2 Young you understood the demands of lawyers and things, but
3 when it comes -- if you are elected as a judge, you're
4 going to have to sit and make decisions as to a variety
5 reasons that you hear for a judge, "I'm not available for
6 this motion" or "I can't be ready for this trial" or "I
7 want protection so I can take family off."

8 Or even a little thing as, "Judge, I'd like to
9 leave three o'clock so I can go to my child's soccer game."

10 And the quality of life of attorneys is not what
11 it -- it seems to be getting worse, and you hear about the
12 higher rates of alcoholism and depression among attorneys.
13 Tell me how you would handle -- especially, 'cause it seems
14 to be on the criminal side to some degree, but more on the
15 civil side with attorneys being all over -- you know,
16 they're getting calls to different courts in magistrate
17 court, civil courts, family courts, general sessions.

18 How are you going to handle attorneys and their
19 court appearances and their requests for conflicts, or for
20 protection or for continuances, if you were elected judge?

21 A. I think that in any one of those situations
22 there's always going to be a balance. And on the one side
23 of the balance is the reason for the person not being
24 available, and on the other side of the balance is how old
25 is the particular matter, how pressing is the particular

1 matter, how many other times has the same attorney asked
2 for this matter to be continued or something of that sort.

3 But what I can say is, I would always be
4 respectful of all the demands that are on attorneys,
5 particularly in private practice, for a lot of the reasons
6 you've said.

7 You know, I do think that practice of law has
8 become more stressful, just in the time that I've been
9 practicing law. I do -- I am aware of, you know, the
10 instances of alcoholism in the practice of law. And I do
11 believe that all of us as attorneys -- you know, just
12 because you're an attorney doesn't mean that you give up,
13 you know, your role and responsibility as a husband or as a
14 father or as a member of your community.

15 And I think that if anything -- you never know
16 till you're there. But I think that I would always
17 emergency room -- I shouldn't say "always." But most of
18 the time, err on the side of respecting an attorney's other
19 commitments.

20 You know, I myself have, in addition to working
21 with the Social Concerns Committee at Saint Mary's in Rock
22 Hill, but I have coached my child at For Mill High School
23 for three years. I've coached youth soccer, youth
24 basketball, youth flag football in the Fort Mill/Tega Cay
25 area for many years. You know, sometimes that does require

1 me to leave work a little early to get to practice for
2 kids. And I've always been -- had the benefit of having,
3 you know, either my boss or a judge being respectful of
4 that.

5 And I think that, you know, as an attorney, I
6 always try to be respectful of the party on the other side,
7 and give them a lot of advance notice if it is a situation
8 like that.

9 But, I mean, I think those things are important.
10 I don't think anybody gives up, you know, their role as a
11 member of the community or father or husband just because
12 they're a lawyer.

13 And I think that as a judge I'd be respectful of
14 that. I would always try to be respectful of that. I
15 think my own personal experience would guide my thought
16 processes in those types of situations.

17 And like I said, I know that there are times when
18 a case might be continued ten times, and then all of sudden
19 I'm the eleventh judge hearing it or something, and it
20 might require some firmness, saying, "No, this has to go."

21 But I think the vast majority of times, it would
22 be more of a situation of where I would always try to be
23 more respectful of the other commitments that an attorney
24 might have.

25 **Q. And how do you see temperament playing in the --**

1 in the role of a judge and what the importance of judicial
2 temperament is to being a quality or successful judge or a
3 reputable judge?

4 A. I think it is extremely important. I think that
5 -- I would like to think that, that would be probably my
6 greatest strength. Again, referring back to the attorneys
7 in the solicitor's office, I think the reason why I
8 developed so many good relationships with them is because,
9 despite a couple of the comments, I've learned a skill
10 being able to disagree without being disagreeable.

11 I think that would translate to being a judge.
12 And it would certainly, certainly be my goal that everybody
13 who appeared in front of me, whether it was a prosecutor or
14 defense attorney, whether it was a civil attorney, whether
15 it was a criminal defendant or victim or witness or party
16 to a case, that each and every one of them would leave that
17 court saying, "That judge treated me well. That judge was
18 not rude. That judge was not short with me. That judge
19 was not impatient with me."

20 You know, I think judicial temperament is
21 extremely important. I've been doing this long enough, and
22 been in court long enough, to have been in front of some
23 judges who treat all of us magnificently, and, sadly, I've
24 been in front of some judges who were extremely impatient
25 and harsh with people sometimes, in my view, for no reason.

1 And I think that, you know, if I were a judge, I
2 would do all I could do to make everyone who appeared in
3 front of me feel like it was a good experience.

4 **Q. Do you think it's ever appropriate for a judge,**
5 **for lack of a better term, to dress down somebody in the**
6 **courtroom?**

7 A. No.

8 **Q. If that needs to occur, where should that occur?**

9 A. If it would -- if there were a time that, that
10 did need to occur, that certainly would be a situation
11 where I might ask to see somebody in my office.

12 **Q. And I don't mean dress down, but be reprimanded -**
13 **- if somebody's late to your court, where should you**
14 **address that issue?**

15 A. In an office.

16 CHAIRMAN SMITH: All right. Any further
17 questions?

18 (Hearing none.)

19 CHAIRMAN SMITH: All right. Mr.
20 Barrowclough, thank you so much. This concludes this
21 portion of your screening process. I want to take this
22 opportunity to remind you that, pursuant to the
23 Commission's evaluative criteria, the Commission expects
24 candidates to follow the spirit, as well as the letter of
25 the ethics laws, and we will review violations or the

1 appearance of impropriety as serious, and potentially
2 deserving a heavy weight in screening deliberations.

3 On that note, and as you know, the record will
4 remain open until the formal release of the report of
5 qualifications, and you may be called back at such time if
6 the need arises.

7 I thank you for offering. And I thank you for
8 your service to the state of South Carolina.

9 MR. BARROWCLOUGH: Thank you, Mr. Chairman.
10 And thank you-all for your time in hearing me and asking me
11 this questions and taking an interest in my candidacy.

12 CHAIRMAN SMITH: Thank you, sir.

13 (Candidate excused.)

14 CHAIRMAN SMITH: Off the record.

15 (Off the record from 12:54 p.m. to 1:02 p.m.)

16 CHAIRMAN SMITH: Good afternoon, Ms.
17 Collins.

18 MS. COLLINS: Good afternoon.

19 CHAIRMAN SMITH: I know it's supposed to be
20 "good morning" for your hearing, so we apologize for the
21 delay. I'm sorry we --

22 MS. COLLINS: That's fine.

23 CHAIRMAN SMITH: I tell everybody we're
24 optimistic with our scheduling. And I think my optimism is
25 dwindling now, and we're going to have to start reshuffling

1 the schedule. So I apologize for any inconvenience.

2 MS. COLLINS: No apology needed. Thank you.

3 CHAIRMAN SMITH: I see you got somebody you
4 brought with you today.

5 MS. COLLINS: I do.

6 CHAIRMAN SMITH: Would you like to introduce
7 him?

8 MS. COLLINS: This is my husband, Harry
9 Collins.

10 CHAIRMAN SMITH: Harry, good to have you. I
11 appreciate you being here today.

12 MR. COLLINS: Glad to be here. Glad to be
13 here.

14 CHAIRMAN SMITH: I think we're going to get
15 started. We're missing Representative Rutherford. We'll
16 go ahead and get started.

17 MS. COLLINS: Okay.

18 CHAIRMAN SMITH: Will you please raise your
19 right hand, please, ma'am.

20 MS. COLLINS: Yes, sir.

21 WHEREUPON:

22 LISA G. COLLINS, being duly sworn and
23 cautioned to speak the truth, the whole truth and nothing
24 but the truth, testifies as follows:

25 CHAIRMAN SMITH: Ms. Collins, in front of

1 you is your personal data questionnaire and your sworn
2 statement that you submitted to the Commission. Is that a
3 copy -- is that the documents that you've submitted?

4 MS. COLLINS: Yes, sir. Along with one
5 amendment.

6 CHAIRMAN SMITH: Okay. And have you --
7 you've already made an amendment? Or do you need to make
8 an oral amendment?

9 MS. COLLINS: No, sir. I've already made an
10 amendment that's labeled Exhibit 5.

11 CHAIRMAN SMITH: Okay. It's already marked
12 as an exhibit.

13 MS. COLLINS: Yes, sir

14 CHAIRMAN SMITH: I just want to make sure --

15 MS. COLLINS: It is.

16 CHAIRMAN SMITH: Are both of these documents
17 correct, with the amendments?

18 MS. COLLINS: Yes, sir.

19 CHAIRMAN SMITH: And does anything need to
20 be changed or updated other than the amendment you
21 referenced earlier?

22 MS. COLLINS: No, sir.

23 CHAIRMAN SMITH: Do you have any objection
24 to these documents and any amendments becoming a part of
25 the record of your sworn testimony?

1 MS. COLLINS: Not at all.

2 CHAIRMAN SMITH: All right. If you'll hand
3 those to Lindi for me, please, ma'am. And were going to
4 make those a part of the record.

5 (EXHIBIT NO. 3 - JUDICIAL MERIT SELECTION
6 COMMISSION PERSONAL DATA QUESTIONNAIRE OF LISA G.
7 COLLINS)

8 (EXHIBIT NO. 4 - JUDICIAL MERIT SELECTION
9 COMMISSION SWORN STATEMENT OF LISA G. COLLINS)

10 (EXHIBIT NO. 5 - AMENDMENT TO THE PERSONAL
11 DATA QUESTIONNAIRE OF LISA G. COLLINS)

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

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

25 MS. COLLINS: I will waive that. I do wish

1 to make a very brief closing statement, if I may.

2 CHAIRMAN SMITH: Yes, ma'am.

3 MS. COLLINS: Thank you.

4 CHAIRMAN SMITH: We certainly will.

5 MS. COLLINS: Thank you.

6 CHAIRMAN SMITH: All right. And will you
7 answer any questions that counsel may have for you, please,
8 ma'am.

9 MS. COLLINS: Yes, sir.

10 MS. BENSON: Mr. Chairman, I note for the
11 record that based on the testimony contained in the
12 candidate's PDQ, which has now been included in the record,
13 along with the amendment, and with the candidate's consent,
14 Lisa G. Collins meets the constitutional and statutory
15 requirements for this position regarding age, residence and
16 years of practice.

17 EXAMINATION BY MS. BENSON:

18 **Q. Mrs. Collins, how do you feel your legal and**
19 **professional experience, thus far, renders you qualified**
20 **and will assist you to be an effective circuit court judge?**

21 A. Well, I believe that, along with my legal
22 experiences, my life experiences have contributed to that
23 because I think that we are all a product of all that we
24 have met. And so I would say not only my legal experiences
25 but my life experiences.

1 But as for my legal experiences, I've been an
2 attorney for over 31 years. As you've seen in my
3 application, during that time I have a broad background. I
4 initially practiced insurance defense firm with Rainey,
5 Britton, Gibbes & Clarkson, a law firm from Greenville. I
6 enjoyed that. It didn't call to my public service heart as
7 much, and so I then left that and I've been a public
8 servant ever since.

9 I have worked in the fields for the Attorney
10 General's office in post-conviction relief hearings
11 throughout the state, which are kind of a hybrid of civil
12 practice and criminal, because it's in the civil arena but
13 the subject matter is as to criminal proceedings as you
14 know. And since that time, have fallen in love with
15 criminal law and have been a prosecutor for many years, as
16 well as a defense attorney.

17 And I've also served on the bench, albeit in
18 "baby court," as I call it, in terms of the municipal bench
19 for the City of Rock Hill, as an assistant, as well as the
20 chief municipal judge for the City of Fort Mill.

21 **Q. Thank you. Mrs. Collins, the Commission received**
22 **130 ballot box surveys regarding you, and 27 had additional**
23 **comments. Of the positive comments, they indicated:**

24 **"Most qualified for this position. Excellent**
25 **demeanor. An excellent lawyer with great and diverse**

1 experience, great integrity. Lisa is kind, professional,
2 and a perfect candidate for a judicial position. Ms.
3 Collins is probably the smartest attorney I have known in
4 all my years of practice. Lisa Collins would be
5 exceptional rather than well qualified if that were a
6 category above."

7 There were four -- out of the 27 comments, there
8 were four comments that might have -- might be considered
9 negative. And two of those negative comments questioned
10 your capacity to handle civil matters, as the bulk of your
11 experience has been in criminal law. Both of these
12 responses qualified the observation in a positive light.

13 One comment noted that after -- saying that you
14 lacked civil experience but could be a quick learner. And
15 the other comment concerning civil experience asserted
16 that, "As long as she is hearing criminal and family court
17 matters, she will perform well."

18 Is there any response that you would make to
19 those negative comments?

20 A. Well, I was very flattered about the family court
21 comment, because really, I had not spent very much time in
22 the family courts, other than when I advocated on behalf of
23 foster children for the Foster Care Review Board for three
24 years.

25 I was not surprised with those comments, in that

1 the bulk of my career has been in criminal. Particularly,
2 the last 29 years.

3 But for the first two years, as I stated, I did
4 insurance defense work. I have tried to conclusion, four
5 civil trial -- jury trials; two of those representing the
6 defendant, and two of those representing the plaintiff.
7 One in the plaintiff, I did on behalf of a partner who had
8 a plaintiff -- a friend who had a slip-and-fall. And of
9 course the other two as defense for insurance defense.

10 And then I assisted a younger colleague in
11 prosecuting -- well, not prosecuting -- actually, in a
12 civil forfeiture hearing, where a house was seized that was
13 being used as a drug house. And there was a jury trial for
14 that. And I helped her because she'd never done a civil
15 trial before. And we prevailed at that.

16 **Q. The other two negative comments questioned your**
17 **judicial temperament. One commenter said, "The arrogant**
18 **Assistant Solicitor does not begin to describe her." And**
19 **another comment said, "She lacks the judicial temperament**
20 **to be a judge." What comment would you respond to those?**

21 A. Well, thank you for sharing, on the front-end,
22 the positive comments. Because I remember when we had our
23 meeting, that I asked you if any of the positive comments
24 addressed my temperament. And I was very honored that some
25 of them did, and that they had a -- an opposite view.

1 I deeply regret that anyone would ever feel that
2 about me. I came from a very humble background. I grew up
3 on a farm outside of Lake City, South Carolina, from a
4 wonderful family of teachers. My dad was a farmer and my
5 mother was a nurse. And I really, truly, would hate that I
6 left anybody with that impression of arrogance. 'Cause I -
7 - I -- I just can't stand that as a character trait with
8 anyone.

9 But it is an adversarial process. And I've tried
10 over a hundred criminal trials, and trials that are often
11 emotional in nature. And it might be the attorney I went
12 against, you know, took that personally. And we cannot do
13 that. You know, we cannot take things personally.

14 But I will say that once we picked the jury, the
15 gloves were off. I was going to advocate for my side and
16 fight hard for my side. But up until that point, in terms
17 of scheduling and everything, I always made a point of
18 saying, whether to witnesses such as law enforcement
19 officers, or other attorneys, you know, "If you have any
20 scheduling issue, please let me know. Even if it's just
21 that, you know, your 3-year-old is having her birthday
22 party, I want you to be there for that. So we'll work
23 around it."

24 So I truly, truly hate that, that individual felt
25 that way. And I hope that others feel that, that is not

1 the case. I always strive every day for no one to feel
2 that way about me. Thank you.

3 Q. And thank you. Ms. Collins, you listed that you
4 had been involved in a civil lawsuit when your mortgage
5 company failed to timely file satisfaction of your
6 mortgage, and that was back in 2004.

7 A. It was.

8 Q. You said that, that case was closed and was
9 settled to your satisfaction.

10 A. It was.

11 Q. And you also listed another case that you were
12 involved with, and a post-relief conviction case that was
13 brought in federal court, that was ultimately dismissed as
14 to -- as to all parties.

15 A. There are multiple attorneys in the Attorney
16 General's Office, that were sued in their capacity,
17 individually. And I was one of those. And it was
18 dismissed.

19 Q. Thank you. Mrs. Collins, you were previously
20 screened ten years ago. Why are you now seeking a judicial
21 position?

22 A. Well, at the time that I screened -- in 2000, I
23 believe, actually, so it would be seventeen years ago. --
24 I did not yet have a child. Harry and I had recently
25 married, and at the time I wanted to explore the process

1 and learn about the process. And it certainly is a very
2 intriguing process.

3 I know that Senator Hayes remembers that time.
4 He was very kind to me, as -- as many of the members of the
5 legislature were. And I did get reported out. I was very
6 honored with that. But it was very clear to me early on,
7 that it was a two-man race, the Honorable Clifton Newman,
8 very deserving, got that seat, and Ned Miller, the later,
9 got the next seat. And they're wonderful judges. And
10 we're so blessed to have them in our state.

11 Shortly after that, I became pregnant. And had
12 always wanted a child, and God blessed us with a child.
13 and we have a daughter, now, Mia. And for that time
14 period, at that point, I did not run again because I did
15 not want to travel. I wanted to be home with my child,
16 that I had asked God for, and he blessed us with that.

17 And now I'm at the point that she's a teenager
18 and she really doesn't want me around quite so much. And,
19 hopefully, she'll be spreading her wings and flying off to
20 college soon.

21 And so at this time where, as I anticipate my
22 empty nest, I think, "What can I do to serve the other
23 people in my life?" Because I truly believe we're here to
24 serve others. And I would like to serve the citizens of
25 South Carolina, if they find I have merit, if the members

1 of the Legislature feel that way, in the capacity as a
2 circuit court judge.

3 And if not, I'll continue on my course currently
4 as chief deputy solicitor for the 6th Judicial Circuit in
5 Lancaster, for Solicitor Newman, until he kicks me out the
6 door and says that it's time for me to retire.

7 **Q. Thank you. In our conversation, you indicated**
8 **that you felt that you truly understood the people in this**
9 **circuit. How would this understanding benefit you if you**
10 **were elected to the circuit court judgeship?**

11 A. Well, obviously, in South Carolina, since judges
12 round the circuits, we would be serving throughout the
13 state. But in that this is a local seat, I stated to you
14 that I'm very familiar with the personalities and dynamics,
15 in terms of the 16th Circuit, having practiced both as a
16 prosecutor and as a defense attorney in that circuit.

17 There's some very strong personalties there.
18 There's some extremely talented attorneys there. And York
19 County and Union County, they're very blessed to have those
20 individuals. But I do strongly feel that the circuit cries
21 out for someone who is also strong in the role of judge.

22 I think that they have to be extremely
23 independent and impartial. And having worked on both sides
24 of the table in the criminal arena, I feel that I can bring
25 that to the table. I believe that -- that a judge has to

1 have impartiality. Independence is critical, as well as
2 the intellect, to apply the law as the Legislature has
3 passed it and as the appellate courts have interpreted it.

4 But mostly, I believe -- and this is from my
5 closing remarks, so I guess I can skip my closing remark
6 now. I believe, even more important than that, is respect.
7 I believe that if we rise up every morning, and have
8 respect for the position, and come to work fully prepared
9 for the day, and on time, and if we ask each of the parties
10 to have respect for the court and to preside over the court
11 with a firm hand, but a patient hand, and mostly to listen
12 -- 'cause I truly think that our justice system is such
13 that everyone has a voice.

14 But they want to be heard. And if the judge will
15 just be patient and listen and hear, and let them know that
16 they are listening. Because I'm convinced in the end, when
17 the judge rules, as for all of us, it's not as important
18 what you say, which is certainly critical, but it's how you
19 say it.

20 And it's how you make the individual feel that
21 you actually weighed and considered their argument and that
22 you explained, fully on the record, the reason for your
23 ruling. I think that is what is beautiful about our
24 system.

25 And then at the end, respect to go home at the

1 end of the day, and to reflect back -- and I try to live my
2 life this way -- but to reflect back on the day and think
3 how -- what could I have done better, how could I have
4 improved, and then to get up the next morning and do it
5 better and try to continue to improve.

6 Q. Thank you, Mrs. Collins. Just a few housekeeping
7 items. Mrs. Collins, are you aware that, as a judicial
8 candidate, you are bound by the Code of Judicial Conduct as
9 found in Rule 501 of the South Carolina Appellate Court
10 Rules?

11 A. Yes.

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

15 A. No, I have not.

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

20 A. Absolutely not.

21 Q. Have you asked any third parties to contact
22 members of the General Assembly on your behalf, or are you
23 aware of anyone who is doing that?

24 A. No, I'm not.

25 Q. Have you reviewed and do you understand the

1 **Commission's guidelines on pledging and the South Carolina**
2 **Code Section 2-19-70(E)?**

3 A. I'm very familiar with the 48-hour rule. And if
4 can back up to my answer to the last question. 'Cause you
5 asked if I had asked any -- anyone to contact, or if I was
6 aware of. And I said, "No, I am not." I should also say,
7 "No, I have not." I have not asked, and I am not aware of
8 anyone doing so.

9 **Q. Thank you.**

10 A. But I didn't -- I didn't feel my answer was
11 complete. Thank you.

12 MS. BENSON: Thank you. Mr. Chairman, I
13 would note for the record, that the Piedmont Citizens
14 Committee reported Mrs. Collins to be well qualified in the
15 evaluative criteria of ethical fitness, professional and
16 academic ability, character, reputation, and judicial
17 temperament. They found her qualified in the remaining
18 evaluative criteria of constitutional qualifications,
19 physical health, mental stability, and experience.

20 The Committee was impressed with her thoughtful
21 consideration of the significant issues at stake in the
22 criminal justice system, and believed her temperament to be
23 especially well suited to a judgeship.

24 Mr. Chairman, I would note for the record that
25 any concerns raised during the investigation regarding this

1 candidate were incorporated into the questioning today.

2 And I have no further questions.

3 MS. COLLINS: Thank you.

4 CHAIRMAN SMITH: All right. Thank you. Any
5 questions? Mr. Hitchcock.

6 MR. HITCHCOCK: Thank you, Mr. Chairman
7 EXAMINATION BY MR. HITCHCOCK:

8 Q. Good morning, Ms. Collins. How are you doing?

9 A. Good morning.

10 Q. Certainly, you know, we're -- I think it's, like,
11 easy for us to say that we're expressed -- impressed with
12 your breath and depth of experience. And, you know, having
13 personally tried cases both with you and against you --
14 successfully with you -- the -- you know, I certainly find
15 you to be a formidable advocate for whatever side that
16 you're -- that you're representing. And I know that you
17 have -- have spent some time as a -- as a judge at the
18 municipal court level and magistrate court level.

19 But as you think about making the transition
20 from, you know, being more of an advocate, and zealously
21 representing the interest of whatever side that you're on,
22 and moving much more into a neutral role or -- a decider
23 role as a -- as a -- as a judge, how do you feel that
24 you'll make that transition? And are there any judges that
25 you hold in high esteem, that you would attempt to pattern

1 **yourself after, or potentially look to mentor you through**
2 **that transition process?**

3 A. Well, absolutely, there are judges that I would
4 like to model myself after. And there are two judges in
5 particular I'd like to name. And one is Howard Ballenger,
6 who served in the Seneca/Pickens area. And I often appear
7 in front of Judge Ballenger. And I was very impressed --
8 in fact, I think he came, Mr. Hitchcock, and did some pleas
9 before he died, if you remember.

10 And he took a long time to do pleas, because he
11 spoke to people and considered what they said. And he was
12 just wonderful in terms of his demeanor with people. And I
13 would be remiss not to mention his name as someone that I
14 would love to follow in the footsteps of, to just remember
15 how he spoke to people, not as animals, but as people that
16 had concerns and hopes and wishes, and of course were very
17 frightened to be in the courtroom setting, about to have
18 either their lives judged and ruled upon, or -- you know,
19 the defendant, if they were the victims.

20 In terms of stepping into a role -- I mentioned
21 there was one other judge. When Chief Justice Finney was
22 sworn in, his daughter wrote a poem, "He Never Had It
23 Made." And they published in the South Carolina Bar and
24 Lawyer Magazine.

25 And having grown up on a tobacco farm outside of

1 Lake City, on a dirt road, I'll never forget that poem. And
2 I cut it out and I had it on the back of my door for many
3 years. I don't know if you remember, Michael, seeing it.
4 But it spoke about how he never had it made, and how he had
5 to work so hard. And, you know, certainly I hope one day
6 to say I tried to follow in his footsteps.

7 My dad died when I was 9, leaving six children
8 for my mother to raise. She returned to school and became
9 a nurse. And both of them taught me the value of hard work
10 and integrity. And I also came from a family of teachers.
11 My grandmother, my uncle, aunts, and siblings, many of them
12 are teachers.

13 And I think that a judge in a way is a teacher,
14 apart from the simplistic comparison in terms of giving
15 jury instructions, and it has to be clear, and educate them
16 on the law to be applied to the case. I think also as I
17 stated, in terms of their written orders, explaining their
18 reasoning and their rulings, and just keeping control of
19 the courtroom, it reminds me of wonderful teachers.

20 I think that I would transition well, and I'll
21 tell you why. The years I spent in the public defender's
22 office were some of the most important of my life. I wish
23 that every young solicitor would have that opportunity to
24 serve on that side, and to recognize the humanity and that
25 people come from different circumstances.

1 And when I returned to prosecution, though, what
2 drew me back was that our mandate by the U.S. Supreme Court
3 that prosecutors are to seek justice, not merely
4 convictions. And so in my role as prosecutor, I've often
5 been complimented, and I appreciate those remarks, in
6 saying that I truly try to make plea offers that I think
7 would bring justice. And, generally, those are going to be
8 a cap, so it gives the judge the discretion of doing,
9 obviously, what he wants to do.

10 But I consider the circumstances of the case, the
11 background of the defendant, and I just think, again, as a
12 prosecutor. And I try to mentor the young attorneys in my
13 office with that, too, that it's not all about just locking
14 someone up. That's not the goal. The goal, is hopefully,
15 ultimately rehabilitation, so that we can all live in a
16 society where everyone honors the law.

17 And it just goes back to what I said earlier
18 about respect. We have rules for a reason, we have laws
19 for a reason, and that if we can all learn to respect them
20 then maybe one day we can all live in peace and none of us
21 will be needed. Thank you.

22 CHAIRMAN SMITH: Any further questions?
23 Senator Hayes.

24 EXAMINATION BY MR. HAYES:

25 **Q. I do recall when you ran before. And I**

1 appreciate your willingness to run again.

2 A. Thank you.

3 Q. And other than, you know, your background --
4 which I think is an impressive resume -- but other than
5 your background in criminal or civil, etc., what traits do
6 you have -- personal traits that -- probably the one that
7 would put you in a good stead as a judge? And I ask what
8 weakness do you have, if you had to pick a weakness, in
9 your background for becoming a judge?

10 A. Well, in terms of a strength, I would state again
11 independence. I learned kind of early in life, I wasn't
12 someone that made decisions because I thought I would be
13 popular. And I was willing to sacrifice friendships to
14 adhere to my values and what I felt was the right thing to
15 do.

16 But in doing so, I never tried to judge other
17 people for their decisions. But again, I think that a
18 strong judge has to be independent. Because you're not
19 going to make everybody happy.

20 In fact, I often tell people that during the day,
21 as a prosecutor, I don't make anybody happy. The victim
22 might not like what I did, my boss might not like what I
23 did, and then I go home and I don't make anybody happy.
24 So, you know, I'm kinda use to that. But the bottom line
25 is, I'm not going let the reactions of others influence my

1 actions and my decisions.

2 In terms of weaknesses, I think, certainly, I
3 have empathy for people. And I think that we need to have
4 empathy. I think that can be a strength in many ways. I
5 often think, sitting in the courtroom, what it's like for
6 those in the gallery, with their families, because again
7 many people aren't there for happy reasons. They're in a
8 civil suit, they're either being sued or suing someone
9 because they're unhappy with something. Criminal, they've
10 either been charged with something, or allegedly a victim
11 of something.

12 But when the name of the defendant is called, I
13 often think, you know, at one time someone held a baby in
14 their arms and they thought, "What name should I give this
15 child?" And they gave a lot of thought to them, and they
16 had a lot of hopes for them, and they raised that child and
17 they taught him to walk and they took him to school the
18 first day, and they never thought they would be sitting in
19 a courtroom in that circumstance.

20 I tend to think about stuff like that a lot. And
21 I think that is what tempers my offer, sometimes, as a
22 criminal prosecutor. And there are those that might say
23 that, that is a weakness for a prosecutor. But I would say
24 to you that I believe it's necessary, that we're not
25 machines.

1 If it were easy, we could just have a computer
2 that made the decisions. Punch in the prior record, punch
3 in the facts of the case, you know, punch in the various
4 things, punch in, you know, whether or not it's a violent
5 crime or not, and let the computer decide what the sentence
6 should be. I think there's a reason that a live human
7 being is there, that has a background and has a life, to
8 sit and consider what's the best in each case.

9 I often have people tell me that they don't think
10 that I can be tough enough in the courtroom. But I think,
11 as Mr. Hitchcock stated, that they have found that once the
12 jury's selected, a different side of me comes out -- that
13 my husband might be familiar with at times, in terms of
14 showing a harder side.

15 But I will say that, in fashioning plea offers as
16 a prosecutor, obviously, I have to consider what should be
17 the appropriate sentence. And I've had to do that
18 hundreds, if not thousands, of times in the course of my
19 career. And I don't take that lightly at all. I don't
20 take that responsibility lightly. But empathy might be
21 something that some people feel is less needed.

22 **Q. I appreciate it. Thank you.**

23 A. Thank you.

24 CHAIRMAN SMITH: Any other questions?
25 Senator Rankin.

1 EXAMINATION BY SENATOR RANKIN:

2 Q. And I want to compliment you. Looking through
3 your -- as Mike said earlier, who you know. But you have
4 been around the horn. Two years in private practice, and I
5 was trying to find who it was with. Gallivan, Boyd --

6 A. White.

7 Q. I can't say it, there's so many names. Anyway --

8 A. Gallivan, White & Boyd now. It was Rainey,
9 Britton, Gibbes & Clarkson.

10 Q. And you were -- you were made to try a
11 plaintiff's case, and that's what got you out of that
12 defense firm, I guess.

13 A. No, I appreciate it.

14 Q. How did that case go, by the way?

15 A. I lost. It was so funny. It was a slip-and-
16 fall, and the gentleman was suing Southern Bell. He had a
17 slipped and fall -- slipped and fell. And when I was
18 talking to him about, you know, his injuries -- he didn't
19 have very many medicals. It was actually -- that one was
20 in magistrate court. He would go on and on and on about
21 his aches and pains, etc.

22 And when we actually had the trial -- and those
23 of us who are attorneys have all experienced that, I know,
24 of where they do it a little differently once they're sworn
25 in and under oath and in front of a jury. And I was like,

1 and how -- you know, "Tell us about your pain and
2 suffering."

3 And he was like "Well, I hurt a little bit."

4 I'm thinking, You just spent hours and hours
5 telling me about it, you know, "Can you describe it a
6 little more?"

7 "Well, that's about it. You know, I hurt a
8 little bit."

9 So we won the case. And they came back with
10 about a hundred dollars, so -- which was a lot less than we
11 had hoped for. But that's how it went. But my partner was
12 happy and the plaintiff was happy; he felt vindicated
13 against the -- the big Southern Bell corporation.

14 **Q. As you commented again about the mostly criminal**
15 **and a little civil -- which again that's a trial to**
16 **verdict. So you've been there. Your credentials of -- as**
17 **a student and the activities at law school, certainly show**
18 **you were no back-bench player. You are a -- you're a**
19 **starter, it looks like, in the field of law. So I**
20 **compliment you for your willingness to do this and your --**

21 A. Thank you.

22 **Q. -- your pedigree gets you to this point.**

23 A. Thank you so much.

24 CHAIRMAN SMITH: Senator Sabb.

25 SENATOR SABB: Thank you, Mr. Chairman.

1 EXAMINATION BY SENATOR SABB:

2 Q. And thank you, Ms. Collins, for offering
3 yourself. Following up on what Senator Rankin was
4 mentioning, what I found astonishing was that not only were
5 you on law review, you did moot court. I don't know
6 anybody who punishes themselves that way in law school.
7 But congratulations for surviving that.

8 A. Thank you. I wasn't an editor on law review. I
9 was -- you know, they call them spade or checking the
10 research. And I did write some articles. But thank you.
11 I loved moot court. I have to say if I were to choose
12 between the two, it was just such a wonderful experience.
13 Thank you.

14 Q. Well, I wasn't smart enough for law review, and
15 so I jumped on moot court.

16 A. I loved it.

17 Q. You're right. It was a great experience.

18 A. Thank you.

19 Q. Now, you're from Lake City?

20 A. I am.

21 Q. Your maiden name Godwin?

22 A. Yes. Yes.

23 Q. Related to Charles Godwin and that crowd?

24 A. No, I often get asked that. Actually, Charles
25 married the sister of one of my aunts. And they're -- in

1 Lake City, they are like three sets of Godwins.

2 **Q. Yes.**

3 A. And often throughout the state, you hear
4 "Goodwin" a lot. But there are a lot of Godwins in Lake
5 City, and there are like three sets. But my dad, Jack
6 Godwin, was one of six brothers that were tobacco farmers.
7 But you may know my uncle Guy Godwin, he was --

8 **Q. Absolutely.**

9 A. He was principal at Kingstree High many years.

10 **Q. Absolutely, yeah. Yeah.**

11 A. And Aunt Dixie Jo was the librarian there and --

12 **Q. Yeah. And Mr. Godwin was an extraordinary man**
13 **and --**

14 A. He was.

15 **Q. We all loved him in the area, so --**

16 A. Thank you. Thank you.

17 **Q. But thank you.**

18 A. Thank you.

19 **Q. I had a couple of questions relating to your**
20 **judicial philosophy. Tell me a little bit about your**
21 **experience as it relates to sentencing and what you see.**

22 A. Well, I mentioned in my application, that,
23 obviously, you have to consider someone's prior record.
24 And in considering whether or not if they're a repeat
25 offender, if prior sentences were enough to rehabilitate.

1 But I don't think it's just that simple that you would say,
2 okay, "Well, next time it has to be more, because that
3 didn't rehabilitate."

4 Because things in that person's life could have
5 changed. And I think you would need to consider is the
6 repeat offense the same type of offense or is it a
7 different type of offense. But certainly you need to
8 consider someone's background.

9 But I will say that I'm very concerned about -- I
10 often think, going to empathy, Senator Hayes, that we're
11 just warehousing people. And I'm very concerned that many
12 of the people in our prisons might have mental illnesses,
13 they might come from extremely impoverished or
14 disadvantaged backgrounds.

15 When I was reading books to my child at night,
16 when she was small, I would often think of the children who
17 didn't have a parent at home, whether they were working two
18 jobs, or just because of other circumstances they didn't
19 have their parent home with them. People come from
20 different backgrounds. And I think that needs to be
21 considered.

22 And I am -- I am sad that we as a society can't
23 do more to address the issues in terms of mental illness
24 that may lead to crime -- addiction that may lead to crime.
25 I'm worried about that.

1 **Q. You would be one of the ones that would advocate**
2 **for mental health court and that kind of thing?**

3 A. Well, as a judge, I know there are restrictions
4 in terms of me being an advocate. But I certainly will
5 tell you, standing here today as an attorney, that, that
6 is sorely needed. It's sorely needed. And just the
7 resources, too, even with the court if they referred
8 someone, we have an extreme lack of resources in terms of
9 service providers.

10 And in any event, I had some recent -- in fact
11 just recently, I had two hearings. Two not guilty by
12 reason of insanity, one came back before the judge because
13 they were looking to putting him out in the community
14 again, after he'd been an inpatient. He had killed his
15 father.

16 And then I had another one that I actually dealt
17 with, that he had killed his mother, and he's inpatient.
18 And again, it is just such tragedy and such sadness. I
19 don't know if I've addressed your question, but --

20 **Q. No, you have.**

21 A. Thank you.

22 **Q. Thank you.**

23 A. Thank you.

24 CHAIRMAN SMITH: Representative Rutherford.
25 EXAMINATION BY REPRESENTATIVE RUTHERFORD:

1 Q. Tell me -- and this came up yesterday. The
2 policy that the York County Detention Center has, about
3 lawyers sending in letters of rep, is that still in place?

4 A. I don't know, because now I'm in Lancaster
5 County. Now, I serve as the Chief Deputy for Randy
6 Newman. And I have -- I retired from York, in June of
7 2013, and it was after that I became municipal judge for
8 Fort Mill. And I'm now in Lancaster.

9 But I'm very concerned about any of those
10 policies. I know that Harry Dest, from time to time,
11 tells me things that I'm extremely concerned about. And I
12 would hope that our chief administrative judge -- I
13 believe Judge Hall is going to be that, in January, for
14 York County, would address any concerns about that.

15 We have -- we have an issue in Lancaster County,
16 I'll be the first to say, that Solicitor Newman is working
17 to resolve, and that is, again, issues in terms of
18 limitation of access. It's a very small facility, so
19 there is a problem in terms of adequate meeting space.

20 But there's not that ongoing access that an
21 attorney sorely needs with his client, that I certainly
22 experienced as a member of the Public Defender's Office.
23 It's just critical that you're able to get in there as
24 often as possible to meet with your client.

25 CHAIRMAN SMITH: All right. Ms. Collins --

1 oh, sorry. Senator Young.

2 SENATOR YOUNG: Thank you, Mr. Chairman.

3 EXAMINATION BY SENATOR YOUNG:

4 Q. Ms. Collins, just very quickly. Could you just
5 briefly tell us what your judicial philosophy is in terms
6 of the application of the law to the facts that are before
7 you?

8 A. Well, again, I hate coming back to this word,
9 but respect is that -- I have to respect your role in
10 fashioning the laws and passing the laws, and making sure
11 that we as judges apply the law as you intended them to be
12 applied; whether it's the statutory laws, or certainly,
13 the Constitution of our forefathers by the state and the
14 federal.

15 But, you know, I just believe that, that is the
16 essence of justice, that it's not for me to twist that law
17 to what I perhaps think it might be. That would be
18 something for the Legislature to later address down the
19 road, but to apply it as written, and as it has been
20 interpreted by appellate courts.

21 Q. Another question I have is: You have never
22 practiced in a smaller firm; is that right?

23 A. I think that's correct.

24 Q. Could you tell us, just briefly, how sensitive
25 or how familiar you are with the time challenges on the

1 lawyers who practice in smaller firms who handle cases in
2 multiple courts? And then how will you handle requests
3 for continuances and those types of things, if you are
4 elected to the circuit court?

5 A. Well, I feel like I would be very generous, in
6 requests for continuances, unless I felt that it was
7 merely for the purpose of delay. But I certainly
8 recognize -- I've often said to attorneys, that practice
9 in the criminal field, that we have the luxury of just
10 being in circuit court.

11 Although, we now also prosecute in magistrate
12 court, and we have to be cognizant in our circuit -- which
13 is 6th Circuit is a small circuit -- of whenever there's
14 court going on in our sister-counties, I'm based in
15 Lancaster, Fairfield, and Chester, because I might be
16 needed to also go there.

17 So while I'm aware of the struggle, I would have
18 to multiply that a hundred fold, I'm sure, to what an
19 attorney in a small firm would have to deal with in terms
20 of balancing those requirements.

21 I've often said, again as a prosecutor, and when
22 we schedule the docket that -- and again that's changed
23 since Langford, for many of the counties -- but I would
24 often say to the attorney, "No, just let me know what's
25 going on."

1 Whether it's a deposition in a civil court that
2 -- you know, in civil that they had -- had to reschedule
3 numerous times, and like, "Please don't call that case on
4 Thursday," 'cause we've rescheduled it three times and
5 it's very important to make this case move forward in the
6 civil arena.

7 Or if it's simply in the terms of a magistrate
8 calling and saying again, you know, "We've got this jury
9 trial scheduled, can you work with us?" I always try to
10 work with them.

11 Again, I think that's going back to what we as
12 human beings need to do with each others, and as
13 professionals, need to do is be cognizant of those
14 struggles, and professional with each other.

15 **Q. Thank you.**

16 CHAIRMAN SMITH: Mr. Safran.

17 MR. SAFRAN: Thank you, Mr. Chairman.

18 EXAMINATION BY MR. SAFRAN:

19 **Q. Just very briefly, I was actually very**
20 **surprised, but also very happy, to hear you invoke the**
21 **name of Judge Ballenger. I know he was to a fault**
22 **somebody that wanted to always make sure people felt like**
23 **they were being heard, and also treat lawyers**
24 **appropriately. Is that basically the standard that you**
25 **intend to follow if you're elected?**

1 A. Absolutely. Absolutely.

2 Q. You've been in court a number of times, in a
3 number of places. Has, basically, the temperament that
4 you are more or less received with, going to court, always
5 been something that, I guess, had a big impact on how you
6 performed?

7 A. I think without question. And I certainly would
8 not want to play a role as judge, in ever having someone
9 shut down their full advocacy on behalf of their client
10 because they're worried about how, first of all, it might
11 appear to the jury if our argument is going on in front of
12 the jury. Which, hopefully, the judge will be
13 professional enough to immediately send the jury out, if
14 he knew that there was going to be any -- or even take it
15 back in chambers and talk privately to the attorney, if he
16 felt that there was something untoward going on.

17 But absolutely, and that's again why I just so
18 admired Judge Ballenger. And it made for a longer day,
19 sometimes, but it was well worth it. And as I stated, you
20 know, I grew up watching my dad get up early, and then
21 later, my mom get up early to be a nurse and work long
22 hours. And I'm not afraid of hard work.

23 And I think the people of South Carolina deserve
24 that. They deserve a judge who's there and available all
25 the time.

1 Q. Well, and I guess along those same lines, when
2 you would, basically, appear in front of a judge --
3 hopefully, most often -- that you felt like you were being
4 respected, that you were given the opportunity to do what
5 you felt you needed to do, within the perimeters in order
6 to represent your client, did you really have a gained
7 respect or an increased respect for the system because of
8 it?

9 A. I did. I did. Not only for the judge himself,
10 but also for the system. Because again, I think the point
11 is for everyone to fully be heard and have a voice.

12 Q. Well, and on the flip side, I'm sure with the
13 career you've had, that there have been a number of times
14 -- hopefully smaller -- where you've run into other
15 situations, maybe, where you had a judge who didn't quite
16 behave that way.

17 A. Yes, sir.

18 Q. Did it also leave a lasting impression?

19 A. It did. Because I'm smarter not to realize that
20 if the judge, you know, has already made up his mind, and
21 he's ruling and if he's not happy and expressing that, to
22 immediately stop my mouth and listen to him and be
23 attentive to him. And but you're right, it certainly
24 leaves a lasting impression. No question.

25 Q. Just lastly, having been in the courtroom as

1 much as you have, over time, have you had the opportunity
2 to make your own impressions on how that latter type of
3 behavior from a judge impacts the courtroom, impacts the
4 perception of the people in there, and in terms of their
5 feelings about the -- really, the adequacy and the
6 reverence that needs to be provided to the judicial
7 system?

8 A. I have. And, you know, it's of great concern.
9 I had the honor of appearing in front of many judges, as
10 you stated, throughout the state. Some of the judges
11 sometimes want to go very, very quickly, whether it's in
12 terms of a probation revocation, and just cut people off,
13 "I made my decision and go ahead and rule."

14 And again, you know, they might have had family
15 members out there waiting for hours for that ten-minute
16 hearing, and the opportunity to be heard on behalf of
17 their child or their son, and they certainly should be
18 given that opportunity to be heard.

19 Q. We appreciate your candidacy. And thank you for
20 your responses.

21 MS. COLLINS: Thank you. Thank you.

22 EXAMINATION BY CHAIRMAN SMITH:

23 Q. Ms. Collins, I think you've sort of answered
24 these questions, but I've been asking all the candidates
25 this, and I want to make sure and ask you this. I'll try

1 to do it as quickly as we can.

2 The civil portion of this is, I understand from
3 your history, you have had experience in civil court. And
4 I believe I heard you say that you've got enough
5 experience in practicing criminal law, you feel like you
6 would have the fundamentals to learn quickly as in civil
7 law, and how to handle motions and --

8 A. Yes, sir.

9 Q. -- the issues that arise for you in common
10 pleas.

11 A. Yes, sir. I've taught numerous CLE classes
12 regarding evidence -- rules of evidence, which of course
13 apply in both courts, in terms of hearsay and impeachment
14 and other matters. I do feel that I could.

15 And I need to clarify that particular case
16 Senator Rankin asked me about was in magistrate court, but
17 the other three were in circuit court that was a full
18 trial that went to conclusion in front of a jury. One was
19 products liability, one was -- that was defense trial.
20 One was an automobile accident, personal injury. And the
21 other was a civil forfeiture jury trial that I mentioned.

22 In addition to that, I did numerous depositions,
23 pretrial practice including interrogatories, requests for
24 admission, motions for summary judgement, argued numerous
25 motions for summary judgment. So I'm very familiar with

1 the pretrial practice in the civil court.

2 Which, thankfully, many times can work toward
3 the parties having that full discovery, to where they can
4 have a meeting of their minds regarding what the -- the
5 disposition of the case should be.

6 Q. And I think you answered it, as it relates to
7 the mental health courts, but if you're elected to the
8 court -- you know, I don't know what y'all have up in the
9 circuit that you prosecute. But, you know, the
10 alternative courts, the drug courts, mental health courts,
11 veterans courts, diversionary type of programs, you know,
12 I know you can't advocate for them, but you certainly can
13 be involved in the creation of them --

14 A. Yes, sir.

15 Q. -- through the judiciary and participate.

16 A. Yes, sir.

17 Q. Or utilize and make referrals to those. If
18 you're elected, would you embrace that? Or what's your
19 thought on these alternative courts?

20 A. I would definitely embrace that. All of them.
21 We just -- we're so excited in Lancaster, we just started
22 our first adult drug court. We've had a juvenile drug
23 court program for years. And we hope to expand the
24 veterans court one day, and ultimately to a mental health
25 court. But I would fully embrace that. I think it's so -

1 - so needed.

2 Q. And then another question I'm interested in is,
3 obviously, you know what it's like with practicing
4 criminal, and to some degree y'all do -- solicitors do
5 have control of the docket. And so I appreciate what I
6 heard you say is, you know, if there's a deposition, let
7 me not call it today and doing that.

8 But along those lines, when you're a judge,
9 you're going to be called upon from time to time,
10 especially in the civil arena, where somebody may have a
11 motion or a case and have a conflict with that. And, you
12 know, they'll come to you for orders of protection at
13 times about that, and about getting orders of protection.

14 And more importantly, also, from time to time,
15 they'll come and say, "Look, I got a child's baseball game
16 at three o'clock today, Judge. Can I put this off?"

17 What's going to be your practice, if you are
18 elected as a judge, as to handling an attorneys' requests
19 and balancing the demands of the court versus the quality
20 of the life of attorneys?

21 A. Well, I think it certainly is a balancing act.
22 And I think all attorneys who enter the field of law
23 understand that when they enter it, or they learn it very
24 quickly once they start a family and have a family.

25 As a judge, I would certainly do everything I

1 can to consider that and give great consideration to that.
2 But at the same time, we're asking jurors to serve, be
3 away from their families and their jobs. And if we
4 continue to delay things -- like, if they're saying, "I
5 need to leave at three. Can we stop the trial and start
6 back tomorrow?" You know, I would not be inclined to do
7 that.

8 I would also give consideration to whether or
9 not these are repeated requests by the same individual.
10 And then I might have a private word with him about that,
11 just to say that, you know, "I'm trying to give you as
12 much consideration as I can. I certainly value family,
13 and I want you to have that time with your family, but we
14 also need to focus on moving forward. So what can we do
15 to work together, whether it's starting earlier or staying
16 later one day?"

17 **Q. Judicial temperament -- and I presume you've**
18 **been on the side of judges who've been wonderful with a**
19 **temperament, and judges who have been abusive with their**
20 **temperament, if you've practiced as long as you have.**
21 **What do you think about -- and you have attorneys who we**
22 **all -- that we've all seen who are habitually late to**
23 **court, or do something that they shouldn't. Is there ever**
24 **an appropriate time for attorneys to be reprimanded in the**
25 **courtroom in front of jurors and/or the public or their**

1 **colleagues?**

2 A. I would always start with having that private
3 word in chambers. I cannot imagine a circumstance where
4 an attorney should be reprimanded in front of a jury
5 during the course of a jury trial. I think that would
6 impede the administration of justice for the jury to
7 continue to impartially weigh the case, and not be
8 distracted by any diversions of consideration for a judge,
9 indicating that the attorney is doing anything less than
10 fulfilling his duty to his client.

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

13 (Hearing none.)

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

23 On that note, and as you know, the record
24 will remain open until the formal release of the report of
25 qualifications, and you may be called back at such time if

1 the need arises. I thank you for offering. And I thank
2 you for your service to the state of South Carolina.

3 MS. COLLINS: Thank you-all for hearing me
4 today. Thank you.

5 CHAIRMAN SMITH: Thank you. If we could
6 tell -- who's got Mr. McKinnon as their -- okay. We'll
7 let him know. Let's start back at 2:20, do y'all think?
8 All right. And then we're going to go into executive
9 session, real quick.

10 So Mr. Murphy moves we go into executive
11 session. All in favor say "aye."

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

13 CHAIRMAN SMITH: All opposed?

14 (Hearing none.)

15 CHAIRMAN SMITH: The ayes have it. Let's
16 clear the room and go into executive session.

17 (OFF THE RECORD AT 1:50 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 86 PAGES IS A TRUE, ACCURATE, AND COMPLETE RECORD TO THE BEST OF MY SKILL AND ABILITY.

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

IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS 25TH DAY OF NOVEMBER 2017.

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

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND)

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JUDICIAL MERIT SELECTION COMMISSION
TRANSCRIPT OF PUBLIC HEARINGS

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8 BEFORE: G. MURRELL SMITH, JR., CHAIRMAN
9 SENATOR LUKE A. RANKIN
10 SENATOR RONNIE A. SABB
11 SENATOR TOM YOUNG, JR.
12 MR. 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 15th, 2017
21 TIME: 2:32 p.m.
22 LOCATION: Gressette Building
23 1101 Pendleton Street
24 Columbia, South Carolina 29201
25 REPORTED BY: JENNIFER NOTTLE, 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: Senator Hayes moves that we come out
2 of executive session. See, I remembered this
3 time. And I wanted to thank everyone. The
4 Judicial Merrit Selection Commission is now back
5 on the record. For the record, I would like to
6 state that we've been in executive session
7 however, no decisions were made and no votes were
8 taken during executive session. Mr. McKinnon,
9 welcome. Want to apologize for the delay. I
10 know we're running way behind and sorry about the
11 inconvenience to you for this. I see you got two
12 people with you. Probably your wife would be the
13 most important person. Would you like to
14 introduce them to the Commission?

15 MR. MCKINNON: Thank you, Representative Smith. Yeah.
16 This is my wife Ellen McKinnon, and my good
17 friend Peter Protopapas.

18 CHAIRMAN SMITH: Hey, Peter how are you doing?

19 MR. PROTOPAPAS: All right.

20 CHAIRMAN SMITH: Mr. McKinnon, will you raise you
21 right hand, please, sir?

22 MR. MCKINNON, being duly sworn, testifies as follows:

23 CHAIRMAN SMITH: Mr. McKinnon, before you is your --
24 is your personal data questionnaire and your
25 sworn statement. Are these both documents that

1 you have submitted to the Commission?

2 MR. MCKINNON: Yes, sir. They are.

3 CHAIRMAN SMITH: And are they both of them correct?

4 MR. MCKINNON: I haven't had a chance to review them
5 but if they're the same ones I submitted, they
6 are sir.

7 CHAIRMAN SMITH: Oh, I -- I need to qualify that. Are
8 both of them correct to the best of your
9 knowledge? How about that?

10 MR. MCKINNON: Yes, sir, they are.

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

13 MR. MCKINNON: No, sir. The only amendment I think I
14 sent in, I have spent postage to mail the
15 legislature and so there was a --

16 CHAIRMAN SMITH: Okay. Sorry, go ahead.

17 MR. MCKINNON: I sent the requisite notice saying I've
18 spent more than \$100 because I -- I mailed the
19 letter to the members of the General Assembly.

20 CHAIRMAN SMITH: So, did you already submit that?

21 MR. MCKINNON: Yes, sir.

22 CHAIRMAN SMITH: Or you need to make -- okay. So,
23 you've got a exhibit to that? All right. Do you
24 any objections to making those documents a part
25 of your sworn testimony?

1 MR. MCKINNON: No, sir.

2 CHAIRMAN SMITH: All right. And if you'll hand those
3 to Lindi and we'll make those a part of the
4 record, please, sir. Mr. McKinnon, the Judicial
5 Merit Selection Commission has thoroughly
6 investigated your qualifications for the bench.
7 Our inquiry has focused on nine evaluative
8 criteria and has included a ballot box survey, a
9 thorough study of your application materials,
10 verification of your compliance with State ethics
11 laws, search of newspaper articles in which your
12 name appears, study of previous screenings, and
13 checks for economic conflicts of interest. We
14 have received no affidavits today in opposition
15 to your election and no witnesses are present to
16 testify. Do you wish to make a opening statement
17 -- a brief opening statement to the Commission?

18 (EXHIBIT 6 - JUDICIAL MERIT SELECTION COMMISSION
19 PERSONAL DATA QUESTIONNAIRE OF WILLIAM M. MCKINNON)
20 (EXHIBIT 7- JUDICIAL MERIT SELECTION COMMISSION SWORN
21 STATEMENT OF WILLIAM M. MCKINNON)

22 MR. MCKINNON: Certainly sir. It's an honor to be
23 here. Again, this has been a life long dream to
24 -- to join the bench in South Carolina. I'm
25 looking forward to another opportunity. You

1 know, I've spent most of my practice in the civil
2 world and because this has -- this has been my --
3 my life -- since I graduated from law school,
4 this has been my goal. I closed my practice
5 about a year ago and I've been working full-time
6 at the solicitor's office since then in
7 preparation for this race. And so, I look
8 forward to speaking with all of you folks today.

9 CHAIRMAN SMITH: Okay. Thank you, Mr. McKinnon. Now,
10 will you answer any questions that counsel may
11 have for you, please sir?

12 MR. MCKINNON: Certainly.

13 EXAMINATION BY MS. CRAWFORD:

14 Q. Thank you, Mr. Chairman. I note for the record
15 that based on the testimony contained in the
16 candidate's PDQ, which has been included in the
17 record with the candidate's consent, Mr. McKinnon
18 meets the constitutional and statutory
19 requirements for this position regarding age,
20 residence, and years of practice. Mr. McKinnon,
21 you touched on it a bit in your opening
22 statement. You were screened last in 2014. How
23 do you feel your legal and professional
24 experience renders you qualified and will assist
25 you to be an effective circuit court judge? And

1 **then maybe elaborate how your experience has**
2 **changed since you appeared before the Commission**
3 **in 2014?**

4 A. Yes, ma'am. I -- I feel like I've had a -- a
5 broad range of practice in my career. I started
6 out clerking for two different federal judges.
7 Joe Anderson here in the District of South
8 Carolina. And then Judge Kleinfeld on the 9th
9 Circuit out west. Then I was briefly at a very
10 large firm in Washington, D.C. And I missed
11 South Carolina and decided that was not for me.
12 Came and joined Lewis, Babcock, and Hawkins, here
13 in Columbia. So, I've been at a small -- a small
14 plaintiff's firm but they did defense work as
15 well. We did all the defense work for BellSouth
16 in South Carolina. And we also did Russell and
17 Jeffcoat Realty. So, at -- at the Lewis and
18 Babcock, I did both civil defense side work and
19 plaintiff's work. I mean, we did -- probably
20 about a third of what I did was defense work.
21 Then following that I was a sole practitioner for
22 a year. Primarily working on one enormous estate
23 case. Some heirs fighting over money and that --
24 that lasted about a year. So, I have been a solo
25 practitioner. I transitioned from there to

1 McGowan, Hood, and Felder in Rock Hill where I
2 was for ten years doing about half medical
3 malpractice, plaintiff's side, and the rest a mix
4 of different civil litigation and some criminal
5 defense as I was on the criminal appointment
6 list. But no -- no criminal defense for pay.
7 And also some ethics defense of lawyers as well.
8 And then, so, I have appeared in front of the
9 South Carolina Court of Appeals, the South
10 Carolina Supreme Court, the 4th Circuit Court of
11 Appeals. I've -- you know, I've appeared in
12 Federal District Court in South Carolina. But
13 the one area I thought I needed to work on prior
14 to running again this time was I had the limited,
15 limited criminal experience. So, two years ago I
16 approached Solicitor Brackett and he allowed me
17 to work part-time as an assistant solicitor
18 primarily prosecuting DUI cases because that was
19 something that I could do part-time. And then
20 about a year ago, I closed my private practice in
21 anticipation of this race. And I've been a full
22 time assistant solicitor for the past year. I
23 started out doing general felony work and I'm
24 currently a drug prosecutor.

25 **Q. Thank you, Mr. McKinnon. The Commission has**

1 received 116 ballot box surveys regarding you,
2 with 21 additional comments. The positive
3 comments included -- for example some of the --
4 some of these positives, "smart, even tempered,
5 fair person." And, "he would be an outstanding
6 judge. His temperament and intellectual
7 abilities are what we need more of." Four of the
8 written comments expressed concerns. One of
9 these concerns indicated that you may exhibit
10 bias -- excuse me, bias towards others. What
11 response would you offer as to this criticism?

12 A. It's not true. I mean, I certainly -- I mean, I
13 -- I -- I'm sure that there was something the
14 person thought -- I mean, there was some -- you
15 know, but I -- I certainly -- I mean, I think
16 anyone who would know me well would say I don't -
17 - don't exhibit bias toward anyone. And I -- I -
18 - and would not exhibit bias on the bench if I
19 were elected.

20 Q. Another concern indicates you may have poor
21 judicial temperament. How would you react to
22 that?

23 A. All I can say is, I must have made one person
24 really mad at some point in my career. Because
25 they -- they sent the same comment in in 2014. I

1 have racked my brain. I -- I don't recall any
2 incident. As I think as other comments said, I -
3 - I think I have a pretty even keel. But
4 somewhere in my career I have made someone angry.
5 And -- and they have sent the same -- same -- the
6 same comment in three times now.

7 **Q. Well, I -- I will note, Mr. McKinnon, clarify**
8 **that -- that concern said in one case you had**
9 **just gone to far. So, it looks like it was just**
10 **one case.**

11 **A.** And I -- I -- I know it's not very helpful to the
12 Committee. I have no recollection of what
13 they're talking about. But I -- I -- I don't
14 think it is true in general. And if -- if I knew
15 who it was I would apologize for whatever it is
16 they -- you know, whatever they're talking about.

17 **Q. Yes, sir. Thank you. And the third concern,**
18 **which you have addressed but I want to touch on**
19 **again discussed your experience. The concern was**
20 **specifically with your experience handling cases,**
21 **general sessions. And I think that concern said**
22 **you'd only handled minor cases and not many**
23 **felonies. But can you elaborate on your recent**
24 **experience?**

25 **A.** Yes, ma'am. I would say that even prior to

1 joining the solicitor's office, I -- I did have
2 some felony experience. At the time the York
3 County appointment list, I would be appointed
4 about three to four times a year on criminal
5 cases. And typically they were serious felonies
6 where the public defender's office had a
7 conflict. And I took a case to trial as a -- you
8 know, an -- a -- a life without parole,
9 possession with intent to distribute drugs, third
10 offense, as a private practice attorney. And
11 then certainly -- and then my first year working
12 part time with the solicitor's office I did DUIs
13 solely because that was what the solicitor was
14 willing to let me do part-time, which was
15 extraordinarily generous on his part. There were
16 some subsequent second or third or fourth offense
17 felony DUIs. Primarily, those were DUI first.
18 But since I've been at the solicitor's office
19 full-time, which I said has been about exactly
20 one year now, I've done all felony work, general
21 felonies, burglaries, robberies and all. And
22 then -- in the last eight weeks I've been
23 switched to the drug team. So, I do felony drug
24 work now.

25 **Q. Thank you, Mr. McKinnon. I have a few**

1 housekeeping issues. Are you aware that as a
2 judicial candidate, that you are bound by the
3 code of judicial conduct as found in Rule 501 of
4 the South Carolina Appellate Court Rules?

5 A. Yes, ma'am, I am.

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

9 A. No, ma'am, I have not.

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

14 A. No, ma'am, I have not.

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

19 A. No, ma'am, I am not -- or I have not.

20 Q. And have you reviewed and do you understand the
21 Commission's guidelines on pledging and South
22 Carolina Code Section 2-19-70 subsection E?

23 A. Yes, ma'am, I do.

24 Q. Okay. Mr. Chairman, I would note that the
25 Piedmont Citizens Committee found Mr. McKinnon to

1 be well-qualified in the evaluative criteria of
2 ethical fitness, professional and academic
3 ability, character, reputation, experience, and
4 judicial temperament. And qualified in the
5 remaining evaluative criteria of constitutional
6 qualifications, physical health, and mental
7 stability. The Citizens Committee noted, "Mr.
8 McKinnon has run for a circuit judgeship and
9 appeared before the committee several times. He
10 has diligently worked to improve his
11 qualifications by leaving his civil practice and
12 going to work for the 16th Circuit Solicitor's
13 office, a laudable example of conscientiousness
14 and public service." Mr. Chairman, I note for
15 the record that any concerns raised during the
16 investigation by myself regarding this candidate
17 were incorporated into the questioning of the
18 candidate today and I have no further questions.

19 CHAIRMAN SMITH: Thank you, Ms. Crawford. Have any
20 questions of the Commission? Senator Hayes.

21 EXAMINATION BY MR. HAYES:

22 Q. Thank you. I happen to go to church, it'll be a
23 full admission, with Bill and I appreciate your
24 running before and being willing to run again for
25 this office. I noticed you have quite an

1 impressive resume. You were first in your class
2 at law school?

3 A. Yes, sir.

4 Q. We have that in common. I was last in my class
5 and you were first in yours. So -- so, that's
6 about as close as we'll get. And I don't know if
7 I was quite last but I wasn't first, I can tell
8 you that. Tell me this, other than the criminal
9 and civil that you've talked about, what is it in
10 your background that would put you in good stead
11 as a judge? What character trait or what -- what
12 have you done in your past history that would --
13 and what weakness is in your background or in
14 your character traits as far as becoming a judge?

15 A. Yes, sir. I would say I have had a lot of
16 experience dealing with folks in different walks
17 of life. I started out as a teacher. I taught
18 school for three years prior to going to law
19 school. And then primarily through my service at
20 the church, I was a deacon at my church and --
21 and then elected an elder. And at the
22 Presbyterian Church, a deacon is an office of
23 mercy. So, I was the -- the point person for
24 people who had financial needs or need -- you
25 know, needs for housing and that kind of thing.

1 So, that obviously I -- I spent a lot of time
2 with folks in very difficult situations. And I
3 think that -- that experience will serve me well
4 if -- if I am elected to the bench. I would say
5 that my -- my biggest weakness is -- is something
6 that I said I am working on. Compared to some
7 folks who run for the judiciary, my criminal
8 experience was limited and so I'm -- done the
9 best that I can to remedy that for this race.

10 CHAIRMAN SMITH: Any further questions? Senator
11 Young.

12 EXAMINATION BY SENATOR YOUNG:

13 **Q. Thank you, Mr. Chairman. Mr. McKinnon, thank you**
14 **so much for your interest in serving the State**
15 **and the judiciary by running for this circuit**
16 **court seat.**

17 A. Thank you, sir.

18 **Q. The questions I have, one would be, how would you**
19 **describe your judicial philosophy? If you're**
20 **elected to circuit court, how would you apply to**
21 **the facts that are before you?**

22 A. Well, I guess it's -- it's a bit of a cliché but
23 I -- I -- I would say that I -- my job as -- as a
24 judge is an umpire to call balls and strikes. My
25 job is not to write the law or push the law. I

1 mean, those of you folks who are on the General
2 Assembly, it's -- it's your job to write the
3 laws. And it's my job as a judge to see that
4 they're applied fairly and apply the law as it's
5 written by folks who -- whose job that is. You
6 know, my -- it's not -- my job is not to be an
7 activist, to push the law. It -- it's -- you
8 know, it's to apply the law as it's written
9 fairly and impartially.

10 **Q. I noticed that you taught at Aiken -- at Aiken**
11 **Prep School --**

12 A. Yes, sir.

13 **Q. -- for two years?**

14 A. Yes, sir.

15 **Q. Is that right?**

16 A. Two years. Yes, sir.

17 **Q. And that was before law school?**

18 A. Yes, sir.

19 **Q. What did you teach there?**

20 A. I taught math and Latin.

21 **Q. Did you live in Aiken?**

22 A. I did sir. Because at the -- at the -- at the
23 time, it was a boarding school. So, I lived in
24 the -- in a -- in a dorm -- in a -- a faculty
25 apartment in the dorm. We didn't have a lot of -

1 - I mean, you know, with the boarding duty we
2 didn't have a lot of free time. But I did -- I
3 did live there.

4 **Q. How did you end up clerking for a -- for a judge**
5 **on the 9th circuit?**

6 A. That was -- I met a gentleman named Robert Levy
7 in -- in D.C. through a political event at the
8 time who was involved in a -- he had clerked for
9 a Judge Ginsburg on the D.C. circuit. And he and
10 I hit it off and we had somewhat similar
11 political views. And he gave me sort of a list.
12 And he said, you know, I've clerked on the D.C.
13 circuit. And he was an interesting guy. He had
14 made a lot of money in a -- in a software
15 business and had gone to law school at about 50
16 years old. And then was a law clerk at 53 on the
17 -- on the D.C. circuit. And so, he took me out
18 to dinner and said, you know, I think you and I
19 have some similar views. And, you know, here are
20 some judges that, you know, you might get along
21 well with. And Judge Kleinfeld was on that list.
22 So, I did some research on Judge Kleinfeld. I
23 read a bunch of his opinions and -- and loved his
24 opinions. And I -- I sent my resume in and he --
25 his chambers were in Fairbanks, Alaska and it's

1 extrodinarily difficult to travel to Fairbanks.
2 It's very expensive and I was a law student. So,
3 he met me in Seattle, I think, or San Francisco.
4 Because the courts meets in other places. And
5 so, one court term I flew out there and met he
6 and his wife for dinner an he offered me a job.
7 And it was a -- an amazing experience.

8 **Q. Where did you live?**

9 A. I lived in North Pole, Alaska.

10 CHAIRMAN SMITH: Did you meet Santa Claus?

11 A. He was always gone. I guess he was out
12 delivering toys. But I did -- I lived -- the
13 judge's chambers were in Fairbanks and I lived in
14 a little town about ten miles outside called
15 North Pole.

16 **Q. It -- it looks like you have a pretty broad
17 experience in both civil and criminal law.**

18 A. I think so, sir. Yes.

19 **Q. And you also have worked at a -- in a -- two -- I
20 would -- I would say two smaller, moderate size
21 law firm -- private law firms.**

22 A. Yes, sir.

23 **Q. And so, you're familiar with -- would you --
24 would you say you're familiar with the challenges
25 that face lawyers who practice in smaller**

1 **practices and have multiple cases in multiple**
2 **courts?**

3 A. Absolutely, sir. And I -- and especially in
4 comparison I spent a little under a year in
5 Washington, D.C. at a law firm that had more than
6 300 lawyers. And that was never an issue at that
7 firm. There was always tons of -- you know, if
8 you had a hearing and you couldn't -- you had a
9 conflict, another lawyer would cover it for you.
10 I mean, you had 24-hour secretarial assistance
11 and 24-paralegal assistance. And you know -- and
12 at a small firm it's totally different. And I
13 understand that folks, they may have conflicting
14 court hearings in different parts of the state.
15 Or some of you folks on the General Assembly, I
16 mean, having to practice law and also have your
17 commitments in Columbia. And I have a great
18 sympathy for -- for a small firm lawyers and --
19 and solo practitioners who are just trying to
20 represent their clients and do the best that they
21 can.

22 **Q. What is your view of -- of -- of what is the**
23 **appropriate demeanor that a -- a trial judge**
24 **should demonstrate from the bench?**

25 A. I think calm, reasoned, respectful would be what

1 I would say.

2 **Q. Thank you.**

3 CHAIRMAN SMITH: Mr. Rutherford.

4 EXAMINATION BY REPRESENTATIVE RUTHERFORD:

5 **Q. Tell me your -- your -- your first step outside**
6 **of a civil practice was to the solicitor's office**
7 **as opposed to going to work for somebody doing**
8 **criminal defense work. Is there any sentencing**
9 **philosophy behind that or?**

10 A. No, sir. It was just -- I knew from my brother
11 who is a public defender that the -- the public
12 defender's office did not have any openings. I
13 also, in York County I knew a lot of the criminal
14 practitioners. One of my good friends is a
15 criminal defense lawyer. And it's -- it's
16 difficult for -- in my -- in my limited
17 experience, difficult for criminal practitioners
18 to bring in another full-time lawyer who is --
19 does not have criminal experience who is not
20 going to attract a lot of clients. It's just
21 tough to go to someone who has a criminal
22 practice and say, can you bring me on as a full-
23 time lawyer, pay me a full-time salary. I don't
24 have any criminal experience -- little criminal
25 experience. I'm not going to attract clients but

1 I -- you need to pay me a salary that my family
2 can live on. That's very tough to do. And
3 Solicitor Brackett was very gracious and -- and -
4 - and was -- you know, hired me.

5 **Q. So, tell me about sentencing philosophy after**
6 **having been in the York Solicitor's office? I**
7 **mentioned earlier about the number of enemies**
8 **I've made there. You aren't on that list. But**
9 **maybe the answer's yet. But --**

10 A. I'm glad to hear that.

11 **Q. So, yeah. But I mean, tell me about your**
12 **sentencing philosophy coming out of that**
13 **solicitor's office?**

14 A. I think my -- my sentencing philosophy would be -
15 - and I guess it -- it's certainly reflected in
16 the pleas that I offer now. Certainly for first-
17 time offenders or low-level offenders, you -- you
18 want to provide sentences or offer sentences or
19 offer pleas that offer rehabilitation that don't
20 ruin people's lives. I mean, we often see people
21 maybe with -- with no -- with no record who are
22 caught with drug felonies. And our office's
23 typical policy is to offer misdemeanor charges in
24 those situations, and I think that's appropriate.
25 Certainly, I would take into account the person's

1 background, the challenges that they have
2 suffered. You know, why -- you know,
3 difficulties -- you know, the schooling they had.
4 And then on the other end I obviously our -- our
5 job's also in part to protect the people of South
6 Carolina. And there -- there are certain folks
7 that are extremely dangerous. And -- and who --
8 who continue to commit dangerous crimes. And I
9 think those folks sometimes warrant long
10 sentences.

11 Q. How would you -- and I don't want to ask you
12 because I don't know if you're still employed
13 there. I assume that you are. But --

14 A. I am, sir.

15 Q. Yeah. I -- I think that the general sentiment
16 amongst most judges and a lot of lawyers that
17 practice in and out of York County is that the
18 philosophy of that office is a little bit off
19 kilter. Do you think that you agree with the
20 sentencing policy of -- policies of the office or
21 are you a little bit different?

22 A. Representative Rutherford, I -- I've heard that
23 myself. My experience has been different and all
24 -- all I can say is that Solicitor Brackett has
25 given me basically free reign to handle my cases

1 as I see appropriate. He does not interfere in -
2 - in -- in cases or he doesn't -- he certainly
3 welcome. He answers questions if I have them and
4 other attorneys in the office are -- have been
5 very -- very free with their time in helping me
6 learn some. But -- but there's no pressure from
7 the office to pushing hard sentences or anything
8 like that. There's no -- there's no numbers
9 pressure. And the only -- the only numbers
10 pressure we get is that Solicitor Brackett does
11 not like cases to hang around a long time. So,
12 he does prompt us that we need to resolve our
13 cases. But there's certainly -- there's no
14 oversight. Anyone going behind me and saying,
15 well you were too light on that guy. Or why did
16 you give this person probation. Or -- my
17 experience has been that we have a great deal of
18 freedom and -- and trust from Solicitor Brackett.
19 But I --

20 **Q.** You -- you keep -- you go back and forth between
21 there's no pressure on us or we. You're saying
22 that that's the office policy? That's -- that's
23 not my experience up there. Everybody seems to
24 refer back to what they can't do by what they're
25 being told. Is it just limited to you that you

1 **have that kind of flexibility or?**

2 A. Representative Rutherford, I -- I -- I can't
3 speak to what Solicitor Brackett tells other
4 people in private. All -- well, what I can is,
5 with me, I have never felt that pressure. The
6 only office policy I'm aware of is once we have
7 set a case for trial, once the plea offer has
8 been turned down and the case has been scheduled
9 for trial, at that point all plea offers are
10 revoked. And the only option at that point for
11 the Defendant is they must plead straight up.
12 But that's -- you know, after a long plea
13 negotiation period and we've finally said this
14 our -- your last chance. If you turn down this
15 offer we're going to put it on the trial roster.
16 And at that point, if you -- you know, the office
17 policy is if I have a case that's set for trial
18 and I want to re-offer a plea, I have to have the
19 permission of Solicitor Brackett or one of the
20 deputy solicitors. But other than that there are
21 no policies that -- I mean, -- I mean, I've never
22 felt pressure to go a certain way in a case. But
23 I -- but I have heard the same thing from
24 lawyers.

25 **Q. Again, that's what causes me concern is that, you**

1 know, I've been doing this 20 years and I
2 continue to be flummoxed by what I hear from
3 solicitors in York County. And as I'm sure you
4 know, this is on a regular basis. What I'm being
5 told is that, oh, I can't do this because of this
6 reason or I can't do that because of this reason.
7 And it just -- I would be further concerned if
8 you were left the -- you were left believing from
9 your limited time in the solicitor's office that
10 that was the way that things should be in a
11 criminal practice throughout the state. Because
12 I assure you it is not anywhere else like that
13 but in York County. So that concerns me that
14 that's your experience in the criminal world.

15 A. I can only say, Representative Rutherford, that I
16 -- I -- I have not felt any kind of pressure like
17 that myself. And I -- I feel like I'm -- there
18 are -- there really are no restrictions on how I
19 handle cases. And I certainly felt no -- no
20 pressure to put people in jail for long terms or
21 anything like that.

22 EXAMINATION BY CHAIRMAN SMITH:

23 Q. Mr. McKinnon, let me follow up with you on a
24 couple of those. Kind of along those lines. You
25 know, we see people who are historically -- the

1 criminal experience comes from public defender
2 sector, then they believe the way the public
3 defenders -- you know, what they ask for and the
4 way they present cases is the way that as judges
5 they should handle this. And -- and we had a
6 public defender that was before us earlier. So,
7 there are similar questions. As a solicitor, you
8 know, obviously you know you get up there and you
9 recommend sentences and -- and -- you know,
10 what's going to be your policy as to a
11 recommendation from a solicitor as to a sentence?
12 Are you going to take in to your own
13 consideration those -- those recommendations and
14 weigh what's before you before you pronounce
15 sentence, or are you generally going to follow
16 the recommendation of the solicitor?

17 A. No, sir. I -- I would definitely take in to
18 account my -- my own evaluation of the facts and
19 the background of the defendant. And I -- I
20 would make my own judgment.

21 Q. What weight would a recommendation of a solicitor
22 have upon your decision?

23 A. It would have some weight. But again, I mean,
24 the -- the -- the people of South Carolina and
25 the General Assembly entrust the -- the bench

1 with the -- with the authority on sentencing.
2 And it's the judge who is in the -- the final --
3 who is the final arbiter. And my personal
4 philosophy was I would feel comfortable going
5 lower than a recommendation without giving
6 warning to the lawyers. But in a situation where
7 I felt like the sentence was too low, I would
8 give the attorneys a chance to withdraw that plea
9 before I --

10 **Q. You are following right along with my next**
11 **question. And I -- I know that you're not bound**
12 **upwards or downwards with -- with a sentence.**
13 **But if a sentence is going to be -- if the**
14 **recommendations say 10 years and you say that's**
15 **not -- that's not appropriate, I think this**
16 **individual deserves more time. Which I -- I**
17 **think that's perfectly well within your**
18 **discretion. Would you allow the attorney to**
19 **withdraw that plea or advise that you can not go**
20 **forward with it and allow them to withdraw that**
21 **plea or -- rather than proceed with sentence and**
22 **what I call the blind-siding theory?**

23 **A. Absolutely, Chairman Smith. I -- I don't think**
24 **that's fair to counsel and certainly I -- I would**
25 **give them a heads up that -- that my -- that I**

1 would -- that I would tell them that I view the
2 case is more serious than that recommendation.
3 And would -- do they still want to go forward
4 with myself as the -- the judge.

5 Q. Yes, sir. And -- and I'll follow along with what
6 Senator Young was saying. It -- it appears you
7 have a wealth of civil experience. You have a --
8 now a breadth of criminal experience. So, you
9 know, it looks would you -- if you were elected,
10 you would be well prepared to go to the bench.
11 So, then when you look at certain issues that --
12 you know, the temperament of a judge. How --
13 what -- how -- how does that play in to your
14 philosophy of being a judge?

15 A. Well, as -- as -- I -- I think that the
16 temperament that you hope that you get from
17 judges on the bench is fair, even tempered,
18 respectful. We've all been in situations where
19 we may be running late because of traffic or
20 something like that. And I just -- you know, I'm
21 -- I would not be the kind of judge who's going
22 to blast at counsel from the bench. I just -- I
23 just don't think that's appropriate. And even
24 with -- with criminal defendants, if they -- if
25 you think the crime is particularly heinous, the

1 way that you express the judgment of South
2 Carolina in that situation is in the sentence.
3 You don't harangue people from the bench or
4 lecture them from the bench. And I -- I -- I
5 think that I would be a judge that would be
6 respectful and even -- even keel you know,
7 friendly temperament.

8 **Q. And obviously, you've got to control your**
9 **courtroom at times?**

10 A. Yes, sir.

11 **Q. And -- and you've got attorneys that -- we all**
12 **know attorneys or, you know, unfortunately there**
13 **are attorneys who try to take advantage of the**
14 **court or don't respect the court and don't**
15 **respect their position. So, what -- what's the**
16 **appropriate way when someone is -- is what you**
17 **believe is being disrespectful to the court or**
18 **running late and causing disruptions in your**
19 **court -- how would you address those manners?**

20 A. I think barring a truly exceptional situation, a
21 warning first is always appropriate. And then if
22 the behavior or the disruption continues beyond a
23 warning, then depending on what it is -- that --
24 I mean, you have the -- the contempt power. But
25 I certainly -- barring truly exceptional

1 circumstances, I would always give counsel or a
2 party warning that they have -- that they've
3 crossed the line and they -- they need to reel it
4 in or there are going to be consequences.

5 **Q. Where would that warning occur, in the courtroom?**

6 A. If it was -- it -- if it was a case before a
7 jury, I would certainly not do it in front of the
8 jury because you run the risk of causing a
9 mistrial or having to do -- it would depend on
10 who else was in the courtroom. So I mean, if it
11 was a fairly private hearing I might -- it would
12 -- possible I would do it from the bench but much
13 more likely it would be -- we would take a recess
14 and do it privately.

15 **Q. Okay. In chambers?**

16 A. Yes, sir.

17 **Q. And -- and wouldn't you believe that that's**
18 **probably the appropriate place to address**
19 **behavioral issues with --**

20 A. Yes, sir.

21 **Q. -- attorneys?**

22 A. And that's -- especially when it's out of the --
23 you know out of hearing the court personnel and -
24 - and the jury. Yeah. I think it -- it --
25 that's the best way to resolve it, sir.

1 Q. And along the lines with what you're doing now
2 and I -- I'm not familiar. Unlike Mr.
3 Rutherford, I don't go to your county. I'm smart
4 enough to know to stay in my own lane when --
5 where I'm supposed to go to court. But in -- in
6 regards to alternative sentencing, we -- we --
7 we're looking alternative sentencing, alternative
8 courts, mental health courts, drug courts,
9 veterans courts. I know you wouldn't be a part
10 of the policy making of those courts. But if you
11 were elected to the bench, you know, obviously
12 you would have a hand in the formulation of those
13 courts whether they are working, whether they're
14 not working and, you know, -- and how they are
15 created and whether it's with the solicitor's
16 consent, without the solicitor's consent. What
17 role do you think alternative sentencing and
18 alternative courts play in our general sessions
19 arena?

20 A. I -- I think they play a very positive role,
21 Chairman Smith. I am personally familiar with
22 our -- our PTI program. Which I think is an
23 exceptionally good program. You know, I'm -- as
24 I'm sure you're aware, it gives first time
25 offenders a chance to do some community service

1 and do some counseling and keep their record
2 clean. That's a great program. We also have the
3 alcohol education program, which is for certain
4 alcohol offenses. Typically, for people under
5 21. I -- because we have a traffic program
6 called the TEP, which is similar. It's an
7 intervention program for traffic tickets. I'm
8 not personally familiar with it. I think we --
9 we are most proud of our drug court program in
10 the 16th circuit, which is typically a program
11 for people who are facing significant jail time
12 due to their drug habit. Typically, the
13 candidates are people who maybe keep stealing
14 things or because -- to feed a drug habit. And
15 the way we do is it we -- they plead guilty to a
16 -- a charge with series time. Typically, we
17 won't even take someone in the program unless
18 they're willing to plead guilty and be sentenced
19 to five years or more. And then that is a very,
20 very effective motivator. Because the drug
21 program is very intensive. It's meets with
22 people three times a week when it starts. And
23 you can say, look if -- you know, if you -- if
24 you can't stop smoking marijuana you're going to
25 go to jail for five -- for five years. And it is

1 a great program. We are just starting a mental
2 health court which is really encouraging because
3 I'm sure, you know, with your criminal experience
4 there are some folks who just -- they just have
5 mental problems. And they're not -- they're not
6 malicious or evil. But they -- they keep
7 committing crimes because they have serious
8 mental health issues. So, we're -- we're just
9 getting that going and I'm very encouraged. I
10 would love to be a part of that.

11 Q. All right. And you know, I -- I -- pivoting back
12 towards the civil side. Obviously, you -- you
13 have to -- you will have the unfortunate
14 experience if you are elected of being chief
15 administrative judge of those circuits. And
16 always hear that's probably the worst part of
17 being a judge. But time to time you're going to
18 have attorneys call you, write to you for a
19 request for protection. You know, get to called
20 to trial or a motion and say, judge you know I --
21 I've got five lawyers in this deposition and it's
22 scheduled for this afternoon. And -- and you
23 know, I've got this motion. If -- it's going to
24 disrupt everything if we -- if we don't have this
25 deposition or even the things to -- you know, I

1 need to go on vacation. Or we're going out of
2 town this Thursday or this Friday or my kid's got
3 a soccer game at 4:00 o'clock or 5:00 o'clock,
4 can I leave court early. How -- how are you
5 going to handle those issues as opposed to the
6 just disposition of court cases?

7 A. Having been a small firm practitioner I guess I
8 would say my -- my sympathy is with the lawyer in
9 those situations. I would do everything that
10 would be reasonable to accommodate those lawyers
11 to the -- just so long as I wasn't prejudicing
12 the other party. Because there -- there is a
13 point where those sort of things can become delay
14 tactics. But I mean, in the great majority of
15 situations I would -- I would bend over backwards
16 to work with the lawyer and not -- because we all
17 have families. We all have children who get sick
18 and things that come up. And you know, I -- I
19 would be as understanding as possible.

20 Q. I think we generally -- all of us who make a
21 living doing courtroom work tend to identify
22 those who are abusing the system versus those who
23 are -- have legitimate issues. And -- and what's
24 the quality of life of lawyers? What importance
25 does that weigh in to you as a judge and how

1 **would you consider that?**

2 A. I -- I think I would do what I could. I'm not
3 sure that I -- as a judge I would have a huge
4 influence on that other than what you just
5 mentioned, Chairman Smith, with reasonable on
6 scheduling, reasonable on deadlines, reasonable
7 on continuances. I think those sort of things
8 can have a very positive impact on a lawyer's
9 quality of life. And I -- I think I would also -
10 - with -- with juries and with lawyers, I would
11 be reluctant to go late in to the evening on a
12 case barring unusual circumstances.

13 **Q. Right. And you recognize that was going to be my**
14 **next question. You will recognize when you will**
15 **have to deal with jurors and you have to deal**
16 **with clerk personnel and bailiffs and sheriff's**
17 **deputies and they all have families at home and**
18 **they have issues, would you be cognizant of their**
19 **demands and personal demands as opposed to you**
20 **wanting to get rid of the case and let's let the**
21 **jury start deliberating at 4:00 or 5:00 o'clock**
22 **at night?**

23 A. Yes, sir. I mean, I -- I have a six-year-old
24 step-daughter and she has to be picked up at
25 school at 6:00 o'clock no matter what. And I --

1 I know what that's like. And I -- I would do the
2 very best I could, sir.

3 Q. And I -- I want -- I -- I looked over your --
4 your bench bar survey. Your ballot box
5 information. And I -- you know, I -- I make it
6 appoint when we see negative comments, I want to
7 obviously discuss those with -- with the
8 candidates. But I also think it's important to
9 recognize when you have a lot of positive
10 comments and positive evaluations. And let me
11 commend you for having a lot of positive
12 evaluations.

13 A. Thank you.

14 Q. Your negatives, judicial temperament, six, which
15 is very good in these situations. You have --
16 you're -- you're qualifications are all in -- are
17 all 60 percent, 70 percent, 80 percent for well
18 qualified. And I think that's -- that's a
19 testament to the type of practice and the type of
20 lawyer you've been. More importantly, what --
21 you're the third candidate, I believe, we've had
22 over here at York County. All of y'all have
23 either solicitors or public defenders. So you
24 know, we're -- y'all approach -- I was a part-
25 time public defender at some point. And I know

1 you always approach that -- it's a -- it's a
2 adversarial situation. And -- but you always try
3 to approach that with respect to each other and
4 to the process, although you differ on the facts
5 and the way you argue the facts. And so you
6 know, one thing I look at this as a -- you see as
7 those who've, as I call it, been in the pit. We
8 have adversarial issues in and you know, you tend
9 to make some enemies along the way. But
10 apparently, you as a solicitor have been -- have
11 -- have not found that way. And the -- you know,
12 the way you see the public defenders and
13 solicitors they butt heads at times. But you
14 know, at the end of the day those who walk away
15 and that they still remain friends and respectful
16 of one another, that's a real testament to the
17 way you carry yourself in that manner.

18 A. Thank you, sir. I think that the fact my brother
19 is a public defender helps keep me grounded, too.

20 Q. Well, then you -- you -- you -- it would make
21 life difficult wouldn't it?

22 A. Yes, sir.

23 Q. So, we were just -- I -- I just was looking at
24 some of these and -- and the ones who are long
25 time solicitors or long term public defenders,

1 you see more -- more -- more comments. And you
2 know, their responses, I think rightfully so,
3 were look, you know, I'm advocating for my client
4 and it can create some hostilities. But I don't
5 see that in -- in yours. And so, I'm
6 appreciative of that.

7 A. Thank you.

8 Q. All right. Mr. McKinnon -- do you have -- okay.
9 Does anyone else have any questions? All right.
10 Mr. McKinnon, thank you. This concludes this
11 portion of your screening process. I want to
12 take this opportunity to remind you that pursuant
13 to the Commission's evaluative criteria, the
14 Commission expects candidates to follow the
15 spirit as well as the letter of the ethics laws.
16 And we will -- we will view violations of -- or
17 the appearance of impropriety as serious and
18 potentially deserving of heavyweight and
19 screening deliberations. On that note, and as
20 you know, the record will remain open until the
21 formal release of the report of qualifications.
22 And you may be called back at such time if the
23 need arises. I thank you for offering for this
24 position. And I thank you for your service to
25 the State of South Carolina.

1 MR. MCKINNON: Thank you, sir. And thank you all for
2 your time.

3 CHAIRMAN SMITH: All right. Thank you. Have a safe
4 trip back.

5 (Off the Record)

6 CHAIRMAN SMITH: Come on up and we'll get started.
7 Mr. Morton, will you raise your right hand
8 please, sir.

9 MR. MORTON, being duly sworn, testifies as follows:

10 CHAIRMAN SMITH: All right. Mr. Morton, before you,
11 you have the personal data questionnaire and the
12 sworn statement. Are these documents that you
13 submitted to the Commission? They should be on
14 the --

15 MR. MORTON: They're -- I don't --

16 CHAIRMAN SMITH: I think I'm getting ahead of myself
17 then if they're not on there. Yeah. Sorry,
18 we're missing a -- a key component of our
19 screening process.

20 (Documents were retrieved at this time.)

21 CHAIRMAN SMITH: Are those documents before you, are
22 those the documents that you've submitted to the
23 Commission?

24 MR. MORTON: Yes, sir, Your Honor.

25 CHAIRMAN SMITH: Are they both correct?

1 MR. MORTON: Sorry. Calling you, Your Honor. Yes,
2 sir.

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

5 MR. MORTON: No, sir.

6 CHAIRMAN SMITH: Do you have any objection to us
7 making a part -- this a part of your -- of the --
8 of the record of your sworn testimony?

9 MR. MORTON: No, sir.

10 CHAIRMAN SMITH: All right. Will you please. Jimmy,
11 if you'll just hand those to the court reporter
12 and we'll make those as Exhibit to the record.
13 Mr. Morton, the Judicial Merit Selection
14 Commission has thoroughly investigated your
15 qualifications for the bench. Our inquiry is
16 focused on nine evaluative criteria and has
17 included a ballot box survey, a thorough study of
18 your application materials, verification of your
19 compliance with state ethics laws, search of
20 newspaper articles in which your name appears,
21 study of previous screenings, and checks for
22 economic conflicts of interest. We have received
23 no affidavits filed in opposition to your
24 election and there are no witnesses present to
25 testify today. Do you wish to make a brief

1 opening statement to the Commission?
2 (EXHIBIT 8 - JUDICIAL MERIT SELECTION COMMISSION
3 PERSONAL DATA QUESTIONNAIRE OF JAMES M. MORTON)
4 (EXHIBIT 9 - JUDICIAL MERIT SELECTION COMMISSION SWORN
5 STATEMENT OF JAMES M. MORTON)
6 (EXHIBIT 10 - AMENDMENT TO THE PERSONAL DATA
7 QUESTIONNAIRE OF JAMES M. MORTON)
8 (EXHIBIT 11 - AMENDMENT TO THE PERSONAL DATA
9 QUESTIONNAIRE OF JAMES M. MORTON)

10 MR. MORTON: No, sir.

11 CHAIRMAN SMITH: Thank you, Mr. Morton. If you'll
12 answer any questions that counsel may have.

13

14 EXAMINATION BY MR. MALDONADO:

15 **Q. Thank you, Mr. Chairman. I note for the record**
16 **that based on the that based on the testimony**
17 **contained in the candidate's PDQ, which has been**
18 **included in the record with the candidate's**
19 **consent, James Morton meets the constitutional**
20 **and statutory requirements for this position**
21 **regarding age, residence, and years of practice.**
22 **Mr. Morton, why do you want to be a circuit court**
23 **judge?**

24 **A. You know, I think being a circuit judge has the**
25 **unique capability to effect people's lives and**

1 this has a tremendous power in that regard. And
2 that's something that I've wanted to aspire to be
3 able to do most of my life. Not all of my life.
4 I think I can be a -- a fair, qualified,
5 impartial, hard-working, dedicated judge that the
6 people of my circuit and the people of this state
7 can be proud of.

8 **Q. Thank you. How do you feel your legal and**
9 **professional experience thus far renders you**
10 **qualified and will assist you to be an effective**
11 **circuit court judge?**

12 A. Well, I've had the experience on lot -- of
13 course, lots of criminal experience. I've had
14 some civil experience. My civil experience
15 includes handling cases of all types of different
16 situations from unfair trade practices to
17 nuisance to unlawful -- to accident cases, to
18 wrongful deaths, to negligent supervision. I've
19 tried a lot of cases in civil cases. I've
20 handled dozens more in civil court. Most of my
21 experience has been in the criminal arena where
22 I've been a public defender. I've been a
23 prosecutor. I had the wonderful timing to be a
24 prosecutor here in Columbia for about five years
25 where I was able to prosecute a lot of high

1 profile cases and a lot of serious cases. And I
2 learned a lot from that. I -- I think being on
3 both sides of the -- of the law, so to speak, has
4 qualified uniquely, to tell you the truth, as
5 well as my experiences outside of the courtroom.

6 Q. Thank you. Mr. Morton, the Commission received
7 170 ballot box surveys about you with 28
8 additional comments. The ballot box survey, for
9 example, contained the following positive
10 comments, "He's one of the strongest candidates
11 for a circuit court judgeship that I've ever
12 observed in my 42 years practicing law." Also,
13 "Mr. Morton is, in my opinion, one of the most
14 professional attorneys I've ever encountered. He
15 possesses civility that the legal -- that the
16 legal community is looking for. He's experienced
17 in almost every field of law. What a great asset
18 to our bench should he be elected." Three of the
19 28 comments expressed concerns. One comment
20 stated, "This candidate is not always trustworthy
21 and disagrees with legislative authority to
22 promulgate the law. He will not apply the law
23 with legislative intent and will be biased toward
24 parties, inserting his personal beliefs instead
25 of the rule of law." Another stated, "I have had

1 instances where I questioned his integrity and
2 honesty. I do not believe he is qualified and
3 feel that he would not be impartial. He would
4 have his own agenda and would not -- and it would
5 not be to further justice." How do you respond
6 to these concerns?

7 A. I have no idea where some of those negative
8 comments come from. I -- I would -- you know, at
9 the end of the day you have to put your head on
10 the pillow at night. You have to do what you
11 think is right. You have to do what you think is
12 right for the people that are in front of you and
13 that includes the victims. That includes
14 defendants. That includes people on both side of
15 the law. I am probably unfailingly fair, in my
16 opinion. I've been a victim of crime. I've
17 represented victims of crime. I've prosecuted
18 people. Put people in jail for long periods of
19 time. I have no personal ambition. My only job
20 when I retire to judges chambers would be knowing
21 that I have done what I consider to be the right
22 thing. That I have listened to all the parties.
23 I have listened to what they had to say. And
24 that's the only thing that would drive me.

25 Q. Thank you. Two other comments mentioned your

1 **lack of civil experience. I -- I believe you**
2 **already touched on this but would you like to**
3 **offer any other response to that question?**

4 A. You know, my -- no question that -- that most of
5 my experience has been in the criminal realm.
6 After I left the solicitor's office here in
7 Columbia, after about five years, I was in
8 private practice. I've been in private practice
9 since that time. I'm -- I'm at a firm that has
10 13 lawyers in my firm, or our firm. We practice
11 all types of law, I think, except bankruptcy and
12 -- and maybe a couple of other things. I help
13 manage all my lawyers. I -- again, I've tried
14 numerous civil cases in various types of law from
15 nuisance, to negligent supervision, to unfair
16 trade practices, to wreck cases, to wrongful
17 death cases. So, I -- I think I have more
18 experience than a lot of people that you're going
19 to see in front of you from -- from -- from civil
20 and certainly from criminal.

21 **Q. Thank you. Mr. Morton, what do you feel is the**
22 **appropriate demeanor for a judge?**

23 A. Well, you know the -- the judge that this seat is
24 -- the vacancy which John Hayes -- I don't always
25 agree with Judge Hayes and some of the things

1 that he does, but his demeanor -- he said that
2 when he became a judge that he took an oath to
3 himself to always be -- to never downgrade a
4 lawyer in the courtroom. To always listen. To -
5 - to -- to be -- have a demeanor that's kind of
6 quiet confidence. To listen to everyone. And
7 you know, judges can have lawyers who raise all
8 kinds of different issues and make all kinds of
9 arguments and it gets very heated and a place to
10 be. But Judge Hayes has always taken the
11 position that he is going to listen to lawyers.
12 He's going to listen to litigants. He's going to
13 listen to people in the courtroom. I don't think
14 I've ever heard him raise his voice one time.
15 That's the kind of judge I would aspire to be.

16 **Q. Thank you. Are there any areas, including**
17 **subjective areas of the law, that you would need**
18 **additional preparation in -- in order to serve as**
19 **a circuit court judge? And how would you handle**
20 **the additional preparation?**

21 A. Well, yeah, there are plenty of places that I
22 would need some help. There are too many to --
23 to name. Fortunately, with the internet and with
24 law clerks, with a network of -- of people that
25 you can rely on to ask questions of in an

1 appropriate manner. Yeah, there are lots of
2 things that I would do. I would -- I'm never
3 one, I don't think, to make a quick, irrational
4 decision without giving it careful thought and
5 consideration. And I would always do that. And
6 I would have lots of ways -- lots of things to
7 learn as a judge. And I don't deny that.

8 **Q. Thank you, Mr. Morton. I'll finish up with some**
9 **housekeeping questions. Mr. Morton, are you**
10 **aware that as a judicial candidate, you are bound**
11 **by the code of judicial conduct as found in Rule**
12 **501 of the South Carolina Appellate Court Rules?**

13 A. Yes, sir.

14 **Q. Since submitting your letter of intent, have you**
15 **contacted any members of the Commission about**
16 **your candidacy?**

17 A. No, sir.

18 **Q. Since submitting your letter of intent, have you**
19 **sought to receive the pledge of any legislator,**
20 **either prior to this date or pending the outcome**
21 **of your screening?**

22 A. No, sir.

23 **Q. Have you -- have you asked any third parties to**
24 **contact members of the General Assembly on your**
25 **behalf or are you aware of anyone attempting to**

1 **intervene in this process on your behalf?**

2 A. No, sir.

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

6 A. Yes, sir.

7 **Q. I would note that Piedmont Citizens Committee**
8 **reported Mr. Morton is well qualified in the**
9 **ethical -- in the -- one of these days I'm going**
10 **to say that right -- evaluative criteria of**
11 **ethical fitness, character, professional and**
12 **academic ability, character, reputation,**
13 **experience, and judicial temperament. And**
14 **qualified in the criterias of constitution --**
15 **constitutional qualifications, physical health,**
16 **and mental stability. Mr. Chairman, I would note**
17 **for the record that any concerns raised during**
18 **the investigation by staff regarding this**
19 **candidate were incorporated into the questioning**
20 **of the candidate today. I have no further**
21 **questions.**

22 CHAIRMAN SMITH: All right. Thank you. Any
23 questions? Mr. Safran.

24 EXAMINATION BY MR. SAFRAN:

25 **Q. Mr. Morton, good to see you again.**

1 A. Good to see you, Mr. Safran.

2 Q. A couple of questions. And you touched on this
3 and it's something that we obviously, as a group,
4 have -- have found to be something that is a very
5 significant point that we want to try to make and
6 -- and to at the same time glean from the
7 testimony of the folks appearing. You've been
8 practicing a long time. You've been in front of
9 a lot of judges. And I'm sure, like me, you've
10 probably had your moments where it wasn't always
11 the most pleasant situation. Has that -- or have
12 those experiences had an impact on you in terms
13 of how you would want to project as a judge,
14 particularly as it relates to how you treat
15 members of the Bar?

16 A. Absolutely. And again, I had the fortunate
17 experience of practicing here in Columbia for a
18 long time. And as a result, I think when you're
19 a Columbia lawyer you -- you go to Lexington.
20 You go to different counties. You see --
21 obviously you see lots of judges come in to
22 Columbia from, you know, Rodney Peebles to -- to
23 -- to Frank Epps to Tony Harris. I've been
24 around for a long time. And I've seen how judges
25 handle themselves and conduct themselves. And

1 I've seen how they talk to lawyers and I've seen
2 the impression that that has on -- not only on
3 lawyers but on litigants in -- in the courtroom
4 and on jurors. Sometimes I think that judges who
5 don't think before they speak get it wrong. And
6 I -- I would caution myself to think before you
7 speak because there are lots of competing
8 interests when you're in the courtroom. You have
9 there lots of people that are influenced by
10 everything that you say whether it be the court
11 reporter or the clerk or -- or the jury or the
12 bailiffs. All of those things, you're a leader
13 on. And I -- I think I've had a lot of
14 experience in watching lots of different judges
15 through the years. Hopefully, I will get it
16 right.

17 **Q. And I guess when you talk about experience,**
18 **obviously over a period of time you see people**
19 **come in here who have different degrees,**
20 **different levels, and -- and certainly different**
21 **types. You've had experience in a number of**
22 **courts and a number of years. Granted, you've**
23 **indicated that it's been predominately criminal.**
24 **Does that experience, in your estimation, really**
25 **present itself as -- as a very valuable asset to**

1 **how you would be handling yourself on the bench?**

2 A. Well, I don't think there's any question in that
3 -- that after 32 years of -- of -- of being
4 primarily a courtroom lawyer that -- you know,
5 that experience will serve anyone well who's --
6 who's done that. And I've been on -- I've been
7 on both sides. I've tried death penalty cases.
8 I've -- I've had people sentenced to the electric
9 chair. I've sentenced people to life in prison.
10 I've handled cases where I've prosecuted people
11 that I later determined I put in jail for life
12 that were innocent. I've handled cases that were
13 -- where people were put in jail that for life
14 that I believe were innocent. I -- I have -- you
15 know, so the experience over all these years, I
16 think, is invaluable. I think it's hard for
17 younger people to have that experience.
18 Everybody that's running for this seat is very
19 fine and capable, qualified, bright. Probably --
20 I'm probably the least smart of this group that
21 we have in here. But as far as experience is
22 concerned, I think I have more experience than --
23 I -- I think I'm uniquely qualified in the -- in
24 the realm of experience.

25 **Q. Just along those same lines. You know, you**

1 talked about having appeared in front of a number
2 of different judges. And obviously people have
3 different styles and different habits. I've
4 known of some judges that want to keep people
5 there to the late hours of the evening in order
6 to get things done. I've known others that, you
7 know, want to more or less make it clear that
8 there's no way I'm letting you out of here. No
9 continuances. No time to more or less to tend to
10 your personal situations. I think one thing
11 we've discussed in here in the last couple of
12 years is the fact that lawyers have lives like
13 everybody else does. And do you take that and
14 will you take that into consideration? You know,
15 not to a point where somebody's abusing it, but
16 at the same time recognizing that lawyers have
17 other parts of their lives that have to be
18 addressed and that are of some significance and
19 some value to that?

20 A. Well, yeah. Well, having been in private
21 practice for so many years and I know that all to
22 well. I also know well lawyers who -- who do
23 abuse that. And lawyers who don't fulfill their
24 obligations. And lawyers who are always there
25 trying to kick the can down the road. I also

1 understand that judges have a responsibility to
2 help move the docket along and to help resolve
3 and settle the cases. So, I think I have a
4 healthy balance of -- of knowing when the lawyers
5 have legitimate needs that they need to tend to.
6 And sometimes judges -- you know, frankly they --
7 they don't -- they don't understand that. They
8 don't understand that if you're in court from
9 9:00 o'clock in the morning until 6:00 o'clock at
10 night that you then got to back to your office
11 and prepare for the next day, often not counting
12 your family life and not counting your other
13 personal commitments. So, I think I have a
14 healthy understanding of -- of the needs that
15 lawyers have who appear before you.

16 **Q. And I guess in that same vein, if -- if lawyers**
17 **come to you with something that clearly you know**
18 **is not to try to kick the can down the road, not**
19 **to in any way abuse or unnecessarily delay but in**
20 **fact, kid's got a soccer game. I've got to**
21 **attend this graduation. I need some time in**
22 **order to go away for vacation. I mean, are those**
23 **the kind of things that, based on your own**
24 **experience, that would be legitimate reasons to**
25 **work with them?**

1 A. Yes. Absolutely. And I realize that -- that --
2 that lawyers have those -- those kinds of
3 conflicts and those situations. It's hard
4 sometimes when you're due in court to -- to be --
5 sometimes you don't feel well. Sometimes in fact
6 you're quite sick. I -- I don't think I've ever
7 missed a court appearance for -- for calling in
8 sick. But on the other hand, you do respect and
9 appreciate judges who know that you have a family
10 life and you have a personal life and you have a
11 business life. And you're not there to -- to be
12 dilatory. You're there -- you have legitimate
13 concerns and needs and expectations from others.
14 And I think -- again, I think there's a healthy
15 balance. I think I've seen a lot of that. I
16 think I've seen, you know, on my side and I think
17 it I've seen it on whatever side I've been on.
18 And I've -- I've seen -- I've seen it abused.
19 And I've seen where it's a legitimate need. And
20 I think I can recognize for the most part those
21 situations.

22 **Q. We certainly appreciate you being here today and**
23 **I thank you for answering my questions.**

24 CHAIRMAN SMITH: Thank you, Mr. Safran. Senator
25 Hayes.

1 EXAMINATION BY MR. HAYES:

2 Q. Thank you. Full disclosure, don't hold this
3 against him but he and I did grow up together.
4 And I -- I'm going to ask him some questions but
5 you can't -- it's off -- off ground bringing up
6 anything that -- that you have on me.

7 A. Okay. All right. Because I've already been
8 telling some stuff outside.

9 Q. All right. Well, don't -- don't tell anymore.
10 But I -- you have shown an interest in -- in
11 serving before now. So I appreciate your
12 interest in serving as a judge. What in your
13 background -- putting aside your criminal and
14 civil experience but other outside of that, what
15 in your background really helps equip you to be a
16 good judge? And what, if any, weaknesses do you
17 have in your background as far as becoming a
18 judge?

19 A. Well, you know, you've seen my PDQ application.
20 I've had a lot of experiences outside of the
21 courtroom and in life. I've had handcuffs put on
22 me and I've been put in jail. And I know how
23 that feels. And I know what it's like to be
24 stopped by the police. Or I know what it's like
25 to -- to -- to feel abused. You know -- I grew

1 up as you well know -- my dad grew up in the
2 depression and in the war and he taught me the --
3 the value of -- of service and of trying to do
4 the right thing. I've always, I think, tried to
5 do the right thing. I've certainly made plenty
6 of mistakes in -- in life. Certainly, I -- I
7 will make plenty more. But I have a wealth of
8 experience outside the courtroom. You know, I
9 was -- as you know, Senator, I was a quarterback
10 on my football team and a pitcher on my baseball
11 team. I worked in Washington for Senator
12 Hollings. I had the wonderful experience of
13 working on the Senate floor back when people like
14 yourselves were called statesmen and not
15 politicians. And I've seen people -- I've seen
16 how they worked and I've seen how they work into
17 the night. I've seen people work on Saturdays
18 and Sundays. And I've seen fight and argue where
19 I thought, well this has become personal. These
20 -- these people are never going to speak to each
21 other again and they walk out arm and arm to go
22 get dinner together. I tried to learn from that.
23 That you have to be professional. That there are
24 always other sides of the coin. That you have to
25 understand that there are always two sides to --

1 the coin. There are always two sides to an
2 argument. There are always different
3 perspectives that people have. Each perspective
4 is not always right but life is not black and
5 white. It's -- it's gray. I know my wife gets
6 tired of hearing me say that when I -- I talk
7 about the kids. You have to -- I think -- I
8 think I have a wealth of understanding where
9 people have come from. I want to help people. I
10 want to serve people. I want to do the right
11 thing. But I want to punish people who need to
12 be punished.

13 **Q. Thank you.**

14 CHAIRMAN SMITH: Any other questions? Representative
15 Rutherford.

16 EXAMINATION BY REPRESENTATIVE RUTHERFORD:

17 **Q. Mr. Morton, I remember prosecuting against you**
18 **when you were in Richland County. And I was --**
19 **for the brief time I was in the solicitor's**
20 **office. Do you think that your time in York has**
21 **not skewed you to not know or remember what a**
22 **good sentence looks like?**

23 **A.** I think it has. I do. I think it has. And you
24 know, coming from Richland County, where I used
25 to think that Lexington County sentences were the

1 worst thing in the world, to go to York, where
2 the sentences are really hard, I do think it has
3 skewed me. So you know, I think that there --
4 you know, but again and you -- you know that I've
5 -- I've -- I've prosecuted. And I'll give people
6 chances where I think people deserve to have
7 chances. And that's -- you know, I'm going to do
8 what I think's right. And I'm going to -- you
9 know, I -- I realize that people get themselves
10 in difficult situations there but for the grace
11 of God go I. I have been. And I know that
12 people make mistakes. And I think people deserve
13 second chances. But I also think that I realize
14 when people are abusive and -- and -- and need to
15 have the heavy hand of the -- of -- of a sentence
16 put on them.

17 **Q. All right.**

18 CHAIRMAN SMITH: Any other questions? Senator Young.

19 EXAMINATION BY SENATOR YOUNG:

20 **Q. Thank you, Mr. Chairman. Mr. Morton, thank you**
21 **for you interest in serving on the circuit court**
22 **bench. I have a few -- just a couple of**
23 **questions. One is, how would you describe your**
24 **judicial philosophy in terms of were you elected**
25 **to the circuit bench and the application of the**

1 law to the facts before you? Tell us how you
2 would apply the law to those facts?

3 A. I'm not exactly sure I understand exactly your
4 question.

5 Q. Well, in terms of -- are you going to -- what --
6 do you think the role of a judge is to apply the
7 law as it is written or do you think the role is
8 to expand upon that law somehow beyond what is
9 written on it -- on the --

10 A. I think judges have an influence on juries,
11 sometimes, that I don't know whether it's
12 intentional or whether it's unintentional. But
13 sometimes I think judges have the power and the
14 influence the way that they handle the courtroom
15 or state the law that can unnecessarily affect
16 what juries decide. I will try not to do that.
17 You know, the law's the law. It's not my job to
18 decide what the law is. My job is to tell people
19 what the law is. In other words, how it's
20 written. I'm not there to try and interpret it
21 one way or another. I don't know if that's a
22 good answer. But -- but I've seen, you know,
23 judges apply the law in what I consider to be a -
24 - a manner that I thought that they were
25 affecting the out -- the -- the jurors' opinions.

1 And I would try to use my experience not to do
2 that. Be as even handed as I could to be as
3 really flat and unemotional as I could in telling
4 jurors what the law is. And then deciding points
5 of law between litigants when you don't have --
6 when you -- even when you don't have a jury.

7 **Q. How do you believe your life experiences would**
8 **influence this -- influence your -- influence you**
9 **as a circuit judge?**

10 A. Well, I think my experience as a lawyer would
11 influence me more than anything. I've been a
12 public defender. Again I've told you all this,
13 and I've been a -- I've been a prosecutor and
14 I've been in private practice and I've run a law
15 firm. And I've dealt with a lot -- lots of types
16 of situations over the years in many different
17 areas of the law. I think I have as much
18 experience as anybody that's going to stand
19 before you when it comes to -- to -- to be a
20 judge.

21 **Q. Thank you.**

22 CHAIRMAN SMITH: Mr. -- Senator Rankin.

23 EXAMINATION BY SENATOR RANKIN:

24 **Q. Can we go back to Senator Hayes, please. Let's**
25 **talk about -- now, you are under oath. I would**

1 **like to ask you a couple of things.**

2 A. Okay.

3 **Q. Tell me about --**

4 A. I'll be glad to tell you. I can -- I can be glad
5 to tell you about Senator Hayes and --

6 **Q. No. No. No.**

7 A. -- what a tough man he is. And what -- how he
8 comes across as meek and mild mannered but I can
9 you tell you he's a tough man.

10 **Q. I was curious about your four-year stint in the**
11 **U.S. Senate which you -- you talked about there.**
12 **Not in it but serving it.**

13 A. Right. I -- I was -- I was a gopher. It was in
14 between college and law school. I was not an
15 administrative assistant. I wasn't up there
16 making law. I was a gopher. But I had the
17 wonderful experience of working of the floor at
18 the United States Senate. And I saw all these
19 great Senate minds of the late '70s and '80s from
20 Barry Goldwater to Ted Kennedy to everywhere in
21 between. And I watched them make law and I
22 watched them argue and I watched them fight into
23 the hours of the night. And I was fascinated
24 with it. And it formed a large part of who I am.
25 I respect their -- their professionalism and

1 their dedication. I've seen them -- you know,
2 they didn't have to be doing what they were
3 doing. I've seen them to come to work on
4 Saturdays and Sundays and work late into the
5 night. And I think that for the most part people
6 who do that are dedicated people that are trying
7 to do what's right. And I think they get a bad
8 rap.

9 **Q. My son had the pleasure of -- of after his**
10 **freshman year, he's now in his sophomore, here,**
11 **to work six or seven weeks in D.C. this past May-**
12 **June, through that period of time. And had an**
13 **incredible time. Didn't get to see the floor**
14 **debates but got to sit in on lots of different**
15 **cool things. Including the Comey hearings. And**
16 **so, that bit of history you've enjoyed I've just**
17 **kind of --**

18 **A. Yes, sir. It's a -- it was an unbelievable**
19 **experience for me. Something that I -- I wish**
20 **everybody could have.**

21 **Q. Thank you.**

22 CHAIRMAN SMITH: Any further questions?

23 EXAMINATION BY CHAIRMAN SMITH:

24 **Q. Mr. Morton, let me ask you a few questions and**
25 **I'll first say your wife and I went to high**

1 school together and I've known her for -- as -- I
2 guess, since I can far remember. And so, I don't
3 want you telling --

4 A. You know how I suffer.

5 Q. Yes, sir. But I don't want you telling any
6 stories about me either. So, I'll -- will
7 qualify that. Let me ask you a couple of
8 questions. And -- and you -- you've got a wealth
9 of experience. And -- and I listened to it. And
10 I know you by reputation. I know you personally.
11 And -- and I know you've got a reputation as an
12 attorney as a fair defender of -- of individuals
13 and -- and their -- their liberties that -- that
14 are constitutionally guaranteed to them. And
15 you've addressed a lot of those issues about --
16 about how you -- that's your job and -- and how
17 you would set that aside. But as we go into --
18 it's -- it's -- if you were elected to the bench
19 and you served in the capacity as a judge, what
20 would -- how would you take recommendations from
21 solicitors and -- and listening to solicitor's
22 side of the story and what they believe a
23 appropriate sentence? How would you take that
24 into consideration in formulating a sentence?

25 A. I take it very much in to consideration because I

1 know that solicitors and the -- and the defense
2 attorneys have a unique ability to tell you about
3 a particular case. I understand what solicitors
4 do. I've -- I've been there and I've done that.
5 And I know how they -- their recommendations --
6 you know, I take with a grain of salt. But it's
7 not to say that I take them lightly by any means.
8 They -- they do their job. They have a job to
9 protect the public and protect the people. I
10 respect their recommendations. I would certainly
11 listen. I want to be an impartial judge. I want
12 to hear what everybody has to say. So, you know,
13 there's -- there's no question that the
14 recommendation of a solicitor in a particular
15 case has great influence with judges. And I -- I
16 would certainly respect that.

17 **Q. Okay. And on the flip side of that, as -- as you**
18 **receive recommendations if you were a judge and**
19 **you listened to the facts and you felt like you**
20 **could not follow the recommendations of the**
21 **solicitor and that you felt it was -- that the**
22 **person before you deserved a punishment that**
23 **exceeded that recommendation, would you allow**
24 **them to -- tell them that you're going to have**
25 **some difficulty following their recommendation**

1 and allow them to withdraw their recommendation -
2 - withdraw their plea or would you just sentence
3 them taking into consideration the
4 recommendation?

5 A. I would in fairness to the attorney who was
6 relying on that recommendation, let them
7 withdraw.

8 Q. Okay. And from time I listened to this and I
9 read some of these evaluations that are -- or
10 some of these ballot box surveys and -- and
11 there's some comment about your civil experience
12 in here. But one issue I think -- I think I
13 heard you say you practice with 13 lawyers and --
14 who have wealth of -- well, not a wealth but a
15 variety of experiences including civil
16 experiences?

17 A. Yes, sir. My -- yes, sir.

18 Q. Okay. And you have -- I -- I think I've seen,
19 maybe read somewhere a few years ago where you or
20 your firm got some type of verdict. It may have
21 been the Lawyers Weekly or something. But do you
22 participate in civil cases?

23 A. I do participate in civil cases. I don't usually
24 but I have great -- what I consider to be great
25 civil lawyers in my firm. But I -- I do

1 participate in -- in civil cases. Not a great
2 deal. But it's -- you know, just being around
3 those guys and we -- we have meetings where we
4 talk about certain cases and -- and how we're
5 going to proceed or whether to proceed or whether
6 to take them and evaluate cases. I think I bring
7 something to the table in that regard.

8 **Q. And you argue motions from time to time in --**

9 A. I don't -- you know, I don't argue too many civil
10 motions anymore. I -- I probably haven't argued
11 a civil motion outside of a PCR court in a number
12 of years. But I go in front of the master --
13 I've got to in front of the master soon on
14 wrongful taking of a car, seizures, those kinds
15 of things. I do some of that.

16 **Q. Okay. And along the lines of what Mr. Safran was**
17 **-- was asking. I presume you're going to -- if**
18 **you are elected you'll have the unenviable task**
19 **of being a chief administrative judge one day and**
20 **make decisions in civil as well maybe criminal.**
21 **But when lawyers come to you and -- and say, you**
22 **know, Judge I've got to be an a deposition over**
23 **here or I've got -- already committed to this --**
24 **to this type of case. And -- and I know your**
25 **court would always take priority. How would you**

1 **balance conflicts amongst lawyers with the**
2 **disposition of cases that are pending before you?**

3 A. Well, I think -- just like anything else, I think
4 you've just got to get into the weeds. And I
5 think you've got ask questions. And I think
6 you've got to get answers from people about why
7 this needs to be put off or why this deposition
8 here is more important or -- or what's going in
9 their practice of law. I certainly have a
10 healthy respect for the roles -- for the jobs
11 that lawyers do and the fact that they're pulled
12 in many different directions. I -- I understand
13 that and certainly would -- would give great
14 value to lawyers who have heavy schedule.

15 **Q. Okay. And -- and lastly one thing I've been**
16 **inquiring from candidates for circuit court is**
17 **obviously you're not a -- you won't be -- would**
18 **not be involved if elected to -- to the creation**
19 **of certain alternative courts. But I -- I've**
20 **come to learn through screening some of the**
21 **candidates that have come before that y'all are**
22 **beginning mental health court. You got maybe a**
23 **drug court.**

24 A. Mental health court, veterans court.

25 **Q. Veterans court and things to that effect. So --**

1 so, I -- I guess that kind of answers a lot of
2 the question. But is -- do you believe that's a
3 viable option for the disposition of criminal
4 cases for those who would be eligible in that for
5 those type of courts?

6 A. I do think that would -- I do think it's a viable
7 option. We have a very tough drug court in York
8 County. Tougher than most. I think it's done a
9 world of good for a lot of people. Veterans
10 court, I think all those are -- are -- you know,
11 they're -- they're great ways to dispose of cases
12 and of -- of people's problems that need an
13 alternative resolution. I think, for the most
14 part, they're wonderful inventions that I hadn't
15 always had the benefit of as I was younger. I
16 think it's -- I think it's a great thing.

17 CHAIRMAN SMITH: Okay. All right. Any other
18 questions? All right. Mr. Morton, thank you for
19 your presentation today. This will conclude this
20 portion of your screening process. I want to
21 take this opportunity to remind you that pursuant
22 to the Commission's evaluative criteria, the
23 Commission expects candidates to follow the
24 spirit as well as the letter of the ethics law.
25 And we will view violations of the -- or the

1 appearance of impropriety as serious and
2 potentially deserving of heavyweight and
3 screening deliberations. On that note, and as
4 you know, the record will remain open until the
5 formal release of the report of qualifications.
6 And you may be called back at such time if the
7 need arises. I thank you for offering for this
8 position. And I thank you for your service to
9 the State of South Carolina.

10 MR. MORTON: Thank you very much for your time.

11 Thank you.

12 CHAIRMAN SMITH: Thank you. Safe travels back.

13 MR. MORTON: Thank you, sir.

14 CHAIRMAN SMITH: Tell your wife I said hello.

15 MR. MORTON: Okay. Thank you so much.

16 (Off the Record)

17 CHAIRMAN SMITH: Ms. Moody, if you'll come forth,
18 please, ma'am. Let me turn on my microphone.

19 Ms. Moody, will you raise your right hand.

20 MS. MOODY, being duly sworn, testifies as follows:

21 CHAIRMAN SMITH: All right. Ms. Moody, before you is
22 your personal data questionnaire and your sworn
23 statement. Are these documents that you have
24 submitted to the Commission?

25 MS. MOODY: I believe they are. Yes, sir.

1 CHAIRMAN SMITH: Okay. And are they both correct?

2 MS. MOODY: I believe they are. Yes, sir.

3 CHAIRMAN SMITH: All right. Does anything need to be
4 changed or updated at this time?

5 MS. MOODY: Other than a scrivener's error. No, sir.

6 CHAIRMAN SMITH: Okay. We won't hold scrivener's
7 error against you. How about that?

8 MS. MOODY: Thank you.

9 CHAIRMAN SMITH: Do you object to making -- to us
10 making these documents and any amendments a part
11 of the record of your sworn testimony?

12 MS. MOODY: No, sir.

13 CHAIRMAN SMITH: All right. If you'll hand those
14 documents to Lindi for me please, ma'am. And
15 we'll make that a part of the record. Ms. Moody,
16 the Judicial Merit Selection Commission has
17 thoroughly investigated your qualifications for
18 the bench. Our inquiry has focused on nine
19 evaluative criteria and has included a ballot box
20 survey, a thorough study of your application
21 materials, verification of your compliance with
22 State ethics laws, search of newspaper articles
23 in which your name appears, study of previous
24 screenings, and checks for economic conflicts of
25 interest. We have received one affidavit from

1 Marie Assad Faltis, filed in opposition to your
2 election. However, the Commission has dismissed
3 this Complaint. No witnesses are present to
4 testify today. Do you wish to make a brief
5 opening statement to the Commission?

6 (EXHIBIT 12 - JUDICIAL MERIT SELECTION COMMISSION
7 PERSONAL DATA QUESTIONNAIRE OF LEAH B. MOODY)

8 (EXHIBIT 13 - JUDICIAL MERIT SELECTION COMMISSION
9 SWORN STATEMENT OF LEAH B. MOODY)

10 (EXHIBIT 14 - AMENDMENT TO THE PERSONAL DATA
11 QUESTIONNAIRE OF LEAH B. MOODY)

12 (EXHIBIT 15 - AMENDMENT TO THE PERSONAL DATA
13 QUESTIONNAIRE OF LEAH B. MOODY)

14 (EXHIBIT 16 - AMENDMENT TO THE PERSONAL DATA
15 QUESTIONNAIRE OF LEAH B. MOODY)

16 (EXHIBIT 17 - AMENDMENT TO THE PERSONAL DATA
17 QUESTIONNAIRE OF LEAH B. MOODY)

18 MS. MOODY: Yes, sir. I would just say thank you for
19 allowing me to appear before you here today.
20 Thank you for your service on this committee and
21 to your community. I would like to thank Andy
22 for his support throughout this process. He's
23 worked with me probably more than he's wanted to.
24 But he's worked with me and I appreciate him.
25 Thank you.

1 CHAIRMAN SMITH: Thank you, Ms. Moody. Will you
2 answer any questions that counsel may have for
3 you?

4 EXAMINATION BY MR. FIFFICK:

5 Q. Thank you, Mr. Chairman. I note that for that
6 record based on the testimony contained in the
7 candidates PDQ, which has been included in the
8 record with the candidate's consent, Ms. Moody
9 meets the constitutional and statutory
10 requirements for this position regarding age,
11 residence, and years of practice. Ms. Moody, how
12 do you feel your legal and professional
13 experience thus far renders you qualified and
14 will assist you to be an effective circuit court
15 judge?

16 A. Well, I think that I have a very broad range of
17 experience. I started off my career as a
18 prosecutor here in Richland County. And I've
19 moved on back to Rock Hill. But I also was in
20 this chamber as a staff counsel and I worked for
21 the Governor -- Governor Jim Hodges. I think
22 that since being in state government and going in
23 to private practice, I think that I've had a
24 broad range of clients. I've represented clients
25 that are non-profit, for profit, the everyday

1 citizen, pro bono cases, mothers, fathers, kids,
2 all kinds of people from all walks of life. I
3 think each one of those experiences have been
4 different. Each one of those experiences have
5 allowed me to see and represent my clients at a
6 level that maybe they probably would not have
7 ever expected to be in that situation. And so,
8 that has given me some insight. As far as like
9 representing towns or non-profit, it's exposed me
10 to different areas of the law. So, I think all
11 of my experiences in total would lend to any
12 experience that I might be given the opportunity
13 to have on the bench.

14 **Q. Thank you, ma'am. Ms. Moody, how would you**
15 **describe the ideal courtroom environment and how**
16 **would you accomplish this?**

17 A. The ideal courtroom environment starts on time,
18 supportive staff, and order to the process. And
19 what I mean by that, when I first started off as
20 a prosecutor I had the opportunity to run plea
21 court. And one of the things I thought was
22 important in running plea court was having some
23 kind of idea of the order of the day. Because
24 the one thing you don't want to have is the court
25 shut down for two to three hours when you have

1 pleas that can go forward. You want to keep it
2 running consistently. You want all clients that
3 are with their attorneys have been -- to have
4 signed up or to be ready to go forward before the
5 court. In a civil context, all parties available
6 and ready to go forward, all pre-trial motions
7 handled, and then an understanding from -- if I'm
8 on the bench, an understanding of how the counsel
9 intends their witnesses and what might come back
10 in terms of rebuttal or what have you. Being
11 able to take care of the jury, making sure the
12 jury is comfortable, not wasting the jury's time
13 because they -- you know, they have jobs and they
14 come. And jury service is a serious aspect. We
15 want to people to serve on the jury so you don't
16 want to waste their time. Outside of that on a
17 day-to-day, I just think the function of the
18 court is to be efficient. And so, that will go
19 in to the type of technology, documentation that
20 you may have, to document what happened that day
21 in the courtroom or orders that are necessary to
22 administer justice.

23 **Q. Thank you, ma'am. Ms. Moody, could you please**
24 **describe your experience with the North Carolina**
25 **Bar exam?**

1 A. Torture. I took the bar exam, at that time,
2 because the firm that I moved to from -- in Rock
3 Hill had a practice in North Carolina. And I was
4 asked to take the bar. I wasn't necessarily
5 interested in taking the North Carolina bar.
6 They have a different process in terms of their
7 bar. They have a minority force law so it's
8 quite different. Their family court is totally
9 different from ours because those are trial
10 situations where you might go to full-blown jury
11 trial with the North Carolina Bar. So, I missed
12 it by 48 points and I was asked if I wanted to
13 take it again. I decided not to.

14 **Q. Thank you, ma'am. Ms. Moody, the Commission**
15 **received 259 ballot box surveys regarding you**
16 **with 35 additional comments, 11 of which were**
17 **negative. The ballot box survey, for example,**
18 **contained the following positive comments, "Ms.**
19 **Moody will work hard to know the law. She is**
20 **fair, objective, and has years of criminal trial**
21 **experience and experience in civil matters as**
22 **well. Her background as a solo practitioner is**
23 **critical to serving in this position adds to her**
24 **experience and qualifications to do this job."**
25 **However, 11 of the written comments expressed**

1 concerns mostly as to Ms. Moody's temperament and
2 academic ability. 13.5 percent of respondents
3 found her unqualified in the area of professional
4 and academic ability. 11.2 percent found her
5 unqualified in the area of experience, and 11.6
6 percent found her unqualified in the area of
7 judicial temperament. Ms. Moody, how would you
8 respond to allegations that you're temperamental,
9 short-tempered, flighty and thus unfit for the
10 bench?

11 A. Well, I'll deal with flighty first. I don't
12 think that I'm flighty. I think I try to
13 approach every situation positively. Now, I
14 recognize that people may not agree with my view
15 of evidence or my view of the case. And that's
16 okay. I -- I -- I just don't think that I'm
17 flighty. The second one you said, I'm sorry?

18 **Q. I've got temperamental.**

19 A. Temperamental. Without knowing the specific
20 context, I'm not really sure what they mean. I
21 know when I go in to the courtroom, when I go in
22 to any panel or any boardroom, I try to get along
23 with everybody. The reason why I try to get
24 along with everybody is because at the end of the
25 day, if I'm representing a client and I cannot

1 get along with the opposing party, it may have
2 some tremendous impact against my client. And at
3 the -- at the end of the day, I don't want to
4 impact my client negatively or cause them -- for
5 instance, in a criminal situation I don't want to
6 have a negative impact and cause them to get a
7 unreasonable plea offer. With my clients in
8 civil cases, I can't think of any context in
9 which I've been flighty or temperamental or lost
10 my temper. Either you're going to trial or
11 you're not going to trial. Either you settle the
12 matter or you don't settle the matter. With my
13 clients, I try to give them enough information so
14 that they understand that the costs of going to
15 trial can be quite expensive for them. So, if
16 there's anyway to come to a middle ground as it
17 relates to their case it might be in their best
18 interest to settle. So, I don't -- I can't
19 really address the context of where somebody
20 might have felt that I was temperamental.

21 **Q. Thank you, ma'am. How would you respond to**
22 **allegations that you lack requisite legal**
23 **knowledge and experience to serve as a circuit**
24 **court judge?**

25 **A. Well, I passed the bar the first time I took it.**

1 I passed the test for this -- not for this
2 particular seat, when I ran the first time. I've
3 been practicing almost 21-22 years. I've not had
4 any issue in handling a case. Now, the only
5 context that I can think somebody might feel that
6 way is if I choose to take a step for my client
7 and they want to go in that direction, such as a
8 plea. They may decide to plea because there are
9 other consequences that could impact them
10 negatively. And we've talked about their
11 particular case. And we decide to go a different
12 direction. Well now, somebody on the other side,
13 from their perspective, if they only see their
14 side and they see the weaknesses in their case,
15 they may feel that I'm making a big mistake or my
16 client is actually not making the right decision.
17 But given what my client needs and what their
18 desires are and what they've asked me to do and
19 what they think after weighing what their
20 decision may be, that's the best decision. If
21 someone thinks that I'm not academically astute,
22 that's their perspective.

23 **Q. And as a follow-up, how would you respond to the**
24 **allegation that when you perceive your legal**
25 **knowledge as being challenged, you become hostile**

1 **and aggressive?**

2 A. No. I don't. I think I have a strong
3 personality. And I think that comes off as soon
4 as I enter any courtroom, that I'm not shrinking
5 violet. I know how to defend myself and I know
6 how to defend my clients. And I'm going to do
7 that zealously. Because that's my obligation. I
8 would say that I'm a trial lawyer. So as a trial
9 lawyer, it's a adversarial situation. So, when I
10 go to court, you know, while I -- I would love to
11 like be friends with everybody in the courtroom.
12 And quite frankly with the clerk of court, I have
13 a good relationship with all the personnel with
14 the clerks of court. Sometimes, you can not --
15 you can not be warm and fuzzy with everybody.
16 So, you have to represent your client. Clients
17 pay attention to that and if they feel that you
18 are working with another, say for instance, a
19 solicitor, that's something for them to grievance
20 you over. I've had comments from clients where
21 they felt like I was being too nice to the
22 opposing side so I have to be careful and -- and
23 balance that. But I don't think that I have a --
24 a negative disposition.

25 **Q. How would you respond to allegations you come to**

1 **court appointed-cases unprepared?**

2 A. Court appointed-cases, unprepared. I don't have
3 court-appointed cases. I have state contract
4 cases. I deal -- I do PCR cases, post conviction
5 relief hearings. And I did handle cases in
6 Spartanburg, Cherokee County, Union and York
7 County, and then I come to Columbia, Richland
8 County. I -- I think I have a system with my PCR
9 cases. Initially, when I start off with my PCR
10 cases, they're -- the clients receive a letter.
11 The previous counsel receives a letter. The
12 clerk of court receives a letter. And that
13 Attorney General's office gets a letter. In
14 Columbia, the judge controls the docket. In York
15 County the judge does not control the docket.
16 The AG determines the docket. So, in those cases
17 with those letters initially, those letters go
18 out and I request for all documents from all
19 parties so that I can fully read that file.
20 Because you can not read your client's
21 application and find the evidence there in their
22 documents because sometimes they misunderstand
23 something. So, if you're reading the previous
24 file, you read the discovery from the previous
25 lawyer, the AG's position, the grounds that the

1 client presents as grounds for PCR, you can do
2 your legal research. After I read all of those
3 documents, I handle those cases as to talking to
4 my client and going through all of the
5 allegations and explaining to them the law.
6 Sometimes clients have additional information.
7 If we have court and they want to give me the
8 additional information and I feel that it is
9 substantial information, I try not to put their
10 PCR application in jeopardy. I might ask for a
11 continuance. And that's what I would do in any
12 case if I felt there was evidence that needed to
13 be presented or vetted to make sure that it is
14 true and correct, and that it is something that
15 will not harm my client.

16 **Q. Thank you, ma'am. Now, some questions we've**
17 **already discussed about some lawsuits but we need**
18 **to get those into the record.**

19 A. Okay.

20 **Q. Ms. Moody, you've indicated in your PDQ that a**
21 **lawsuit was filed against you in 2014 in**
22 **magistrate's court by Ambrosia Wilson. Please**
23 **explain the nature and disposition of this**
24 **lawsuit?**

25 A. That was a case against my law firm for indigent

1 fees. I got a -- well, at that time I did do an
2 appointed case and it was a Hispanic client. I
3 had actually three Hispanic clients in that
4 situation where they give you court-appointed
5 names. Well excuse me, court interpreters names
6 for court-appointed cases and you have to file an
7 ex parte request for a translator. So, in that
8 particular case I explained to her -- we sent her
9 letters that I was representing the indigent
10 defense. And so, with that you have to go
11 through filing your fees and expenses with
12 indigent defense. They have a specific process.
13 Those processes are outlined on their outline --
14 excuse me, on their website. We have to
15 electronically enter that information in. So, if
16 you're billing is not in the correct structure
17 for the ladies that go over the billing and
18 review the expenses, they will kick it back to
19 you. And so, I can not change her -- I could not
20 change her billing so my office contacted her and
21 explained to her that her billing was incorrect
22 and that the SCCID (indigent defense) would not
23 accept it. So, with that if they will not accept
24 that billing, they will not pay you. I had not
25 been paid on that case either -- or cases either.

1 I could not bill until the cases were closed and
2 they were not closed. She did not understand
3 that after sending her several emails. I had,
4 you know, gotten her documentation. I explained
5 to her personally how she needed to correct it.
6 She got it to me. I have to then submit it to
7 the SCCID. They have a process and I don't
8 control when they cut their checks but it goes to
9 the comptroller general. That case is resolved
10 because her funds -- when I contacted her to come
11 meet with me, they were put in a trust account
12 because the SCCID made the check out to my law
13 firm. The funds were put in the trust account
14 because those are not my funds. So, that I could
15 disburse to her the funds out of the trust
16 account to pay her. So, once I gave that
17 information to the magistrate's court that that's
18 the occurrence -- how it occurred, the case was
19 dismissed. But she received her payment but it
20 was not because I was trying to withhold or not
21 pay her. And that was because I had no control
22 over the situation. And just as I instructed
23 her, she has to submit her billing the same way I
24 have to do it the same way also.

25 **Q. Thank you, Ms. Moody. Ms. Moody, you've**

1 **indicated in your PDQ that a lawsuit was filed**
2 **against you in 2001 in Richland County Circuit**
3 **Court by Carnaby Square Association. Please**
4 **explain the nature and disposition of this**
5 **lawsuit?**

6 A. That was when I -- I -- I'd need to look at one
7 document.

8 **Q. I believe that's one of the homeowners**
9 **association cases. Regime fees possibly.**

10 A. Yes. I had a property manager in -- managing my
11 property and she did not pay, from the rent, the
12 regime fees. You have to pay -- at that time it
13 was like \$100 -- \$125. And when I learned of it,
14 I immediately paid it.

15 **Q. Similar situation, you've indicated in your PDQ**
16 **that a lawsuit was filed against you in 2015 in**
17 **Richland County Circuit Court by Carnaby Square**
18 **Horizontal Property Regime. Please explain the**
19 **nature and disposition of this lawsuit?**

20 A. Well, I used to own property there but when my
21 mother passed away there was property that she
22 owned there and my brother's property. My
23 brother's regime fees had been normally taken out
24 of my mother's account. And I believe in that
25 situation I have to look at the specific one but

1 it was resolved. It was paid. But I was the PR
2 of the estate. And so, that's why my name was
3 named in it.

4 **Q. Thank you, Ms. Moody. Ms. Moody you've indicated**
5 **your PTQ -- PDQ that a lawsuit was filed against**
6 **you in your capacity as a member of the South**
7 **Carolina Commission on Higher Education in 2015**
8 **in U.S. District Court by Angelica Rocha Herrera.**
9 **Please explain the nature and disposition of this**
10 **lawsuit?**

11 A. That was a lawsuit where Ms. Herrera -- I think
12 I'm saying it correctly -- she filed against the
13 Commissioners of the South Carolina Commission on
14 Higher Education. And I served by virtue of
15 being on the board for the research universities,
16 Clemson, USC, MUSC. She filed under the 14th
17 Amendment and the due -- and substantive due
18 process of the Constitution that the
19 Commissioners in their administration and
20 enforcement of the state law that the Commission
21 somehow violated her constitutional rights. So,
22 Ms. Herrera was a individual who is a
23 Mexican/American and she applied to USC Upstate
24 and Converse. The tuition was determined by her
25 state residence. She lived in South Carolina.

1 Her parents were not citizens. And so, the
2 policy, which is issued from the legislature,
3 tells us how, you know, residency is determined
4 and CHE is the regulatory entity that handles
5 that. So, that regulatory entity told the
6 universities how to handle residency. And they
7 classified Ms. Herrera as being a out-of-state
8 citizen/student. So, she had to pay out-of-state
9 tuition which is significantly higher than in-
10 state tuition. She decided not to go to Upstate
11 but she went to Converse and she still had to pay
12 the out-of-state tuition. So, she sued us all
13 and our enforcement and administration of the
14 state law. And that case was dismissed,
15 particularly because she could not allege any
16 specific incidents where any Commissioner
17 actually took any action to prevent her from
18 having in-state tuition. She later filed an
19 appeal and that was -- the District Court
20 affirmed that appeal -- the lower court's
21 decision.

22 **Q. Thank you, ma'am. Ms. Moody, you've -- you've**
23 **amended your PDQ to reflect the imposition and**
24 **subsequent satisfaction of a 2015 lien on**
25 **property at 840 Rock Hill Drive by the Fairway**

1 **Woods Homeowner's Association. Could you please**
2 **describe the circumstances surrounding this lien?**

3 A. That's a \$200 yearly charge and our homeowner's
4 association was not within -- well, I'm not -- I
5 don't live there anymore but the homeowner's
6 association was not in the charge of the
7 residence. When it was brought to my attention
8 that I had not paid it, I paid it.

9 **Q. Thank you, ma'am. Could you please describe the**
10 **circumstances surrounding a lien filed against**
11 **you by the South Carolina Department of Revenue**
12 **in 2009? I note that it was satisfied less than**
13 **two months after being filed.**

14 A. Right. So, that had something to do with my
15 taxes. I had an accountant filing my taxes and I
16 got a notice. I did a lien with -- not a lien --
17 I did an installment and I didn't realize that
18 when you do an installment payment with South
19 Carolina, they file a lien against you. So, when
20 I learned that there was a lien, I immediately
21 paid it off.

22 MR. FIFFICK: Thank you, ma'am. Mr. Chairman, I would
23 like to ask that we now go into executive session
24 to handle a matter.

25 CHAIRMAN SMITH: All right. Mr. -- Representative

1 Murphy moves that we go in Murphy moves that we
2 go in executive session. All in favor say aye.

3 (Ayes are heard.)

4 CHAIRMAN SMITH: All opposed?

5 (No response is heard.)

6 CHAIRMAN SMITH: Ayes have it. We'll go into
7 executive session. We'll close the doors.
8 Everyone please turn off their microphones.

9 (Off the record)

10 CHAIRMAN SMITH: All right. Senator Hayes moves that
11 we go back on the record. I want to thank
12 everyone for this. The Judicial Merit Selection
13 Commission is now back on the record. For the
14 record, I'd like to state that we have been
15 executive session however, no decisions were made
16 and no votes were taken during executive session.
17 Mr. Fiffick, if you will continue, please, sir.

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

19 **Q. I have a few housekeeping issues. Ms. Moody, are**
20 **you aware that as a judicial candidate, you are**
21 **bound by the code of judicial conduct as found in**
22 **Rule 501 of the South Carolina Appellate Court**
23 **Rules?**

24 A. Yes, sir.

25 **Q. Ms. Moody, since submitting your letter of**

1 intent, have you contacted any members of the
2 Commission about your candidacy?

3 A. No, sir.

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

8 A. No, sir.

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

13 A. No, sir.

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

17 A. I do.

18 Q. I would note that the Piedmont Citizens Committee
19 found Ms. Moody to be well qualified in the
20 evaluative criteria of ethical fitness,
21 professional and academic ability, character,
22 reputation, experience and judicial temperament.
23 And qualified in the remaining evaluative
24 criteria of constitutional qualifications,
25 physical health, and mental stability. The

1 Committee went on to say that Ms. Moody is an
2 experienced lawyer who practices in a wide range
3 of areas. Her enthusiasm and commitment to
4 public service are notable. And the Committee
5 believes that she would be a particularly
6 energetic and diligent circuit court judge. Mr.
7 Chairman, I note for the record that any concerns
8 raised during the investigation by staff
9 regarding the candidate were incorporated into
10 the questioning of the candidate today. Mr.
11 Chairman, I have no further questions.

12 CHAIRMAN SMITH: All right. Thank you. Any questions
13 of Ms. Moody? Senator Hayes.

14 EXAMINATION BY SENATOR HAYES:

15 Q. Thank you. Hello, Ms. Moody. I had the honor
16 serving with her mother for many years in General
17 Assembly. I have reviewed your background. I'd
18 just like you to -- not talking so much about
19 your criminal or civil experience, but what in
20 your background do you think equips you to be a -
21 - a good judge? And what may be a weakness in
22 your background?

23 A. Well, I think just having experienced a lot of
24 stuff.

25 Q. Is that the plus? How about any -- any negatives

1 **in your background?**

2 A. Well, I would say I don't have any negatives.

3 **Q. Okay. All right. Well, that's --**

4 A. I mean, I'm -- I'm sure I'm not -- I know I'm not
5 perfect.

6 **Q. Yeah.**

7 A. I think that -- you mentioned my mother. I
8 apologize.

9 **Q. That's kind of a tough question to answer**
10 **sometime. But I certainly appreciate your**
11 **experience. Thank you.**

12 A. I'd say when you have clients situations similar
13 to that or clients that have brothers that are
14 handicapped, I particularly identify with them.
15 When you have families that get broken up, I
16 particularly understand the angst that might go
17 along with a mother or a father or the kid
18 themselves. So, I'm very passionate about my
19 clients. And I will protect them just because
20 sometimes they don't have a voice and I'm that --
21 I'm the only voice for them.

22 **Q. Thank you. I appreciate that.**

23 CHAIRMAN SMITH: Senator Rankin.

24 EXAMINATION BY SENATOR RANKIN:

25 **Q. And you are the biggest Clemson fan in the room,**

1 correct?

2 A. Absolutely not.

3 Q. You have -- are you presently on the USC board?

4 A. Yes, sir.

5 Q. And you've been on that for how long now?

6 A. Since 2009.

7 Q. And you single handily have brought us how many
8 national championships? Three? Four?

9 A. You just want to go there?

10 Q. You didn't participate on either of the teams but
11 anyway. I -- I obviously know you. I appreciate
12 your passion and your optimism. Your -- your
13 zeal. And so I commend you for offering for this
14 position.

15 A. Thank you.

16 CHAIRMAN SMITH: Any other questions? Senator Young.

17 EXAMINATION BY SENATOR YOUNG:

18 Q. Thank you, Mr. Chairman. Ms. Moody, I have just
19 a couple of questions. One is, first of all I
20 want to thank you for your interest in serving on
21 the circuit court bench. And the second -- or
22 the first question I have is, how would you
23 describe your judicial philosophy in terms of how
24 you -- you would apply the law to the facts that
25 are before you if and when you're elected to the

1 **circuit court?**

2 A. As the law states, I will uphold the law. It's
3 my responsibility to uphold the integrity and the
4 independence of the court. And I will follow the
5 law.

6 **Q. And you have -- you've been in private practice**
7 **as a solo practitioner for several years; is that**
8 **right?**

9 A. Thirteen.

10 **Q. And so, you are -- I mean, is it fair to say that**
11 **you're familiar with the challenges that face**
12 **lawyers who practice in smaller firms who have a**
13 **trial practice and have cases in multiple courts?**

14 A. Yes, it's difficult. So, I understand the
15 balance that has to be made because either you're
16 the visionary, the supervisor, the technician at
17 any given point. But the work has to get done.
18 And so, the -- often times your life is not your
19 own because you have an obligation to your
20 clients. And, you know, I take that seriously.
21 It requires you to work on the weekends.
22 Sometimes you have difficult clients. Sometimes
23 those clients may not understand their
24 expectation is not reasonable. On the other
25 side, as having been a prosecutor, I recognize

1 well what the prosecutors have to deal with when
2 they have victims. And the experiences those
3 victims may be having which are new to them. And
4 so, you have to balance that. It -- it -- it's -
5 - it's a interesting experience when you are solo
6 and you are your own employer. You have an
7 opportunity to see everything and to have some
8 level of understanding from other people's
9 experiences, what they might be going through.

10 **Q. And so, if you were elected to the bench and**
11 **you're in a circuit court position, you would be**
12 **able to relate to attorneys who have to come**
13 **before you and tell you that they may need a**
14 **continuance for a reason that might be related to**
15 **a family trip or a family obligation and they**
16 **just can't get it all done within the time frame**
17 **that's expected of them? I mean, you would --**
18 **would you be sensitive to that?**

19 A. Oh, absolutely.

20 **Q. Yeah.**

21 A. Because I haven't had a vacation this entire year
22 so I'm definitely sensitive to it.

23 **Q. Thank you.**

24 CHAIRMAN SMITH: Any other questions?

25 EXAMINATION BY CHAIRMAN SMITH:

1 Q. Ms. Moody, just following up along that -- along
2 that is if you were elected judge, I -- I would
3 presume, you know, you have civil cases and
4 criminal cases and lawyers would come to you and
5 say, you know, I've got depositions where we've
6 got six lawyers have been scheduled for six
7 weeks. And judge if I have to come to court
8 today, it's going to mess up the depositions.
9 We're going to have to start over. Or someone's
10 got a soccer game at 4:00 o'clock or something
11 like that. And that conflicts with the
12 disposition of the cases that you have or maybe
13 scheduled. How would you generally handle that?

14 A. Well, I -- actually, I -- I think I would have to
15 look at each situation on a case by case basis.
16 If it's something that is an emergency, say, for
17 instance a family matter, somebody's sick, what
18 have you, obviously, you have to really take that
19 into consideration. When you have someone coming
20 in from Virginia to South Carolina to testify in
21 a matter and it's been scheduled and there's been
22 expenses paid, what have you, there's a balancing
23 there. And I -- I -- I recognize that there may
24 be an expense to one individual versus another.
25 And I would just have to look at it from the case

1 by case basis and make the best decision so that
2 it accommodates moving the case docket along, as
3 well as taking in to consideration what that
4 individual lawyer might be experiencing.

5 Q. And you, obviously, would balance the quality of
6 life of an attorney as opposed -- I think you say
7 --

8 A. It's important.

9 Q. -- you haven't had a vacation all -- all year. I
10 presume you're like the rest of us that have to
11 go in Saturdays and Sundays while all our friends
12 are enjoying football games and doing other
13 things.

14 A. But either you get to the football game then
15 you've got to go back to work. So, there --

16 Q. I -- I'm with you on that. That's one of the
17 only guilty pleasures I have is to be able to go
18 to football games. So, you know, along those
19 lines also you prosecuted before. And I think
20 you've been in -- in -- you said you've done some
21 defense work now as a -- as a solo practitioner.
22 Have you -- I'm learning through this process
23 today, y'all have got some alternative courts in
24 York County. Drug court, mental health court. I
25 think they said it's either starting a mental

1 health court or a veterans court. What -- what's
2 your philosophy on alternative courts and
3 alternative, you know, and -- and diversionary
4 programs as it comes to criminal cases?

5 A. Well, I've actually handled cases here in
6 Richland County in the mental health court. And
7 that was an eye-opening experience. Because you
8 find more people who commit crimes that have
9 mental issues. Unfortunately they don't know
10 they have a mental health issue. And so,
11 something has happened where there has been a
12 breakdown and they have been brought to the
13 hospital and that's how they get into the
14 hospital. So, I understand that they might go
15 out and commit crime and so that's how they end
16 up in the -- in the system. But as a lawyer --
17 in -- in my practice, when I recognize something
18 like that with my clients, if there's an
19 alternative for them to go to diversionary court,
20 I try to get them in that diversionary court.
21 Because a 26-year-old female who has had a
22 nervous breakdown and realizes all of a sudden
23 now she has a diagnosis. Whatever it may be,
24 schizophrenia, bi-polarism. She has this
25 diagnosis. She lacks insight as to what's going

1 on with her. She lacks insight how the medicine
2 makes her chemically balanced and that she has to
3 take that medicine. It changes her life
4 completely. So, when I have a client that's in a
5 situation like that, I make sure that I try to
6 exhaust any alternative. And I think they're
7 good. Because we can't just place them in
8 detention because then in detention, there's
9 going to be a different kind of experience there
10 too. And I can't -- well, my clients I -- they
11 might have some issues or whatever but they're my
12 clients. And so, I can't fathom any of my
13 clients being in custody for the first time and
14 it's -- the basis of it is they committed a crime
15 and they have a mental illness. So, that's very,
16 very important. A lot of things could happen to
17 them in custody. So, I believe in those
18 programs. I think most of my clients that have
19 gone through those programs have done well with
20 the exception of a few that have been back to me.
21 But they've -- most of them have done well. And
22 I think the mental health court is a good thing.

23 CHAIRMAN SMITH: Okay. All right. Any further
24 questions, guys? All right. Ms. Moody, thank
25 you. This concludes this portion of your

1 screening process. I want to take this
2 opportunity to remind you that pursuant to the
3 Commission's evaluative criteria, the Commission
4 expects candidates to follow the spirit as well
5 as the letter of the ethics laws. And we will
6 view violations or appearances of impropriety as
7 serious and potentially deserving of heavyweight
8 and screening deliberations. On that note, and
9 as you know, the record will remain open until
10 the formal release of the report of
11 qualifications. And you may be called back at
12 such time if the need arises. I thank you for
13 offering. And I thank you for your service to
14 the State of South Carolina.

15 MS. MOODY: Thank you. Thank you so much.

16 CHAIRMAN SMITH: Safe travels back home.

17 MS. MOODY: Thank you.

18 (Executive Session)

19 CHAIRMAN SMITH: Ladies and gentleman, thank y'all.

20 The Judicial Merritt Selection Commission is now
21 back on the record. For the record, I'd like to
22 say that we've been in executive session however,
23 no decisions were made and no votes were taken.
24 We're going to proceed to vote on two races. The
25 -- the 3rd circuit seat number 2 and the 16th

1 circuit seat number 1. We'll proceed with the
2 3rd circuit first. If you'll call the names and
3 if you -- and we're going -- when you vote, I
4 want to make sure everybody raises their hand for
5 a vote and staff will record it. So, don't put
6 your hand down until -- until a -- staff says
7 it's okay to put your hand down. All right.

8 Yes, sir.

9 MR. HITCHCOCK: Can I make a -- a motion that -- that
10 as far as the findings that the candidates are
11 qualified, that we take them up as a slate. I
12 would move that they all be qualified.

13 CHAIRMAN SMITH: Mr. Hitchcock moves that we find an
14 all candidates qualified. Mr. Safran seconds it.
15 Any -- for the 3rd circuit seat number 1. Is
16 there any discussion on that? Seat two. Sorry.
17 I need to read. Seat two. Any discussions? All
18 in favor raise their hand signifying aye. All
19 opposed raise their hands. Let the record
20 reflect that's a unanimous vote. All candidates
21 are filed -- found qualified so we're going to
22 move to the candidates that are nominated.

23 MS. CRAWFORD: Mr. Chairman.

24 CHAIRMAN SMITH: Yes -- yes, ma'am. Go ahead.

25 MS. CRAWFORD: Just a quick reminder. I will call the

1 names of the qualified candidates in alphabetical
2 order. Each commission member has three votes.
3 You're asked to find an individual qualified and
4 nominated. Any candidate that receives six or
5 more votes will be considered qualified and
6 nominated at the end of that vote unless there is
7 a tie. Any candidate that does not get any votes
8 will be removed from consideration on any
9 subsequent ballot that occurs. Does anyone have
10 any questions? No. May I proceed Mr. Chairman?

11 CHAIRMAN SMITH: Proceed.

12 MS. CRAWFORD: The Honorable Kristi Fisher Curtis.
13 Okay, ten. Samuel Lanue Floyd. Mr. Floyd
14 received zero. Ryan Kirk Griffin. Ten. Mr.
15 Timothy Ward Murphy. Ten. Okay. Mr. Chairman,
16 the three candidates are found qualified and
17 nominated with ten votes each are The Honorable
18 Kristi Fisher Curtis, Ryan Kirk Griffin, and
19 Timothy Ward Murphy.

20 CHAIRMAN SMITH: All right. Thank you. Let's proceed
21 to circuit court -- 16th circuit seat number one.
22 Mr. Hitchcock?

23 MR. HITCHCOCK: Mr. Chairman, I would make a motion
24 that we take the -- the -- that we take the
25 candidates up as a slate for purposes of finding

1 them qualified. And I would move that they all
2 be found qualified.

3 CHAIRMAN SMITH: All right. Mr. Hitchcock moves they
4 be -- all be found qualified. Mr. Safran
5 seconds. Any discussion on that motion? All
6 right. No discussion. All in favor of all the
7 candidates being found qualified, please raise
8 their hands.

9 MS. CRAWFORD: For circuit court.

10 CHAIRMAN SMITH: For -- for circuit court -- the 16th
11 circuit seat number one. All right. All opposed
12 please raise your hands. All right. All
13 candidates are hereby found qualified and let the
14 record reflect that was a unanimous vote. We'll
15 move to the nominated of the candidates.

16 MS. CRAWFORD: Okay. Bryson John Barrowclough. Lisa
17 G. Collins. William Angus McKinnon. James
18 Michael Morton. Nine.

19 SENATOR RANKIN: Ten. Was it ten?

20 MS. CRAWFORD: No. Nine.

21 SENATOR RANKING: Who didn't vote?

22 CHAIRMAN SMITH: Ronnie didn't.

23 MR. SABB: I didn't.

24 CHAIRMAN SMITH: Okay. And then Leah Moody.

25 MS. CRAWFORD: Leah B. Moody.

1 CHAIRMAN SMITH: If y'all -- if you didn't vote for
2 Leah B. Moody -- let me make sure this is right -
3 - you would still check her as qualified, okay.
4 And -- and same with Sam Floyd. If you did not
5 vote for Sam Floyd, you would check him
6 qualified. You want to change your vote -- or
7 you make a motion to reconsider your vote? All
8 right. Mr. Rutherford moves to reconsider his
9 vote. All in favor say aye.

10 (Ayes are heard.)

11 CHAIRMAN SMITH: All opposed. Ayes have it. So, the
12 vote has back up for Leah to -- votes back up for
13 James Michael Morton. All right. Mr. Rutherford
14 moves that we -- all right. So, let's -- let's -
15 - let's back up. Mr. Rutherford moves to
16 reconsider the vote on William Angus McKinnon.
17 So, we are back up on the vote of William Angus
18 McKinnon for the 16th circuit, seat number one.
19 All in favor of nominating Mr. McKinnon, please
20 raise your hand.

21 MS. CRAWFORD: Nine.

22 CHAIRMAN SMITH: Okay. All right. All -- well, no.
23 Okay. Then -- then the next vote, we -- we're
24 moving to -- we're moving -- and then Mr.
25 Rutherford moves to reconsider the vote on Leah

1 V. Moody. All in favor say aye.

2 (Ayes are heard.)

3 CHAIRMAN SMITH: All opposed. Ayes have it. So,
4 we're going to back up to vote on Leah B. Moody.
5 All in favor of nominating Leah B. Moody, please
6 raise your hand. So -- okay. All right. So,
7 with that being said, the -- all candidates are
8 found qualified for the 16th judicial circuit
9 seat number one and -- and Bryson John
10 Barrowclough is -- is -- is nominated. William
11 Angus McKinnon is nominated. And James Michael
12 Morton is nominated.

13 MS. CRAWFORD: Yes, sir.

14 CHAIRMAN SMITH: All right. And so, that concludes
15 the votes on the 3rd judicial circuit, seat
16 number two and the 16th judicial circuit, seat
17 number one. And we're going to take a five-
18 minute break. And staff, please contact your
19 candidates if you had candidates in this race.

20 (Off the Record)

21 CHAIRMAN SMITH: All right. We're back on the record.
22 Judge Kinlaw, appreciate you being here. We --
23 yes, you're right. Did we come out of executive
24 session, on -- yeah, we voted on the record.
25 Okay. All right. Long day. All right, Judge

1 Kinlaw, appreciate your patience. I'm sorry.
2 We're -- we're, as we say optimistic. You've
3 been through this process a couple of times so I
4 think you learn we don't run on time too -- too
5 much.

6 JUDGE KINLAW: I'm okay.

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

9 JUDGE KINLAW, being duly sworn, testifies as follows:

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

14 JUDGE KINLAW: Yes.

15 CHAIRMAN SMITH: Are they both correct?

16 JUDGE KINLAW: Yes, they are.

17 CHAIRMAN SMITH: Does anything need to be changed or
18 updated at this time?

19 JUDGE KINLAW: No.

20 CHAIRMAN SMITH: Do you object to making these
21 documents and any amendments a part of the record
22 of your sworn testimony?

23 JUDGE KINLAW: No objection.

24 CHAIRMAN SMITH: All right. Without objection, we're
25 going to make those documents if you'll hand them

1 to Lindi for me, please sir.

2 (EXHIBIT 18 - JUDICIAL MERIT SELECTION COMMISSION
3 PERSONAL DATA QUESTIONNAIRE OF THE HONORABLE ALEX
4 KINLAW, JR.)

5 (EXHIBIT 19 - JUDICIAL MERIT SELECTION COMMISSION
6 SWORN STATEMENT OF THE HONORABLE ALEX KINLAW, JR.)

7 (EXHIBIT 20 - AMENDMENT TO THE PERSONAL DATA
8 QUESTIONNAIRE OF THE HONORABLE ALEX KINLAW, JR.)

9 (EXHIBIT 21 - AMENDMENT TO THE PERSONAL DATA
10 QUESTIONNAIRE OF THE HONORABLE ALEX KINLAW, JR.)

11 JUDGE KINLAW: All right.

12 CHAIRMAN SMITH: And we're going to make those
13 documents a part of your sworn testimony. All
14 right. Judge Kinlaw, the Judicial Merit
15 Selection Commission has thoroughly investigated
16 your qualifications for the bench. Our inquiry
17 is focused on nine evaluative criteria and has
18 included a ballot box survey, a thorough study of
19 your application materials, verification of your
20 compliance with State ethics laws, search of
21 newspaper articles in which your name appears,
22 study of previous screenings and checks for
23 economic conflicts of interest. We have received
24 no affidavits filed in opposition to your
25 election and no witnesses are present to testify.

1 Do you wish to make a brief opening statement to
2 the Commission?

3 JUDGE KINLAW: Yes. First of all, I'd -- I -- I have
4 had the absolute privilege to serve as family
5 court judge for the last nine years. And during
6 that nine-year period of time, I have had the
7 opportunity to hold court in 31 counties. And
8 I've -- I've touched the pulse of everybody that
9 -- that I've met or I've been -- interacted with.
10 And I just hope that the impact that I've had in
11 the last nine years on the individuals that have
12 come before me is as beneficial as the impact
13 that they've had upon me. And I -- I've -- I
14 considered serving on the -- on the bench a
15 privilege. I've enjoyed it. And I just want to
16 say thank you. The -- this body and the General
17 Assembly for bestowing confidence in me nine
18 years ago -- almost nine years ago, to give me
19 that opportunity. And I just want to say thank
20 you for that.

21 CHAIRMAN SMITH: Thank you, Judge. Answer any
22 questions that counsel may have. Brian.

23 EXAMINATION BY MR. COHL:

24 **Q. Thank you, Mr. Chairman. Good evening, Judge**
25 **Kinlaw.**

1 A. Yes.

2 Q. I note for the record that based on the testimony
3 contained in the candidate's personal data
4 questionnaire, which has been included in the
5 record with the candidate's consent, Judge Alex
6 Kinlaw meets the constitutional and statutory
7 requirements for this position regarding age,
8 residence, and years of practice. Judge Kinlaw,
9 how do you feel your legal and professional
10 experience thus far renders you qualified and
11 will assist you to be an effective circuit court
12 judge?

13 A. Well -- and I'll just piggy back on what I said
14 earlier. I've had the opportunity to serve on
15 the family court bench for some nine years.
16 Prior to that, I was in private practice for
17 almost 22-23 years. During that period of time,
18 I had the opportunity to handle a matter -- a
19 number of civil matters. And as a matter of
20 fact, I am the only judge on the family court
21 bench that has the unique experience of having
22 served as lead counsel in five death penalty
23 cases that I handled over the last -- the first
24 part of my -- my tenure. And based upon what
25 I've done on the family court -- and the family

1 court is -- is -- is -- covers a lot of areas.
2 And those areas, domestic, criminal, abuse and
3 neglect. I've learned a lot. And I just feel
4 like I'm ready to carry that knowledge that I not
5 only learned in the 20 some odd years I was in
6 private practice but also the nine years that
7 I've served on the bench in the family court.
8 And that's -- and, you know, it's -- I want to
9 have the -- the ability to continue to serve.
10 And my knowledge over the years not only in -- in
11 family law was -- was great, but my knowledge in
12 other areas as well. And I -- and that's --
13 that's why I wanted to be given the opportunity
14 to share that again with this state.

15 **Q. Thank you very much, Judge Kinlaw.**

16 A. All right.

17 **Q. What do you believe your reputation is among**
18 **attorneys that practice before you?**

19 A. Well, I'll tell you this. What -- and I'll tell
20 you what I've heard and what -- what lawyers tell
21 me and what I -- what -- you know, one of the
22 unique things about a trial judge is that if
23 you've done what lawyers have done, which means
24 that you have handled cases. You have
25 interviewed clients. You have handled court

1 dockets. If you've done that, you've got a
2 unique perspective as a trial judge. And let me
3 give you an example. I understand when a lawyer
4 calls the court and says, I'm going to -- Judge,
5 I'm going to be about ten minutes late because
6 I'm trying to get from Anderson to Laurens
7 because Anderson is running behind, can you help.
8 And what I try to do because I -- I -- I've been
9 there and I've done that. So, what I try to do
10 is I say, look I'll work you in. We'll get it
11 done. And -- and -- and also -- I also try to --
12 and I understand this is the other part. When
13 you practice law you understand when lawyers have
14 difficult clients. You see that. You're able to
15 gauge that. And since you've got a sense of that
16 since you've done that, you -- you -- you kind of
17 know as a trial judge whether or not how to
18 conduct the court. Because if the -- if the
19 litigant is -- is giving the lawyer some
20 difficulty then you've got to navigate around
21 that. But you only know that if you've done
22 that.

23 **Q. Thank you, Judge Kinlaw. The Commission received**
24 **401 ballot box surveys regarding your candidacy**
25 **with 40 providing additional comments. The**

1 ballot box survey, for example, contained the
2 following positive comments. "Judge Kinlaw has a
3 great deal of integrity and is extremely
4 knowledgeable and experienced as a jurist. Judge
5 Kinlaw is always fair to all parties and displays
6 excellent temperament. He has an excellent
7 demeanor and his skill as a family court judge
8 would serve him greatly." Several of the
9 comments, however, address concerns in the areas
10 of work ethic and judicial temperament. As to
11 work ethic, a comment provided that Judge Kinlaw
12 has a reputation for not being a hard worker.
13 What response would you offer to this concern?

- 14 A. Well, let me just say this. In the 13th judicial
15 circuit, in the family court, that circuit has
16 more cases than any other circuit in the state.
17 I served as chief administrative judge on two
18 stints. Two stints. The first time I served as
19 chief administrative judge, I made some changes
20 in the flow of cases. And the reason I did that
21 was because we didn't have a whole lot of -- we
22 had -- we had -- we had some judges but we didn't
23 have a whole lot of judges back then. So, the
24 judges that we had, we had to move the cases.
25 So, I reduced cases that took the -- the

1 litigants or the lawyers were asking for 30
2 minutes to the 15 minutes to move the docket
3 along. There were some -- there were some
4 instances where we made the Department of Social
5 Services not try to negotiate the cases in the
6 hall but -- but come in and put them on the
7 record. So, we -- we navigated around that.
8 That took a lot of work. My second stint as
9 chief administrative judge -- and let me just
10 tell you this. Since I -- since 2008, 2009 when
11 I appeared before this body several times, I
12 don't know if everybody understands the impact of
13 pro se litigants and -- and -- and how that's
14 impacted what we do in family court. And what
15 I'm getting ready to say, Brian, is I'll probably
16 dovetail into your next question about the whole
17 -- the -- the temperament question because I want
18 to talk about that just for a second. Since I
19 have been on the bench, and since 2009, pro se
20 cases have increased at least 35-40 percent. And
21 when I started, the pro se cases were namely
22 defendants. But now we have pro se plaintiffs.
23 Pro se defendants. And a lot of these litigants,
24 some of them could afford an attorney, some could
25 not. So, in order to move the cases along, I

1 came up with -- you know what -- and I'll always
2 be proud of this no matter what happens. I came
3 up with a system, a questionnaire, that were
4 given to pro se litigants. I understand they get
5 information off the website and all that. But I
6 came up with a questionnaire that I gave pro se
7 litigants. I came up with it where they have to
8 complete certain things to -- before they could
9 get on the trial docket. In other words, you're
10 not going to waste time where you allow judges to
11 -- to tell the pro se litigant you haven't had
12 service. You -- you haven't sent notice to the
13 other side. So, there was a checklist that --
14 that I got from a -- from a clerk in Jasper
15 County. And you learn some things when you go to
16 these different counties because a lot of these
17 clerks -- you learn from the staff and the clerks
18 too, as judges. I saw what they were doing and I
19 said I'm going to bring back this to the busiest
20 circuit in the state, Greenville, and see if we
21 can do it. And I implemented it and now the pro
22 se litigant when they're -- when they file their
23 pleadings -- file their action with the court,
24 they have to fill out a questionnaire and they
25 attach it to the hearing request saying that

1 they've complied with all of these things. But
2 the key thing is, they're attaching the affidavit
3 of service. And that's the main thing that
4 allows cases to be continued. Because of that,
5 we've moved a tremendous amount of cases. So, on
6 the work ethic part -- and I -- I hate to say
7 this but I really take issue with that because we
8 work very hard up in Greenville. And we've moved
9 a lot of cases during my tenure as chief
10 administrative judge. And we've got some fine
11 judges there and that we work extremely hard.
12 We're on the bench 95 percent of the time. We're
13 on the bench -- we sit on the bench more than the
14 circuit court judges that -- if you -- if you do
15 a comparison. And I -- and I'm just saying, we -
16 - we sit on the bench every single day. And so,
17 I don't know if there's a question you're going
18 to ask me about how you can improve flow on the
19 circuit court. I don't know if you're going to
20 get there, but if you get -- if that question
21 comes out, I certainly want to address it. But -
22 - so, that's the kind of work that we do in
23 Greenville all the time. Now, temperament. Let
24 me just say this and I -- I -- I sort of alluded
25 to that just a minute ago. The role of the -- of

1 the -- of the -- at least family court judge has
2 changed since I -- there a little bit. Let me
3 tell you why. We find ourselves trying to
4 straddle the line between being -- you're going
5 to be the trial judge and you want to be fair.
6 But when you've got pro se litigants in your
7 courtroom who's never been in court before who
8 have no idea about the decorum of the courtroom,
9 a lot of them, things sometimes get out of hand.
10 And you find yourself as a trial judge trying to
11 be a referee and a trial judge at the same time.
12 And you've got to make certain that you keep
13 control of the courtroom but also you've got to
14 be fair litigants as well. So -- and family
15 court is a very emotional stage. We try to
16 navigate around that. And we try to make parties
17 comfortable. But more often than not -- more so
18 know than ever before, we're dealing with -- with
19 conduct issues. Not necessarily with the
20 lawyers. I think lawyers have gotten -- have
21 gotten a lot -- a lot better. I think we had a
22 few years ago a civility oath we all had to -- to
23 abide by. But we're still trying to navigate the
24 pro se litigant and to make sure that the cases
25 move and the -- the pro se litigant and the

1 conduct that happens in the courtroom delays the
2 process. So, sometimes our parties confuse the
3 trial judge trying to restore order and keep
4 things going to -- to some lack of temperament.
5 And I certainly -- I'm not saying that that's
6 what the -- what the person meant. But I
7 certainly think that this committee needs to know
8 that the role of the family court judge has
9 changed. And even the trial judge on any level.

10 CHAIRMAN SMITH: Judge you bring up a good point.

11 That's very interesting to me and I -- so I'm
12 going to go ahead and jump in here and ask you
13 some questions about this. What -- what's your
14 -- I -- I understand you need to orderly move the
15 court when you have pro se litigants. And I -- I
16 say fortunately, I don't practice in the family
17 court anymore -- any longer. And I know there's
18 been proliferation of there and the access of
19 justice is encouraging that. But what's the
20 judge's role as trying to give legal advice
21 versus the orderly moving the case? What -- what
22 -- what's your philosophy on that?

23 JUDGE KINLAW: Well, let me -- let me -- let me answer
24 it this way. Pro se litigants, a lot of them are
25 of the opinion that the trial judge should show

1 some deference to them because they appear
2 without benefit of counsel.

3 CHAIRMAN SMITH: You're right about that.

4 JUDGE KINLAW: And the trial judge -- and what I've
5 done in -- in the -- what I try to do is at the
6 beginning, I have the spiel, for lack of better
7 terminology, that I tell both sides. The pro se
8 litigant I say, ma'am or sir -- I say, I'm going
9 to be fair to both sides. But I want you to
10 clearly understand that I can't assist you in the
11 case and I can't give you legal advice. And I
12 also indicate to them that during the course of
13 this trial, there -- you're going to have some
14 objections made by the other side. And you have
15 the right to make objections. But I have to make
16 a determination whether you have a legal
17 objection or whether it's a factual objection.
18 And it -- and to piggy back and to move on with
19 your question, to move the case along if a pro se
20 litigant jumps up and makes an objection because
21 the litigant -- I mean, the pro se litigant
22 objects to the witness' testimony and that
23 happens a lot. For example, I don't think she's
24 telling the truth. Well, that's a -- that's --
25 that's a -- that's a factual objection. That's

1 something that can be handled on cross-
2 examination. And I would say to the pro se
3 litigant, ma'am or sir, that's not a proper
4 objection. I think that can be handled on cross-
5 examination. Now, if you say that's not a proper
6 objection and you say that can be handled on
7 cross-examination now there's -- the question is
8 if you say that can be handled on cross-
9 examination are you giving legal advice? I think
10 you're -- I think that's administrative. I think
11 you're -- you're trying to push -- move the case
12 along and that kind of thing. So, I think it's -
13 - it's -- it's -- you've got to explain to them -
14 - now, sometimes I'll be honest with you, I've
15 had pro se litigants they were as -- were as good
16 as lawyers. And you -- you know that when they
17 come in. And -- and so, I think it's a case by
18 case basis.

19 CHAIRMAN SMITH: Now, what -- what I'm interested in
20 is -- is, you know, obviously in family court,
21 you see in magistrates court and, you know, when
22 you practice in circuit court, you're going to
23 see some. But -- but the more of the circuit
24 court are people who, what I call disrupters of
25 the courtroom. And -- and -- and so, what -- you

1 know, I'm -- I'm all for access for judgment. I
2 mean, access to justice.

3 JUDGE KINLAW: Right.

4 CHAIRMAN SMITH: I'm also -- I'm all for you got a
5 constitutional right to be a pro se but that does
6 not turn the judge into the legal advisor of the
7 pro ses.

8 JUDGE KINLAW: Right.

9 CHAIRMAN SMITH: And so, you know, one of -- and one
10 thing that I'm always concerned with and when I
11 watch and you know, I sit and I watch motions
12 sometimes. And I watch pro se people argue
13 motions. And I see judges that do exactly what I
14 believe judges ought to do, and that is to hold
15 them to the same standard that they hold
16 attorneys.

17 JUDGE KINLAW: Right.

18 CHAIRMAN SMITH: And then I see judges who assist them
19 in the presentation of their case. And that
20 causes me great concern for the justice system
21 for my client or -- or one of these gentleman's
22 clients that have -- that takes the time to pay
23 an attorney and then -- and someone gets the
24 benefit of legal advice from the judge, no less,
25 that does not bother to pay an attorney. And so,

1 you know, I -- everyone is entitled to the same
2 access to the courts but they're not entitled to
3 any assistance --

4 JUDGE KINLAW: Right.

5 CHAIRMAN SMITH: -- in the courts, especially from a
6 judge who's supposed to be a neutral and detached
7 person -- neutral and detached presider of the --
8 of the cases. And so, you know, I -- I'm -- and
9 that's why I asked this question. Because I'm
10 very interested in how judges are handling that.
11 I have not observed it in family court. And I
12 imagine, you know, there's financial declarations
13 that need to be provided. There's, you know, --
14 you got to ask about the reconciliation. You got
15 to establish the date you testify -- you -- you
16 separated and you live separate and apart for
17 more than a year. And I presume that that
18 requires you to probably have to engage something
19 to lay the record in there. And so, where's that
20 fine line that we draw that, you know -- do you
21 come in here like I saw some judges used to do it
22 before all this access to judge -- to justice
23 that would say, all right present your testimony.
24 And then they would present the testimony and say
25 denied. You did not -- you did not prove that

1 y'all lived separate and apart for more than a
2 year. And I -- I mean -- and so, you know, I --
3 I don't know where that fine line is. But it's
4 got to be somewhere but shouldn't be to the
5 detriment of those who go out and hire lawyers.

6 JUDGE KINLAW: Right. I -- I agree and that's why I
7 said at the outset that that's what I do in all
8 cases involving pro se litigants. I tell them
9 that at the front end. And one of the reasons
10 that I -- I think that that's important. If --
11 if judges get any complaints at all from pro se
12 litigants, 99 -- 95 percent of them will complain
13 that the judge didn't treat them fairly or didn't
14 show them deference. They didn't have an
15 attorney and the judge was unfair to them and a
16 judge this and that. So -- so to eliminate that,
17 you tell them on the front end the rules of
18 evidence -- you have to abide by the same way
19 John Doe over here is. And you know, and you --
20 it depends on how you say that. You know, I'm a
21 big guy and I say it pretty -- pretty -- pretty
22 sternly and they -- you know, if they -- they --
23 they believe what I tell them.

24 CHAIRMAN SMITH: If you're successful in your quest to
25 become a circuit court judge, you're going to be

1 greeted to a whole new world of pro se litigants.
2 I assure you of that, Judge. And good luck with
3 that if you're successful.

4 JUDGE KINLAW: All right.

5 CHAIRMAN SMITH: Go ahead, Brian. Sorry.

6 **Q. Thank you, Judge Kinlaw. Are there any areas of**
7 **the law that you would need additional**
8 **preparation for prior to serving as a circuit**
9 **court judge?**

10 A. I wouldn't think so. Let me -- let me tell you
11 why that is. Because before I served -- start
12 serving as a family court judge, I was in private
13 practice for 24 years. I tried a number of
14 automobile accident cases. I tried a lot of
15 products cases. I tried some medical malpractice
16 cases. Had a few cases against the late Dewy
17 Oxner. We tried some cases together. Tried some
18 cases with Mike Parm who is -- who is a medical
19 malpractice. So, I did a -- I did everything.
20 The only area that I -- I did not do anything at
21 all in is I did very little in the federal court.
22 And I -- I -- I went to the federal court on a
23 couple of -- a few criminal matters. And I had a
24 -- I think a housing discrimination case one time
25 in the federal court. So, I -- other than that,

1 I -- that's -- I -- I didn't go to federal court
2 that much.

3 Q. Thank you, Judge Kinlaw. Just a few brief
4 housekeeping issues to run through.

5 A. Yes, sir.

6 Q. Are you aware that as a judicial candidate, you
7 are bound by the code of judicial conduct as
8 found in Rule 501 of the South Carolina Appellate
9 Court Rules?

10 A. Yes.

11 Q. Since submitting your letter of intent, have you
12 contacted any members of the Commission
13 concerning your candidacy?

14 A. No, I have not.

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

19 A. No, I have not.

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

24 A. No.

25 Q. Have you reviewed and do you understand the

1 Commission's guidelines on pledging and South
2 Carolina Code Section 2-19-70(E)?

3 A. I do.

4 Q. Thank you, Judge Kinlaw. Mr. Chairman, I would
5 note that the Upstate Citizen's Committee
6 reported Judge Kinlaw is qualified in the
7 evaluative criteria of constitutional
8 qualifications, physical health, and mental
9 stability. And well qualified in the evaluative
10 criteria of ethical fitness, professional and
11 academic ability, character, reputation,
12 experience, and judicial temperament. I would
13 just note for the record that any concerns raised
14 during the investigation regarding Judge Kinlaw
15 were incorporated into the questioning today and
16 I have no further questions.

17 CHAIRMAN SMITH: Thank you so much. Any questions for
18 Judge Kinlaw? Mr. Safran.

19

20 EXAMINATION BY MR. SAFRAN:

21 Q. Judge, we appreciate you being here.

22 A. Yes.

23 Q. Particularly at the hour that -- it's -- it's
24 kind of transpired to. What I liked and what I
25 was impressed with is the fact that you were

1 really focused on the idea of the experience you
2 brought into the family court position. And
3 allowing that to continue to, more or less,
4 enable you to do what has to be done at the next
5 level. Now, I understand you've been focused on
6 family court during these last years, but I'm
7 assuming you haven't lost touch of all those
8 other things that you were doing in the circuit
9 court when you were a private practitioner,
10 correct?

11 A. Correct.

12 Q. And so, it's -- it's -- you've still been dealing
13 with the rules of evidence daily.

14 A. Right.

15 Q. And you know, it's a matter, more or less, kind
16 of assessing the case applying the law. You
17 don't think there's going to be any major
18 difference at this point, do you?

19 A. No, I don't think so at all.

20 Q. Judge, you mentioned that you have a -- a great
21 deal of experience in court. And I think one
22 thing that -- that we hear a lot is, I guess, the
23 idea, what does temperament mean in terms of how
24 the judge presents and the idea of how the
25 lawyers, more or less, come to, I guess,

1 appreciate particular judges. And how the impact
2 is on the system in -- in general. I mean, is
3 temperament a big thing for you in terms of how
4 you want to handle the job?

5 A. I do. Can -- can I comment on something?

6 Q. Absolutely.

7 A. You know, I -- I want to say this. I -- when --
8 when I'm at home sometimes and I guess -- and
9 I've been married for a long time, about 30 years
10 or better. And I've got two kids. And sometimes
11 when I'm sitting there and I have this expression
12 on my face, and even as my kids were growing up,
13 they felt that that expression meant that I --
14 they shouldn't come ask me for anything but they
15 should go ask their mom. Let me tell you why I
16 say that. I never noticed it but sometimes if
17 I'm sitting on the bench and I'm not smiling but
18 I just have this stoic face, it's not your
19 typical stoic face. And I can't change it. I
20 can't -- there's nothing I can do about it. But
21 I -- I just notice that sometimes even when I'm
22 in -- sitting there, you could probably get a
23 mis-impression of what my facial expression is.
24 Like someone here if you -- if you smile or if
25 your frown, that's just how you do it. And if

1 you try to change it, you know, it's -- so, what
2 I try to do -- and somebody asked me said, well -
3 - well you smile all the time. You know why I do
4 that, when I smile? Because I think if I'm
5 smiling sometimes, I think it puts people at
6 ease. But I also think that as a trial judge I
7 can't sit there as -- and there's litigants in
8 the courtroom and I'm smiling, because that sends
9 a wrong message all the time. So, I -- I -- I
10 struggle with my facial expression sometimes.
11 And so -- and I'm better at it. My wife says I'm
12 better. I'm -- I'm better at it than when she
13 met me all those years ago. My -- my kids, who
14 are now grown, tell me I'm better at it. But I
15 ask them. And I just ask the question. So,
16 that's why I say -- can I talk about something
17 else just for a second?

18 **Q. Sure.**

19 A. The -- when I -- when I -- when I practiced in
20 the -- in the -- when I was in private practice
21 and I -- and I practiced in civil court and
22 criminal court and all that, one of the concerns
23 that I have -- and I'm pretty sure you've heard
24 this concern, is the movement of cases in the --
25 on the circuit court level, on the civil docket

1 and on the criminal docket. Now, Mr. Chief
2 Justice, I think at one of our most recent
3 meetings, he kind of talked about something that
4 I'm in full -- full support of. Let me tell what
5 that is. We in the family court about four or
6 five years ago or maybe longer -- we had cases
7 scheduled for all day. And if a case broke down,
8 we didn't have -- we'd have to scramble to
9 replace it. And a few years ago we went to a ABC
10 docket. Greenville County, matter of fact, was
11 the first county that had a ABC docket. We were
12 doing it before we were mandated to do it by
13 Chief Justice Toal. And what we did was, we put
14 all the attorneys on notice that your case could
15 be called on that day and the cases that were
16 settled and the lawyers wanted to put on the
17 record, we allowed those cases to do, to put on
18 the record. And if you're lucky all of them
19 settled. But if all of them didn't settle, you
20 always had a case to try. And that's worked
21 great. Because of what Greenville did, and the
22 hard work we do there, every single county has
23 done that. Greenville County was one of the
24 first counties that had mandatory mediation in
25 family court. There were circuits like McCormick

1 County, Edgefield County, even though these are
2 smaller counties, they weren't going to
3 mediation. But now we have mandatory mediation
4 in all the counties and that's helped. In the
5 circuit court, if -- if I'm blessed enough to be
6 given the opportunity and -- and I use the word
7 blessed because I was blessed to be given this
8 opportunity. But if I'm blessed to be given that
9 opportunity, I think, what the -- the Chief
10 Justice talked about at our last conference, for
11 lack of a better word, an interlocking docket.
12 Let me tell you what we're talking about. And
13 I'm not -- I don't want to quote him because I'm
14 just -- I'm just going to think what I thought he
15 meant. If there is a calendar and you have a --
16 a trial in criminal court scheduled. If that
17 defendant decides to plead guilty, then the judge
18 is now scrambling for something to do. You know
19 why? Because that same -- that there's a civil
20 court -- civil case that's backing up the
21 criminal case.

22 **Q. Yeah.**

23 A. So, you're -- you're doing both dockets at the
24 same time. In other words, that judge he -- he
25 is -- he is assigned to the criminal case but

1 he's also assigned to non-jury civil cases at the
2 same time. So, he has a day where he's got the
3 criminal trial -- criminal trial goes, non-jury
4 case -- non-jury docket rolls over. Criminal
5 trial doesn't go. He -- court reporter's already
6 there. Then he rolls into the non-jury docket.
7 And I'm just saying non-jury. You could have a
8 civil trial. You could have a -- a civil trial
9 backing up a criminal trial. But my point is --
10 or you could have probation or other cases. You
11 need to have -- this is just me talking, you need
12 to have a backup on the docket so you can keep
13 judges busy at all times. Now, I don't know how
14 that's going to work but it's out there. The --
15 the -- the new system that's been proposed by the
16 -- by the Chief Justice, which I fully support,
17 is making sure that all courts are covered by
18 court reporters at all times. Right -- this week
19 -- and I'm going to quit talking in a minute.
20 This week I'm in Charleston and I'm in the middle
21 of a five-day case and I came here in the middle
22 of the week. But during that week, I may have
23 three different court reporters because of the --
24 the shortage sometimes that we have. But if
25 you've got court reporters that are there and

1 you've got a docket in circuit court that breaks
2 down, you need to have a rollover docket, whether
3 it's on the criminal side or whether it's on the
4 civil side to keep the judge working. I -- I --
5 I know that wasn't -- that wasn't a response to
6 your question but that was something that I
7 wanted to share with this committee that I
8 thought it was something that's happened. I've --
9 - I've always been a proponent of moving cases.
10 I've done that. I've done that in the family
11 court as I indicated in my -- my unique way of
12 moving pro se cases along. And I think if we do
13 that then it -- it ups our percentage of cases
14 that are filed and cases that are heard on the
15 civil side and cases -- want to move it like we
16 did in the family court. And I -- I don't know
17 if that answered your question but I wanted to
18 share that.

19 **Q. Well, let me just ask one last thing.**

20 A. Yes, sir.

21 **Q. Could -- has it been your effort during the time**
22 **you've been on the bench to try to treat the**
23 **lawyers that appear before you in the same way**
24 **that you wanted to be treated when you were a --**
25 **a practitioner?**

1 A. I -- it's interesting you ask me that question.
2 And I -- I -- I could say yes. But I'm a -- I'm
3 a person that likes to give you an example of
4 what I'm talking about. I recall -- and I -- for
5 those of you who practiced law for a long period
6 of time, you probably remember this situation.
7 You've got a case that's Monday morning at 9:00
8 o'clock. You went in your office on Friday to
9 make sure the file is ready. You probably
10 stopped by on Saturday. You knew you had to be
11 in Laurens County at 9:00 o'clock so you ran by
12 your office early that morning to grab the file
13 off the end of the desk. And you grabbed it
14 because you knew that's where you put it at. You
15 put it in your car, you drove off to Laurens.
16 And you get to Laurens, you get the file out of
17 your car and you go into the -- into the court.
18 And you sit in the waiting room with your client.
19 And you look at it and you brought the wrong file
20 because you got a lot files. You say, oh my God
21 I brought the wrong file. Why is that important?
22 A -- a judge who has practiced law before handles
23 that differently than someone who has not.
24 You've got your client there, you made a mistake
25 as -- as the attorney but you go in and you've

1 got the litigants there. And then the judge
2 says, well I'll tell you what you need to do.
3 Why don't you get your secretary to fax me a copy
4 of the -- because you -- you're an officer of the
5 court. You've not have any -- you never any
6 difficulty with this judge before. You fax me a
7 copy of your affidavit of service, a copy of your
8 financial declarations or whatever. And then you
9 submit that to the record tomorrow and we'll go
10 ahead and have the hearing. Now, that's -- if
11 you've practiced before you know that that
12 situation arises, so. And from time to time
13 lawyers come in with a lot of different things
14 that are occurring. They need more time to speak
15 with their client and they're asking the judge to
16 be considerate about that. I'm a stickler about
17 continuances. I try to not to -- when I -- when
18 I was chief admin judge, I never continued a case
19 that was -- it was just me. If it was -- it was
20 2017, I do not continue 2015 or beginning of 2016
21 cases unless you had a real, real good reason to
22 do so. So, I -- I sort of treat lawyers like I
23 wanted to be treated when I was out there all
24 those years because I know the -- the -- the
25 things that lawyers go through in terms of

1 interacting with clients, interacting with the
2 court system. And I can tell you this, I always
3 treat the -- the court staff, clerk's office and
4 all, everywhere I go, the same way. Because I
5 interact with all these clerks when I practice
6 and they can be a valuable resource. I don't
7 know if that answers your question but.

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

9 A. All right.

10 CHAIRMAN SMITH: Any further questions?

11 EXAMINATION BY SENATOR RANKIN:

12 **Q. Real quick. And I want to echo -- you're**
13 **originally from where?**

14 A. Georgetown.

15 **Q. And are you familiar with a fella by the last**
16 **name of Sabb?**

17 A. Yes.

18 **Q. A Ronnie Sabb?**

19 A. Yes. Yes, I know him.

20 **Q. He speaks very highly of you. I want you to know**
21 **that.**

22 A. Thank you.

23 **Q. If he were here he would speak higher of you but**
24 **it would be longer for him to say it.**

25 A. Right.

1 Q. So, I just want to tell you he -- he had to scoot
2 out shortly. But --

3 A. All right

4 Q. -- anyway. Real quick.

5 A. Yeah.

6 Q. Real quick. Bench bar comments. Do you
7 recognize that as a -- as a valuable tool for us
8 to determine and critique folks that are seeking
9 office?

10 A. I came in here to be a candidate and I intend to
11 do so. Let me just tell and answer your question
12 this way. I think as -- as the --

13 Q. And I'm talking about the ballot box.

14 A. I know. I know what you're talking about, ballot
15 box. When you're -- when you're -- I think it's -
16 - I think it's -- it's -- it's good -- good tool.
17 One of the things that's probably come up
18 sometimes as it relates to judges, if you're like
19 me and -- and I've held court in 30 some counties
20 I've -- I've seen lawyers from all across the
21 state. So, it's highly unusual for an attorney
22 say in the lower part of the state or upstate to
23 send a comment in. But when you're the sitting
24 judge wherever -- this just happens. Not all
25 lawyers like the judges. Not all -- not all the

1 lawyers like judges' rulings or things of that
2 nature or -- or -- or -- or -- or the attorney
3 fees. So, sometimes you're getting comments from
4 all over the state and that's if you're a sitting
5 judge. Now, if you are an applicant who never
6 held the judicial position before, then someone
7 from maybe Beaufort wouldn't know the judge in
8 Greenville. And would probably on the -- on the
9 ballot box indicate the -- that they didn't know
10 the judge and couldn't make any comments. Or
11 they know the applicants so -- the -- the
12 applicant without any judicial experience all the
13 comments really sometime become regionalized --
14 regionalized where the applicant is in terms of
15 where that applicant is either practiced law or
16 has some contact. As a -- as a sitting judge,
17 you're getting comments from all over the state
18 which expands the scope. And I don't know if
19 that answers your question but that's what --

20 **Q. Well and you've heard comments earlier asking**
21 **very briefly. I mean, you are well recognized on**
22 **-- in fact every criteria of -- in terms of being**
23 **well qualified with few complaints. And so, if**
24 **we're hearing good things should we believe it or**
25 **these folks just confused?**

1 A. Senator, I -- Senator, I don't think they're
2 confused. I think you need to believe them.

3 **Q. Amen. Thank you.**

4 A. All right.

5 EXAMINATION BY CHAIRMAN SMITH:

6 **Q. Judge Kinlaw, I've been asking every client -- I**
7 **mean every client, every -- every candidate --**
8 **sorry you got me in practicing judge --**
9 **practicing law now. Every candidate this**
10 **question. Explain to me your philosophy. I**
11 **heard you say if it's a 2015 case you don't**
12 **continue it if it's 2017. And you know, I -- and**
13 **you know, you're going to find there's more**
14 **protracted litigation and I don't think that's**
15 **all too uncommon. If lawyers agree and they have**
16 **issues that, you know, that they've got other**
17 **cases. They don't have one or two cases. They**
18 **got 50 or 60, that's how you make -- make a**
19 **living these days is by volume. Is -- you know,**
20 **what -- or how do you balance lawyers' demands of**
21 **other cases and personal demands and all that**
22 **against the -- the quick disposition of cases?**
23 **How would you handle that as a circuit court**
24 **judge?**

25 A. Well, I -- I would say this in the -- on the

1 family court level I think it'd still be the same
2 thing on the circuit court level. If there was a
3 case that I thought had some age on it, I would
4 ask for a pretrial of the case and where the
5 lawyers would come. And then I'd make inquiry as
6 to what's going on. And I -- I -- I -- I have
7 continued cases that were more than two years old
8 but there were situations where the litigants had
9 a -- had a death in the family, had some sickness
10 in the family or the lawyer was sick or -- or
11 there was issues regarding getting a therapist
12 report or a doctor's report. A lot of things
13 factor into it. So, I -- I -- I would on the
14 circuit court level have a pretrial. Now, I've
15 had -- I'm -- I'm a big proponent of conference
16 calls and inter-conference calls on files where
17 we look at files and we have issues with them and
18 we get all the lawyers, including a guardian, on
19 the phone and we resolve it that way as opposed
20 to having a docketed pretrial. So, I think there
21 are ways to do that.

22 **Q. Yes, sir. And -- and -- and I guess what I'm**
23 **leading up to is, you know, you -- if you're**
24 **elected to the position you're going to have to**
25 **be chief administrative judge at some point. And**

1 I know that's not an easy job. And lawyers are
2 going to write to you and ask for protection for
3 vacations. And lawyers are going to say, Judge,
4 I got this motion coming up this week and, you
5 know, I had plans to go and my child had a soccer
6 game. Are you going to have rigid rules for your
7 court and how that's held as opposed to the
8 quality of life or allowing lawyers to be able to
9 do something outside of their days of -- of work?

10 A. Representative Smith, I will tell you that I will
11 sign every request for that no matter what
12 because, you know, life is not around the law.

13 Q. Yes, sir.

14 A. I mean, there are other things that you do. And
15 the reason I -- I -- I'm probably one of the
16 judges that I rarely want to go past 5:00
17 o'clock. And you know why? Because the court
18 reporter has a life outside the court room. She
19 has kids. She has things to do. So, and that's
20 -- that's my -- that's important to me. So, no.
21 I think when I was chief administrative judge, if
22 I -- I've signed every single request for a
23 lawyer to have some -- some good mental health
24 time if they needed it. Because you need that.
25 And if there's a, you know, soccer game or

1 something like that, I'm open to that because I
2 had those same issues when I was coming. I was
3 writing letters to judges asking that I be given
4 those things. So, how dare me to now put this
5 robe on and change what I used to ask the judges
6 the same thing that they're asking me. So, no.
7 I -- I -- I -- I wouldn't do that.

8 Q. And don't -- we're -- we're -- I'm asking every
9 candidate that because I want to know the -- you
10 know, the quality of life and what the importance
11 of that is to judges or judicial candidates as
12 opposed to the -- the disposition of cases. So -
13 - so, I appreciate that response. I -- I agree
14 with you whole heartedly, I'll tell you that.
15 Any other questions of Judge Kinlaw?

16 SENATOR YOUNG: Mr. Chairman.

17 CHAIRMAN SMITH: Yes, sir, Mr. Young.

18 EXAMINATION BY SENATOR YOUNG:

19 Q. Judge Kinlaw, just one question. First of all,
20 thank you for your service and your -- for your
21 interest in continuing your service on the
22 circuit bench. Number 16 in your sworn statement
23 asked a question about what was -- what is your
24 philosophy on judicial activism. And I want to
25 ask you to expand on -- on that. You -- your

1 **answer was that you thought judges could educate**
2 **the community on the workings of the judicial**
3 **system and not promote or set public policy.**
4 **What is your view of how a judge should apply the**
5 **law to the facts that are before him or her?**

6 A. Well, I -- I -- you know, I don't think that the
7 -- you know, sometimes you're -- you're -- you're
8 placed in -- in difficult situations where cases
9 should never be tried on -- on emotion. It
10 should never be tried on -- on what you, as a
11 judge, may be thinking. But you have to apply
12 the law as difficult as it may be. And trust me,
13 Senator, it's difficult sometimes to do that.
14 But you've got to do it. And -- but there's a
15 way to do it. And I said -- and the way to do it
16 is, I don't think that you in your ruling if you
17 -- if you -- if you read the ruling from the
18 bench -- if you've got to apply the law but
19 explain to the -- to the lawyers why you think
20 this law is applicable in the given set of facts
21 that was before you. And -- and that's why I try
22 to do. So, and I think when you stop doing that,
23 then I -- I don't think that this is the arena
24 you need to be in.

25 **Q. And -- and is it fair to say that you don't think**

1 that the judge should -- should -- the judge
2 should interpret the law the way it's written and
3 not try to expand the law more than what's
4 written in the actual law itself?

5 A. I -- I agree. And I also think, to expand upon
6 that, from time to time litigants through their
7 lawyers would -- there would be orders that prior
8 judges signed and they would bring the orders to
9 the trial judge and try to interpret. Say well,
10 I don't think that judge so and so meant this.
11 But I view order on its face. If that's what the
12 order says, that's what it says and -- and -- and
13 that's what I abide by.

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

15 A. All right.

16 CHAIRMAN SMITH: All right. Any further questions?

17 Judge Kinlaw, thank you so much for your
18 testimony today. This concludes this portion of
19 your screening process. I want to take this
20 opportunity to remind you that pursuant to the
21 Commission's evaluative criteria, the Commission
22 expects candidates to follow the spirit as well
23 as the letter of the ethics laws. And we will
24 view violations or the appearance of impropriety
25 as serious and potentially deserving of heavy

1 weight in screening deliberations. On that note,
2 and as you know, the record will remain open
3 until the formal release of the report of
4 qualifications. And you may be called back at
5 such time if the need arises.

6 JUDGE KINLAW: All right.

7 CHAIRMAN SMITH: I thank you for offering for this
8 position and I thank you for your service --

9 JUDGE KINLAW: All right. And I -- I want to thank
10 you. And -- and I know you're on a tight
11 schedule and I apologize if I talked too much.
12 So, don't hold that against me.

13 CHAIRMAN SMITH: We won't hold it against you. Thank
14 you, Judge. We appreciate you -- we appreciate
15 your indulgence and your patience with us. Thank
16 you.

17 JUDGE KINLAW: All right. Thank you.

18 (Off the Record)

19 CHAIRMAN SMITH: Mr. Moorman, how you doing today?

20 MR. MOORMAN: I'm well. Thank you for having me.

21 CHAIRMAN SMITH: All right. You have a guest here
22 you'd like to introduce to the Commission?

23 MR. MOORMAN: I would. Thank you for the opportunity.
24 With me is my wife of 16 years, my best friend,
25 Jayne Moorman.

1 CHAIRMAN SMITH: Hey Jayne, how are you doing?

2 Welcome. Appreciate you being here today. Mr.
3 Moorman, if you'll raise your right hand, please
4 sir.

5 MR. MOORMAN, being duly sworn, testifies as follows:

6 CHAIRMAN SMITH: Mr. Moorman, we have before you your
7 personal data questionnaire and your sworn
8 statement. Are both of those the documents that
9 you submitted to the Commission?

10 MR. MOORMAN: They are.

11 CHAIRMAN SMITH: Are they both correct?

12 MR. MOORMAN: They are. And I would mention just with
13 the amendment, I have the -- both cover letter --

14 CHAIRMAN SMITH: Amendment with it too?

15 MR. MOORMAN: There is.

16 CHAIRMAN SMITH: Okay. And it's marked as exhibit?

17 MR. MOORMAN: It is.

18 CHAIRMAN SMITH: Okay. All right. And are there any
19 other changes or anything else that needs to be
20 updated at this time?

21 MR. MOORMAN: No other changes.

22 CHAIRMAN SMITH: Do you have any objection to us
23 making those documents a part of your sworn
24 testimony today?

25 MR. MOORMAN: I do not.

1 CHAIRMAN SMITH: If you'll hand them to Lindi for us
2 please. And we're going to make those a part of
3 your -- the record of your sworn testimony today.

4 MR. MOORMAN: Certainly.

5 (EXHIBIT 22 - JUDICIAL MERIT SELECTION COMMISSION
6 PERSONAL DATA QUESTIONNAIRE OF ANDREW B. MOORMAN, SR.)

7 (EXHIBIT 23 - JUDICIAL MERIT SELECTION COMMISSION
8 SWORN STATEMENT OF ANDREW B. MOORMAN, SR.)

9 (EXHIBIT 24 - AMENDMENT TO THE PERSONAL DATA
10 QUESTIONNAIRE OF ANDREW B. MOORMAN, SR.)

11 CHAIRMAN SMITH: Mr. Moorman, the Judicial Merit
12 Selection Commission has thoroughly investigated
13 your qualifications for the bench. Our inquiry
14 is focused on nine evaluative criteria and has
15 included a ballot box survey, a thorough study of
16 your application materials, verification of your
17 compliance with state ethics laws, search of
18 newspaper articles in which your name appears,
19 and study of previous screenings, and check for
20 economic conflicts of interest. We have had no
21 affidavits filed in opposition to candidacy
22 today. And there are no witness here to testify.
23 Do you wish to make an opening statement to the
24 Commission?

25 MR. MOORMAN: The only thing I would say is that I'm

1 grateful to the Commission for considering my
2 application.

3 CHAIRMAN SMITH: All right. And Mr. Moorman, let me
4 tell me what we were just telling Judge Kinlaw.
5 I know we made you wait today. We're always
6 overly optimistic on our time and so I appreciate
7 your patience and I know -- I know it was
8 inconvenient. And I'm sorry about that.

9 MR. MOORMAN: I'm just happy to be here. Thank you.

10 CHAIRMAN SMITH: Thank you. Answer any questions
11 counsel will have. Mr. Davidson.

12 EXAMINATION BY MR. DAVIDSON:

13 **Q. Thank you, Mr. Chairman. Based on the testimony**
14 **contained in the candidates PDQ, which has been**
15 **included in the record with the candidate's**
16 **consent, Mr. Moorman meets the constitutional and**
17 **statutory requirements for this position**
18 **regarding age, residence, and years of practice.**
19 **Mr. Moorman, how do you feel your legal and**
20 **professional experience thus far renders you**
21 **qualified and will assist you to be an affective**
22 **circuit court judge?**

23 **A. Thank you for that question. I think it will**
24 **assist me in a number of different ways. First,**
25 **I have had the pleasure of appearing for trials**

1 in practically every trial court in this state.
2 In magistrate's court, in circuit court, in
3 federal district court, and in family court. So,
4 I have a breadth of experience that I bring,
5 having tried cases in those courts. The other
6 element of my career that I think is especially
7 useful for this Commission's consideration, is
8 the type of clients I've represented. So, I've
9 represented the State of South Carolina as an
10 assistant solicitor for five years. I
11 represented individuals while I was in private
12 practice. Single moms, defendants charged with
13 crimes. And most recently I've had the privilege
14 of representing the United States of America.
15 Having those opportunities to represent those
16 different types of clients in different trial
17 courts has provided me with a wealth of
18 experience that I would bring as I would preside
19 over trials and other hearings as a circuit
20 judge.

21 **Q. Could you describe, in your opinion, the ideal**
22 **judge. And also, is there a particular judge you**
23 **would model yourself after?**

24 A. The judicial canons talk about certain
25 characteristics of a judge. A judge should be

1 courteous. A judge should be dignified. A judge
2 should be patient. In my sworn statement, I also
3 added the quality of humility. And I think
4 humility in a judge is extremely important. And
5 I think that's the case because what is the most
6 important part of what goes on in a -- in a
7 courtroom is getting at the truth. And to get at
8 the truth I think you have to go in with an open
9 mind and understand as a judge that you don't
10 know everything. You need to listen to arguments
11 of the lawyers. You need to -- you need to be
12 open to arguments, listen to the evidence. And
13 only then can you make a decision after
14 understanding everything that's happened. Some
15 of the best judges I've seen -- I've had the
16 privilege of growing up as a lawyer in the 13th
17 circuit. And when I started as a law clerk for
18 Judge Fuge, at that time in the 13th Circuit, you
19 had Judge Fuge, you had Judge Kittredge, and you
20 had Judge Floyd. All of whom have risen to -- to
21 positions of -- of incredible stature based on
22 their excellence as circuit judges and -- and
23 other judges. So, I would -- I would say that
24 the judges that I had the privilege of appearing
25 before when I became a lawyer are among the best

1 lawyer -- best judges I've ever been in front of.

2 Q. Thank you. The Commission received 153 ballot
3 box surveys regarding your candidacy with 23
4 additional comments. The ballot box surveys, for
5 example, contain the following positive comments,
6 "Is consistently one of the most thorough,
7 prepared, and thoughtful attorneys I've
8 encountered." Another stated, "He is of the
9 highest character. A very hard worker and will
10 be a great judge." Six of the written comments
11 express concerns. Three of those comments raised
12 a concern regarding a lack of civil experience.
13 What response would you offer to those concerns?

14 A. First, I would say that I take criticism to heart
15 because I want to get better everyday as a
16 lawyer. And that also feeds in to the -- the
17 humility component that a judge needs to have.
18 So, I'm grateful for those comments and I think
19 that's a fair question. First thing I would say
20 is I do have civil experience. While I was in
21 private practice, I represented parties in the
22 court of common pleas. While representing those
23 parties, I served interrogatories, I took
24 depositions. Also, I had a lot of -- I had the
25 ability to represent clients in family court.

1 And as many of you know, in family court often
2 times orders are instituted in cases that apply
3 the rules of civil procedure. So while in family
4 court, again, I was able to use discovery
5 devices, for example, contained in the rule for
6 civil procedure, interrogatories, depositions.
7 So, I do have civil experience. The other part
8 of my legal experience that I think is very
9 relevant in this civil context is this, while
10 I've been in the U.S. Attorney's office I had
11 served as an OCDETF prosecutor. That stands for
12 organized crime and drug enforcement task force.
13 Often times in my cases I'll indite 20-30
14 defendants. These defendants reside in South
15 Carolina, but they also reside in other parts of
16 the country. I've had defendants come as far
17 from Alaska. I deal with lawyers often times
18 outside the State of South Carolina. I mention
19 these types of cases because there's an
20 expectation in federal court that the assistant
21 U.S. attorneys who bring these cases also serve
22 as a case manager. So, I will send discovery. I
23 will institute timelines in an effort to make
24 sure the case is progressing at the pace it
25 should. I'll participate in status conferences

1 to discuss discovery issues. There's a robust
2 motion practice. We have thousands or tens of
3 thousands of pages of discovery. So, I would
4 argue that the types of cases I have prosecuted
5 as an assistant U.S. attorney are very similar to
6 larger, complex cases that courts in -- or
7 circuit judges would preside over in the court of
8 common pleas.

9 **Q. Thank you. The other three comments were**
10 **concerned there would be a bias in favor of the**
11 **prosecution. What response would you offer to**
12 **those concerns?**

13 A. First, I would say I was a criminal defense
14 attorney for a period of my career. One thing I
15 learned about being a criminal defense attorney
16 is that lots of times your clients are good
17 people who just make bad decisions. So, I think
18 my time as a criminal defense attorney was very
19 instructive in helping me understand that the law
20 is about people. It affects people. The other
21 comment I would make is, as a prosecutor, my job
22 has not been to win or lose. Any prosecutor who
23 tells you his or her job is to win or lose should
24 not be a prosecutor. The mandate of a prosecutor
25 is to do justice. And in different cases that

1 means different things. Sometimes it means
2 people have to go to jail. Sometimes it means
3 that charges have to be dismissed. Sometimes it
4 means the person should not be charged at all.
5 So, I would argue that my mandate as a prosecutor
6 to do justice is very similar to the oath circuit
7 judges take. In essence, to do justice.

8 **Q. Thank you. Switching pages here for a second.**
9 **You stated in your PDQ that a former client**
10 **initiated a fee dispute against you in 2010.**
11 **Could you explain the nature or disposition of**
12 **that dispute, please?**

13 A. Happy to. The former client, I'll use her first
14 name, Wendy, was a client who -- who I
15 represented in -- in family court and I also
16 represented her on a criminal case. There were --
17 -- during the course of the representation, the --
18 the relationship broke down. I believe I moved
19 to be relieved as counsel. And after I was
20 relieved as counsel, she had asked for a refund
21 of some of the money that, I believe, that was in
22 our trust account that -- that we had earned.
23 She filed a fee dispute. We had a hearing in
24 Anderson. And ultimately, the -- I guess, the
25 board, or whatever the body was who heard the

1 dispute, decided we acted -- we being me and the
2 Bannister Firm -- Bannister and Wyatt for whom I
3 worked at the time -- we acted appropriately and
4 dismissed her -- her grievance -- her claim.

5 **Q. Thank you. Lastly, I have a few questions that**
6 **I'll run through quickly. Are you aware that as**
7 **a judicial candidate, you're bound by the code of**
8 **judicial conduct as found in Rule 501 of the**
9 **South Carolina Appellate Court Rules?**

10 A. Yes, I am.

11 **Q. Since submitting your letter of intent, have you**
12 **contacted any members of this Commission about**
13 **your candidacy?**

14 A. I have not.

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

19 A. No, I have not.

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

24 A. No, I -- no, I have not.

25 **Q. And have you reviewed and do you understand the**

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

3 A. I have.

4 Q. Thank you. The Upstate Citizens Committee
5 reported Mr. Moorman to be qualified in the
6 evaluative criteria of constitutional
7 qualifications, physical health, mental
8 stability. And well qualified in the remaining
9 criteria of ethical fitness, professional and
10 academic ability, character, reputation,
11 experience, and judicial temperament. Mr.
12 Chairman, any concerns raised during the
13 investigation regarding Mr. Moorman are
14 incorporated into my questioning today. No
15 further questions.

16 CHAIRMAN SMITH: All right. Thank you. Anyone have
17 any questions for Mr. Moorman? Senator Hayes.

18 EXAMINATION BY MR. HAYES:

19 Q. I notice that you took the bar and were licenced
20 in Kentucky, but you never worked in Kentucky,
21 though, did you?

22 A. I did not. I'm from Kentucky. My parents still
23 live in Kentucky. I still have family who lives
24 in Kentucky. And I thought that because of all
25 the support my parents gave me, I might as well

1 be licensed in Kentucky. So, that's why I took
2 the bar there.

3 **Q. Just -- and I'm -- I'm aware of your -- your**
4 **background as far as your work, etcetera. But**
5 **outside of your legal background, what other**
6 **traits do you have that would put you in good**
7 **stead as a judge and perhaps what weakness do you**
8 **have that might make it difficult to be a judge?**

9 A. Thank you for that -- for that question. First,
10 I'm a very hard worker. I get to work on time.
11 I work very hard. And I believe that that is
12 something special. That you have to get to work
13 and you have to work hard. I do that not only
14 professionally but at -- at the house I'm very
15 involved with my kids' activities. I try to --
16 try to bring home to the -- to the kids of
17 importance of -- of doing what you're expected to
18 do and working hard. Another trait is I am a --
19 I -- I do my best to be a good listener. I
20 understand that I don't know everything. That I
21 need to learn as I go. And I think that's very
22 important when you are -- it's an important trait
23 a judge needs to have. Again, I go back to the
24 humility because I make mistakes like everybody
25 else. And the minute I think that I need to stop

1 listening, I need to stop learning, is the minute
2 that I am not going to be effective in whatever
3 career I have. So, I -- I think those are --
4 those are two. The only other thing is that I
5 would say that is important and I think a lot of
6 people take it for granted. But I'm -- I'm --
7 I'm honest. I do what I say. And I follow
8 through on that. And I think that that's very
9 important because if people have trust -- so --
10 so often in our legal system, cases are resolved
11 because of the trust that lawyers have with each
12 other. That I'm trustworthy. What are some of
13 the weaknesses? I think one of my weaknesses is
14 I -- I -- I have faith in my ability to deal with
15 chaos. A lot on my plate. And I -- I typically
16 think I can do that well. Sometimes, I have too
17 much confidence in my ability to deal with chaos.
18 So, I think one -- one weakness would be not
19 being as willing or maybe being too willing or
20 too ambitious in some of the projects that I try
21 to take on. But I'm recently with -- with what's
22 been going on, I'm learning to -- to be a -- my
23 eyes aren't as quite as big as they used to be.
24 Those are the -- those are the traits that come
25 to mind.

1 Q. Thank you. I appreciate it.

2 A. Thank you.

3 CHAIRMAN SMITH: All right. Any further questions?

4 Mr. Moorman, let me -- does anyone have any
5 questions?

6 EXAMINATION BY CHAIRMAN SMITH:

7 Q. Mr. Moorman, let me ask you this question. I
8 notice you work at the U.S. Attorney's office in
9 Greenville?

10 A. Yes, sir.

11 Q. Please tell me you don't work with Lance Crick.

12 A. I work with Lance Crick.

13 Q. Okay. I hope you don't learn from Lance Crick,
14 then.

15 A. So, that -- Lance is my boss. So --

16 Q. Well --

17 A. -- that's a tough question.

18 Q. Well, I -- I -- I -- well, when we get through
19 our process one day, I'll -- I'll -- I'll give
20 you a list of -- my brother roomed with him at
21 Wofford and so I'll give you a list of -- of
22 things that you can use on him so you should have
23 easy sledding at your job over there. Mr.
24 Moorman, let -- let me ask you just a couple of
25 questions that I -- you know, it seems like you

1 have some experience in private practice and now
2 you're mainly working in the federal courts. The
3 -- the alternative courts that -- that are being
4 utilized and proposed, mental health courts, drug
5 courts, veteran courts, what's your philosophy --
6 if -- if you're elected as a judge -- I mean, I
7 know you don't have any -- any input on the -- on
8 the creation of them but the administration and
9 implementation of them you would. What's your
10 philosophy on those alternative courts?

11 A. First, I think there's merit there. I think our
12 -- our criminal justice system is the best in the
13 world. But it is -- it is being stretched in
14 ways that need -- that require us to begin to
15 think of new ways to -- to deal with disposing of
16 cases. So, as a general proposition I think
17 alternative courts have merit and can serve a
18 purpose. What I think is vitally important in
19 pursuing alternative courts is to think very
20 carefully about how those courts mesh with our
21 standard criminal justice system. And let me
22 give you one example. In federal court we have a
23 drug court -- a drug court that's been very
24 successful. And we also -- there's a drug court
25 in Greenville that Judge Simmons has run for

1 years. That's also been very successful. I
2 think the drug court in state court has been
3 around long enough where they've sort of got it
4 down. Drug court in federal court has been
5 effective in helping addicts get treatment and
6 the recidivism has gone down in light of that.
7 But what is -- what is a challenge is trying to
8 figure out what happens at the end of the day to
9 drug court defendants in federal court once they
10 complete drug court. So, they go to drug court.
11 They've had six months, nine months of treatment.
12 They come out. They're still charged with a
13 crime. So, do they -- what's the expectation
14 there if they've successfully completed? Do they
15 go to jail? That depends on what they've been
16 charged with and -- and what the penalties are.
17 But that's probably a long answer to the question
18 but it's how do you mesh new ideas in alternative
19 courts with our tried and true and proven
20 criminal justice system. So, I think once you're
21 able to determine how those two mesh and -- and
22 engender predictability and -- and some sense of
23 predictability. What's going to happen in the
24 future. I think that that's -- that's critical
25 and that's a good thing.

1 Q. Yes, sir. And -- and as it relates, if -- if you
2 were successful in becoming elected to this
3 position, you -- you're going to have all sorts
4 of attorneys calling you and asking you for
5 orders of protection, you know, got a conflict
6 with this week, I'd like to go off to my kids
7 basketball game that starts at 4:00 o'clock or --
8 or something like that. How do you balance the
9 quality of life and the -- and -- of attorneys
10 and how they have to -- and the stresses that
11 they have to handle as opposed to the disposition
12 of cases and the movement of dockets?

13 A. Thank you for that question. That's a great
14 question. First, quality of life is extremely
15 important. And the first thing you do to balance
16 that is remember when you were a lawyer. And
17 remember when you had vacations scheduled that
18 were cancelled. And remember what that felt
19 like. So, you -- you remember. In -- in federal
20 court, I'm at the mercy -- I -- we don't schedule
21 our cases. So, when a federal judge tells me to
22 be in court, I say yes, sir/yes, ma'am and I'm
23 there regardless of what I have. So, the first
24 thing I would do is remember what it feels like.
25 Second thing, I would do is -- is within the

1 judicial canons, I would communicate with the
2 lawyers and try to determine what the conflicts
3 are. You want a continuance, tell me about that.
4 Tell me where we are in the case. Do you see any
5 prejudice with this -- you know, non-moving party
6 do you see any prejudice in the court granting
7 continuance? But -- so, communicate with the
8 lawyers. Understand what the lay of the land is
9 for the cases before you grant it. But bottom
10 line, quality of life for lawyers is extremely
11 important. And I won't forget those vacations
12 that I've had to cancel.

13 **Q. Thank you, Mr. Moorman. Any further questions?**
14 **Senator Rankin.**

15 EXAMINATION BY SENATOR RANKIN:

16 **Q. And I'll be very brief and I -- your wife is**
17 **smiling so patiently. Supposed to be here at**
18 **3:30. You got here at 3:00, probably. You**
19 **really owe her a lot I'll tell you.**

20 A. You have no idea. That's --

21 **Q. This friendship is about to be tested, let me**
22 **tell you.**

23 A. Yes, sir.

24 **Q. Quick question. Operation silver -- operation**
25 **sunset --**

1 A. Silver sunset.

2 **Q. Silver -- tell me about that.**

3 A. Okay. Let me see how I -- all right. So,
4 operation silver sunset, as I said I'm an OCDETF
5 lawyer, organized crime and drug enforcement task
6 force. These cases are typically assigned names
7 so that we can track the progress of the case.
8 Operation silver sunset began in -- right around
9 2014. And this was all information that --
10 that's public. Began in 2014 and the purpose of
11 operation silver sunset was to target gang
12 members operating in the eastern part of South
13 Carolina. Specifically, United Blood Nation Gang
14 members and a subset of the gang called the Billy
15 East sides. The -- this was a gang that was
16 operating in the Myrtle Beach and Florence areas.
17 During the investigation, we received
18 authorization from a federal judge to intercept
19 communications over three phones used by gang
20 members in December through February -- December
21 of 2016 through February of 2017. During those
22 intercepts, we gained a lot of useful
23 intelligence. And ultimately on February the
24 22nd, the takedown in the case occurred. And on
25 that day -- prior to that day the grand jury

1 returned an indictment in -- against about 20
2 defendants. And I believe at the end of the day
3 we had 18 -- right around 18 in custody. All
4 total, we have roughly -- we've indicted 29-30
5 defendants. It's interesting you mentioned that.
6 I was in Florence this morning because there was
7 a -- a hearing in that case and then tomorrow
8 morning we have sentencing. So, it's been a --
9 it's been an effective case and I've really had a
10 pleasure working on it. It's kind of interesting
11 that the lead case agent is an FBI agent named
12 Todd Richards who is one of the case agents in
13 the Whitey Bulger case. He's from Boston. It's
14 been a pleasure to work with.

15 **Q. And you were awarded by the FBI for your role in**
16 **prosecuting and developing -- what?**

17 A. Both. So, in -- in -- as an assistant U.S.
18 attorney, literally how an investigation begins
19 is agents who -- who identify a target will come
20 to the assistant U.S. attorney and say, we're
21 interested in this target, will you help us? And
22 ultimately -- or -- or typically what happens
23 after we sign on there will be electronic
24 surveillance requests that'll come in on a
25 regular basis, trackers on vehicles. There will

1 be wire taps if necessary. A whole host of -- of
2 investigative techniques that we'll work together
3 to get authorization from courts. We'll build
4 the investigation. And sometimes the
5 investigation lasts two or three months.
6 Sometimes it last two years. Ultimately, after
7 the investigation, there's a point where we feel
8 like we have the evidence we need and -- and
9 we've got the targets that we think we need to
10 get, then we'll schedule a take down. A
11 typically it's a simultaneous effort among
12 multiple agencies to arrest all these individuals
13 at the same time. And so, the investigation in -
14 - in silver sunset lasted a little over two
15 years. I came in on towards sort of the tail
16 end, late fall of 2016.

17 **Q. And those indictments were February of '17?**

18 A. They were. And we've gotten multiple indictments
19 in the case. So, the first indictment was
20 February of 2017.

21 **Q. Super. And then last Billy Nettles has called**
22 **you the go-to guy?**

23 A. So --

24 **Q. Spend less time on that because that's less**
25 **impressive.**

1 A. So, it was -- it was a --

2 **Q. I'm just kidding.**

3 A. No, it was a nice one. It was -- we just had an
4 awards ceremony yesterday. But it's -- it's
5 basically an atta-boy in the office for -- for
6 somebody -- that was for somebody who is a
7 resource for other prosecutors, so.

8 **Q. But you put it on your statement and I don't**
9 **blame you.**

10 A. Oh, thank you very much.

11 **Q. Thank y'all for being here.**

12 A. Thank you.

13 CHAIRMAN SMITH: Any questions? Any further
14 questions? Mr. Moorman, appreciate you being
15 here today. This will conclude this portion of
16 your screening process. I want to take the
17 opportunity to remind that pursuant to the
18 Commission's evaluative criteria, the Commission
19 expects candidates to follow the spirit as well
20 as the letter of the ethics laws. And we will
21 view violations or the appearance of impropriety
22 as serious and potentially deserving of
23 heavyweight and screening deliberations. On that
24 note, and as you know, the record will remain
25 open until the formal release of the report of

1 qualifications. And you may be called back at
2 such time if the need arises. I thank you for
3 your interest in this position and I thank you
4 for what you do for the State of South Carolina.

5 MR. MOORMAN: Thank you very much.

6 CHAIRMAN SMITH: All right. Safe travels back to
7 Greenville.

8 (Off the Record)

9 CHAIRMAN SMITH: Mr. Riordan, appreciate you being
10 here today. Before we get started, do you have
11 someone you want to introduce to the Commission?

12 MR. RIORDAN: Yes. You've mentioned her off the
13 record, my wife Leora is here. Our -- our 16-
14 year-old daughter's actually in Columbia. Might
15 have been here earlier but she's with the youth
16 and government group. Could have had 60 kids if
17 we --

18 CHAIRMAN SMITH: Yeah.

19 MR. RIORDAN: -- gotten in at 4:00. They're all
20 outside.

21 CHAIRMAN SMITH: We -- we saw them. We've been over
22 here for all week, most of the week, so.

23 MR. RIORDAN: I wondered if they were the ones that
24 held you up.

25 CHAIRMAN SMITH: Well, welcome and sorry that we held

1 y'all up and make sure that Jack takes you out
2 for dinner afterwards. How about that.

3 MR. RIORDAN: I invited her at the request but she
4 said let's get this over.

5 CHAIRMAN SMITH: All right. Mr. Riordan, will you
6 raise your right hand please, sir.

7 MR. RIORDAN, being duly sworn, testifies as follows:

8 CHAIRMAN SMITH: All right. Mr. Riordan, before you
9 is your personal data questionnaire and the sworn
10 statement. Are these documents that you've
11 submitted to the Commission?

12 MR. RIORDAN: Yes.

13 CHAIRMAN SMITH: Are they -- are they both correct?

14 MR. RIORDAN: To my knowledge, yes.

15 CHAIRMAN SMITH: Okay. And do -- is there anything
16 need to be changed or updated at this time?

17 MR. RIORDAN: I mean, again, these are not the --
18 these are the not the signed ones but I -- I
19 assume they're the same copies. The only thing I
20 saw on the -- the sworn statement. I think four
21 and -- no six and eight, to the extent there was
22 any suggestion in my answer I might appear before
23 family. Change that. I -- I wasn't sure just
24 the way it was written and whether that was
25 something that -- either by the way was asked or

1 the way I responded. Just wanted to make sure
2 everyone understands, I do understand can not
3 have family that I would appear in front of. I'd
4 -- I'd be disqualified. I don't think it's
5 necessarily in there and I think I read eight in
6 regarding financial interest, like maybe a
7 company we might have something to do with is how
8 I was reading that. But to the extent it could
9 be read otherwise, that would be the only change.

10 CHAIRMAN SMITH: Okay. And -- I -- I guess we'll just
11 make oral amendments to that. If -- if to the
12 extent that's necessary. Do you have any
13 objection to making these documents and any
14 amendments a part of the record of your sworn
15 testimony?

16 MR. RIORDAN: I do not.

17 (EXHIBIT 25 - JUDICIAL MERIT SELECTION COMMISSION
18 PERSONAL DATA QUESTIONNAIRE OF JOHN P. RIORDAN)

19 (EXHIBIT 26 - JUDICIAL MERIT SELECTION COMMISSION
20 SWORN STATEMENT OF JOHN P. RIORDAN)

21 CHAIRMAN SMITH: All right. If you'll give those
22 documents to Lindi for me please, sir. And we're
23 going to make those a part of the record of your
24 sworn testimony. Mr. Riordan, the Judicial Merit
25 Selection Commission has thoroughly investigated

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

12 MR. RIORDAN: Not really, other than to say thanks to
13 this entire board and all those involved with the
14 process. I -- I did not realize how thorough the
15 process was. And I certainly thank Erin and
16 Lindi for all their help and Andy as well. But,
17 you know, to the extent it gets back to the
18 Community Committee and -- and those folks with
19 the Bar. I've just been impressed a bunch of
20 folks coming up afterwards saying they called me
21 about you. You know, just wanted to let me know
22 so I was just impressed how thorough it was. So,
23 I -- I thank you for that.

24 CHAIRMAN SMITH: All right. Thank you, Mr. Riordan.
25 Will you answer any questions that counsel may

1 have, sir.

2 MR. RIORDAN: Absolutely.

3 EXAMINATION BY MR. FIFFICK:

4 **Q. Thank you, Mr. Chairman. Mr. Riordan, how do you**
5 **feel your legal and professional experience thus**
6 **far renders you qualified and will assist you in**
7 **being -- in being an effective circuit court**
8 **judge?**

9 A. I've been involved both in the, you know, as a
10 prosecutor in the -- in the Court of General
11 Sessions and now with common pleas. I think I've
12 got a -- a fairly, you know, wide expanse of
13 experience that I've put forth over 25 years now.
14 It's one of the things I've attempted to do with
15 this potentially in the back of my mind as -- as
16 something that potentially I'd try to do at one
17 point. I think in all those areas I've -- I've
18 at least tried to excel and think for the most
19 part, you know, at least from my peers and my
20 clients that's, you know, been put back to me as
21 -- as reflecting what I've done. But, you know,
22 I -- I think I've got a great background, quite
23 frankly. I'm -- I'm -- I'm 50 years old now.
24 Just turned 50. Twenty-five years experience on
25 both sides. I've been on -- you know, even

1 though I'm -- I'm doing civil practice now and
2 I'm in a firm that's, you know, considered a
3 defense firm. I -- I still get just about
4 anything that smells of a criminal matter will
5 come my way. I do have some plaintiff's work
6 that I do as well. And -- and that's a lot of
7 what I'm doing presently, actually. So you know,
8 at least for this position in circuit court
9 looking at court of general sessions and common
10 pleas, I think I've got a -- a -- you know, the
11 type of background I would want for my clients if
12 I were to appear before a judge. And that -- and
13 that's part of why I'm doing this. I think
14 finally at this point in my career I have all
15 those -- that background experience to fulfill
16 the role as needed.

17 **Q. Thank you, sir. Mr. Riordan, the Commission**
18 **received 206 ballot box surveys regarding you**
19 **with 16 additional comments, only one of which**
20 **was negative. The ballot box survey, for**
21 **example, contained the following positive**
22 **comments, "Jack is a kind and -- is kind and**
23 **respectful to work with. A great advocate while**
24 **also being a great adversary. An outstanding**
25 **lawyer with 25 years and thousands of hours in**

1 the courtroom. An absolute pleasure to work
2 with. Extremely intelligent and competent. Has
3 unparalleled work ethic and will be a fantastic
4 judge. His background as a prosecutor and civil
5 attorney uniquely qualifies him for the bench."
6 The lone written expressed concerns that you were
7 disrespectful to women and prone to irrational
8 outbursts. What response would you offer to this
9 concern?

10 A. I -- I really don't know how to respond without
11 knowing the source and the context. I -- I'm
12 glad to hear the other 205 or so were not of that
13 nature. Concerned though that anyone feels that
14 way. I'll certainly do my best as I always try
15 to -- to make sure everyone feels like they're
16 treated respectfully. And you know, I'll
17 certainly do that in the court.

18 Q. Thank you, sir. Mr. Riordan, you note in your
19 PDQ, that like many others, your opportunity for
20 trial experience has decreased over the past
21 decade. Given your breadth of experience, how do
22 you see this trend affecting the civil justice
23 system in South Carolina in the coming years?

24 A. Well, I mean, it's -- you know, the taxpayers may
25 think it's a good thing. You know, for attorneys

1 it's not necessarily. If the cases are moving
2 and people are having a -- a just result that
3 they can live with and often with our mediators,
4 we're getting that, then so be it. But if you
5 have to go to trial and maybe your attorney's not
6 up to speed, I know it's -- you know, it's
7 certainly not good for your clients and not good
8 for the -- for the judges that have to deal with
9 those that come before them. I know there's some
10 frustration, even expressed this past week at the
11 conference I was at that, you know, we're --
12 we're just not trying so many cases. But again,
13 it just depends on the circumstance. You know,
14 it's -- I don't know that it's necessarily
15 troubling if people feel they're getting their
16 disputes heard in a -- in a -- in a way that --
17 that ends up being just or -- or resolved in a
18 just manner.

19 **Q. Thank you, sir. I have a few housekeeping**
20 **issues. Mr. Riordan, are you aware that as a**
21 **judicial candidate, you are bound by the code of**
22 **judicial conduct as found in Rule 501 of the**
23 **South Carolina Appellate Court Rules?**

24 **A. Yes.**

25 **Q. Mr. Riordan, since submitting your letter of**

1 intent, have you contacted any member of the
2 Commission about your candidacy?

3 A. No.

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

8 A. No.

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

13 A. No.

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

17 A. Yes.

18 Q. South Carolina Bar Judicial Qualifications
19 Committee found Mr. Riordan to be overall well
20 qualified and well qualified in the evaluative
21 criteria of ethical fitness, character,
22 professional and academic ability, reputation,
23 experience, and judicial temperament. And
24 qualified in the remaining evaluative criteria of
25 constitutional qualifications, physical health,

1 and mental stability. I would also note that the
2 Upstate Citizens Committee reported that Mr.
3 Riordan was well qualified in the evaluative
4 criteria of ethical fitness, professional and
5 academic ability, character, reputation,
6 experience, and judicial temperament. And
7 qualified in the remaining evaluative criteria of
8 constitutional qualifications, physical health,
9 and mental stability. Mr. Chairman, I would note
10 for the record that any concerns raised during
11 the investigation by staff regarding the
12 candidate were incorporated into the questioning
13 of the candidate today. Mr. Chairman, I have no
14 further questions.

15 CHAIRMAN SMITH: All right. Thank you. Any -- do we
16 have any questions for Mr. Riordan? Senator
17 Rankin.

18 EXAMINATION BY SENATOR RANKIN:

19 Q. Are we pronouncing your name correct?

20 A. Riordan is it.

21 Q. All right. And I keep looking because I know a
22 Jerry Reardon who is in Columbia. His spells his
23 R-E-A versus R-I-O.

24 A. Some of them change it to avoid any
25 mispronunciation. But we have not done that.

1 Q. Okay. And I -- I notice you referenced Vic or
2 Judge Pyles and I -- it was Vic, right?

3 A. Charlie or Vic. Quite frankly, we've talked
4 about that recently, but.

5 Q. Yeah. I appeared before him long ago. Kind of
6 like the very difficult professor who we
7 nicknamed the smiling sea. He was a smiling
8 judge. You just you knew you were in good shape
9 until -- but he was extremely fair, so. Your --
10 your sense of running for this not -- with that
11 and -- and the Bar comments that you were -- the
12 Greenville Bar, was that the impetus for your
13 running for this?

14 A. Well, as I said, I mean, this is something -- my
15 wife's father was a judge. Her mother worked for
16 two of our judges -- soon to be appellate court
17 judges. So, I mean, he was really the one that
18 got me even thinking about the law when I was a
19 Clemson undergrad, I was in finance. And never
20 had attorneys in our -- I'm still the only
21 attorney in the family that's now getting close
22 to 50 people from my parents on down. But I met
23 him. Made me at least think about it. Thought
24 that might be interesting. If nothing else, a
25 great education. Went through. I think you see

1 from my background, I had at least some neat
2 experiences in law school. And got affiliated
3 with 5th Circuit Solicitor's office here. I
4 thought, okay, well let me take it to next step.
5 Let's see about trial work. I mean, if -- that's
6 what I knew about attorneys, from being in court
7 most of the time. And so that's what appealed to
8 me. And I didn't know how it would be. Still
9 get nervous as I might be right now if every time
10 I get up in front of a jury. But that's the only
11 way to confront it. I did it then and tried, you
12 know, a lot of cases there. I thought, hey let's
13 get more experience. Did some appellate work.
14 This has always been in the back. Like I said,
15 I've always tried to -- to -- to -- to go as far
16 as I could. But with that relationship, I guess
17 part of that, I got to know all those judges from
18 that time frame. And was very comfortable with
19 them and got to know them as persons and wasn't
20 too intimidated. To know, hey this would be
21 neat. And I -- I see the, you know, position of
22 stature they have and -- and how important it is
23 in the system. And so, I always thought it might
24 be something to do. The timing's never great.
25 Don't know if now is the best time. But these

1 were things in my mind as -- as, you know, we've
2 had these little -- I don't know -- sounds like
3 somebody's -- you know, I would say a calling but
4 at least one of your members is in a group that
5 I'm in that we have at least a couple of meetings
6 a year. End of 2015 and both meetings in 2016 we
7 had justices and legislators that came and spoke
8 to that group and -- and invited us, you know, if
9 we want to be part of it to, you know, put your
10 hat in the ring. You've got to -- you've got to
11 step out and do things. So, I felt that was
12 somewhat talking to me. And -- and you're right
13 though. Kind of the tipping point was with Judge
14 Pyles' death. And the -- and the Bar, you know,
15 putting out that little note asking, you know,
16 are you doing the same type of thing. And I
17 enjoyed my service as a prosecutor. You know,
18 try -- try to do a good job for the citizenry --
19 citizenry. Now that I'm not in court as much I
20 do find that I've been missing that for some
21 time. And just being over there and seeing
22 justice on a daily basis kind of gives you a good
23 perspective too. And that's one thing about
24 being a prosecutor, hey, wasn't the best pay.
25 But boy every day you felt thankful. You'd see a

1 -- a tragedy coming in everyday and kind of put
2 things in perspective. And you know, again, I
3 see a bunch of -- you know, bunch of folks that
4 I've known and grown up with have -- have left
5 the bench. And -- and a lot of them great
6 jurists have passed on. And I -- I try to answer
7 with that little bit of a call that might be
8 there. I want to serve. I -- I think with my
9 experience I'm, you know, at least somewhat
10 uniquely qualified in that regard with the
11 experience in -- in both areas. But you know, I
12 -- I know that's a -- that's a selfish portion.
13 It'd be up to you guys to determine whether one
14 I'm even, you know, worthy of being a part of it
15 and -- and the legislature it self will determine
16 whether they really want me to -- to be there.
17 But for the taxpayers, to be a part of my
18 community, to do more and serve like so many of
19 you. I know everybody here today's serving. But
20 so many of you in the legislature. At least one
21 of you I worked with long ago and it's been in
22 the headlines and working and doing service. And
23 he knows a lot of our -- our brethren throughout
24 from that group are doing the same type thing.
25 So, yeah. I look back on occasion and wonder,

1 you know, how -- how things could have been a
2 little bit differently. But this is really what
3 I thought was more important to -- to me. And --
4 and it's something that I feel comfortable doing.
5 And I -- I know I've spoken a good bit about it.
6 But -- but that -- that's really -- it's not as
7 if it just popped up this past year. It's been
8 something that's been in the back of my mind.
9 And I now feel a bit more comfortable that I
10 could fulfil the role quite frankly.

11 **Q. Couple of quick things. Best lawyer -- best**
12 **lawyers in America for personal injury**
13 **litigation. Would that be a -- a defense side or**
14 **would that be the plaintiff's side or --**

15 A. I think the best lawyers is probably civil
16 defense. And one of those was an award, again,
17 until I got it I didn't even know you could get
18 it, was, I think, 2012 I got like best lawyer of
19 the year in Greenville or something. So, I had --
20 I had -- had a nice case another firm got me
21 involved in. And I -- I think having, you know,
22 a lot of other people from a different firm voted
23 for me that year was what pushed that over the
24 top. But I was happy for that. And I -- I mean,
25 we did do a good job in that case. It was a, you

1 know, very interesting case that ended up, you
2 know, with a lot of millions of dollars being
3 talked about before I got in. And we came back
4 with a double defense verdict, so it was --

5 **Q. It was happy for some --**

6 A. Happy for some and not for others.

7 **Q. -- and less so for others.**

8 A. Well, that's how it always is. Two things -- two
9 final things and I noticed your wife's last name
10 is Patterson?

11 **Q. Yes.**

12 A. Your father was --

13 **Q. Choppy Patterson.**

14 A. Very good. And then last, you and I share a
15 similar stepping stone in -- in your -- your walk
16 to this point at least. At least becoming a
17 lawyer. I too worked with Kermit King.

18 **Q. Okay.**

19 A. Where I learned an incredible amount of stuff.
20 And one of the biggest take-aways was you don't
21 want to mess with Kermit King.

22 **Q. That's true.**

23 A. So, you learned from a great lawyer there, so
24 that's it. Thank you for your willingness to do
25 this.

1 Q. All right. Great.

2 CHAIRMAN SMITH: Any other questions? All right.

3 EXAMINATION BY CHAIRMAN SMITH:

4 Q. Mr. Riordan, I -- I've asked everybody that's a
5 judge -- I mean that's a judicial candidate up
6 here. So, let me -- let just be consistent and
7 ask you a couple of these questions. I -- I know
8 you haven't been in general sessions court in a
9 while. Well, I guess you do do some -- you do
10 perform some criminal defense work still, right?

11 A. Correct.

12 Q. What -- what's your philosophy on the alternative
13 courts like, you know, mental health court, drug
14 court, the veterans court? I -- I -- I know at
15 some point if you were elected judge and you
16 would be involved in the management of the courts
17 and participation of individuals in those courts.
18 What's your thoughts about those?

19 A. I'm all for anything that -- that helps our
20 judicial system. Again, I don't know as much
21 about the funding as you all. But I'm -- I'm all
22 for anything giving it a shot. I mean, we've
23 made some great strides since I was practicing as
24 a prosecutor. You know, all the sentencing
25 reform and all that has made a big change. I

1 hear all the time there our drug court -- I've
2 only assisted peripherally with some of that. I
3 -- I know Judge Chuck Simmons up in -- in
4 Greenville has enjoyed that and thinks it's a
5 great program. And I -- I'd have no reason to
6 dispute that. I'm pretty close with all the
7 prosecutors as well. They're all for it as well.
8 Anything we can do that's alternative, keeps down
9 the -- the -- the -- the prison population.
10 Saves the taxpayers money, especially for non-
11 violent offenders. Give everyone a chance. I'm
12 all for it.

13 **Q. Okay. And -- and lastly I -- if you're elected**
14 **judge, you're going to have lawyers as -- as you**
15 **know when you and I had cases together, going to**
16 **have a host of conflicts, especially when you**
17 **have a number of lawyers involved. And how do**
18 **you balance the quality of life of lawyers who**
19 **may need vacations or going to one of their**
20 **children's football games, basketball games, or**
21 **sporting events as opposed to moving a docket and**
22 **having a just disposition of cases?**

23 **A. You know, it's always a case by case basis. You**
24 **know -- you know, you -- you try to accommodate**
25 **everyone if it -- if it can happen and if it's**

1 not going to break down court. I mean, that's
2 certainly what we all want to do. We all want to
3 be good members of the Bar together. Nobody
4 wants to be, you know, firm just for the sake of
5 being firm. Some judges may have gotten that
6 reputation in the past. Who knows. But, you
7 know, you -- you try to work within it. But --
8 but again, you -- you can't do it unnecessarily
9 and -- and have the -- you know, you've got to
10 think about the -- the clients themselves that
11 are involved and make sure the -- the attorneys
12 vouch for the fact that their client's are on
13 board with it. That they're well aware of it and
14 this is what they want to happen. And again,
15 it's just a fine balance but you don't want to do
16 it and waste any court time and have court break
17 down because someone -- you know, especially if
18 they come up with the last minute. It's
19 certainly the type of thing you'd encourage.
20 That's the kind of thing I would do is try to
21 have more interaction with the bar. Just kind of
22 encourage, hey, if you've got issues --
23 Greenville's pretty good anyway. We have these
24 pretrial conferences set far out. I mean, I've
25 got some coming next week. But they invite us to

1 come in beforehand and say, look, you don't even
2 have to show up. You know, like we used to do
3 with some judges. Come in, the whole group's
4 there all day to speak with the judge personally
5 who's never going to see the case again. We
6 invite them to -- to -- well, they invite the
7 attorney's to -- to send in a scheduling order.
8 Just tell, hey can we put this off? We'll be
9 ready -- you know, no -- no -- as long as we can
10 have the case called no later mid-July, is the
11 one I've got for next week. And they invite us
12 to do that. And so again, you -- you want it --
13 you -- you just don't want anything to come at
14 the last minute. And -- and I think the
15 attorneys that do that know that they're really
16 asking for a lot and maybe most of them wouldn't
17 even do that. I think most of them are cognizant
18 of the court's time as well.

19 **Q. And Mr. Riordan, finally, I -- I want to tell you**
20 **as -- as -- when we look at these ballot box**
21 **comments and it's a -- I know some people don't**
22 **like them because they're anonymous but also by**
23 **the same token they also give us a -- a good**
24 **indication of what lawyers who don't fear any**
25 **retribution or offending anybody tells us. And I**

1 -- I think it's important when we look at these
2 to tell that -- tell the candidates that -- that
3 when they do well. And I just want to tell you,
4 when you look at this, you're well qualified over
5 80 to -- to 80 to 70 to 90 percent of people
6 under the criteria finds you well qualified. So,
7 I think that's a testament --

8 A. Thank you.

9 Q. -- to your practice and to your good work and
10 what you've done over the years and that's
11 something you ought to be proud of.

12 A. Great.

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

15 SENATOR RANKIN: Real quick.

16 CHAIRMAN SMITH: Yes, sir.

17 EXAMINATION BY MR. RANKIN:

18 Q. And to -- and to just chase a little rabbit here.
19 We heard from Justice Kittredge earlier this week
20 or last -- whatever -- whatever day.

21 A. Apparently in Greenville this year thus far, did
22 he say that they were always at -- only the 16
23 common pleas trials conducted?

24 Q. That's what -- that's what he had to say. We
25 heard that same talk this weekend or Friday. So,

1 this is somewhat of a reverse. You have got a 90
2 percent practice is focused on civil. You've
3 done -- you cite cases that you've been involved
4 on the criminal side. But it's amazing how
5 either we're afraid to try cases or -- or the
6 success of ADR. But -- and we've heard Judge
7 Wooten, I think -- no, Judge Anderson. Federal
8 Court Judge Anderson bemoan the fact that we
9 really don't try cases anymore. And so, if
10 you're --

11 A. Didn't mean to interrupt you but I ---

12 Q. It's not a real question but an observation from
13 your standpoint about if you're successful,
14 you're not going to be trying as many in
15 Greenville common pleas cases as you are going to
16 be general sessions, it sounds like.

17 A. Well and again, I -- I -- you know, the -- the
18 fact that I've mostly been doing civil -- again,
19 I think some of the folks -- my appearances there
20 I think are for good reason. I'm trying -- most
21 of the stuff I get these days, I try my best and
22 thankfully through connections have tried to nip
23 things in the bud. So, they're -- so, they're
24 not making headlines and they're not in court as
25 much as we can be. I think that's the best thing

1 I can do for my -- for my criminal cases. But
2 you're right. I did -- and I note in there just
3 -- had a couple of unfortunate scenarios a couple
4 of years ago and because of those, I kind of
5 intentionally said, all right. I'm -- I'm going
6 to peel back on this. I just -- you know -- one
7 of them was a terribly long case just to -- you
8 know -- unfortunate outcome there. And another
9 was with a young man that I just -- the solicitor
10 and I for whatever reason, he and I've gotten
11 along in every other case. Je and I couldn't see
12 eye to eye on this. I still it was -- just a --
13 so I tried to appeal to him as a taxpayer. You
14 know, why would you want to have this young
15 person there. But, you know, with the trials
16 from the defense standpoint and you know others
17 here know, you know, a part of that is just the
18 headlines that are out there. The -- the
19 plaintiff's attorneys do a good job of, you know,
20 putting out headlines whether they're trials or
21 judgments or whatever. And our client's read
22 about them. And they're -- you know, you can't
23 guarantee them a result. All they can do is tell
24 them, hey, you know, we've got a pretty good
25 case. This is -- I'm not afraid to try this.

1 You know, I've got a lot of clients who do
2 listen. But it's just not as many anymore. And
3 we've got -- we've got great mediators in the
4 upstate too. So, the other thing about
5 Greenville is, we don't get most of those huge
6 verdicts. And so, when we're able to -- to
7 deliver, you know, a decent resolution, the
8 insurance companies that are doing work and --
9 and the companies that are doing work all over
10 the country and have some bad results on similar
11 facts, they're happy to do it. They think
12 they're getting a bargain. And I think part of
13 that's just from the great jury pool we have in
14 Greenville. But -- but again, I -- you know, I
15 think if you talk to anyone around the state and
16 you know, look at my record I'm -- I'm certainly
17 not one of those that's afraid to try them. But
18 you're right, if I'm sitting as a judge, yeah.
19 They -- they -- it -- it may be fewer.

20 **Q. And I'm -- I'm not -- it's a odd rabbit that --**
21 **that I'm chasing here. A rabbit hole but**
22 **ultimately I grew up with a father who was a**
23 **lawyer and a judge. And you look back everyone**
24 **knew Choppy Patterson. That's your dad, correct?**
25 **Judge Patterson?**

1 A. Yes.

2 Q. Sorry. In-law. I'm looking to or at your wife.

3 A. Yes.

4 Q. Yeah. Yeah. So, now I'm looking too -- or at
5 your wife. My father was firm as well as a
6 judge. And very strict. And -- but you try your
7 cases that you can't resolve. You try either the
8 bad ones and you settle your good ones. So, I --
9 perhaps that's -- that's your experience. I know
10 -- got recent experience where we've tried bad
11 ones and good results, bad results. So, anyway.
12 That --

13 A. Yeah. As I say, I'd -- I'd -- I'd -- I'd rather
14 it be less trials and good results all around
15 than having a couple of these I'm up here and I'm
16 saying, boy, I wish we never tried that case.
17 Thankfully, that hasn't happened in -- in some
18 time.

19 Q. There won't be a lack of work awaiting you if
20 you're successful. It'll be just different.

21 A. Sure.

22 Q. Mr. Chairman, please turn my mic off.

23 CHAIRMAN SMITH: Thank you. I'll be happy to do that
24 for you. Okay. Mr. Riordan -- any -- any
25 further questions of Mr. Riordan? Mr. Riordan,

1 thank you so much for your testimony today. That
2 concludes this portion of your screening process.
3 I want to take this opportunity to remind you
4 that pursuant to the Commission's evaluative
5 criteria, the Commission expects candidates to
6 follow the spirit as well as the letter of the
7 ethics laws. And we will view violations or the
8 appearance of impropriety as serious and
9 potentially deserving of heavyweight and
10 screening deliberations. On that note, and as
11 you know, the record will remain open until the
12 formal release of the report of qualifications.
13 And you may be called back at such time if the
14 need arises. I thank you for offering. And I
15 thank you for your service to the State of South
16 Carolina.

17 MR. RIORDAN: Thank you all.

18 CHAIRMAN SMITH: Y'all have a safe trip back to
19 Greenville.

20 MR. RIORDAN: Thank you.

21 (Off the Record)

22 CHAIRMAN SMITH: Is it -- is it Ms. -- Ms. Salvini?
23 Is that how you pronounce your name?

24 JUDGE SALVINI: That's correct.

25 CHAIRMAN SMITH: All right, good. Ms. Salvini, first,

1 let me apologize to you for making you wait. We
2 are overly optimistic on our time and -- and we
3 do not mean to be disrespectful of your time. So,
4 I appreciate your patience with us.

5 JUDGE SALVINI: Thank you.

6 CHAIRMAN SMITH: Judge -- sorry.

7 JUDGE SALVINI: No, that's all right. I appreciate
8 that but --

9 CHAIRMAN SMITH: I do have ---

10 JUDGE SALVINI: No, it's not a problem at all.

11 CHAIRMAN SMITH: You're getting the benefit of being
12 the last person before us today, so my -- my eyes
13 are getting worn out. All right. Judge Salvini,
14 will you please raise your right hand?

15 JUDGE SALVINI, being duly sworn, testifies as follows:

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

20 JUDGE SALVINI: Yes, they are.

21 CHAIRMAN SMITH: Are they both correct?

22 JUDGE SALVINI: They are. And I did provide an
23 amendment which is Exhibit 29.

24 CHAIRMAN SMITH: Okay. And the amendment's marked as
25 exhibit. Is there any other changes or any other

1 updates you need to make at this time?

2 JUDGE SALVINI: I do not.

3 CHAIRMAN SMITH: Do you have any objection to us
4 making those documents and your amendment a part
5 of the record of your sworn testimony?

6 JUDGE SALVINI: I do not.

7 CHAIRMAN SMITH: All right. Let the record reflect.
8 Will -- if you'll hand those to Lindi for me,
9 please. And we'll make those part of your --
10 exhibit to your sworn testimony. Judge Salvini,
11 the Judicial Merits Selection Commission has
12 thoroughly investigated your qualifications for
13 the bench. Our inquiry has focused on the nine
14 evaluative criteria and has included a ballot box
15 survey, a thorough study of your application
16 materials, verification of your compliance with
17 the state ethics laws, search of newspaper
18 articles in which your name appears, study of
19 previous screenings, and checks for economic
20 conflicts of interest. We've received no
21 affidavits today filed in opposition to your
22 election and there are no witnesses present to
23 testify. Do you wish to make a brief opening
24 statement to the Commission?

25 (EXHIBIT 27 - JUDICIAL MERIT SELECTION COMMISSION

1 PERSONAL DATA QUESTIONNAIRE OF THE HONORABLE JESSICA
2 A. SALVINI)

3 (EXHIBIT 28 - JUDICIAL MERIT SELECTION COMMISSION
4 SWORN STATEMENT OF THE HONORABLE JESSICA A. SALVINI)

5 (EXHIBIT 29 - AMENDMENT TO THE PERSONAL DATA
6 QUESTIONNAIRE OF THE HONORABLE JESSICA A. SALVINI)

7 JUDGE SALVINI: Briefly, I would just like to thank
8 you all for the opportunity to appear before you
9 here this evening. And to thank the staff for
10 being so wonderful. They truly have been. They
11 have been helpful and informative and I
12 appreciate them very much. With that said, I am
13 keenly aware that I am the last candidate of this
14 evening so I am happy to answer any questions
15 that you all may have.

16 CHAIRMAN SMITH: Thank you. Will you please answer
17 questions from counsel?

18 JUDGE SALVINI: Yes, sir.

19 EXAMINATION BY MR. HINSON:

20 **Q. Good evening, Judge Salvini. Chairman, I will**
21 **begin by noting for the record that based on the**
22 **testimony contained into candidate's PDQ, which**
23 **has been included in the record, with the**
24 **candidate's consent, that Judge Salvini meets the**
25 **constitutional and statutory requirements for**

1 **this position regarding age, residence, and years**
2 **of practice. Judge Salvini, how do you feel your**
3 **legal and professional experience thus far**
4 **renders you qualified and will assist you to be**
5 **an effective circuit court judge?**

6 A. So, my practice without going over every detail
7 that's in my PDQ has been a very general
8 practice. I've had the benefit of being a
9 general practitioner in private practice and
10 quite frankly a trial attorney my entire legal
11 career. Specifically, I have handled a wide
12 variety of matters in almost every court in this
13 state throughout the past 16 years. I am
14 starting my 17th year of practice. I also have
15 had the pleasure of being for the last ten years
16 a municipal court judge. And I think that that
17 experience specifically aids me in -- in seeking
18 this position in being a circuit court judge.
19 So, I started out being a trial attorney and
20 being in court generally two to three times a
21 week, if not every week. And then once becoming
22 a municipal court judge, I had the honor and
23 pleasure of being trained by the Honorable Rob
24 Stillwell. So, he was my predecessor. And when
25 I was first appointed to an associate judge

1 position, he took me under his wing and I sat
2 with him at -- on the bench for quite some time.
3 I'm sure I drove him probably crazy asking him as
4 many questions as I possibly could in hopes that
5 I could gain from his knowledge and experience
6 before he took the circuit court bench. And he
7 was extremely patient with me and taught me,
8 essentially, how to be a judge, how to preside
9 over matters, how to be effective and control the
10 courtroom, and specifically, how to make my
11 record clear. So, I have spent the last ten
12 years as a municipal court judge. And then when
13 he went up to the circuit court, I became the
14 chief trial judge. That has afforded me the
15 opportunity to preside over matters every single
16 week. In fact, this morning I was on the bench
17 wearing the black robe. Most of those matters
18 are pro se litigants, people without lawyers.
19 So, they don't really know what to do during the
20 court process. And I believe that that
21 experience in and of itself, being able to deal
22 with those litigants, both attorneys and pro se,
23 just the citizens, and providing them with a fair
24 and impartial process. It has been my goal to
25 make sure that when they walk into that courtroom

1 they feel like they have been heard. That they
2 understand what the law is and what the process
3 is. And that they were treated fairly and
4 justly. So, that experience, I believe, puts me
5 in a unique position to move to the circuit
6 court.

7 **Q. Thank you, Judge Salvini. Judge Salvini, we --**
8 **we -- the Commission received 171 ballot box**
9 **surveys regarding you with 12 additional**
10 **comments. The ballot box survey, for example,**
11 **contained the following positive comments. One**
12 **stated you had the highest ethical standards.**
13 **Another stated, "This applicant would make a**
14 **great addition to the bench." And another said,**
15 **"Most qualified person I've seen in a long time."**
16 **I would note for the record that there were no**
17 **negative concerns expressed in the ballot box**
18 **survey. Judge Salvini, your SLED report**
19 **indicates you were named as a defendant in a**
20 **lawsuit that was filed in 2016 in the Greenville**
21 **County Court of Common Pleas by RoofRoof**
22 **Greenville. Can you explain the nature and**
23 **disposition of this lawsuit?**

24 **A. Yes. So, I, along with my ex-husband, still own**
25 **a -- what I would consider to be a loft apartment**

1 in Greenville. And that building contains
2 several units. And the homeowner's association
3 contracted with RoofRoof to -- and I don't recall
4 specifically, but either to repair or to replace
5 the roof. After the construction was done there
6 were several of the owners whose roofs were still
7 leaking and objected to the homeowner's
8 association paying the bill in its entirety.
9 That's my understanding. I never had any direct
10 conversations. I wasn't involved in any of the
11 discussions with the homeowner's association or
12 those -- those owners of, what I would consider
13 to be loft apartments. The matter was resolved
14 between the homeowner's association and the --
15 those owners. There was additional repairs made.
16 I was specifically named because I have an
17 interest in that loft apartment. I -- I don't --
18 I don't reside there. My ex-husband resides
19 there currently. But that was the nature of that
20 and it was satisfied after they resolved their
21 dispute.

22 **Q. Thank you. You also indicated in your PDQ that**
23 **while you were not named, your law firm and your**
24 **partner were sued by a former client. Can you**
25 **explain the nature and disposition of that suit?**

1 A. Yes. So, my -- my law partner was sued by a
2 former client and that client did name my law
3 firm. I wasn't named specifically. It was a
4 client who had an issue with her nursing license.
5 She alleged that my partner had failed in several
6 regards in terms of helping her or assisting her
7 or representing her properly in acquiring that
8 license. It was resolved via settlement
9 agreement. I believe that my insurance company
10 or our insurance company for our law firm and my
11 law partner and myself did agree to.

12 **Q. Thank you for that. Judge Salvini, should you**
13 **ascend to the circuit court bench what do you**
14 **believe will be the most challenging aspect of**
15 **the position?**

16 A. I think the most challenging aspect of the
17 position will be making sure that the cases --
18 that there's not a backlog of cases. I believe
19 that that's one of the issues that faces all of
20 our courts. It certainly faces the municipal
21 court. And I believe that it does so at the
22 circuit court level. So, being able to balance
23 the general sessions docket and making sure that
24 those cases are heard in a timely manner.
25 Especially for those individuals who are

1 incarcerated as well as balancing the court of
2 common pleas and ensuring those cases are heard
3 timely. I believe that they may be the -- the
4 most difficult challenge. Or the -- the
5 challenge that faces all circuit judges in terms
6 of being able to be an effective circuit judge is
7 making sure those cases are heard timely.

8 **Q. Judge Salvini, what do you believe may be the**
9 **appropriate temperament of a circuit court judge?**

10 A. I believe that for every judge, whether it's a
11 circuit court judge or a family court judge or --
12 or a municipal court judge, that the temperament
13 of the judge should be one who is -- is patient.
14 Who is willing and able to listen to the
15 litigants. Even if there may be a frustrating
16 argument or someone is not abiding by the rules
17 to begin with. For example, pro se litigants
18 appear before me all the time. They become
19 extremely frustrated when they realize that they
20 are making an argument that isn't firmly rooted
21 in the law. It's a matter of being able to
22 listen to those litigants, making sure that they
23 feel and understand that they have been heard by
24 somebody who is listening to their argument and
25 cares about what they're saying. I believe that

1 a circuit judge or any judge needs to treat
2 people with respect and make sure that when they
3 walk out of that courtroom that they feel like
4 they had a fair and just hearing, regardless of
5 whatever the outcome is.

6 Q. Thank you, Judge Salvini. I just have a few
7 house keeping issues. Judge Salvini, are you
8 aware that as a judicial candidate you are bound
9 by the code of judicial conduct as found in Rule
10 501 of the South Carolina Appellate Court Rules?

11 A. Yes, I am.

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

15 A. I have not.

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

20 A. I have not.

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

25 A. I have not and I am not aware of anyone who has.

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

4 A. Yes.

5 Q. I would note that the Upstate Citizens Committee
6 reported that Judge Salvini to be well qualified
7 in the evaluative criteria of ethical fitness,
8 professional and academic ability, character,
9 reputation, experience, and judicial temperament.
10 And qualified in the evaluative criteria of
11 constitutional qualifications, physical health,
12 and mental stability. Mr. Chairman, I would note
13 for the record that any concerns raised during
14 the investigation by staff regarding the
15 candidate were incorporated in the questioning of
16 the candidate today. And with that, I have no
17 further questions.

18 CHAIRMAN SMITH: Thank you. Any questions for Judge
19 Salvini?

20 MR. MURPHY: Mr. Chairman.

21 CHAIRMAN SMITH: Yes, Mr. -- Representative Murphy.

22 EXAMINATION BY REPRESENTATIVE MURPHY:

23 Q. Judge Salvini, just curious. I see you're a
24 native Californian?

25 A. I am.

1 **Q. And went to law school and practiced out there.**
2 **How did you get to South Carolina? Just --**

3 **A. I -- I followed a boy. I met my ex-husband in**
4 **California. He was attending school there. We**
5 **went to law school together. And shortly after**
6 **we graduated he started clerking for a, I**
7 **believe, a federal judge. And I started my**
8 **practice. And his father became sick. He is an**
9 **-- from Greenville, South Carolina.**

10 **Q. Yeah.**

11 **A. And asked if I would be willing to take another**
12 **bar exam. Which I was a little reluctant to do**
13 **but asked if I'd be willing to move here. And**
14 **so, we thought about it. And as soon as he**
15 **finished that year, we went ahead and made the**
16 **move. And I've been here ever since.**

17 **Q. Thank you.**

18 CHAIRMAN SMITH: Senator Hayes.

19 EXAMINATION BY MR. HAYES:

20 **Q. I know you probably went over this and I just --**
21 **it's getting late. I may not have been paying**
22 **attention. What criminal experience do you have?**
23 **I know you do criminal work in -- in -- in your**
24 **judge's capacity because you hear crimes that are**
25 **coming in to municipal court. But outside of**

1 **that, what criminal work have you done?**

2 A. Okay. So, I've had an extensive criminal
3 practice. I've handled cases in my private
4 practice anywhere from a misdemeanor all the way
5 up to a felony. So, I -- recently, for example,
6 just resolved a criminal sexual conduct with a
7 minor case this past winter in general sessions.
8 I have tried cases in federal court. I'm on the
9 criminal justice act panel. Which means, I -- I
10 accept and receive criminal appointments for
11 those that are charged with federal crimes. So,
12 I've had an extensive -- outside of my presiding
13 over those matters, which -- which I do regularly
14 --

15 **Q. What -- what percentage of your practice would**
16 **you say was criminal as opposed to civil?**

17 A. Without going back and looking at my PDQ when I
18 was categorizing the cases looking at my
19 database, I would say that my case load when --
20 when I compare it to civil versus criminal, if
21 I'm looking at domestic work, I have a -- a
22 strong domestic private practice that I would
23 include in civil. So, that definitely -- that
24 percentage would be higher over my criminal case
25 load. I'd want to go back and look and make sure

1 I'm not telling you wrong but --

2 Q. Taking out the family, where would you say as far
3 as criminal versus?

4 A. I think my criminal is probably more extensive
5 than my civil practice. Maybe it would be more
6 than half of that.

7 Q. Okay. Thank you.

8 CHAIRMAN SMITH: Any further questions? Any other
9 questions for Judge Salvini?

10 EXAMINATION BY CHAIRMAN SMITH:

11 Q. Judge, let me ask you just a couple question I've
12 been asking everybody. And you've got some
13 familiarity with the criminal side I hear you
14 say. What -- what's your -- what's your thoughts
15 on these alternative courts that we're seeing
16 more and more of in -- in regards to mental
17 health courts, veterans courts, drug courts? And
18 I understand through this race now that I've been
19 asking these questions is that y'all have all of
20 the above in Greenville. And what -- what's your
21 thoughts on that, if you become elected as a
22 judge, you know, you would have to participate,
23 preside or -- or, you know be involved in.
24 What's your thoughts about the advocacy and -- of
25 those courts that we have in that alternative

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fashions?

A. Okay. So, I -- I do believe that those courts are extremely effective and they can be so in several regards. One, because they will help with the backlog of cases. And number two, I do believe in some instances, for example, like with drug court they can help with rehabilitation so that there's not repeat offenders. I mean, that is the goal. And so, I do believe that those can be extremely effective. As of right now, the penalties become very harsh for those individuals who decide to take advantage of those courts and then don't -- don't successfully complete. So, at -- at this point in time, I do believe they are effective and I think that they should continue to -- to move forward and -- and -- and even -- maybe even consider, for example, something like homeless. Homeless court would be a very, I think, advantageous thing for the -- for -- for us to consider as well. And I'm just throwing that out there because that's something that's near and dear to my heart. But there's -- I can't tell you how many times I'm in municipal court and the officers in Mauldin are extremely considerate when they make sure that I know that

1 somebody who appears before me is homeless, has
2 no place to go, and no ability to pay a fine.
3 And so, those alternative courts help address
4 those issues that I think the judges face.

5 **Q. And Justice Beatty recently issued an opinion**
6 **about -- about unrepresented defendants and how**
7 **municipal courts -- and I read some articles in**
8 **the New York Times that highlighted the -- our**
9 **justice system on the municipal and magistrate**
10 **level in South Carolina. What are your thoughts**
11 **about his order in does it provide you any -- any**
12 **complications in the way you handle your court?**

13 **A.** Without commenting on something that would put me
14 in a position as a judicial officer of -- of
15 addressing something that hasn't -- that's still
16 in development because I'm -- understand we had a
17 -- we had a meeting here just recently where the
18 municipal and magistrate court judges are -- are
19 give -- given some guidance about what's coming
20 down the pipeline. And -- and certainly it's
21 made national news. At least for my court, I
22 touched based with my administrative judge and my
23 clerk of court and we immediately started taking
24 steps to address that issue. So for example,
25 today, even ,when I presided over matters, every

1 person who came before the court received their
2 Faretta warnings form. Not just myself on the
3 bench explaining to them their right to counsel.
4 But actually listing it out. Having them read
5 it, sign it, indicate that they understood it.
6 And those steps we have started to take
7 immediately. Now, certainly his order has
8 required us to recall bench warrants before my
9 tenure even on the bench. And so, I believe,
10 that at this point we have recalled -- and I -- I
11 won't -- I think it's 2,400 and some change of --
12 of bench warrants that have been recalled in my
13 jurisdiction alone, in my court. And -- and I'm
14 not -- I don't know how we're going to handle
15 that just yet. I had a meeting this morning to
16 try to address it. But certainly, my court -- my
17 clerk and I -- my administrative judge, we are
18 very efficient in terms of trying to make sure
19 our docket moves fast and people are afforded
20 their right to counsel and they're given their
21 right. So, at this point until we receive
22 further direction from the Supreme Court or from
23 Justice Beatty, we are recalling those bench
24 warrants. We are categorizing them to determine
25 whether or not those individuals had counsel.

1 Again, some of them were before I was even on the
2 bench. But immediately we've taken steps to
3 address any concern that would be going on in our
4 court regarding whether or not someone was given
5 their right to counsel or informed of their right
6 to counsel adequately.

7 Q. If somebody would come to your court and been in
8 jail for ten days, eight days, however long it
9 was and they were there and they were guilty,
10 they didn't have the ability to pay a fine were
11 you incarcerating? Was it pay 30 days or a fine
12 of \$500 or were you doing time served? How were
13 you handling that?

14 A. So -- so, most of -- most of the cases that I
15 hear, I impose a fine as opposed to jail time. I
16 may impose a suspended sentence depending on the
17 nature of the crime. But in most of my cases I
18 will impose a fine and then the individuals are
19 given either a -- what I would consider to be an
20 extension on payment if they weren't able to pay
21 the fine on that date. But I don't -- I don't
22 generally incarcerate. Now, I do provide victims
23 the opportunity to be heard. And there are some
24 victims that appear that request that someone be
25 incarcerated. For example, if it was domestic

1 violence or if it was some type of assault and
2 battery. But for the most part -- most of my
3 victims even aren't asking for incarceration.

4 **Q. How about the -- if somebody doesn't pay the fine**
5 **that you impose --**

6 A. Uh-huh.

7 **Q. -- and it's 30 days or \$500 fine and give you**
8 **time payments and they don't pay, and those time**
9 **payments, are y'all issuing bench warrants to**
10 **have those people picked up and serve the time if**
11 **they can't afford to pay?**

12 A. No. I think that the issue that's coming before,
13 at least my court, is is that these are
14 individuals who did not appear. They were tried
15 in their absence and a sentence was imposed.
16 That -- that is the primary issue before my
17 court. In -- in -- in the instances where
18 individuals who have actually appeared before me
19 and received, let's say, a sentence that was a
20 fine and not a sentence of incarceration.
21 Although I did have an associate judge that most
22 often would impose, for example, a fine with a
23 30-day suspended sentence. My sentences
24 generally -- I can't think of a -- a -- I -- it
25 would be a small handful that that would occur.

1 Those individuals are given an -- been given an
2 extension on payment. Now, if they fail to
3 reappear to pay that fine, there are some
4 consequences in terms of I may, depending on a
5 case by case basis, hold them in contempt of
6 court, for example, for not reappearing.
7 Especially, if, for example, there's something
8 attached to it like a restitution order. Or
9 there's a victim that needs to have that paid and
10 that was something that was included in what my
11 sentence was.

12 Q. And what -- what I'm interested in is just how
13 your court treats -- you know, you -- you
14 mentioned homeless or --

15 A. Uh-huh.

16 Q. -- those -- those individuals tend to,
17 unfortunately, depending upon what police
18 jurisdiction they are in are the ones that tend
19 to get arrested at -- for minor crimes, public
20 drunk, disorderly conduct. They're -- they're
21 creating a nuisance, so to speak, somewhere. And
22 that's what happens and they get put on time
23 payment plan. I'm just interested, when they --
24 obviously, you know they can't afford a time
25 payment plan when you impose it and they're on

1 there and I think that's part of the point of
2 what the article that I read in my -- my
3 municipal court was cited in -- in the article.
4 So, you know, and -- and that's why I'm
5 interested. You know, the article in my opinion
6 portrayed it a whole lot differently than what
7 happens. But you know, I guess what I'm trying
8 to figure out is those who don't -- who can't pay
9 and don't pay, is there consequences which would
10 include jail for those people?

11 A. It -- it could potentially, yes. Even in my
12 jurisdiction. But for example, when I'm made
13 aware of somebody who can not pay -- Miracle Hill
14 is almost directly across the street from my
15 courthouse. So, generally what I will impose is
16 let's talk about you doing some community
17 service. You can go to the clerk of court's
18 office. They'll provide you with a form. They
19 literally walk across the street to provide that.
20 If it's somebody, for example, who is homeless
21 depending on the nature of the case. It's a case
22 by case basis. Depending on their age, for
23 example, and whether or not they have a place to
24 go. And generally the officers will move for a
25 time served sentence if they spent even a couple

1 of days in jail. Depending on how many times the
2 officer's been involved with them. And likewise,
3 everyone in -- in Mauldin at least in my court
4 and the officers know that, for example, very
5 young -- I'm -- I'm saying, 30 or younger. And
6 actually, if somebody older asks me to do it, I
7 would not be opposed to it. But if they do not
8 have their GED, they do not a job, then we
9 fashion a sentence that will address it. So, I
10 have probably -- I think I have at least half a
11 dozen individuals right now whose cases -- their
12 criminal cases are being held in abeyance until
13 they can obtain their GED. And I will keep them
14 on my court docket. They check in with the
15 officers and they check in with the clerk of
16 court. So, we're fashioning some creative
17 sentences. That's not to say that I don't
18 understand the concern or why Justice Beatty
19 issued his order. It's just that at this point
20 as a municipal court judge I'm still waiting to
21 receive guidance in terms of how we're going to
22 handle it.

23 **Q. And -- and finally the last question is,**
24 **obviously I -- I have friends who are municipal**
25 **court judges and magistrates. And, you know, I -**

1 - I understand they're at the bottom of the totem
2 pole as it relates to priority of courts. So,
3 when attorneys have conflicts with the courts and
4 -- how -- how do you handle that generally?

5 A. Okay. So, and -- and that is an issue for
6 municipal courts. It's a very serious issue.
7 There's a lot of cases that get continued or
8 rescheduled as a result of a lawyer being called
9 to another court. But having the -- the
10 experience of being a private practitioner, I
11 understand that lawyers -- it is a demanding job.
12 And you've got two or three judges that are
13 asking you to be in one place at the exact same
14 time when you're a solo practitioner. And so,
15 generally what I will do is -- is address with
16 the -- the city prosecutor and the attorney.
17 Especially, attorney who is -- who is lucky
18 enough to have a very successful practice so he
19 or she is -- is going to every court. We work it
20 out to where we address it on the docket itself.
21 I'll continue the case. Because I -- I don't
22 want a lawyer to ever feel like they're in a
23 position that they can not handle enough. If
24 somebody's in general sessions trying a felony
25 case and I have a jury trial docket at the exact

1 same time, I have never demanded an attorney show
2 up there, start a trial, pick a jury with me or
3 make, you know, a colleague pick a jury just to
4 show up three days later to try to try a case
5 with me. I mean, I -- this profession is
6 stressful. And -- and if we want to avoid
7 lawyers drinking every single day and -- and --
8 and having some very extreme stress placed on
9 them. So, instead what I've done is usually I'll
10 move them to the very next calendar. Try to
11 address it with the other court with the city
12 prosecutor to make sure that we've got a
13 situation where it can be scheduled. And that so
14 far has seem to work out. We've been able --
15 especially for lawyers that do a lot of DUIs. If
16 we can -- generally like on my next jury trial
17 docket what I'll do is try to take all their DUIs
18 that are coming up for trial and say, look, let's
19 set them for let's say the last two days of that
20 jury trial term. Let's make sure that they know
21 that that's when they're going to go so they can
22 request protection from the other court.

23 **Q. Okay. So, you -- you don't schedule courts on**
24 **Saturdays or days of football games to make sure**
25 **that the attorneys are in -- are available, do**

1 **you?**

2 A. I don't but I think my city prosecutor might me
3 shoot me if I asked him to do one more thing.
4 Right now, in order to move cases --

5 **Q. I'm not -- I'm --**

6 A. -- in the backlog.

7 **Q. I'm not encouraging any of that. You -- you --**
8 **you will suffer the same. We had a municipal**
9 **court judge last year that -- that -- that was**
10 **proud of that. And I don't think he was proud of**
11 **it after he left here.**

12 A. No. That is not -- they would probably -- there
13 would be -- there would be -- yeah. It would be
14 tyranny in my court. There would be people
15 revolting if I made them show up in -- on a
16 football day. But we do run a very -- I'm going
17 to give my city prosecutors at least the -- at
18 least a little bit of props. I mean, right now
19 on my jury trial term we'll schedule
20 approximately 70 cases. I'll do an ABC, every
21 block of time so I can get as many heard in a
22 five-day period as I can. Most of those cases do
23 settle but it does require the city prosecutor
24 and all the defense attorneys to work extremely
25 hard. And nobody's complained yet. I don't want

1 to jinx myself but they're -- they work really
2 hard to move that docket in that five-day period.

3 **Q. Impressed with what you're doing over there. I**
4 **congratulate you on that.**

5 A. Thank you.

6 CHAIRMAN SMITH: Any other questions for Judge
7 Salvini? All right. Judge Salvini, thank you so
8 much. This concludes this portion of your
9 screening process. I want to take this
10 opportunity to remind you that pursuant to the
11 Commission's evaluative criteria, the Commission
12 expect candidates to follow the spirit as well as
13 the letter of the ethics laws. And we will view
14 violations or appearance of impropriety as
15 seriously -- as serious and potentially deserving
16 of heavyweight and screening deliberations. On
17 that note, and as you know, the record will
18 remain open until the former release of the
19 report of qualifications. And you may be called
20 back at such time if the need arises. I thank
21 you for offering for this position and I thank
22 you for your service to the State of South
23 Carolina.

24 JUDGE SALVINI: All right. Thank you, all.

25 CHAIRMAN SMITH: Thank you.

1 JUDGE SALVINI: I hope everyone has a good evening.

2 CHAIRMAN SMITH: You too. Have a safe trip back.

3 JUDGE SALVINI: Thank you.

4 (Off the Record)

5 CHAIRMAN SMITH: Mr. Safran moves that we go into
6 executive session. All in favor say, aye.

7 (Ayes are heard.)

8 CHAIRMAN SMITH: All opposed? Ayes have it. We'll be
9 in executive session.

10 (Executive Session.)

11 CHAIRMAN SMITH: We're going to lift the veil. All in
12 favor say, aye.

13 (Ayes are heard.)

14 CHAIRMAN SMITH: All opposed? Ayes have it. We're
15 here. We're -- we're going to take up the -- we
16 -- we're going to take up the circuit court --
17 13th circuit seat number four. So, Erin's going
18 to --

19 MR. HITCHCOCK: Do you want to vote on whether they're
20 all qualified or not?

21 CHAIRMAN SMITH: Yeah. Well -- yeah. Hold on. Okay.
22 All right. So, Mr. Hitchcock has a motion.

23 MR. HITCHCOCK: Mr. Chairman, I -- I move we take up
24 the candidates as a slate for purposes for
25 determining qualifications and I would move that

1 all be found qualified.

2 CHAIRMAN SMITH: All right. Mr. Hitchcock -- I'm
3 sorry. Moves that all the candidates be found
4 qualified. Mr. Safran seconds it. Any
5 discussion? All in favor of -- of finding the
6 candidates qualified -- all candidates qualified,
7 raise your hands. All opposed? Let the record
8 reflect that I vote the proxy for Representative
9 Rutherford and he votes in the affirmative. And
10 Representative -- I mean, Senator Rankin, you
11 have the proxy of Senator Sabb and how does he
12 vote?

13 MR. RANKIN: In favor.

14 CHAIRMAN SMITH: Okay. All right. Let's call the
15 roll please.

16 MS. CRAWFORD: Okay. This is for qualified and
17 nominated. First candidate would be the
18 Honorable Alex Kinlaw, Jr.

19 CHAIRMAN SMITH: All right. Mr. Howard moves to find,
20 I presume --

21 MR. HOWARD: Mr. Howard moves to find Judge Kinlaw
22 qualified and nominated.

23 CHAIRMAN SMITH: Okay. And moves to nominate ---

24 MS. CRAWFORD: No. No. No. We have to vote.

25 CHAIRMAN SMITH: That's -- that's what I'm saying.

1 But someone has to -- oh, that's right. We just
2 call the vote. All right. Yeah. I'm sorry.
3 All right. All right. So, all in favor of -- of
4 finding Judge Kinlaw nominated -- all in favor of
5 nominating Judge Kinlaw, please raise your hand.

6 MS. CRAWFORD: Eight.

7 CHAIRMAN SMITH: We've got eight. And -- and
8 Representative Rutherford votes to nominated
9 Judge Kinlaw and -- and Senator Sabb votes the
10 same. So, let the record reflect that Judge
11 Kinlaw is nominated unanimously. Next is Andrew
12 -- Andrew "Andy" Moorman, Sr. So, all in favor
13 of finding him -- to nominate him, please raise
14 your hand. And let the record reflect that --
15 two. And then let the record reflect that
16 Representative Rutherford votes for Mr. Moorman.

17 MS. CRAWFORD: The third candidate is John "Jack"
18 Patrick Riordan.

19 CHAIRMAN SMITH: All right. So, all in favor of
20 nominating John "Jack" Patrick Riordan please
21 raise your hand. And the proxys --
22 Representative Rutherford votes to nominate Mr.
23 Riordan and Senator Sabb votes to nominate Mr.
24 Riordan.

25 MS. CRAWFORD: Okay. And then the Honorable Jessica

1 Ann Salvini.

2 CHAIRMAN SMITH: All right. Raise your hand if you --
3 vote --

4 MS. CRAWFORD: Seven.

5 CHAIRMAN SMITH: Okay.

6 MS. CRAWFORD: Is that correct? Seven. Okay. The
7 three candidates qualified and nominated are
8 Judge Kinlaw, Jack Riordan, and Judge Salvini.

9 CHAIRMAN SMITH: Okay. All right. With that, Senator
10 Hayes moves that the Committee adjourn. All in
11 favor say aye.

12 (Ayes are heard.)

13 CHAIRMAN SMITH: All opposed? We stand adjourn to
14 reconvene Monday, November --

15 MS. CRAWFORD: 27th.

16 CHAIRMAN SMITH: -- 27th at 10:00 --

17 MS. CRAWFORD: 10:00 a.m.

18 CHAIRMAN SMITH: -- 10:00 a.m.

19 (There being nothing further, the proceeding concluded at
20 6:45 p.m.)

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CERTIFICATE OF REPORTER

I, JENNIFER NOTTLE, COURT REPORTER AND NOTARY PUBLIC
IN AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, HEREBY
CERTIFY THAT I REPORTED THIS PROCEEDING, ON WEDNESDAY, THE
15TH DAY OF NOVEMBER, 2017, AND THAT THE FOREGOING 218
PAGES CONSTITUTE A TRUE AND CORRECT TRANSCRIPTION OF MY
STENOMASK REPORT OF SAID PROCEEDING.

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 27TH DAY OF NOVEMBER, 2017.

JENNIFER NOTTLE, COURT REPORTER
MY COMMISSION EXPIRES JULY 11, 2023